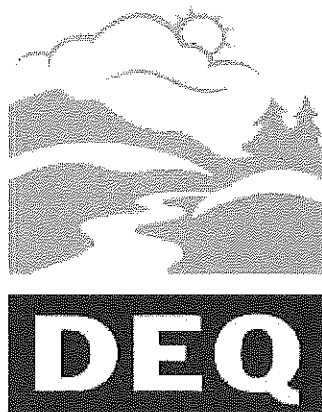


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 05/18/1995**



**State of Oregon
Department of
Environmental
Quality**

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AGENDA

ENVIRONMENTAL QUALITY COMMISSION MEETING

May 18, 1995

DE2 Conference Room 3A

811 S. W. 6th Avenue

Portland, Oregon

Thursday, May 18, 1995: Regular Meeting beginning at 9:00 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.

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

-
- A. Approval of Minutes
 - B. Approval of Tax Credits
 - C. †**Rule Adoption:** Adopting Federal Hazardous Waste Regulations by Reference and Adoption of "Housekeeping" Changes that Correct and Clarify State Regulations

- D. †**Rule Adoption:** VOC Area Source Rules for Portland Ozone Maintenance Plan: Auto Refinishing, Consumer Products, Aerosol Spray Paint, and Architectural Coatings
- E. †**Rule Adoption:** Oregon Title V Operating Permit Fee Increase
- F. †**Rule Adoption:** Boundary Descriptions: Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon
- G. †**Rule Adoption:** Adoption by Reference of Federal Hazardous Air Pollutant (HAP) Program Rules and Hazardous Air Pollutant Emission Standards
- H. †**Rule Adoption:** Amendments to Division 32 Hazardous Air Pollutants and Division 33 Licensing and Certification Asbestos Requirements
- I. Commissioner Reports (Oral)
- J. 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 July 6-7, 1995, for their next meeting. It is tentatively scheduled to be held in Ashland, OR.

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.

May 10, 1995

Approved ✓
Approved with Corrections

Minutes are not final until approved by the E2C

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Forty-Third Meeting
March 3, 1995

Regular Meeting

The Environmental Quality Commission regular meeting was convened at 8:30 a.m. on Friday, March 3, 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:

Emery Castle, Vice Chair
Linda McMahan, Commissioner
Carol Whipple, Commissioner

NOTE: William Wessinger, Chair, and Henry Lorenzen, Commissioner, were unable to attend.

Also present was 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.

Vice Chair Castle called the meeting to order.

A. Approval of minutes.

Commissioner McMahan moved approval of the January 20, 1995, work session and regular meeting minutes; Commissioner Whipple 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 4260	Molecular Probes, Inc (\$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. (\$100,817)	A water pollution control facility to eliminate lead contamination of storm water consisting of skirting and a 1,500 square feet enclosure for four baghouses and three lead residue tanks.
TC 4270	Widmer Brewing Co. (\$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.

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Application Number	Applicant	Description
TC 4275	Columbia Steel Casting Company, Inc. (\$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. (\$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 (\$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 (\$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.

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Application Number	Applicant	Description
TC 4305	Charbonneau Gold Club, Inc. (\$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.

The Department also recommended approval of Willamette Industries, Inc. request for an extension to file a pollution control facilities tax credit application for a plywood dry waste facility located in Dallas, Oregon. In addition, the Department recommended revocation of certificate 2642 (Precision Castparts, Inc.) and certificates 2158 and 2320 (Metrofueling, Inc.) since the facilities no longer function to prevent or control pollution. The Department further recommended transferring 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.

Commissioner Whipple asked about tax credit application 4338. She asked why there was no annual return on investment. Charles Bianchi of the Department's Water Quality Division responded that there was no gross annual income on the investment. Jim Britton from the Oregon Department of Agriculture further explained how the figures in the application were determined. Commissioner McMahan asked about the extension for Willamette Industry, and Mr. Bianchi explained timelines associated with the extension.

Commissioner Whipple moved approval of the Department's recommendation; Commissioner McMahan seconded the motion. The motion was unanimously approved.

C. Rule adoption: Criteria and procedures for determining conformity of general federal actions to state or federal air quality implementation plans.

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 (SIP). This proposed rulemaking establishes new rules based on federal Clean Air Act (CAA) requirements and which follow general conformity rules already adopted by the U. S. Environmental Protection Agency (EPA). 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. The Department recommended the Commission adopt the rules regarding general conformity as presented in Attachment A of the staff report.

Greg Green, Air Quality Administrator, and Brian Finneran of the Air Quality Division presented this item to the Commission. Mr. Finneran provided highlights of the proposed rules.

Commissioner Whipple moved adoption of the rules relating to the criteria and procedures for determining conformity of general federal actions to state or federal air quality implementation plans; Commissioner McMahan seconded the motion. The motion was unanimously approved.

D. Rule adoption: Criteria and procedures for determining conformity to state or federal implementation plans for transportation, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act.

These rules are required by section 176(c)(4)(C) of the CAA and by U. S. Environmental Protection Agency/U.S. Department of Transportation implementing regulations, 58 *Federal Register* 62188, et. seq. The Department recommended the Commission adopt the rules/rule regarding the conformity of transportation plans, programs and projects as presented in Attachment A of the staff report.

Mr. Green and Annette Liebe, Air Quality Division, presented this item to the Commission. Ms. Liebe talked about development and purpose of the rule.

Commissioner McMahan moved approval of the criteria and procedures for determining conformity to state or federal implementation plans for transportation, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act; Commissioner Whipple seconded the motion. The motion was unanimously approved.

E. Rule adoption: Air quality prevention of significant deterioration (PSD) amendments and related forest health restoration.

These rules contained the following amendments:

- Making state PSD rules consistent with federal rules by replacing total suspended particulate (TSP) measurement with measurement of particulate matter smaller than 10 microns (PM₁₀).
- Updating the boundaries of Oregon's 12 Class I wilderness areas to reflect expansions mandated by Congress since 1977.
- Providing a baseline for determining the impacts of PM₁₀ emissions from prescribed burning in forests in northeastern Oregon to address forest health problems.

- Adopting an amendment to the Oregon Smoke Management Program made by the Oregon Department of Forestry and providing air quality monitoring improvements for northeastern Oregon.

The Department recommended adoption of the rules and amendments to the smoke management plan as presented in Attachments A and B of the staff report.

Messrs. Green and Finneran presented this item to the Commission. Mr. Finneran briefly explained the above amendments.

Commissioner Whipple asked about the western Oregon plan only applying to federal and state lands. She asked about private land owners who are required to meet the smoke management objective and wondered how the plan would work for those lands in eastern Oregon. Mr. Finneran said that the private land owners were not being included in the smoke management plan for the east side of the state. He said that at this time private land owners have not indicated a need for increasing prescribed burning.

Commissioner Whipple moved adoption of the air quality prevention of significant deterioration (PSD) amendments and related forest health restoration; Commissioner McMahan seconded the motion. The motion was unanimously approved.

Commissioner Whipple asked that the Department keep her informed about smoke management plans for private land owners.

F. Informational item: Legislative report, underground storage tank (UST) program review.

The purpose of this report was to inform the Commission and Legislature about work accomplished in the UST Financial Assistance program during the 1993-95 biennium.

Richard Reiter, Waste Management and Cleanup Division, presented this item to the Commission.

G. Informational item: Environmental partnerships for Oregon communities.

A report on the of implementation of the Environmental Partnerships for Oregon Communities (EPOC) program was presented by Peter Dalke, Interagency Coordinator for the program.

Mr. Dalke said that the pilot EPOC projects are being conducted in the cities of Nyssa, Powers and Rainier. A Mutual Agreement and Order (MAO) using the EPOC approach has been signed by the City of Nyssa, Oregon Health Division/Drinking Water Program and Department. 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 the EPA and other parties interested in compliance flexibility. Vice Chair Castle questioned the likelihood of any challenges to the program. Assistant Attorney General Huston offered perspective on the nature of any potential challenges and the Department's likely response.

The Department indicated that 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. The next three cities to enter the program are likely to be Garibaldi, Westfir and Lakeview.

Commissioner Whipple suggested that the Department share the innovative EPOC process and experience with researchers at the state's universities that are interested in small community issues. Vice Chairman Castle commented that in developing and flow charting the EPOC process, specific recognition should be made of the importance and value of feedback from the cities to the state and federal agencies.

Ms. Linda Dowling, author of the report, "Case Study Assessments of Community Environmental Compliance Flexibility: Environmental Partnerships for Oregon Communities, and Idaho Small Community Mandates Pilot Projects," presented some additional observations about the program and indicated that Nebraska and Colorado are starting similar projects. At this time, the EPA has decided to evaluate EPOC and similar efforts on a case-by-case basis.

Mr. Jeff Towery, city manager of Cottage Grove, submitted a letter to the Commission expressing his support for EPOC. Mr. Towery has been involved in the development of the EPOC program as a representative of local government on the EPOC Advisory Committee.

H. Action item: Rulemaking petition - National Pollutant Discharge Elimination System (NPDES) permits/mining.

Larry Tuttle, the petitioner, requested the Commission to amend Oregon Administrative Rules (OAR) 340-45-030, pertaining to applications for 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 to evaluate the operating and closure records of such applicants and their affiliates or subsidiaries and requiring rejection of application to applicants with histories of operational and closure problems which might represent a risk to the State.

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 the applicants disclose all affiliates, subsidiaries, officers, directors and shareholders with ownership of 10 percent or more; and, the applicant discloses all permitted mining operations or operations for which permits have been requested within Oregon or anywhere in the United States. The Department recommended the Commission deny the petition and direct the Department to use policy directives and management initiatives to improve oversight and increase inspection frequency of permitted coal and metal-bearing ore mining operations.

Mike Downs, Administrator of the Water Quality Division, and Tom Lucas and Jan Renfroe, Water Quality Division, presented this item to the Commission. Mr. Lucas provided highlights of the staff report. Ms. Renfroe told the Commission about the Department's other permitting procedures.

Larry Tuttle told the Commission that his proposal was an opportunity to make certain that mining operations in Oregon are operated by entities with the best records of operation and closure. He said that the proposal was a good companion piece to the liability assumption rule adopted last year. He emphasized the preventative nature of the proposal.

Mr. Tuttle suggested that as an alternative the Commission might want to consider that the applicant provide the information as referred to in the petition. Additionally, the applicant must certify any deviation or noncompliance issues occurring in other states under a false swearing provision in the application process; as a result, the burden would be on the applicant to disclose their operating history.

Concluding, Mr. Tuttle said this is an authority that the Department should have when issuing permits for mining companies and also an authority that he asked the Department of Geology and Mineral Industries to consider for chemical mining initiatives. He recommended to the Commission that they either ask that the rule making go forward or if they would like to evaluate other alternatives that they reject the petition, and he would come back with specific rule language.

In somewhat of a related issue, Bob Robinson spoke to the Commission about the evaluation process in determining the Department's recommendations on matters that come before the Commission for action. He talked about freedom of speech and provided a copy of his testimony to the Commission. That testimony has been made a part of the meeting record.

Frank Gearhart referred to the three-basin hearing. He said that it was unfair that Kinross was allowed to speak at the special Commission meeting held on February 16. Mr. Gearhart then talked about the criteria for NPDES permits; he said there were no guidelines. He recommended that policy directives be developed to ensure that oversight be improved. He said that Mr. Tuttle's rulemaking petition was only a beginning in taking care of the state's natural resources.

Brian Ballou, Glenbrook Nickel Company, talked about the Glenbrook's three NPDES permits. He talked about the permit requirements of the NPDES that include sampling criteria. He said that money would be better spent on field inspections instead of researching the background of a company. In regard to setting criteria on discharges, he talked about other materials that contain metals.

Commissioner McMahan asked staff about how the Department handles requests for permits where an indication of past activity might be a problem. Mr. Lucas indicated that the Department does not directly get into the past activities of a permittee. He said the Department is aware of previous compliance history and that the Department works with the applicant to ensure that the correct facility be constructed. Ms. Taylor added that the Department's public notice on permit renewal includes any enforcement record that might exist.

Commissioner McMahan said the potential for harm in regard to mining operation is serious and indicated that she favored Alternative 2 of the staff report (forming an advisory committee). Commissioner Whipple said a concern for her was the Department's accountability and that regulatory obligations be met. Mr. Lucas told the Commission about the Department's compliance requirements and complaint responses. Ms. Taylor talked about the requirements of the EPA in regard to NPDES permits.

Ms. Renfroe brought the Commission up to date on existing permits for mining operations in the state. She indicated that most mining in Oregon is recreational mining under general permits for suction dredges and placer mining. She said that only two active mining operations exist now in the state.

Mr. Downs indicated that there is risk in various activities that humans undertake. He said he had concerns about the effort involved in going through rule making and implementing that rule. He questioned whether this activity would result in significant environmental improvement in Oregon. He asked that a specific rule be identified for the Department to take out to hearing.

Commissioner Whipple asked Mr. Tuttle if he thought the permitting process in place now was insufficient. Mr. Tuttle said his concern was that the same mining companies were destroying waters in other states and that the Department could do something about that by screening out those companies.

Mr. Tuttle said he was advised that an alternative way of accomplishing the intent of his petition would be to require that the applicant disclose the information about their affiliate subsidiaries and stockholders where they are operating. He said the applicant could be asked under a false swearing provision to disclose any places where they are out of compliance.

Mr. Huston told the Commission that none of their statutes authorize the Department to inquire into a permit applicant's compliance history. He said the one exception is for permit applications for hazardous waste disposal sites. Mr. Huston said that he did not think that under the current rules the Department could deny a water quality permit based on bad compliance history.

Commissioner Whipple said she had some concerns about a commitment by the Commission to start rulemaking. She said she was still not convinced that the process in place eliminates a thorough review of an application. She said she was not sure she would support taking the issue to rulemaking but would support continued discussions about mining rules.

Commissioner McMahan moved that the Commission deny the petition and instruct the Department to bring the issue back through a work session in the near future to discuss the alternatives and implications for the mining rules; Commissioner Whipple seconded the motion. The motion was unanimously approved (three yes votes).

I. This item was removed from the agenda.

PUBLIC FORUM

- David Moon, Moon Consulting, representing the Stevenson family and Knee Deep Cattle Company, said he believed it was important to apprise the Commission about the activity of the EconoLodge sewage treatment facility. He said that the hotel has not solved their sewage problem. He said recently that partially treated effluent was discharged to the Little Muddy Creek from the sewage treatment facility. He said the infiltration and inflow problem has not been corrected. Mr. Moon said the sewage plant flooded again on January 13 and 14, 1995. He indicated this occurred without any notification to the Stevensons or anyone else located on the stream. He said the hotel was expanding their recreational vehicle park instead of constructing the new treatment facility; he said the hotel has missed several other deadlines. He stated that cattle are still dying.

Vice Chair Castle asked for a progress report at the next Commission meeting.

- Jim Rapp, city manager of Sherwood and a member of the EPOC Advisory Committee, addressed the Commission in support of the EPOC program. He encouraged the Commission to promote the values and practices of the program throughout the Department. Mr. Rapp also encouraged the Commission and Department to expand the EPOC program to include larger cities that have similar problems and issues.

J. Commissioner reports.

There were no Commissioner reports.

K. Director's report.

Klamath Falls Withdraws Salt Caves Certification. The Department received a notice from the city of Klamath Falls that they wish to withdraw their application for 401 certification for the proposed Salt Caves hydroelectric project. The city is proceeding with litigation against the Department of the Interior on the Wild and Scenic designation for the Klamath River. That litigation is expected to take several months. The city's letter informs the Department that after the court takes action, the city may be back with a new 401 application.

Title V Permitting. Five Title V permits are now out on public notice. These are the first ones in the country. Title V is a new way of permitting air emissions, but does not impose any new emission limits. The new permit process is much more complex. As the new permits are being reviewed, states and sources are finding that some changes from the old permits are needed and that in some cases there have been historical violations. Because these are the first permits in the country, they may receive attention from environmental and industry groups outside the state.

HAPS Rules. The EPA has dropped a requirement that states adopt a rule for increases in Hazardous Air Pollutants (HAPs). The Commission adopted these rules based on preliminary guidance from the EPA. The rules required Maximum Available Control Technology for hazardous pollutants above a certain level. These rules are now more stringent than the EPA's new proposals. The EPA is still working to finalize their rules. If there is much more delay or this becomes a problem in the permitting process, the Department may approach the Commission to suspend these rules.

HEARING AUTHORIZATIONS:

- Clarification of Boundary Descriptions of Air Quality Regions and Maintenance Areas

The proposed rule would clarify the boundaries of air quality areas throughout the state, primarily nonattainment and maintenance areas. In the past, many of these areas have been delineated only on maps, with no accompanying description. This has led to uncertainty concerning the actual boundaries. This rulemaking provides legal descriptions of the boundaries.

- Hazardous Air Pollutants and Asbestos Certification

The proposed changes are needed to maintain EPA approval of the Department's asbestos certification program under the revised Model Accreditation Plan. The rulemaking also contains a provision for an annual notification fee for non-friable asbestos abatement projects. The annual fee would allow an unlimited number of projects and would benefit facilities such as schools and colleges.

- **VOC Area Source Rules for Portland**

The proposal would establish limits for the amount of Volatile Organic Compounds (VOC) that can be used in paints and household products available in the Portland Air Quality Maintenance Area. The proposal would also require the use of solvent-saving equipment in most automotive repainting activities.

Olivia Clark to Leave DEQ: Olivia Clark has accepted a position with Governor Kitzhaber's office and is leaving the DEQ. Olivia has been with the Department for three years and has done outstanding work during the legislative session and in improving the Department's relationship with local governments. While the Department will miss Olivia greatly, it will be a nice for the Department to have someone with detailed knowledge about DEQ issues in the Governor's office.

Carolyn Young will step in as our Legislative Liaison until the position can be filled by the new director. Carolyn has ten years experience at the DEQ and has a knowledge of the issues and legislative process.

- **Legislative Update**

Ms. Clark provided highlights to the Commission. She spoke about stringency and the fee bill (Senate Bill 333). She said that Representative Cedric Hayden from the North Santiam Canyon was planning to propose legislation dealing with the Kinross issue. She said she had met with several Salem area representatives and discussed with them the possibility of pulling together an intergovernmental summit between Salem and Marion County and canyon cities to talk about the commitment that the City of Salem made before the Commission at the special EQC meeting in February as to how they plan to help the small cities up the canyon. She said that tax credits have been discussed in the House Revenue Committee. Ms. Clark said that Interim Director Taylor and Mary Wahl, Waste Management and Cleanup Division Administrator, testified on a bill that would remove the Department's toxic use reduction program and orphan site program from a particular funding source. She also talked about a proposed bill that would change the Department's cleanup statutes. In regard to air quality, she said the Department is aware of proposals that will repeal some of the authority given to the Department by the previous legislature to deal with air quality issues in the Portland metropolitan area.

There was no further business, and the meeting was adjourned at 12:07 p.m.

Approved ✓
Approved with Corrections

Minutes are not final until approved by the E2C

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Conference Call Meeting

March 11, 1995

Attending the special conference call meeting were William Wessinger, Chair; Henry Lorenzen, Carol Whipple and Linda McMahan, members. Vice Chair Castle was not able to attend this meeting. Also attending via the conference call were Lydia Taylor, Interim Director, Department of Environmental Quality, and Michael Huston, Assistant Attorney General, Oregon Department of Justice. The purpose of the special conference call was to deliberate about and possibly to determine the selection of a new director of the Department of Environmental Quality.

Chair Wessinger summarized the process of choosing the new director. He said the Commission started about three months ago. He said the position was nationally advertised and that the Commission received over a hundred applications. He said 13 applicants were selected to be interviewed and then the Commission narrowed the selection to three. Those three applicants were again interviewed by the Commission and Governor Kitzhaber.

Chair Wessinger indicated that he had spoken with Commissioner Castle about his thoughts about selecting the director.

Commissioner McMahan said she was impressed by the final three candidates and that they were extremely qualified. She said, however, that she was most impressed with Langdon Marsh. Commissioner Whipple agreed with Commissioner McMahan and indicated that she supported Langdon Marsh. Commissioner Lorenzen said that all three candidates were well qualified. Commissioner Lorenzen also added that Mr. Marsh brought a national perspective to the Department and that his management style and skills would fit in with staff. Chair Wessinger remarked that although Commissioner Castle had said that the decision was difficult to make, his first choice would be Langdon Marsh. Chair Wessinger said that a very close decision for him occurred between two of the three candidates and that he had done the research on one of the candidates and was extremely impressed; however, Langdon Marsh's qualifications were tremendous.

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March 11, 1995

Commissioner Lorenzen moved to offer the position of director to Langdon Marsh and, if he accepted, that Mr. Marsh would become the Department's permanent director; Commissioner Whipple seconded the motion. The motion was unanimously approved (four yes votes).

There was no further business, and the special conference call meeting was adjourned.

Environmental Quality Commission

- Rule Adoption Item
 Action Item
 Information Item

Agenda Item **B**
May 19, 1995 Meeting

Title:

Approval of Tax Credit Applications

Summary:

New Applications - Seven (7) tax credit applications with a total facility cost of \$375,650 are recommended for approval as follows:

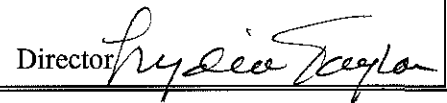
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| - 2 Water Quality facilities with a total facility cost of: | \$ 91,208 |
| - 3 Field Burning related facilities recommended by the Department of Agriculture with a total facility cost of: | \$153,863 |
| - 1 Plastic Product recycling facility costing: | \$ 13,322 |
| - 1 Industrial Solid Waste landfill facility with a total facility cost of: | \$117,257 |

There are no applications with claimed facility costs exceeding \$250,000 that are included in this report.

Department Recommendation:

Approve issuance of tax credit certificates for 7 applications as presented in Attachment A of the staff report.

Report Author:  Michael Brown
Division Administrator

Director:  Lydell Taylor

May 2, 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: May 19, 1995

To: Environmental Quality Commission
From: Lydia Taylor, Interim Director *Lydia Taylor*
Subject: Agenda Item B, May 19, 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 4106	Dinihanian Manufacturing, Inc. (\$13,322)	A plastic product reclamation facility consisting of a CD-100 Con Air plastic resin dryer for drying granulated polycarbonate bottles for the manufacture of plastic wreath frames.
TC 4320	Willamette Beverage Co. (\$89,313)	A water pollution control wastewater pretreatment pH neutralization facility.
TC 4340	Weyerhaeuser Company (\$117,257)	An industrial solid waste landfill facility consisting of a french drain system including pumps and control equipment to direct leachate from the landfill to holding ponds, thereby avoiding groundwater contamination.

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

TC 4352	Templeton Enterprises, Inc. (\$1,895)	A water pollution control facility consisting of an automobile coolant recycling machine.
TC 4369	Roger Neuschwander (\$7,515)	An air quality field burning facility consisting of an Artsway 2400 land leveler.
TC 4374	William J. Stellmacher (\$56,348/86%)	An air quality field burning facility consisting of a John Deere 4850 185hp tractor.
TC 4378	Roy Dean Bowers (\$90,000)	An air quality field burning facility consisting of a John Deere 4960 225hp tractor.

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

Background

There are no substantive issues discussed in this report.

Authority to Address the Issue

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

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

Alternatives and Evaluation

None.

Summary of Any Prior Public Input Opportunity

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

Conclusions

- o The recommendations for action on the attached applications are consistent with statutory provisions and administrative rules related to the pollution control facilities and reclaimed plastic product tax credit programs.
- o Proposed May 19, 1995, Pollution Control Tax Credit Totals:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>Certified Allocable Costs**</u>	<u>No.</u>
Air Quality	0	0	0
CFC	0	0	0
Field Burning	153,863	145,974	3
Hazardous Waste	0	0	0
Noise	0	0	0
Plastics	13,322	13,322	1
SW - Recycling	0	0	0
SW - Landfill	117,257	117,257	1
Water Quality	91,208	91,208	2
UST	<u>0</u>	<u>0</u>	<u>0</u>
	\$375,650	\$367,761	7

- o Calendar Year Totals Through April 14, 1995:

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<u>Certificates</u>	<u>Certified Costs*</u>	<u>Certified Allocable Costs**</u>	<u>No.</u>
Air Quality	\$ 94,402	\$ 94,402	1
CFC	0	0	0
Field Burning	539,253	438,839	7
Hazardous Waste	0	0	0
Noise	0	0	0
Plastics	71,878	71,878	2
SW - Recycling	0	0	0
SW - Landfill	0	0	0
Water Quality	11,541,623	11,536,557	12
UST	188,988	149,301	1
	<u>\$12,436,144</u>	<u>\$12,290,977</u>	<u>23</u>

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

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

Recommendation for Commission Action

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

Intended Followup Actions

Notify applicants of Environmental Quality Commission actions.

Attachments

- A. Pollution Control Tax Credit Application Review Reports.

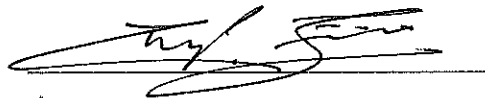
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Reference Documents (available upon request)

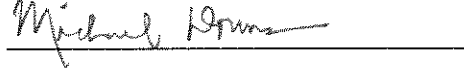
1. ORS 468.150 through 468.190.
2. OAR 340-16-005 through 340-16-050.
3. ORS 468.925 through 468.965.
4. OAR 340-17-010 through 340-17-055.

Approved:

Section:

A handwritten signature in black ink, appearing to read "Michael Downs", written over a horizontal line.

Division:

A handwritten signature in black ink, appearing to read "Michael Downs", written over a horizontal line.

Report Prepared By: Charles Bianchi

Phone: 229-6149

Date Prepared: May 2, 1995

Charles Bianchi
MAYEQC
May 1995

Application No. TC-4106

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Dinihanian Manufacturing, Inc.
Vahan M. Dinihanian Jr.
15005 NW Cornell Road
Beaverton, Oregon 97006

The applicant manufactures plastic wreath frames for the floral industry.

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

The claimed equipment consisting of:

Plastic Resin Dryer CD - 100A Con Air for drying granulated polycarbonate bottles for manufacture of a reclaimed plastic product.

The claimed equipment investment costs: \$13,322.00

Invoices and check numbers were provided.

3. Procedural Requirements

The investment is governed by ORS 468.925 through 468.965, and by OAR Chapter 340, Division 17.

The investment met all statutory deadlines in that:

- a. The request for preliminary certification was received on July 2, 1993.
- b. The request for preliminary certification was approved on July 13, 1993.
- c. The investment was made on April 25, 1994.
- d. The request for final certification was submitted on March 15, 1995 and was filed complete on April 14, 1995.

4. Evaluation of Application

- a. The investment is eligible because the equipment is necessary to process reclaimed plastic.
- b. Allocable Cost Findings

In determining the portion of the investment costs properly allocable to reclaiming and recycling plastic material, the following factors from ORS 468.960 have been considered and analyzed as indicated:

- 1) The extent to which the claimed collection, transportation, processing or manufacturing process is used to convert reclaimed plastic into a salable or usable commodity.

This factor is applicable because the sole purpose of these molds is to manufacture a reclaimed plastic product. The recyclable plastic used by this facility is generated by persons other than the applicant.

- 2) The alternative methods, equipment and costs for achieving the same objective.

The applicant investigated other alternatives and determined that this equipment is the most efficient and productive from an economic standpoint.

- 3) Any other factors which are relevant in establishing the portion of the actual cost of the investment properly allocable to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product.

No other factors were considered relevant.

The actual cost of the investment properly allocable to processing reclaimed plastic as determined by using these factors is 100%.

5. Summation

- a. The investment was made in accordance with all regulatory deadlines.
- b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.
- c. The qualifying business complies with DEQ statutes and rules.
- d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of \$13,322.00 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-4106.

Rick Paul:rap
wp51\tax\tc4106rr.sta
(503) 229-5934
May 1, 1995

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willamette Beverage Co.
3030 Judkins Road
Eugene, OR 97403

The applicant owns and operates a soft drink manufacturing company in Eugene, Oregon.

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

2. Description of Facility

The facility collects wastewater from the plant, neutralizes the pH and discharges the wastewater to the City of Eugene wastewater treatment plant.

Claimed Facility Cost: \$89,313
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that installation of the facility was substantially completed on February 1, 1994 and the application for certification was found to be complete on March 31, 1995, 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 City of Eugene and the Department to reduce water pollution. The requirement is to comply with the facility's wastewater Discharge Permit issued under Section 6.440 of the City of Eugene Code. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Willamette Beverage Co. has a Wastewater Discharge Permit issued by the City of Eugene. On April 28, 1993 the City issued an Administrative Compliance Order based on findings of violation of the pH limits of the Permit. The Order required Willamette Beverage Co. to install a wastewater treatment system to bring their discharges into compliance with the Permit.

The system was placed into operation February 15, 1995 and Willamette Beverage Co. has been in compliance with their permit since that time.

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.

The percent allocable determined by using this factor would be 100%.

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

There is no annual return on investment for the facility.

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

The following alternatives were considered for reducing pH:

- a. Flow through pH adjustment system: estimated cost \$100,000-\$160,000.

- b. Ph neutralization - batching: estimated cost \$83,000.

- c. Activated sludge: estimated cost \$250,000-\$1,000,000.

- d. Contact media: estimated cost \$250,00-\$1,000,000.
- e. Aerated lagoons: estimated cost \$100,000-\$300,000.

The Ph neutralization-batching system was chosen because it was the least expensive and is an acceptable method for pretreating wastewater.

- 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 \$1,300 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 or these factors is 100%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the City of Eugene and the Department to reduce water pollution, and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468B.005.
- c. The facility complies with DEQ statutes and rules and City of Eugene 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 \$89,313 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4320.

William J. Perry: wjp
e:\wp51\taxgen\t4320
(503) 686-7838
April 17, 1995

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Weyerhaeuser
P O Box 275
Springfield, Oregon 97477

The applicant owns and operates a paper and pulp mill and a captive industrial land fill.

2. Description of Facility

The facility is an industrial waste landfill upon which was engineered and installed a french drain system with pumps and electrical controls to direct the leachate from the landfill into ponds, from which the liquid was diverted into the municipal sewage treatment facility.

An independent accountant's certification of costs was provided.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. Installation of the facility was started on October 1, 1992.
- b. The facility was placed into operation on December 23, 1992. The applicant indicates that testing resulted in a shutdown of the pump, removal of the pump, and the installation of a different pump, with the actual date of operation of the existing system, May 1, 1993.
- c. The application for tax credit was filed with the Department on December 23, 1994, within two years of substantial completion of the facility.

4. Evaluation of Application

- a. The principal purpose of the facility is to comply with a requirement of the Department of Environmental Quality, Solid Waste Permit No. 1000.
- 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.

This factor is not applicable.

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

- A) The administrative rule amendments adopted January 29, 1993 establish a separate set of standards for calculation of return on investment for pollution control facilities which are "integral to the applicant's business".

The applicant has reviewed the four factors in OAR 340-16-030(g) as they relate to the installation and operation of the french drain system to contain and direct the leachate. The applicant concluded that the factors did not relate to the project. The Department agrees with this assessment.

- B) The Department review of the cost of the facility has identified certain ineligible costs. The Applicant has claimed a facility cost of \$125,459. The Department has identified ineligible costs relating to construction of roads in the amount of \$8,202.

Original cost of claimed facility	\$125,459.00
Total ineligible cost	\$ 8,202.00
Adjusted cost of claimed facility	\$117,257.00

- C) Annual Percentage Return on Investment

The annual percentage return on investment was calculated and determined does not apply. There was no salvage value of any facility removed from service. There is no income from this activity, no annual operating expenses and no annual cash flow.

The applicant has claimed a twenty year useful life. As a result of using Table 1, OAR 340-16-030, for a twenty year useful life, the return on investment for the claimed facility is 0% and the percent allocable is 100%.

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

The applicant considered other methods for processing diverting the leachate and determined that this method was environmentally acceptable and economically feasible. It is the Department's determination that the proposed facility is an acceptable method of achieving the diversion of the leachate to protect the ground water of the State of Oregon.

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

There are no savings, other than those considered in (2) above, associated with the use of this drain.

- 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 recycle or properly dispose of used oil.

There are no other factors to consider in establishing the actual cost of the installation of the french drain.

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 drain is to divert leachate from entering the ground waters of the State of Oregon, and to direct leachate to the facility which will process the liquid at a sewage treatment facility.
- c. The facility complies with DEQ statutes 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 the findings, it is recommended that a Pollution Control Facility certificate bearing the cost of \$117,257.00 with 100% allocable to pollution control be issued for the facility claimed in Tax Credit Application No. T-4340

Rick Paul:rap
wp51\tax\tc4340RR.STA
(503)229-5934
May 2, 1995

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Templeton Enterprises, Inc.
DBA King City Arco Service Center
PO Box 23472
Tigard OR 97223

The applicant owns and operates a service station in King City, Oregon.

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

2. Description of Facility

The facility is a machine which recycles, filters, and replaces additives for antifreeze.

Claimed Facility Cost: \$1,895
(Documentation of the actual cost was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that installation of the facility was substantially completed on May 5, 1994 and the application for certification was found to be complete in February 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 recycling the antifreeze instead of disposing of it by pouring it into a sanitary sewer drain or by absorbing the antifreeze with rags and laundering the rags. The facility is not required to comply with a water quality permit.

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 recycled antifreeze. Gross revenues generated from the sale of this product are estimated at \$50.00 per annum. These revenues are exceeded by the cost of operating the facility.

The percent of the facility cost that is allocable to pollution control as determined by using the cost allocation methodology is 100%.

- 2) The estimated annual percent return on the investment in the facility.
There is no annual return on investment.
- 3) The alternative methods, equipment and costs for achieving the same pollution control objective.
There are no alternatives to this method of pollution prevention that have been identified that are less costly and will achieve the same objective.
- 4) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

There are no savings from the facility. The cost of maintaining and operating the facility is \$75.00 annually. The net cost of operation is \$25.00 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 a substantial quantity of water pollution and accomplishes this purpose by the recycling antifreeze.
- 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 \$1,895 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4352.

Elliot Zais/NWR
TC 4352
(503) 229-5292
4/11/95

WQTCSR-1/95

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Roger Neuschwander
31983 Harris Drive
Harrisburg, Oregon 97446

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

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

2. Description of Claimed Facility

The equipment described in this application is an Artsway 2400 land leveler, located at 31983 Harris Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$7,515
(Accountant's Certification was provided.)

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

The applicant has 409 perennial and 380 annual grass seed acres under cultivation. The applicant has gradually reduced his open field burning acreage to less than 250 acres annually.

In annual grass seed fields the applicant flail chops the straw left after seed harvest and plows it under as an alternative to open field burning. The majority of the annual grass seed acreage is blue dooby soil which is very low, flat and difficult to drain. Plowing the straw under makes the land very uneven with humps and holes throughout. To provide adequate drainage and avoid heavy crop loss due to drown out, the applicant must level these low lying fields to achieve drainage and produce a reasonable crop.

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, 1995. The application was submitted on March 23, 1995; and the application for final certification was found to be complete on March 30, 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 equipment cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

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

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

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

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

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

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

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

There is an increase in operating costs of \$1,875 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

- a. The equipment was 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 equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$7,515, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4369.

Jim Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 986-4701
FAX: (503) 986-4730

JB:bk4369
March 29, 1995

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

William J. Stellmacher
30416 Stellmacher Drive SW
Albany, Oregon 97321

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

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

2. Description of Claimed Facility

The equipment described in this application is a John Deere 4850 185hp tractor, located at 30416 Stellmacher Drive SW, Albany, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$56,348
(Accountant's Certification was provided.)

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

The applicant has 900 acres under perennial grass seed cultivation. Prior to adopting alternative treatment methods for his grass seed fields, the applicant open field burned as many acres as the smoke management program and weather permitted.

The first step of the alternative treatment method consists of removing the straw from the fields in baled form. The applicant trades the straw to a custom baler for the baling services. To keep the straw dry and in a salable condition and ensure the baling services, the applicant provides a storage shed for the baler's use.

The second phrase of the alternative treatment method is flail chopping the remaining straw and stubble. The final phrase is removing the chopped residue, weed seeds, and volunteer seeds with a Rear's vacuum.

The three phases need to be accomplished as soon as possible after the grass seed is harvested from the fields. The applicant has determined that a second tractor is required to complete the steps in a timely manner to produce a reasonable crop.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on December 28, 1994. The application was submitted on March 30, 1995; and the application for final certification was found to be complete on April 5, 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 equipment cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

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

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

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

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

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

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

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

There is an increase in operating costs of \$2,500 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/Hour</u>	<u>Annual Operating Hours</u>
Rear's Vacuum	900	3	300
Baler (3 string)	350	4	<u>88</u>
Total annual operating hours			388

The total annual operating hours of 388 divided by the average annual operating hours of 450 produces an allocation of 86%.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 86%.

6. Summation

- The equipment was constructed in accordance with all regulatory deadlines.
- 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
- The equipment complies with DEQ statutes and rules.
- The portion of the equipment that is properly allocable to pollution control is 86%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$56,348, with 86% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4374.

Jim Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 986-4701
FAX: (503) 986-4730

JB:bk4374
April 5, 1995

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Roy Dean Bowers
22035 Coburg Road
Harrisburg, Oregon 97446

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

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

2. Description of Claimed Facility

The equipment described in this application is a John Deere 4960, 225 hp tractor, located at 22035 Coburg Road, Harrisburg, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$90,000
(Accountant's Certification was provided.)

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

The applicant has 240 acres of perennial grass seed and 1000 acres of annual grass seed under cultivation. Prior to initiating alternatives to open field burning, the applicant thermally sanitized as many acres as the smoke management program and weather permitted.

The alternatives used on perennial acreage begins with baling the bulk straw followed by flail chopping the remaining residue and stubble and ending with vacuuming the fields. The alternatives used on annual acreage begins with flail chopping the bulk straw followed by plowing the straw under and ending with harrowing and rolling the fields in preparation for seeding.

Using the alternatives, the applicant has reduced his open field burning from 1,200 acres in 1992 to 310 acres in 1994.

To plow, harrow and roll the full straw load in annual fields the applicant has determined that his existing tractor has insufficient horsepower and is concurrently needed to power the flail chopper and vacuum on the perennial 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 March 15, 1995. The application was submitted on April 3, 1995; and the application for final certification was found to be complete on April 11, 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 equipment cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

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

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

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

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

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

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

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

There is an increase in operating costs of \$24,000 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/Hour</u>	<u>Annual Operating Hours</u>
Plow	800	7	114
Harrow/Roller	2400 (800x3)	7	<u>343</u>
Total annual operating hours			457

The total annual operating hours of 457 exceeds the average annual operating hours of 450 producing an allocation of 100%.

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

6. Summation

- a. The equipment was 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 equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$90,000, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4378.

Jim Britton, Manager
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Natural Resources Division
Oregon Department of Agriculture
(503) 986-4701
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JB:bk 4378
April 11, 1995

Environmental Quality Commission

- Rule Adoption Item
 Action Item
 Information Item

Agenda Item C
May 19, 1995 Meeting

Title:

Adopting federal hazardous waste regulations by reference, including permanent adoption of the federal land disposal restriction universal treatment standards and treatment standards for toxicity characteristic waste; and adoption of "housekeeping" changes that correct and clarify state regulations.

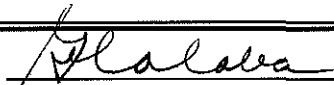
Summary:

On September 19, 1994, EPA promulgated a final rule amending the hazardous waste land disposal restrictions (LDR). In order to reduce confusion about whether the federal or state standards were in effect in Oregon, the EQC temporarily adopted the federal LDR rule changes on December 2, 1994. The federal rule and temporary state rule both became effective on December 19, 1994; however, since the state rule is temporary, it will expire on June 16, 1995, unless adopted permanently.

The Department continues to (1) align its program with the federal program by adopting all federal regulations promulgated between July 1, 1993 and April 1, 1995, and (2) to correct and clarify its state only regulations.

Department Recommendation:

Adopt the amendments and deletions as presented in Attachment A of the staff report at the Commission meeting on May 19, 1995.


Report Author


Division Administrator


Director

May 4, 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: May 3, 1995

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director *Lydia Taylor*

Subject: Agenda Item C, May 19, 1995 EQC Meeting

Request to adopt federal hazardous waste regulations by reference, including permanent adoption of the federal land disposal restriction universal treatment standards and treatment standards for toxicity characteristic waste; and adoption of "housekeeping" changes that correct and clarify state regulations.

Background

On March 17, 1995, the Interim Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would

- ▶ Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including permanent adoption of the land disposal restriction universal treatment standards; and
- ▶ Correct and clarify hazardous waste regulations, including clarification of the legal status of the federal mixture and derived-from rules in Oregon.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on April 1, 1995. The Hearing Notice and informational materials were mailed on March 20, 1995 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. Material was sent to over 400 people.

A Public Hearing was held April 24, 1995 at 10:00 a.m. at the Division of State Lands, Land Board Conference Room, 775 Summer Street, N.E., Salem, Oregon. Gil Hargreaves was Presiding Officer. No one attended the hearing (see Attachment C, Presiding Officer's Report on Public Hearing).

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

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Written comment was received through April 27, 1995. One comment was received and is listed in Attachment D. (A copy of the comment is available upon request.)

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

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

Issues this Proposed Rulemaking Action is Intended to Address

The Department is recommending adoption of new federal hazardous waste regulations and revisions of existing state regulations. The proposed changes address two topic areas: (1) adopting by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including permanent adoption of the temporarily adopted land disposal restriction universal treatment standards and treatment standards for characteristic waste; and (2) correcting and clarifying existing rules, including clarification of the legal status of the federal mixture and derived-from rules in Oregon.

Recommendations of the 1995 Hazardous Waste/Toxics Use Reduction Advisory Committee on the Department's proposal are included as Attachment F.

- 1. Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including the permanent adoption of the land disposal restriction universal treatment standards.**

The Department must adopt all federal hazardous waste regulations in order to retain authorization from the U.S. Environmental Protection Agency (EPA) to implement the hazardous waste program under the Resource Conservation and Recovery Act (RCRA) in lieu of the EPA. States are required to adopt annual clusters of federal regulatory changes within one year after their promulgation by the EPA. The Department has already adopted federal hazardous waste regulations through July 1, 1993, and proposes to adopt new federal rules which will make the state rules current with the federal rules through April 1, 1995.

Included in this rulemaking is the permanent adoption of the universal treatment standards. The EQC temporarily adopted these rules on December 2, 1994 to reduce confusion since the

treatment standards in Oregon differed from the new EPA universal treatment standards. The Department proposes in this rulemaking to permanently adopt those rules prior to their expiration on June 16, 1995. (See the December 2, 1994 staff report to the EQC on the temporary adoption of the universal treatment standards for more information.)

Nearly all of the federal regulations being proposed for adoption are already in effect in Oregon and being implemented by EPA. These rules would:

- ▶ require hazardous waste treatment, storage, and disposal facilities and hazardous waste generators to meet organic air emission standards for tanks, surface impoundments, and containers;
- ▶ establish guidelines for burners and industrial furnaces air quality models;
- ▶ revise toxicity characteristic leaching procedure testing methods;
- ▶ establish health-based burner and industrial furnace levels for exempted mining waste residue;
- ▶ follow EPA's decision not to list chlorophenolic formulations from woodtreaters who surface treat;
- ▶ increase the amount of contaminated media from treatability studies exempted from hazardous waste regulations;
- ▶ implement technical amendment on treatment, storage and disposal facility recordkeeping;
- ▶ correct beryllium hazardous waste listing to include beryllium powder; and
- ▶ conditionally exempt, under certain conditions, from hazardous waste regulations K061^{††}, K062^{†††} and F006^{††††} wastes.

See Attachment G for a summary of the federal rules proposed for adoption.

^{††}K061 is emission control dust/sludge from the primary production of steel in electric furnaces.

^{†††}K062 is spent pickle liquor generated by steel finishing operations in the iron and steel industries.

^{††††}F006 is wastewater treatment sludges from electroplating operations except for 5 specific process exceptions.

2. Correct and clarify regulations, including clarification of the legal status of the federal mixture and derived-from rules in Oregon.

Several rules contain errors and one requires clarification. The Department proposes to correct and clarify the rules as follows:

- A. Delete citation. OAR 340-104-228(1) references 40 CFR 264.228(d). Subsection "(d)" does not exist at 40 CFR 264.228. Delete "(d)" in OAR 340-104-228(1).
- B. Correct citation. OAR 340-105-001(3) references "Section (3)" which is incorrect. Section (4) is the correct citation. Change "Section 3" to Section 4.
- C. Delete enforcement language in a guidance document. Language in OAR 340-101-040, Appendix 1, Best Pollution Prevention Practices for Abrasive Blast Media Waste from Shipyard Repair Facilities, Forward, page 101-5, implies that the Best Pollution Prevention Practices (BPPs) are enforceable. The Department originally proposed to develop enforceable BPP's; however, after considerable discussion with the regulated community, and the Hazardous Waste/Toxics Use Reduction Advisory Committee the proposal was dropped because of the numerous ways hazardous sandblast grit can be contained. The guidance only described a few methods and was not all inclusive. Therefore, instead of enforceable BPP's, the Department (and Advisory Committee) developed a simple and straightforward rule requiring hazardous grit to be contained as generated, but not prescribing methods. The BPPs were adopted as guidance only, but the Department failed to remove references in the BPPs to their enforceability and proposes to remove those references and to clarify in the comment to the rule that the guidance is not enforceable.
- D. Delete adoption of reference materials. The Department is deleting OAR 340-100-011 because reference materials are already adopted in OAR 340-100-002(1).
- E. Clarify that the legally adopted federal mixture and derived-from rules remained in effect in Oregon even after the courts vacated the federal rule in 1991. On May 19, 1980, the EPA published final hazardous waste management rules, including rules clarifying that "hazardous waste" included waste mixed with a hazardous waste and residue generated from managing listed hazardous waste (the mixture and derived-from rules are found at 40 CFR 261.3(a)(2)(iv) and 261.3(c)(2)(i) and (d)(2) respectively). On April 20, 1984, after taking testimony at the March 30, 1984 public hearing and the April 6, 1984 EQC meeting, the EQC adopted the federal mixture and derived-from rules at OAR 340-101-003(2)(d) and 340-101-003(4)(b) and (5)(b) respectively. On July 19, 1985 the EQC again adopted the federal mixture and derived-from rules by reference pursuant to Oregon public hearing law. On December 6, 1991, after ten years in the Courts, the United States Court of Appeals for the District of Columbia Circuit Court vacated the mixture and derived-from rules because of

procedural deficiencies reasons. On March 3, 1992, EPA issued an interim final rule which simultaneously removed and reissued the mixture and derived-from rules. The Department elected not to adopt the reissued regulation at that time since Oregon had properly adopted the rules. To alleviate any confusion over the status of rules that were vacated, we are seeking to clarify that the Oregon rule was never vacated, and remains in force, until changed by the EQC. The EQC has always regarded the mixture rule as a codification of existing and long standing law. The Department proposes to clarify the status of the rule in a footnote to OAR 340-100-002(1). The footnote does not delete or amend any rule; it simply affirms and clarifies that the rule was independently and legally adopted by the Department. The federal rules are adopted each year by reference. If federal rules adopted by the EQC are ever vacated by the Courts, or changed by EPA, Oregon's rule remains intact and in effect until explicitly amended by the EQC.

F. Delete exception reporting requirements for small quantity generators. Current regulations pertaining to small quantity hazardous waste generator manifest discrepancy reporting requirements are more stringent than the federal program. The Department has no record of having ever received an exception report from a small quantity generator. The Department proposes to delete OAR 340-102-044 small quantity generator exception reporting requirements because the federal requirements are adequate to protect human health and the environment.

Relationship to Federal and Adjacent State Rules

Adopting Federal Regulations by Reference. Nearly all of the federal hazardous waste regulations being proposed for adoption are already in effect in Oregon and are being implemented by the EPA. Hence the regulations we propose to adopt are identical to federal requirements because they are the federal requirements.

The adoption of these rules are equivalent to and consistent with the hazardous waste rules in states bordering Oregon.

Authority to Address the Issue

1. **Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including the permanent adoption of the land disposal restriction universal treatment standards.**

ORS 466.020 requires the Commission to adopt rules to establish minimum requirements for the treatment, storage, disposal and recycling of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

ORS 466.020 requires the Commission to adopt rules pertaining to hearings, filing of reports, submission of plans and the issuance of licenses pertaining to generators, and to the transportation of hazardous waste by air and water.

ORS 468.869 provides that the Environmental Quality Commission shall adopt rules and issue orders relating to the use, management, disposal of and resource recovery of used oil. The rules shall include but not be limited to performance standards and other requirements necessary to protect the public health, safety and environment and a provision prohibiting the use of untested used oil for dust suppression.

ORS 466.086 requires the Environmental Quality Commission to adopt, amend or repeal any rule or license, or enter into any agreement necessary to gain federal authorization of the federal rules promulgated under the Resource Conservation and Recovery Act and Hazardous and Solid Waste Amendments of 1984.

2. Correct and clarify regulations, including clarification of the legal status of the federal mixture and derived-from rules in Oregon.

ORS 466.020, general rulemaking authority; ORS 466.020 (4), rulemaking authority for hazardous waste reporting.

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

The Department continually updates its regulations and reforms the program to eliminate overlapping, duplicative regulations and to streamline its program. As the Department gains experience with implementation, changes are proposed that correct defects and problem areas.

The Department presents its proposed rulemakings to an advisory committee consisting of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, environmental and public interest groups. The advisory committee provides advice and feedback to the Department. On March 2, 1995, the Department held a rulemaking meeting with the advisory committee. The initial proposed rules and staff report incorporate many of the informal comments prior received by the committee.

Summary of Significant Public Comment and Changes Proposed in Response

The Department received a written comment (see Attachment D, List of Commenters) that

the existing Oregon adoption of the mixture and derived-from rules is unenforceable because an Oklahoma court vacated EPA's mixture and derived-from rules on procedural grounds. The Department disagrees with the commenters view and proposes no change to the rule draft (see Attachment E for a full explanation).

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

Public versions of the hazardous waste rules will be updated to reflect the newly adopted rule changes. Information factsheets, as appropriate will be developed for distribution to affected businesses. Information on these rules will be incorporated into the Department's on-going technical assistance efforts and training workshops, and inspection program. Notice of the final rule changes will be sent to the potentially affected regulated community.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/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. Rulemaking Statements (Statement of Need)
 - 3. Fiscal and Economic Impact Statement
 - 4. Land Use Evaluation Statement
 - 5. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
- C. Presiding Officer's Report on Public Hearing
- D. List of Written Comments Received
- E. Department's Evaluation of Public Comment
- F. Advisory Committee Report
- G. Federal Rules Proposed for Adoption

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Reference Documents (available upon request)

Written Comments Received (listed in Attachment D) and documents referenced in the staff report.

Approved:

Section: *Fry W. Bunn*

Division: *Mary Ward*

Report Prepared By: Gary Calaba

Phone: (503) 229-6534

Date Prepared: May 3, 1995

Author: Typist

GCGC:5/3/95

**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON**

In the Matter of Amending and) Proposed Amendments, Adoptions, Deletions and
Correcting OAR 340, Divisions) Corrections
100, 101, 102, 104, 105)

Unless otherwise indicated, material crossed out e.g. ---, is proposed to be deleted and material that is underlined is proposed to be added.

1. Rule 340-100-002 is proposed to be amended as follows:

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

340-100-002

(1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 109, 111, and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, and Subpart A of 124, ~~and amendments thereto promulgated through April 1 July 1, 1993, except for 57 FR 7628, March 3, 1992, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215.¹ ~~In addition, 59 Federal Register 48043 48110, September 19, 1994, Part 268 as amended is temporarily adopted by reference effective December 19, 1994.~~~~

1Note: On March 3, 1992, in 57 Federal Register 7628, EPA promulgated a readoption of 40 CFR 261.3, the mixture and derived from rules, because the rules had been vacated as a result of federal litigation. The EQC did not adopt this amendment at that time because the State had independently and legally adopted mixture and derived-from rules under state law in 1985, and has indicated its intent to maintain the mixture and derived-from rules with each annual rulemaking update.

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

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

2. Rule 340-100-011 is proposed to be deleted as follows:

References

~~—340-100-011—~~

~~(1) In addition to the publications listed in 40 CFR 260.11, when used in OAR Chapter 340, Divisions 100 to 110 and 120, the following publications are incorporated by reference:~~

~~(a) CFR, Title 40, U.S. Environmental Protection Agency;~~

~~(b) CFR, Title 49, U.S. Department of Transportation.~~

~~(2) The references listed in section (1) of this rule and in 40 CFR 260.11 are available for inspection at the Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, OR 97204. These materials are incorporated as they exist on July 1, 1990.~~

3. Rule 340-101-040 and Appendix 1 are proposed to be amended as follows:

Wastes Requiring Special Management

340-101-040

(1) Abrasive Blast Waste Containing Pesticides. Abrasive blast waste which contain pesticides that do not meet the criteria specified in 40 CFR Part 261, Subpart C, and are not a federal hazardous waste for any other reason, and meet the criteria identified in OAR 340-101-033 (5)(a) are not subject to Divisions 100 to 108 and 109 provided:

(a) the waste is prevented from entering the environment; and,

(Comment: The practices described in Appendix 1 "Best Pollution Prevention Practices for Abrasive Blast Media Waste from Shipyard Repair Facilities", provide guidance. The guidance in Appendix 1 or equivalent Best Pollution Prevention Practices should be used).

(b) the waste is not stored for more than six months unless the generator demonstrates that a longer storage time is necessary to meet the management standards in OAR 340-101-040(1)(c); and,

(c) the waste is recycled, disposed of according to OAR 340-93-190(1)(f), or disposed of at a hazardous waste facility or other facility authorized to receive such waste.

(2) Pesticide Treated Wood. Spent treated wood that is used or reused for a purpose for which the material would be treated is exempt from this part and from OAR 340-101-033(5)(a). Waste resulting from the use of newly pesticide treated wood, including scrap lumber, shavings and sawdust; waste resulting from shaping pesticide treated wood, such as sawdust, shavings and chips; and treated wood removed from service that do not meet the criteria specified in 40 CFR Part 261, Subpart C, and are not a federal hazardous waste for any other reason; and, are not otherwise excluded by 40 CFR 261.4(b)(9), but meet the criteria identified in 340-101-033 (5)(a); are not subject to Divisions 100 to 108 provided:

(a) the waste is not stored for more than six months unless the generator demonstrates that a longer storage time is necessary to meet the management standards in OAR 340-101-040(2)(b); and,

(b) the waste is recycled, disposed of according to OAR 340-93-190(1)(g), or disposed of at a hazardous waste facility or other facility authorized to receive such waste.

Appendix 1

**BEST POLLUTION PREVENTION PRACTICES
FOR ABRASIVE BLAST MEDIA WASTE
FROM SHIPYARD REPAIR ACTIVITIES**

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INTRODUCTION

SECTION ONE: ABRASIVE BLASTING AND ANTIFOULING PAINT

SECTION TWO: ABRASIVE BLASTING:
BEST POLLUTION PREVENTION PRACTICES

BPP ONE SHROUDING

BPP TWO OVERWATER PROTECTION

BPP THREE WATER BLASTING, HYDROBLASTING,
WATER-CONE BLASTING AND SLURRY BLASTING

BPP FOUR ABRASIVE BLAST MATERIAL CONTAINMENT

BPP FIVE RECORD KEEPING

BPP SIX BPP TRAINING

Based on **Best Management Practices Manual for the Shipbuilding and Repair Industry, The Commonwealth of Virginia State Water Control Board**

FORWARD

There has been increasing concern in recent years about pollutants generated by the shipbuilding and repair industry. In particular, abrasive blast media, metals, metal related compounds, petroleum associated hydrocarbons and antifouling ingredients in paints have come under scrutiny. One reason for concern with pollutants generated by ship repair activities is the close proximity to water and the potential to pollute this resource. Technical inspections and toxics monitoring of shipyard effluent show that significant levels of pollutants are generated by shipbuilding, repair and maintenance operations. Inspections demonstrate a continuing effort by the DEQ to prevent shipyard-related pollutants from entering State waters, particularly to sensitive bays and estuaries.

As a result of these inspections, it was evident that Best Pollution Prevention Practices (BPP's) for the ship and boat repair industry were necessary. In 1993, the DEQ proceeded with the identification of general BPP's applicable to this industry. National Pollutant Discharge Elimination System (NPDES) permits were written to include BPP language, however, the permit wording was later determined to be too general. It was apparent that BPP's were needed that would contain exacting language, that would be enforceable, and would be practical *hazardous sandblast grit containment methods* in terms of their implementation at various facilities.

This manual was developed through literature search, yard inspections and discussions between DEQ and the marine industry, and is designed to serve as an introduction to pollution prevention for repair facilities that do abrasive blasting. Implementation of BPP's described herein should provide significant and economical pollution control at boat yard and repair facilities.

Because the Department of Environmental Quality is not responsible for the implementation and maintenance of the BPP's described in this manual, and does not have daily control over each facility's particular use of the BPP's, the Department will not guarantee or warrant the performance or results that may be obtained by the implementation of the BPP's described herein; only that the BPP's will perform substantially in accordance with the specifications and constraints set forth in this manual, assuming they are properly installed and maintained.

~~The BPP's described in this manual are part of state regulations, therefore are enforceable. Noncompliance with BPP's or equivalent management methods may result in penalties.~~ These BPP's are intended to complement, not substitute, existing federal and state regulations.

INTRODUCTION

The shipbuilding and repair industry presents a unique problem in terms of applying pollution control techniques. Although a given facility may not compare exactly with another facility in terms of repair capabilities, type and size of docks, and so on, there are enough similarities between facilities to describe pollution control techniques that can be adapted to suit a specific site.

There are several different functions that occur at ship and boat repair facilities. Some facilities employ a few people, while others employ many people, including various subcontractors, blacksmiths, boilermakers, chemists, carpenters, electricians, laborers, machinists, welders, painters, sandblasters, riggers, pipe fitters and a number of administrative and managerial staff.

Each of these facilities and associated shipyard services create their own unique set of potential environmental concerns. A tremendous amount of spent blast abrasive dust and grit is generated daily. Millions of gallons of vessel discharges are piped, collected, tested, treated, recycled or transported. Air pollution, noise pollution and water pollution can occur simultaneously with the variety of operations that take place.

There are hundreds of smaller shipyards and marinas which service small commercial and private boats, in addition to large shipyards which service everything from small vessels and marine equipment to super structures.

Abrasive blasting at repair facilities presents an especially challenging task in terms of pollution control because this activity results in a very fine airborne dust which is difficult to contain, it is generated in large volumes, and it takes place near water resources. Add to this complexity, antifouling ingredients which can be deadly to water organisms. Abrasive blasting clearly is what is known as a "cross media" pollutant which affects air, water and land.

While there are a variety of pollutants that may result from activities at repair facilities: abrasive blast and paint, lubricants and oils, solvents, vessel discharge, storm water runoff, etc., all of which need to be properly managed to insure protection of the environment, this manual focuses on one of the biggest problems in the shipyard industry: controlling the pollutants associated with paint removal operations.

...[The remainder of the "Best Pollution Prevention Practices" guidance is unchanged.]

4. Rule 340-102-042 is proposed to be deleted as follows:

Exception Reporting

~~340-102-042~~

The provisions of ~~40 CFR 262.42(b)~~ are deleted.

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

5. Rule 340-102-044 is proposed to be deleted as follows:

Special Requirements for Generators of Between 100 and 1,000 Kg/Mo

~~340-102-044~~

Concerning recordkeeping and reporting, the provisions of ~~40 CFR 262.44(b)~~ are deleted.

~~NOTE: Small Quantity Generators must comply with the requirements in 40 CFR 262.40(a), (c), (d), OAR 340-102-040, 40 CFR 262.42 for generators of greater than 1,000 kg/mo. of hazardous waste, and the requirements in 40 CFR 262.43(e).~~

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

6. Rule 340-104-228 is proposed to be amended as follows:

Closure and Post-Closure Care of Surface Impoundments

340-104-228

(1) The provisions of 40 CFR 264.228(a)(1), and (c) ~~and (d)~~ are deleted and replaced with the requirements of sections (2), (3) and (4) of this rule.

(2) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 CFR 261.3(d) applies.

Comment: The state program is more stringent than the federal program in that it requires the removal of all wastes, etc., at closure whereas the federal program gives the option of closing with wastes left in place.

(3) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in section (2) of this rule, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility in accordance with the closure requirements of 40 CFR 264.228(a)(2) and perform post-closure care in accordance with the closure and post-closure care requirements of 40 CFR 264.228(b).

(4) (a) The owner or operator of a surface impoundment that does not comply with the liner requirements of 40 CFR 264.221(a) and is not exempt from them in accordance with 40 CFR 264.221(b) must:

(A) Include in the closure plan for the surface impoundment under 40 CFR 264.112 both a plan for complying with section (2) of this rule and a contingency plan for complying with section (3) of this rule in case not all contaminated subsoils can be practicably removed at closure; and

(B) Prepare a contingent post-closure plan under 40 CFR 264.118 for complying with section (3) of this rule in case not all contaminated subsoils can be practicably removed at closure.

(b) The cost estimates calculated under 40 CFR 264.142 and 264.144 for closure and post-closure care of a surface impoundment subject to this section must include the cost of complying with the contingent closure plan and the contingent post-closure plan.

7. Rule 340-105-001 is proposed to be amended as follows:

Purpose, Scope and Applicability

340-105-001

(1) The purpose of this Division is to establish basic permitting requirements, such as application requirements, standard permit conditions, monitoring and reporting requirements, and management requirements for existing facilities which have not been issued a RCRA permit.

(2) Persons must also consult 40 CFR, Parts 260-266, 268, 270 and 124, which are incorporated by reference in OAR 340-100-002, to determine all applicable hazardous waste management requirements.

(3) The provisions of section (34) of this rule replace the contents of 40 CFR 270.1(a), 270.1(b) and 270.1(c) prior to paragraph (c)(1).

(4) (a) Technical regulations. The hazardous waste permit program has separate additional regulations that contain technical requirements. These separate regulations are used by the Department to determine what requirements must be placed in permits if they are issued. These separate regulations are located in 40 CFR, Part 264 and OAR Chapter 340, Division 104.

(Comment: Although the permit applicant or permittee will interface primarily with the Department as is indicated by these rules, hazardous waste disposal facility permits are technically issued by the Environmental Quality Commission while hazardous waste storage and treatment facility permits are issued by the Department.)

(b) Applicability. The state hazardous waste program requires a permit for the "treatment", "storage" or "disposal" of any "hazardous waste" as identified or listed in OAR Chapter 340, Division 101. The terms "storage", "disposal" and "hazardous waste" are defined in OAR 340-100-010. The term "treatment" is defined in 40 CFR 260.010.

Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, and, for any unit which closes after the effective date of these rules, during any post-closure care period required under 40 CFR 264.117 and during any compliance period specified under 40 CFR 264.96, including any extension of the compliance period under 40 CFR 264.96(c).

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality, Waste Management and Cleanup Division
OAD Chapter 340, Divisions 100, 101, 102, 104, and 105

DATE: TIME: LOCATION:

April 24, 1995, 10:00 a.m. to 1:00 p.m. (or until all comments are heard) at Division of State Lands, Land Board Conference Room, 775 Summer Street, N.E., Salem, OR, ph. (503) 378-3805.

HEARINGS OFFICER: Gil Hargreaves

STATUTORY AUTHORITY: ORS 466.020, ORS 192, ORS 646

ADOPT: N.A.

AMEND: OAR 340-100-002, 340-101-040 and Appendix 1, 340-104-228, 340-105-001

REPEAL: OAR 340-100-011, 340-102-042, 340-102-044, 340-104-011
Amendments or additions to other sections of Divisions 100 through 105 listed above (or related administrative rules) may be made in response to information or public comment received by the Department.

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

SUMMARY: Adopting federal hazardous waste regulations by reference, including permanent adoption of the federal land disposal restriction universal treatment standards and treatment standards for toxicity characteristic waste; ~~procedural changes for trade secret designation;~~ and correct and clarify state regulations. 4/21
505

LAST DATE FOR COMMENT: received by 5:00 p.m., April 27, 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: Gary Calaba, (503) 229-6534

ADDRESS: Waste Management and Cleanup Division, 811 S. W. 6th Avenue,
Portland, Oregon 97204

TELEPHONE: (503) 229-6534, 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

 for G.L. LOGAN

Date

3/15/95

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Adoption of federal hazardous waste regulations by reference, including permanent adoption of the federal land disposal restriction universal treatment standards and treatment standards for toxicity characteristic waste; and adoption of "housekeeping" changes that correct and clarify state regulations.

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

a. **Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including the permanent adoption of the land disposal restriction universal treatment standards.** ORS 466.020 and ORS 466.086 requires the Commission to adopt rules to establish minimum requirements for the treatment, storage, disposal and recycling of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites, and for gaining federal authorization of the hazardous waste program.

ORS 466.020 classifies as hazardous wastes those residues resulting from any process of industry, manufacturing, trade, business or government or from the development or recovery of any natural resources, which may, because of their quantity, concentration, or physical, chemical or infectious characteristics:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

ORS 466.020 requires the Commission to adopt rules pertaining to hearings, filing of reports, submission of plans and the issuance of licenses pertaining to generators, and to the transportation of hazardous waste by air and water. The rules shall include but not be limited to performance standards and other requirements necessary to protect the public health, safety and environment and a provision prohibiting the use of untested used oil for dust suppression.

b. **Correct and clarify state regulations.** ORS 466.020, general rulemaking authority.

2. Need for the Rule

a. **Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including the permanent adoption of the land disposal restriction universal treatment standards.**

The Department must adopt all federal hazardous waste regulations in order to retain authorization from the U.S. Environmental Protection Agency (EPA) to implement the hazardous waste program under the Resource Conservation and Recovery Act (RCRA) in lieu of the EPA. States are required to adopt clusters of federal regulatory changes within one year after their promulgation by the EPA. The Department has already adopted federal hazardous waste regulations through July 1, 1993, and proposes to adopt new federal rules which will make the state rules current with the federal rules through April 1, 1995.

Included in this rulemaking is the permanent adoption of the universal treatment standards. The EQC temporarily adopted these rules on December 2, 1994 to reduce confusion among the regulated community because the treatment standards in Oregon differed from the new EPA universal treatment standards. The Department proposes in this rulemaking to permanently adopt those rules prior to their expiration on June 16, 1995. (See the December 2, 1994 staff report to the EQC on the temporary adoption of the universal treatment standard for more information.)

See Attachment G for a summary of the federal rules proposed for adoption.

b. **Correct and clarify regulations, including clarification of the legal status of the federal mixture and derived-from rules in Oregon.**

Several rules contain errors and one requires clarification. The Department proposes to correct and clarify several rules to improve their usability and accuracy (see pages 3-5 of the Staff Report for a complete summary).

3. Principal Documents Relied Upon in this Rulemaking

a. **Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including the permanent adoption of the land disposal restriction universal treatment standards.** FR125 Requirements for Preparation, Adoption, and Submittal of Implementation Plans Vol. 58 No. 137 Tuesday, July 20, 1993 p 38816; FR126 Hazardous Waste Management System; Testing and Monitoring Activities Vol. 58 No. 167 Tuesday, August 31, 1993 p 46040; FR127 Burning of Hazardous Waste in Boilers and Industrial Furnaces; Vol. 58 No. 215 Tuesday, November 9, 1993 p 59598; FR128 Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes From Wood Surface Protection Vol. 59 No. 2 Tuesday, January 4, 1994 p 458; FR129 Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion, Vol. 59 No. 34 Friday, February 18, 1994 p 8362; FR131 Recordkeeping Instructions, Vol. 59 No. 57 Thursday, March 24, 1994 p 13891 (Rule); FR132 Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes From Wood Surface Protection; Correction, Vol. 59 No. 105 Thursday, June 2, 1994; p 28484; FR133 Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection, Control Systems; Financial Assurance; Letter of Credit, Vol. 59 No. 111 Friday, June 10, 1994 p 29958; FR134 Hazardous Waste Management System; Correction of Listing of P015-Beryllium Powder Vol. 59 No. 117 Monday, June 20, 1994 p 31551; FR136 Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C-Recyclable Materials Used in a Manner Constituting Disposal; Final Rule, Vol. 59 No. 163 Wednesday, August 24, 1994 p 43496 (Rule); FR137 Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction Vol. 59 No. 180 Monday, September 19, 1994 p 47980 (Rule); FR138 Land Disposal Restrictions Phase II-Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes Vol. 59 No. 180 Monday, September 19, 1994 p 47982 (Rule); FR138.1 Land Disposal Restrictions Phase II-Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes Vol. 60 No. 1 Tuesday, January 3, 1995 p 242; FR 139, Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; FR140 Hazardous Waste Management System;

Testing and Monitoring Activities Vol. 60 No. 9 Friday, January 13, 1995 p 3089; FR141 Hazardous Waste Management System; Carbamate Production Identification and listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities Vol. 60 No.27 Thursday, February 9, 1995; and the Mixture and Derived-from Rules, March 3, 1992, 57 FR 7628; and October 30, 1992, 57 FR 49278.

b. **Correct and clarify state regulations.** OAR 340-100-002, 340-100-003, 340-100-011, 340-101-040 and Appendix 1; 340-102-042, 340-102-044, 340-104-011, 340-104-228, 340-105-001; the April 6, 1984, April 20, 1984, and May 19, 1985 EQC Meetings and Staff Reports.

These documents are available for review at DEQ Headquarters, Waste Management and Cleanup Division, 811 S.W. 6th Avenue, Portland, Oregon, 97204.

4. Advisory Committee Involvement

The Department presents its proposed rulemakings to a Hazardous Waste and Toxics Use Reduction Advisory Committee. The Committee consists of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, environmental and public interest groups.

The Department continually updates its regulations and reforms them to eliminate overlapping, duplicative regulations and to streamline its program. Therefore, in January 1995, the Program embarked on this rulemaking process. As part of the process, the Department held a advisory committee meeting on March 2, 1995 to address the proposed rulemaking and received general agreement with its proposal (see Attachment F for the Advisory Committee recommendation).

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Adoption of federal hazardous waste regulations by reference, including permanent adoption of the federal land disposal restriction universal treatment standards and treatment standards for toxicity characteristic waste; and adoption of "housekeeping" changes that correct and clarify state regulations.

Fiscal and Economic Impact Statement

1. Introduction

Adopt by reference federal hazardous waste regulations enacted between July 1, 1993 and April 1, 1995, including the permanent adoption of the land disposal restriction universal treatment standards. The land disposal universal treatment standards and treatment standards for characteristic waste are in effect in Oregon. The Commission temporarily adopted those regulations on December 2, 1994. Therefore, there will be no additional change in fiscal impact on facilities in Oregon. In general, the other federal regulations being proposed for adoption are technical corrections and clarifications of the federal program and are already effective. Therefore, they will not result in additional fiscal or economic impact on the regulated community from their adoption. Nearly all of the federal rules proposed for adopted by the EQC are already in effect and being implemented by the U.S. Environmental Protection Agency.

Correct and clarify regulations. Deletion of redundant rules; correction of citations, and clarification of rule intent. The corrections and clarification of rulemaking intent and regulations must be met, will have a positive economic impact because the regulations will be clearer. The Department's clarification that the mixture and derived-from rule remain in effect has no fiscal impact.

2. Impacts on Small Business (Fewer than 50 employees)

The Department has not identified any small Oregon businesses affected by these proposed rules. The federal rules being proposed for adoption apply mostly to large management facilities and industries which are typically large businesses. Small businesses that were subject to additional manifest exception reporting requirements would no longer be required to meet those standards; which may result in some economic relief to those small businesses.

3. Impacts on Large Business (More than 50 Employees)

The Federal regulations proposed are already in force in Oregon, or will be, so their adoption will have no additional economic effect. The proposed corrections and clarifications of existing rules will have no economic effect.

4. Impacts on Units of Local Government

No significant fiscal and economic impacts on units of local government have been identified.

5. Impacts on State Agencies

No significant fiscal and economic impacts on state agencies have been identified.

6. Impacts on the General Public

The proposed regulations do not apply to the general public and have no direct economic impact.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Adoption of federal hazardous waste regulations by reference, including permanent adoption of the federal land disposal restriction universal treatment standards and treatment standards for toxicity characteristic waste and adoption of "housekeeping" changes that correct and clarify state regulations.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purposes of the proposed rules are to make the Department's hazardous waste regulations and implementation policy equivalent to and consistent with federal regulations, and to maintain equivalency in order to remain authorized to implement the hazardous waste program in lieu of the Environmental Protection Agency (EPA). The major revisions to the hazardous waste regulations pertain to federal regulations that are already in effect in Oregon. Some of the regulations pertain to hazardous waste management facilities' financial assurance requirements. The facility financial assurance regulations are designed to control the impact of hazardous wastes on Oregon's environment. The rules apply to hazardous waste permits which require the submittal of land use compatibility statements acted upon by the affected local government.

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:

OAR 340-120-001 through 025 for hazardous waste treatment and disposal facility permits.

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

Yes X No _____ (if no, explain):

The existing compatibility procedures involve the requirement of local government approval of the land use compatibility statement as well as written findings for hazardous waste permits as specified in OAR 340, Division 120.

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.

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

N/A

Robert G. [Signature] Date 3/14/95
Division Intergovernmental Coord.

**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. Oregon is required to adopt annual clusters of federal hazardous waste regulatory changes within one year after their promulgation by EPA to maintain authorization.

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

The new federal universal treatment standards and treatment standards for characteristic wastes are technology based. EPA uses the best demonstrated available technology to set the standards.

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. The standards are sufficient. The Department supports the simplified land disposal restriction universal treatment standards.

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 new federal land disposal restriction universal treatment standards simplify aspects of the land disposal restriction program and will maintain consistency with federal standards.

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

Yes. Oregon must adopt federal standards or equivalent standards within one year of their promulgation or jeopardize authorization to implement the program in lieu of EPA. The EQC has adopted the universal treatment standards on a temporary basis. They expire June 16, 1995; therefore, the permanent rules should be adopted by then.

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

Yes.

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

Yes. The proposed regulations maintain reasonable equity among generators of hazardous wastes.

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

The Department is not proposing more stringent regulations.

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 regulations are the federal regulations and the Department is proposing to adopt them without change.

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

Yes. All treatment standards established by the land disposal restriction universal treatment standards' regulation are derived from best demonstrated available technology. Therefore, the technology is available.

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 federal regulations create an incentive to eliminate or reduce the generation of hazardous wastes.

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 28, 1995

To: Environmental Quality Commission
From: Gil Hargreaves, Hearings Officer *Gil Hargreaves*
Subject: Report of Public Hearing on the Proposed Adoption of Hazardous Waste Regulations

On March 17, 1995, the Interim Director authorized a public hearing to consider adoption of Federal hazardous waste regulations by reference, including permanent adoption of the Federal land disposal restriction of universal treatment standards and treatment standards for toxicity characteristic waste; and, adoption of "housekeeping" changes that correct and clarify state regulations. Notice was published in the April edition of the Bulletin, and separately distributed to a Department mailing list of potential interested parties.

On April 24, 1995, the Department held a public hearing at the Division of State Land's building in Salem, Oregon. The hearing began at 10:00 A.M. No one showed up, so the hearing officially ended at 10:30 A.M. Written comment was received through April 27, 1995, and one comment was received from:

Mr. James C. Brown, Bogle & Gates Law Offices, 1400 KOIN Center,
222 S.W. Columbia, Portland, Oregon 97201

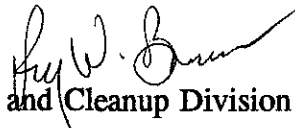
The Department's response to the comment is included in the staff report to the Commission.

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 2, 1995

To: Environmental Quality Commission
From: Roy W. Brower, Waste Management and Cleanup Division
Subject: List of Written Comments Received



The following written comments were received pursuant to the public hearing held on April 24, 1995.

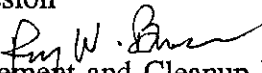
1. Mr. James C. Brown, Bogle & Gates Law Offices, 1400 KOIN center, 222 S.W. Columbia, Portland, Oregon 97201.

The comments are available upon request.

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 2, 1995

To: Environmental Quality Commission
From: Roy W. Brower, Waste Management and Cleanup Division 
Subject: Department's Evaluation of Public Comment

The Department received a comment that the existing Oregon adoption of the mixture and derived-from rules is unenforceable. The commenter argues that, with the vacating of the federal rule on procedural grounds in *Shell Oil et. al. v. U.S. Environmental Protection Agency*, 950 F2d. 741 (D.C. Circuit Court 1991), the Oregon rule which was based on the federal rule was also effectively vacated.

The comment cites *Equidae Partners v. Oklahoma State Department of Health* (Okla. Sup., Ct. 1993) for the proposition that to have enforceable mixture and derived-from rules (prospectively) Oregon must adopt EPA's re-adoption as promulgated March 3, 1992. The Department and the Department of Justice disagree with the comment.

The EQC first adopted the mixture and derived-from rules as part of a rulemaking on April 20, 1984. As presented to the public and the EQC, the proposed Oregon rules at OAR 340-103-003(2)(d), and OAR 340-103-003(4)(b)¹ contained the verbatim text of the then existing federal mixture and derived-from rules in 40 Code of Federal Regulations 261.3(a)(iv) and 261.3(c)(2)(i).

The EQC followed all applicable Oregon rulemaking procedures and, by its action, the rules became Oregon law.

Under the Oregon Administrative Procedures Act (APA), ORS Chapter 183, an Oregon rule may be held invalid only where (1) it violates a constitutional provision, (2) exceeds the agency's statutory authority, or (3) was adopted without compliance with applicable rulemaking procedures. None of these factors exist with respect to the EQC's adoption of the mixture and derived-from rules.

¹Subsequently the EQC has used the less cumbersome process of adopting select federal rules through incorporation by reference. Nonetheless, it must still follow the full rulemaking process as set forth in the Oregon APA.

Memo To: Environmental Quality Commission
May 2, 1995
Page 2

Attachment E
Agenda Item C
EQC Meeting 5/19/95

The Department is advised by the Attorney General that the federal judicial action in Shell Oil based on procedural deficiencies in the initial federal rulemaking should have no legal effect on the duly adopted Oregon rules because the EQC adopts the substantive language of the rules and is not subject to the federal procedural requirements in the federal Administrative Procedures Act².

²Any person seeking a revision to the Oregon rule in response to the holding in Shell Oil had available the option of petitioning the EQC for rulemaking pursuant to ORS 183.390.

CABLE HUSTON BENEDICT & HAAGENSEN EQC Meeting 5/19/95

ATTORNEYS AT LAW

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March 13, 1995

VIA HAND DELIVERY

Ms. Lydia Taylor, Interim Director
 Oregon Department of Environmental Quality
 811 SW Sixth Ave
 Portland, OR 97204-1390

RECEIVED
 MAR 13 1995

Waste Management & Cleanup Division
 Department of Environmental Quality

Re: Hazardous Waste/Toxics Use Reduction Advisory Committee
 Recommendations on 1994/95 Proposed Rulemaking

Dear Lydia:

Attached are recommendations on several proposed rules evaluated by the Hazardous Waste/Toxics Use Reduction Advisory Committee during the winter of 1994/95. The Department formed the Committee four years ago to evaluate various hazardous waste and toxics use reduction rules and to offer recommendations on these rules to the Department. Represented on the Committee were small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental and public interest groups. I have served as Chair of the Committee for the last several years.

The Committee's work involved review and discussion of a series of proposed rules, the majority of which address Oregon's adoption by reference of federal regulations of the Environmental Protection Agency. The Committee also reviewed a number of proposed revisions to existing state hazardous waste rules and developed the attached recommendations on these proposed revisions.

Overall, the Committee believes that the proposed recommendations in the attachment are protective of human health and the environment. The recommendations also support the goals of the Department while considering the economic concerns of persons and businesses who will be regulated by these rules if they are adopted.

Please let me know if you have any questions about the attached recommendations.

Very truly yours,



Donald A. Haagensen

cc: Roy W. Brower, DEQ
 Mary Wahl, DEQ
 Members, HW/TUR Advisory Committee

**HAZARDOUS WASTE/TOXICS USE REDUCTION ADVISORY COMMITTEE
RECOMMENDATIONS ON PROPOSED
HAZARDOUS WASTE RULES
March 1995**

INTRODUCTION

The Oregon Department of Environmental Quality (Department) organized a Hazardous Waste Advisory Committee in 1990 specifically to consider funding options and fee strategies for the hazardous waste program in Oregon. This committee assisted the Department in developing a permanent generator fee structure to support the program that would also encourage waste reduction and recycling. During the same period, the Department formed a Toxics Use Reduction Advisory Committee to advise the Department on rule development, program development and implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act.

In 1991, the Department combined these two committees into a single standing Hazardous Waste/Toxics Use Reduction Advisory Committee (Committee). The role of the Committee was to counsel the Department on public policy issues related to the Hazardous Waste and Toxics Use Reduction Programs and rulemaking activities, as well as reflect concerns of affected parties. The Committee consisted of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental and public interest groups.

In late 1994, the Department asked the Committee to review and to comment on the temporary adoption of a federal regulation. The Environmental Quality Commission (Commission) adopted the temporary rule in December 1994. In March 1995, the Department reconvened the Committee to evaluate the proposed adoption of federal Environmental Protection Agency (EPA) regulations by reference (including adoption of the temporary rule as a permanent rule) and proposed revisions to several state rules. The Committee met on March 2, 1994. The following reflect the Committee's recommendations on the proposed rules evaluated.

RECOMMENDATIONS

**1. ADOPTION BY REFERENCE OF FEDERAL HAZARDOUS WASTE REGULATIONS
ENACTED BETWEEN JULY 1, 1993 AND APRIL 1, 1995**

Background

The Department must adopt all federal hazardous waste regulations in order to retain authorization from the EPA to implement the hazardous waste program under the Resource Conservation and Recovery Act in lieu of the EPA. States are required to adopt annual clusters of federal regulatory changes after promulgation of hazardous waste regulations by the EPA. The Department has already adopted federal hazardous waste regulations through July 1, 1993, and is proposing to adopt new federal regulations which will make Oregon's rules current with the federal regulations through April 1, 1995. The rule cluster brought before the Committee consisted of twelve EPA regulations to be adopted by reference including one rule discussed below that had been previously adopted by the Commission as a temporary rule. The most recent EPA regulation considered by the Committee was promulgated in the Federal Register on September 19, 1994.

Recommendation

The Committee recommends adopting, by reference and without modification, the cluster of twelve federal rules referenced above to implement the federal hazardous waste program.

HAZARDOUS WASTE/TOXICS USE REDUCTION ADVISORY COMMITTEE
RECOMMENDATIONS ON PROPOSED
HAZARDOUS WASTE RULES
March 1995

INTRODUCTION

The Oregon Department of Environmental Quality (Department) organized a Hazardous Waste Advisory Committee in 1990 specifically to consider funding options and fee strategies for the hazardous waste program in Oregon. This committee assisted the Department in developing a permanent generator fee structure to support the program that would also encourage waste reduction and recycling. During the same period, the Department formed a Toxics Use Reduction Advisory Committee to advise the Department on rule development, program development and implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act.

In 1991, the Department combined these two committees into a single standing Hazardous Waste/Toxics Use Reduction Advisory Committee (Committee). The role of the Committee was to counsel the Department on public policy issues related to the Hazardous Waste and Toxics Use Reduction Programs and rulemaking activities, as well as reflect concerns of affected parties. The Committee consisted of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental and public interest groups.

In late 1994, the Department asked the Committee to review and to comment on the temporary adoption of a federal regulation. The Environmental Quality Commission (Commission) adopted the temporary rule in December 1994. In March 1995, the Department reconvened the Committee to evaluate the proposed adoption of federal Environmental Protection Agency (EPA) regulations by reference (including adoption of the temporary rule as a permanent rule) and proposed revisions to several state rules. The Committee met on March 2, 1994. The following reflect the Committee's recommendations on the proposed rules evaluated.

RECOMMENDATIONS

**1. ADOPTION BY REFERENCE OF FEDERAL HAZARDOUS WASTE REGULATIONS
ENACTED BETWEEN JULY 1, 1993 AND APRIL 1, 1995**

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Recommendation

The Committee recommends adopting, by reference and without modification, the cluster of twelve federal rules referenced above to implement the federal hazardous waste program.

2. PERMANENT ADOPTION OF CERTAIN FEDERAL LAND DISPOSAL RESTRICTIONS INCLUDING UNIVERSAL TREATMENT STANDARDS

Attachment F
Agenda Item C
EQC Meeting 5/19/95

Background

On October 4, 1994, the EPA authorized Oregon to implement, in lieu of EPA, the federal EPA Hazardous Waste Land Disposal Restrictions (LDR) regulations as part of Oregon's state-authorized hazardous waste program. On September 19, 1994, the EPA promulgated a final regulation effective December 19, 1994 amending EPA's LDR regulations including creating universal treatment standards for certain hazardous waste. This EPA regulation revised certain treatment standards previously adopted by the state as part of its LDR program. In order to reduce confusion about which treatment standards were applicable in Oregon, the EQC temporarily adopted the September 19, 1994 LDR regulation changes on December 2, 1994 with the state temporary rule becoming effective on the same day as the federal regulation, December 19, 1994. Because the state rule is temporary, it will expire on June 16, 1995 (180 days after the Commission adopted it). The Department proposed to adopt the federal regulation permanently before it expires.

Recommendation

The Committee recommends permanent adoption of the September 19, 1994 federal regulation including the universal treatment standards for certain hazardous waste.

3. HAZARDOUS WASTE PROGRAM CONFIDENTIAL BUSINESS INFORMATION AND TRADE SECRET DESIGNATION RULES

Background

In 1994 the Commission revised the hazardous waste rules specifying procedures for designating confidential information submitted to the Department as trade secret. The Committee had evaluated these rules and recommended their adoption to the Commission.

Since that time, the Department staff has had the opportunity to process a trade secret claim, and to evaluate the rules further. The Department staff determined that there should be: (a) a reconsideration process for persons who may disagree with a Department determination to release information claimed as confidential; (b) an amendment to the rules so that confidentiality substantiation for hazardous waste permit modification submittals must be made at the time of submission; and (c) an amendment to the rules to provide flexibility to extend a substantiation due date for complex or voluminous trade secret claims. The proposed rules address these areas.

Recommendation

The Committee recommended changes to the proposed rules developed by the Department staff and, based on those changes, recommends adoption of the proposed rules.

4. TECHNICAL CORRECTIONS, INCLUDING CLARIFICATION OF LEGAL STATUS OF FEDERAL MIXTURE AND DERIVED-FROM RULES IN OREGON

Background

In reviewing its rules, the Department observed that several state-only hazardous waste rules contain errors such as outdated references and incorrect citations. The Department also observed that there were references and technical errors in state rules relating to federal programs. In addition, the Department observed that there were references related to the enforceability of a set of Best Pollution Prevention Practices (BPPs) in the Commission's sandblast grit rules. As recommended by the Committee and adopted by the Commission in its 1994 rulemaking,

the BPPs in the sandblast grit rules were intended to be adopted as guidance only. The Department staff proposed revisions to the state hazardous waste rules in OAR 340-100-002(1), 340-100-011(2), 340-101-040(1) (including Appendix 1), 340-102-042, 340-102-044, 340-104-228(1), and 340-105-001(3) to address these issues. The Committee suggested additional changes to certain of these rules.

The Department also proposed rule language to alleviate confusion over the status of the state's adoption of the federal mixture and derived-from regulations that were vacated at the federal level as a result of litigation and subsequently adopted by the EPA. The clarification is proposed to be placed in a footnote in the state hazardous waste rules, and emphasizes that Oregon's mixture and derived-from rules were not vacated and will not be changed.

Recommendation

The Committee recommends adopting the proposed rule changes to OAR 340-100-002(1), 340-100-011(2), 340-101-040(1) (including Appendix 1), 340-102-042, 340-102-044, 340-104-228(1), and 340-105-001(3) discussed above.

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Recommendation

The Committee recommends adopting the proposed rule changes to OAR 340-100-002(1), 340-100-011(2), 340-101-040(1) (including Appendix 1), 340-102-042, 340-102-044, 340-104-228(1), and 340-105-001(3) discussed above.

**Universal Treatment Standards and
other Federal Rules through April 1, 1995**

Following is a summary of the federal regulations proposed for adoption and includes those regulations which were promulgated between July 1, 1993 and April 1, 1995. Federal regulations promulgated under the Hazardous and Solid Waste Act of 1994 (HSWA) are already in effect in Oregon and being implemented by the EPA; whereas, Non-HSWA regulations are not effective in Oregon until adopted (but must be adopted within one year of promulgation). The Department adopts the federal regulations annually in order to maintain authorization. This summary of text provided verbatim from EPA's summary of Federal Register notices.

1. FR125

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

Vol. 58 No. 137 Tuesday, July 20, 1993 p 38816

ACTION: Final rule.

EFFECTIVE DATE: This rule is effective August 19, 1993.

AFFECTED REGULATIONS: 40 CFR Parts 51, 52, 260 and 266
[AH-FRL-4672-7, Docket No. A-88-04]

SUMMARY: The "Guideline on Air Quality Models (Revised)" (hereinafter, the "Guideline"), as modified by supplement A (1987), sets forth air quality models and guidance for estimating ambient air concentrations due to sources of air pollutants. The Guideline is presently incorporated by reference into the prevention of significant deterioration (PSD) regulations under the Clean Air Act. On February 13, 1991, EPA issued a Notice of Proposed Rulemaking (NPR) to further clarify and update the Guideline, as well as to augment the Guideline with several new modeling techniques, and to codify the Guideline for all air quality planning purposes. Today EPA takes final action in order to add new models to the Guideline and improve existing models. In addition, this action amends the CFR to incorporate supplement B as codified text, as well as giving regulatory status to long-standing EPA policy regarding the use of air quality models for other regulatory programs. Therefore, EPA is setting out the Guideline, revised by supplements A and B, as appendix W to 40 CFR part 51. Adoption of these new and refined modeling techniques and associated guidance should significantly improve the technical basis for impact assessment of air pollution sources.

2. FR126

Hazardous Waste Management System; Testing and Monitoring Activities

Vol. 58 No. 167 Tuesday, August 31, 1993 p 46040

ACTION: Final rule.

EFFECTIVE DATE: August 31, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1993.

AFFECTED REGULATIONS: 40 CFR Parts 260, 261, 264, 265, 268, and 270
[FRL-3981-7] RIN 2050-AC32

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for testing and monitoring activities. These amendments replace the current Second Edition, including Updates I and II, of the EPA approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, by incorporating by reference the Third Edition (and its first update) into the RCRA regulations. These amendments also revise Appendices II-Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) and III-Chemical Analysis Test Methods to 40 CFR part 261, delete Appendix X-Method of Analysis for Chlorinated Dibenzo-p-dioxins and Dibenzofurans, Method 8280, to 40 CFR part 261, and revise Appendices I-Toxicity Characteristic Leaching Procedure (TCLP) and IX-Extraction Procedure (EP) Toxicity Test, to 40 CFR part 268. This action is necessary to provide better and more complete analytical test methods for RCRA-related testing. The intent of this amendment is to provide up-to-date technologies in order to promote cost effectiveness and flexibility in choosing analytical test methods.

3. FR127

Burning of Hazardous Waste in Boilers and Industrial Furnaces

Vol. 58 No. 215 Tuesday, November 9, 1993 p 59598

ACTION: Interim final rule.

EFFECTIVE DATE: October 15, 1993.

AFFECTED REGULATIONS: 40 CFR Parts 266 and 271
[FRL-4792-7]

SUMMARY: On February 21, 1991, EPA promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) that would expand controls on hazardous waste combustion to regulate the burning of hazardous waste in boilers and industrial furnaces (BIFs). Among other things, the regulations provide two tests for determining whether residues derived from Bevill devices (e.g., cement kilns, light-weight aggregate kilns, primary smelters, coal-fired boilers) co-processing hazardous waste and raw materials are exempt from hazardous waste control: if levels of the toxic constituents in the waste-derived residue are not significantly higher than in normal residue; or if levels of the toxic constituents in the waste-derived residue do not exceed specified health-based levels. EPA is today announcing an interim final rule on the health-based limits for nonmetals that are used to determine whether Bevill residues are exempt from the definition of hazardous waste under test number 2, provided that other limits are met on an interim basis (in order to prevent a situation where nonmetal constituents in these residues go unmonitored). The effect of this rule is to replace the current limits needed to qualify for the Bevill exemption (under test number 2) with the land disposal restriction limits for underlying constituents in nonwastewaters pending further administrative action to establish health-based levels.

4. FR128

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes From Wood Surface Protection

Vol. 59 No. 2 Tuesday, January 4, 1994 p 458

ACTION: Final rule.

EFFECTIVE DATE: January 4, 1994.

AFFECTED REGULATIONS: 40 CFR Parts 260 and 261
[FRL-4804-9]

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a final hazardous waste listing determination for wastes generated from the use of chlorophenolic formulations in wood surface protection processes. Upon reviewing the public comments received on its proposal of April 27, 1993, the Agency has decided not to list wastes from the use of chlorophenolic formulations in wood surface protection processes. As a result of this determination, EPA is not

mandating in this rule any specific operating or information collection requirements for owners/operators of wood surface protection plants. If, however, use of chlorophenolic formulations resumes in the future, the Agency would very likely re-evaluate this decision not to list. This rule also finalizes the proposed amendment of SW-846 ("Test Methods for Evaluating Solid Waste, Physical/Chemical Methods") to include Method 4010 (Immunoassay Test for the Presence of Pentachlorophenol). In addition, the Agency is adding the following four chemicals to 40 CFR part 261, Appendix VIII: Sodium and potassium salts of pentachlorophenol and tetrachlorophenol.

5. FR129

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion

Vol. 59 No. 34 Friday, February 18, 1994 p 8362

ACTION: Final rule.

EFFECTIVE DATE: This rule becomes effective on February 18, 1994.

AFFECTED REGULATIONS: 40 CFR Part 261
[FRL-4838-5]

SUMMARY: On July 7, 1993, the Environmental Protection Agency (EPA) proposed revisions to the Treatability Studies Sample Exemption Rule. The rule conditionally exempts small scale treatability studies from Subtitle C regulation.

EPA is today issuing a final rule. The principal change to the existing rule is to increase the quantity of contaminated media which are conditionally exempt from Subtitle C regulation when used in conducting treatability studies.

6. FR131

Recordkeeping Instructions

Vol. 59 No. 57 Thursday, March 24, 1994 p 13891 (Rule)

ACTION: Technical amendment.

EFFECTIVE DATE: March 24, 1994.

AFFECTED REGULATIONS: 40 CFR Parts 264 and 265
[FRL-4852-9]

SUMMARY: EPA is amending recordkeeping instructions in order to match those unit of measurement codes and handling codes used by hazardous waste treatment, storage and disposal facilities to report to EPA on the Part A Permit Application Form with the codes used to maintain records on-site by these facilities. This technical amendment also adds additional handling codes to allow for the proper recording of those processes relating to Boilers and Industrial Furnaces and Miscellaneous Units (subpart X) facilities. This amendment will encourage the consistent recordkeeping and reporting of information by hazardous waste treatment, storage and disposal facilities.

7. FR132

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes From Wood Surface Protection; Correction

Vol. 59 No. 105 Thursday, June 2, 1994 p 28484

ACTION: Final rule; correction.

EFFECTIVE DATE: June 2, 1994.

AFFECTED REGULATIONS: 40 CFR Part 260
[FRL-4889-7]

SUMMARY: This notice contains corrections to the final regulation (FRL-4804-9) which was published Tuesday, January 4, 1994 ("Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Final Rule", 59 FR 458). This notice corrects inaccurate references in that Final Rule to the EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods".

8. FR133

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit

Vol. 59 No. 111 Friday, June 10, 1994 p 29958

ACTION: Final rule; amendment.

EFFECTIVE DATE: August 9, 1994.

AFFECTED REGULATIONS: 40 CFR Parts 144, 264, and 280
[FRL-4894-3]

SUMMARY: EPA is amending the regulations related to financial assurance promulgated under Subtitles C and I of the Resource Conservation and Recovery Act (RCRA). Those regulations cite the "Uniform Customs and Practice for Documentary Credits," published by the International Chamber of Commerce. This notice inserts the words "and copyrighted" into the letter of credit instrument to clarify that the International Chamber of Commerce publication is copyrighted material. As a result of this notice, owners and operators using the letter of credit instrument to demonstrate financial assurance must include this additional language.

9. FR134

Hazardous Waste Management System; Correction of Listing of P015-Beryllium Powder

Vol. 59 No. 117 Monday, June 20, 1994 p 31551

ACTION: Technical correction amendment.

EFFECTIVE DATE: The amendment is effective June 20, 1994.

AFFECTED REGULATIONS: 40 CFR Parts 261, 268, and 302
[FRL-4999-1]

SUMMARY: The Environmental Protection Agency today is correcting the listing for "beryllium" in the list of commercial chemical products that are hazardous wastes when discarded or intended to be discarded. The listing description is corrected to read "Beryllium powder." Conforming changes also are being made to the RCRA list of hazardous constituents, the RCRA land disposal restrictions technology-based treatment standards, and to the CERCLA list of hazardous substances.

10. FR136

Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C-
Recyclable Materials Used in a Manner Constituting Disposal; Final Rule

Vol. 59 No. 163 Wednesday, August 24, 1994 p 43496 (Rule)

ACTION: Final rule and response to comments.

EFFECTIVE DATE: This final rule is effective on February 24, 1995.

AFFECTED REGULATIONS: 40 CFR Parts 266 and 268
[SW-FRL-5057-8]

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today amending § 266.20, which contains provisions for conditionally exempting hazardous waste-derived products used in a manner constituting disposal (i.e., applied to or placed on land) from the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations. The proposed amendment to § 266.20 was published on February 23, 1994 (59 FR 8583). As specified in the proposal, EPA is amending § 266.20 so that certain uses of slag residues produced from the high temperature metal recovery (HTMR) treatment of electric arc furnace dust (EPA Hazardous Waste No. K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations. EPA's proposal also contained a definition for "non-encapsulated" uses of HTMR slags. Following a review of the public comments, EPA is clarifying the definition of non-encapsulated uses of HTMR slags by specifying these uses to be the anti-skid/deicing uses.

This action partially implements a settlement agreement entered into by EPA on August 13, 1993 with the Natural Resources Defense Council (NRDC) and Hazardous Waste Treatment Council (HWTC). This action will effectively prohibit anti-skid/deicing uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, since such uses will be allowed only if there is compliance with all Subtitle C standards applicable to land disposal. This rule does not prohibit other uses of these slags that meet § 266.20(b) requirements. The rule also does not prevent the disposal of HTMR slags in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). EPA plans to propose a regulatory determination on the remaining uses of HTMR slags by December, 1994.

11. FR137

Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction

Vol. 59 No. 180 Monday, September 19, 1994 p 47980 (Rule)

ACTION: Final rule; correction.

EFFECTIVE DATE: This action is effective as of August 31, 1993.

AFFECTED REGULATIONS: 40 CFR Part 268
[FRL-5070-2]

SUMMARY: This action corrects the final regulations which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule", 58 FR 46040). This action corrects the unintended removal of text from 40 CFR 268.7(a), which sets out the generator waste analysis and recordkeeping requirements of the land disposal restrictions under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended.

12. FR138

Land Disposal Restrictions Phase II-Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes

Vol. 59 No. 180 Monday, September 19, 1994 p 47982 (Rule)

ACTION: Final rule.

DATES: Effective date: The final rule is effective on December 19, 1994. Section 266.100 and Appendix VIII are effective September 19, 1994.

Applicability dates: For high TOC D001 (40 CFR 148.17) and halogenated pesticides wastes (40 CFR 148.17) disposed in Class I nonhazardous injection deep wells, the compliance date is September 19, 1995. For radioactive waste mixed with the newly listed or identified wastes, or soil and debris contaminated with such mixed wastes (40 CFR 268.38), the compliance date is September 19, 1996. Although the effective date of today's rule is December 19, 1994, facilities will be in compliance if they meet the universal treatment standards (UTS) before the 90-day

period ends.

AFFECTED REGULATIONS: 40 CFR Parts 148, 260, 261, 264, 265, 266, 268 and 271
[FRL-5028-9]; RIN 2050-AD89

SUMMARY: As part of the Agency's Land Disposal Restrictions (LDR) program, EPA is today promulgating treatment standards for the newly identified organic toxicity characteristic (TC) wastes (except those managed in Clean Water Act (CWA) systems, CWA- equivalent systems, or Class I Safe Drinking Water Act (SDWA) injection wells), and for all newly listed coke by-product and chlorotoluene production wastes. The required treatment standards for these wastes must be met before they are land disposed. EPA is also requiring ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, that are being disposed in Class I nonhazardous waste injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated by the designated LDR treatment method. Promulgation of these treatment standards for the newly identified and listed wastes and promulgation of the dilution prohibitions for high TOC ignitables and pesticides fulfills requirements of a proposed consent decree between EPA and the Environmental Defense Fund, and a settlement agreement between EPA, the Hazardous Waste Treatment Council, and a number of environmental groups including the Natural Resources Defense Council.

EPA is also making a major improvement in the Land Disposal Restrictions program in order to simplify and provide consistency in the requirements. EPA is establishing a single set of requirements, referred to as universal treatment standards, that apply to most hazardous wastes. EPA is also simplifying the Land Disposal Restrictions program by reducing paperwork for the regulated community, and improving guidance to make compliance easier. EPA is also publishing clarifying guidance regarding treatability variances, which largely restates previous Agency statements. Finally, EPA is modifying the hazardous waste recycling regulations which will allow streamlined regulatory decisions to be made regarding the regulation of certain types of recycling activities.

13. FR138.1

Land Disposal Restrictions Phase II-Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes

Vol. 60 No. 1 Tuesday, January 3, 1995 p 242

ACTION: Final rule; technical amendments.

EFFECTIVE DATE: This rule is effective on December 19, 1994.

AFFECTED REGULATIONS: 40 CFR Part 268
[FRL-5129-2]

SUMMARY: On September 19, 1994, EPA published regulations promulgating congressionally-mandated prohibitions on land disposal of certain hazardous wastes. This notice corrects errors and clarifies the language in the preamble and regulation of the September 19, 1994 final rule.

14. FR139

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators;
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

Vol. 59 No. 233 Tuesday, December 6, 1994 p 62896

ACTION: Final rule.

EFFECTIVE DATE: The final rule is effective as of December 6, 1995. The EPA has specified in the final rule a schedule that establishes the compliance dates by which different requirements of the rule must be met. These compliance dates and requirements are explained further under SUPPLEMENTARY INFORMATION.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the FEDERAL REGISTER as of June 5, 1995.

AFFECTED REGULATIONS: 40 CFR Parts 9, 60, 260, 262, 264, 265, 270, and 271
[IL-64-2-5807; FRL-5110-8] RIN 2060-AB94

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA is promulgating air standards that will further reduce organic emissions from hazardous waste management activities. The air standards apply to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) subject to RCRA subtitle C permitting requirements and to certain hazardous waste generators accumulating waste on-site in RCRA permit-exempt tanks and containers. Under these standards, air emission controls must be used for tanks, surface impoundments, and containers in which hazardous waste is placed on or after June 5, 1995 except under certain conditions specified in the rule. Air emission control requirements are also added to the RCRA permit terms and provisions specified for TSDF

miscellaneous units. In addition, this action establishes a new EPA reference test method (Method 25E) to determine the organic vapor pressure of a waste.

15. FR140

Hazardous Waste Management System; Testing and Monitoring Activities

Vol. 60 No. 9 Friday, January 13, 1995 p 3089

ACTION: Final rule.

EFFECTIVE DATE: January 13, 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of January 13, 1995.

AFFECTED REGULATIONS: 40 CFR Part 260 [FRL-5125-7]
RIN 2050-AD06

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for testing and monitoring activities. This amendment adds new and revised methods as Update II to the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. It also incorporates the SW-846 Third Edition, as amended by Updates I (promulgated August 31, 1993), II, and IIA (promulgated January 4, 1994 as part of the wood surface protection rule), into 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA. The intent of this amendment is to provide better and more complete analytical technologies for RCRA-related testing and thus promote cost effectiveness and flexibility in choosing analytical test methods.

16. FR141

Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities

Vol. 60 No. 27 Thursday, February 9, 1995 p 7824

ACTION: Final rule.

EFFECTIVE DATE: This final rule is effective August 9, 1995.

AFFECTED REGULATIONS: 40 CFR Parts 261, 271, and 302
[SWH-FRL-5150-3] RIN 2050-AD59

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to reduce hazards to human health and the environment from the ongoing manufacture of carbamate chemicals, which are formulated for use as pesticides and in the production of synthetic rubber. EPA is listing as hazardous six wastes generated during the production of carbamate chemicals. EPA is providing an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. EPA is also exempting from the definition of hazardous wastes biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity). The Agency is also adding 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based. EPA is deferring action on 12 specific chemicals and 4 generic categories.

This action is taken under the authority of sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of listing these wastes will be to subject them to regulation as hazardous wastes under subtitle C of RCRA; and the notification requirements of section 103 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is not taking action at this time to adjust the one-pound statutory reportable quantities (RQs) for these substances.

17. Mixture and Derived-from Rules

- a. Hazardous Waste Management System; Definition of Hazardous Waste; "Mixture" and "Derived-From" Rules - 57 FR 7628 No. 42 Tuesday, March 3, 1992

AFFECTED REGULATIONS: 40 CFR Part 261
[FRL-4108-9]

ACTION: Response to court remand: interim final rule.

EFFECTIVE DATES: This rule is effective on February 18, 1992.

EXPIRATION DATE: Paragraphs (a)(2)(iv) and (c)(2)(i) of 40 CFR 261.3 shall expire on April 28, 1993.

SUMMARY: On May 19, 1980 (45 FR 33066), EPA promulgated regulations to govern the management of hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA). As part of these rules, EPA defined "hazardous waste" to include, among other things, mixing hazardous waste with other solid waste or otherwise managing hazardous waste (40 CFR 261.3). These rules are known, respectively, as the "mixture" and "derived-from" rules. The Agency promulgated these rules to close a potentially major loophole in the hazardous waste management system. Without a "mixture" rule, generators of hazardous waste could perhaps evade regulatory requirements by mixing hazardous waste with non-hazardous waste and claiming that the mixture was no longer hazardous, even though it poses environmental hazards. Without a "derived-from" rule, owners and operators of treatment, storage, and disposal facilities could perhaps evade regulation by minimally processing a hazardous waste and claiming that the residue was no longer hazardous.

On December 6, 1991, a panel of the United States Court of Appeals for the District of Columbia Circuit ruled that EPA had failed to give sufficient notice and opportunity for comment in promulgating the "mixture" and "derived-from" rules. The court therefore vacated the rules and remanded them to the Agency. On January 21, 1992, EPA filed a petition for rehearing with the court. This petition was denied on February 12, 1992. At the invitation of the court, EPA is today simultaneously removing and reissuing 40 CFR 261.3, including the "mixture" and "derived-from" rules, on an interim basis under section 553(b)(3)(B) of the Administrative Procedure Act (APA). Elsewhere in today's Federal Register, the Agency is soliciting comment on these rules and on other ways to regulate waste mixtures and residues.

- b. Hazardous Waste Management System; Definition of Hazardous Waste; "Mixture" and "Derived-From" Rules - 57 FR 49278 No. 211 Friday, October 30, 1992

AFFECTED REGULATIONS: 40 CFR Part 261

[FRL-4528-8]

ACTION: Final rule.

EFFECTIVE DATE: Pursuant to Section 3010(b)(1) of RCRA, this rule is effective on October 30, 1992.

Attachment G
Agenda Item C
5/19/95 EQC Meeting

SUMMARY: This action responds to public comment on two proposals (57 FR 7636, March 3, 1992, and 57 FR 21450, May 20, 1992) to modify EPA's hazardous waste identification rules under the Resource Conservation and Recovery Act (RCRA). Because of the large number of comments received by the Agency and the need to evaluate all of the technical information provided by the public, EPA is today removing the April 28, 1993 expiration date from its reinstatement of the "mixture" and "derived-from" rules published on March 3, 1992 (see 57 FR 7628). This action will assure continuity of the existing national hazardous waste program while EPA determines the most appropriate approach for modification of the rules.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D
May 18, 1995 Meeting

Title:

VOC Area Source Rules for the Portland Ozone Maintenance Plan and Housekeeping Amendments

Summary:

These regulations will establish limits for the amount of Volatile Organic Compounds (VOCs) that can be used in a variety of paint and consumer products available in the Portland Air Quality Maintenance Area. These rules will also require the use of higher efficiency spray guns and spray gun cleaning equipment in Portland area automotive refinishing activities.

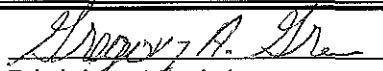
This "Area Source" package contains rule packages for Motor Vehicle Refinishing, Consumer Products, Spray Paint and Architectural Coatings, and will provide the first VOC reductions needed to support the Ozone Maintenance Plan.

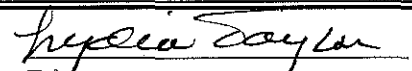
Housekeeping amendments update the definition of VOC and remove an unintended requirement from Categorical RACT regulations.

Department Recommendation:

Adopt proposed regulations to ensure that the early VOC reductions produced by these rules are available for the full Maintenance Plan period.


Report Author


Division Administrator


Director

5-3-95

†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: May 3, 1995

To: Environmental Quality Commission
From: Lydia Taylor, Interim Director *Lydia Taylor*
Subject: Agenda Item D, May 18, 1995 EQC Meeting

VOC Area Source Rules for the Portland Ozone Maintenance Plan and Housekeeping Measures

Background

On February 15, 1995, the Interim Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would reduce the amount of Volatile Organic Compounds (VOCs) used for "consumer and commercial" products available in the Portland Air Quality Maintenance Area (AQMA), which is shown on the attached map. Products affected by these rules are in the categories of Motor Vehicle Refinishing Coatings, Consumer (household) Products, Aerosol Spray Paint, and Architectural Coatings. These categories are considered "area" sources of pollution under the Clean Air Act because emissions occur over a broad geographic region. These area source rules will reduce VOC emissions by 3.6 percent of the human generated VOCs in the Portland area, and are needed to provide early VOC reductions in support of the Ozone Maintenance Plan.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on March 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 February 17, 1995.

A Public Hearing was held March 22, 1995 at 7:00 pm at Meeting Room "C" of the Portland Building in Portland, Oregon with Dave Nordberg serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through March 23, 1995 at 5:00 pm. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

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

Memo To: Environmental Quality Commission
Agenda Item D
May 18, 1995 Meeting
Page 2

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.

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

Issue this Proposed Rulemaking Action is Intended to Address

Under the federal Clean Air Act, the Portland area is designated as a "nonattainment" area for the national ambient air quality standard for ozone. This status includes imposition of strict requirements on new and expanding industries which are an impediment to the area's economic growth vitality. However, due to the success of past pollution control measures, Portland area air quality is now within the allowable limit for ozone, and the area is in a position to apply to the U.S. Environmental Protection Agency for redesignation to "attainment". Attainment designation would remove present industrial growth constraints.

One requirement for redesignation is the preparation of an Ozone Maintenance Plan which must provide measures to reasonably assure the AQMA will continue to be in attainment with the ozone standard for a ten year period. During this period, population, industry, and traffic are projected to grow steadily. To maintain the quality of the airshed, new measures to control pollution must be implemented to offset new air pollution which will come with future growth.

The housekeeping amendments included with this package will update the definition of VOC, and modify Categorical RACT ("Reasonably Available Control Technology) rules to remove a duplicative requirement.

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Relationship to Federal and Adjacent State Rules

Taken as a whole, VOC Area Source rules are being developed to help qualify the Portland area for redesignation to attainment under the Clean Air Act and prevent a recurrence of nonattainment as the region grows. Redesignation is not strictly required by the act, but redesignation to attainment is rewarded under the act by removing the threat of highway fund sanctions and the currently imposed sanctions on industrial expansion.

Taken individually, Area Source regulations are not more stringent than rules expected to be proposed by EPA in the future. Federal rules will, however, apply solely to product manufacturers, and user requirements will not be included. In moving ahead of EPA we must address the potential problem of border leakage whereby noncomplying products would filter into the controlled area from the surrounding region. To address this concern, the Motor Vehicle Refinishing, Spray Paint, and Architectural Coatings rules require commercial users to utilize products that comply with the relevant standards. Additionally, Motor Vehicle Refinishing regulations require painters to use paint-saving High Volume Low Pressure (HVLP) spray guns and solvent-saving gun cleaning equipment. These measures were recommended by the advisory committee as the best methods for reducing VOC emissions.

Similar regulations are now in place in California. Rules proposed for adoption will involve products currently used in the Portland market, or products now available in California and other states. Development of the proposed Area Source rules has been coordinated with the Southwest Washington Air Pollution Control Authority which is moving to adopt similar regulations.

Authority to Address the Issue

Authority to address this issue is provided in ORS 468.020 and ORS 468A.035.

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

Two advisory committees were formed to address issues related to these regulations. The Consumer Products - Architectural & Industrial Maintenance Coatings Advisory Committee was comprised of manufacturers, distributors, and retailers, plus members representing consumer, health, and societal interests. The committee evaluated related

rules in other states, industry proposals, and provisions expected in future federal rules during five sessions held from July 1994 to January 1995. The committee concluded with a virtual consensus accepting the DEQ proposed Consumer Products, Architectural Coatings, and Spray Paint draft regulations which generally reflected proposals of the affected industries.

The second advisory committee dealt with the Motor Vehicle Refinishing issues and consisted of representatives throughout the affected industry. Participants included paint manufacturers, body shop owners, and equipment suppliers. Four meetings held between July and October 1994 addressed VOC reduction options presented in EPA's Alternative Control Techniques (ACT) guidance document. Proposed rules reflect a slightly relaxed version of these options and were either supported or accepted by group members.

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

Proposed rules establish limits for the maximum amount of VOCs that can be used in the manufacture of a wide range of commonly available products. These include automotive paint, architectural paint, aerosol spray paint, and a variety of household products such as hairspray, air freshener, windshield washer fluid and spray antiperspirants.

The primary themes expressed by affected parties throughout the rule development process were that the regulations should be technologically feasible, and consistent with the requirements existing in other regulated areas. The proposed regulations incorporated these principles, and had the general acceptance of the regulated communities by the time they were proposed for public comment.

Summary of Significant Public Comment and Changes Proposed in Response

The paint manufacturing industry as represented by the National Paint & Coatings Association (NPCA, representing more than 500 members and 75% of the nation's paint production), is generally supportive of the Architectural Coating rule provisions. The NPCA would prefer, however, that the Department delay the rule to wait for an anticipated federal rule to be promulgated. The Department can't wait for EPA's action if it is going to live up to legislative expectations (expressed in HB 2214 of the 1993 session) that we adopt a maintenance plan as soon as possible.

A smaller faction of the industry however, represented by the Environmental Legislative and Regulatory Action Program (ELRAP), suggests the Architectural Coatings rule be relaxed in several categories. The Department has incorporated approximately half of ELRAP's suggestions which seem likely to achieve greater conformance with the national rule, but considers other suggestions unnecessary, and erosive of the rule's effectiveness which would make the maintenance plan unable to be approved. For example, the rule proposed for adoption expands the definition of lacquer to allow opaque as well as clear coatings for this high VOC category, and adds a new high VOC category for lacquer stains. However, requests that the VOC limits be relaxed for Primers & Undercoaters, "Non-Flat" coatings, and "Quick-Dry" primers have not been incorporated in the rule offered for adoption because they diminish the VOC reductions needed for a viable VOC reduction program.

Other modifications made in response to comments are the addition of a new category for Multi-Color coatings in the Motor Vehicle Refinishing rule, an exclusion of a special purpose product (resorcinol) from the Consumer Products rule, and the relaxation of the "small container" exemption in the Architectural Coatings rule to extend the exemption to containers of one quart or less.

Summary of How the Proposed Rules Will Work and How they Will be Implemented

The Motor Vehicle Refinishing rule will require Portland area painters to use lower-VOC coatings beginning Jan. 1, 1996, and high efficiency spray guns, plus spray gun cleaning equipment to reduce solvent evaporation starting in June of that year. Retailers of automotive paints will be required to sell only complying products for use in the Portland AQMA beginning January 1, 1996 which will allow time for noncomplying products to be sold or returned to the manufacturer.

Remaining rules apply only to those products manufactured after the applicable effective dates of either January 1, or July 1, 1996. These rules apply primarily to manufacturers who must provide only products which comply with the VOC limits to the Portland area. Producers are able to comply with the proposed requirements using presently available technology, and most are already moving quickly to distribute only complying products nationwide. Manufacturers must also indicate the VOC content of their products using one of several methods. Commercial coating users will also be obligated to avoid noncomplying products. Product differences will typically go unnoticed by the ordinary consumer.

Because regulations are only for the Portland AQMA, the rules will be implemented by two full-time and one part (50%) time temporary employees at DEQ's Northwest Region office. Product testing will be done by one part-time (25%) employee at DEQ's Organic Laboratory. Staff will be charged with notifying regulated parties, registering complying consumer products, evaluating applications for extension of the compliance date, and enforcing rule provisions. Regulations involve no fees or revenue measures, and the program is expected to be supported entirely by federal funds. Once the Federal program is fully implemented, most if not all of the state compliance measures will be unnecessary and they will be eliminated.

Housekeeping Measures require no modification of existing implementation programs.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules and rule amendments regarding VOC Area Source Rules and Housekeeping Measures as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rules (and Amendments) Proposed for Adoption:
 - 1. Motor Vehicle Refinishing (new)
 - 2. Consumer Products (new)
 - 3. Spray Paint (new)
 - 4. Architectural Coatings (new)
 - 5. Area Source General Provisions (new)
 - 6. Housekeeping Amendments
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice of Hearing (Chance to Comment)
 - 3. Rulemaking Statements (Statement of Need)
 - 4. Fiscal and Economic Impact Statement
 - 5. Land Use Evaluation Statement
 - 6. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
- C. Presiding Officer's Report on Public Hearing
- D. List of Written Comments Received
- E. Department's Evaluation of Public Comment

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

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:

Section:

John F. Kowalczuk

Division:

Gregory A. Gra

Report Prepared By: Dave Nordberg

Phone: (503) 229-5519

Date Prepared: April 12, 1995

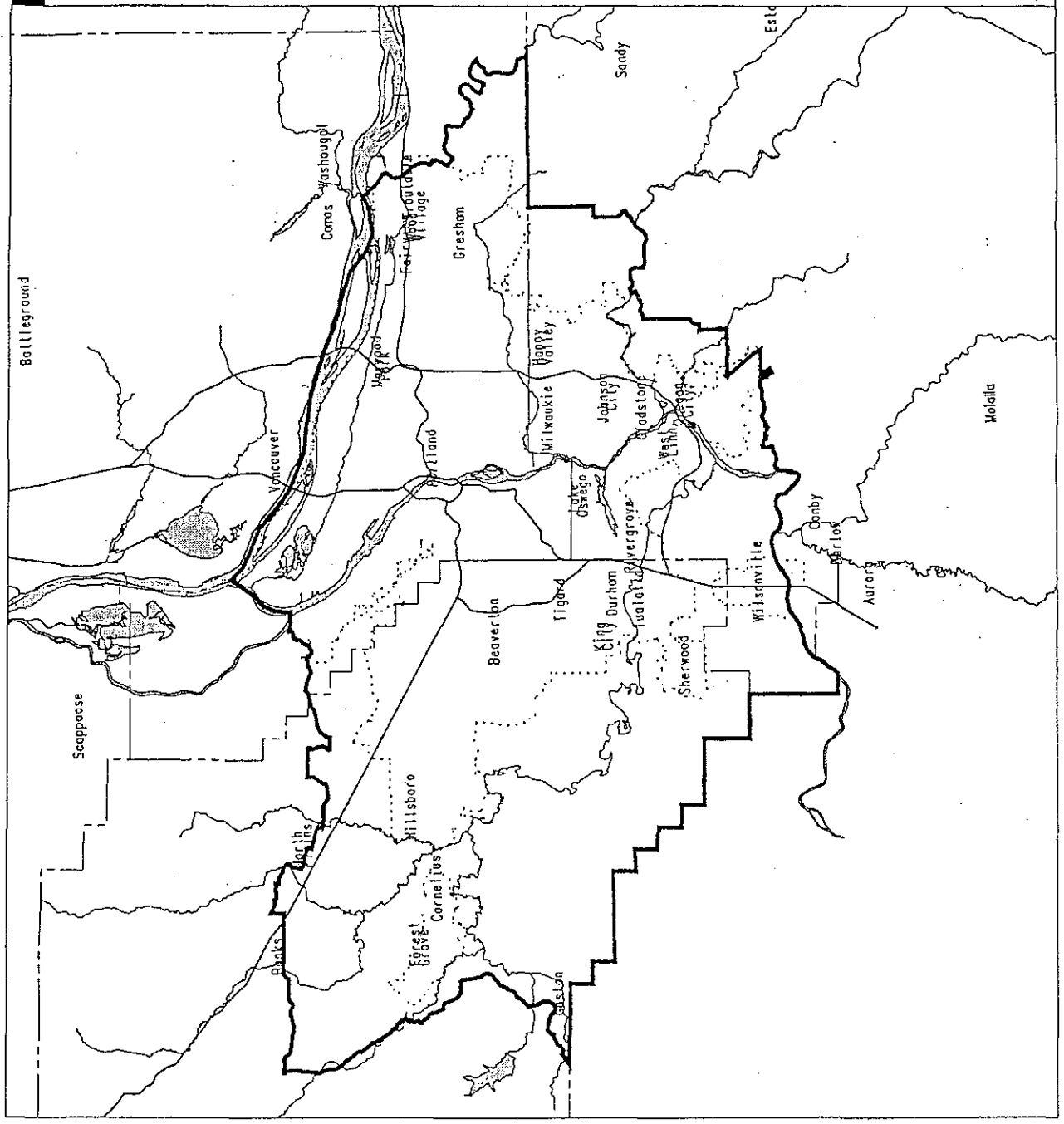
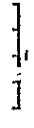
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Ozone Non Attainment Area

Air Quality Maintenance Area
Portland, Oregon

— Non Attainment Boundary



The text of the following rules is entirely new:

Motor Vehicle Refinishing

Applicability

- OAR 340-22-700** OAR 340-22-700 through 340-22-760 apply to any person:
- (1) Who sells, offers for sale, distributes or manufactures motor vehicle refinishing coatings for sale in Oregon, or
 - (2) Who owns, leases, operates or controls a motor vehicle refinishing facility in the Portland AQMA.

Definitions

- OAR 340-22-710** As used in OAR 340-22-700 through 340-22-760:
- (1) "Aerosol Spray" coating means a pre-mixed coating supplied in pressurized containers of 16 ounces or less.
 - (2) "Anti-glare/Safety Coating" means a coating formulated to minimize light reflection to interior areas of a vehicle and which shows a reflectance of 25 or less on a 60 degree gloss meter.
 - (3) "Basecoat" means a pigmented topcoat which is the first topcoat applied as a part of a multistage topcoat system.
 - (4) "Basecoat/Clearcoat Topcoat System" means a topcoat system composed of a basecoat portion and a clearcoat portion. The VOC content of a basecoat/clearcoat topcoat system shall be calculated according to the following formula:

$$\text{VOC}_{bc/cc} = \frac{\text{VOC}_{bc} + 2 \text{VOC}_{cc}}{3}$$

Where: $\text{VOC}_{bc/cc}$ = the composite VOC content, less water and less exempt compounds to be used for compliance determination under the basecoat/clearcoat topcoat system coating category.

VOC_{bc} = the VOC content of any given basecoat as prepared for use, less water and less exempt compounds.

2VOC_{cc} = twice the VOC content of any given clearcoat as prepared for use, less water and less exempt compounds.

- (5) "Bright Metal Trim Repair Coating" means a coating applied directly to chrome-plated metal surfaces for the purposes of appearance.
- (6) "Clearcoat" means a topcoat which contains no pigments or only transparent pigments and which is the final topcoat applied as a part of a multistage topcoat system.

- (7) "Department" means the Oregon Department of Environmental Quality.
- (8) "Elastomeric Materials" mean coatings which are specifically formulated and applied over coated or uncoated flexible plastic substrates for the purpose of adhesion.
- (9) "Exempt compounds" means compounds of carbon excluded from the definition of VOC.
- (10) "Graphic Design Application" means the application of logos, letters, numbers, or artistic representations such as murals, landscapes, and portraits.
- (11) "High Volume, Low Pressure Spray", or "HVLP" means equipment used to apply coatings with a spray device which operates at a nozzle air pressure between 0.1 and 10 pounds per square inch gravity (psig).
- (12) "Impact Resistant Coating" means any coating applied to a rocker panel for the purpose of chip resistance to road debris.
- (13) "Manufacturer" means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.
- (14) "Midcoat" means a semi-transparent topcoat which is the middle topcoat applied as part of a three-stage topcoat system.
- (15) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion as defined in ORS 801.360.
- (16) "Motor Vehicle Refinishing" means the application of surface coating to on-road motor vehicles or non-road motor vehicles, or their existing parts and components, except Original Equipment Manufacturer (OEM) coatings applied at manufacturing plants.
- (17) "Motor Vehicle Refinishing Coating" means any coating designed for, or represented by the manufacturer as being suitable for motor vehicle refinishing.
- (18) "Motor Vehicle Refinishing Facility" means a location at which motor vehicle refinishing is performed.
- (19) "Multi-Color Coating" means a coating which is packaged in a single container that exhibits more than one color when applied, and is used to protect surfaces of vehicle cargo areas.
- (20) "Multistage Topcoat System" means any basecoat/clearcoat topcoat system or any three-stage topcoat system manufactured as a system, and used as specified by the manufacturer.
- (21) "Non-Road Motor Vehicle" means any motor vehicle other than an on-road motor vehicle. "Non-Road Motor Vehicle" includes, but is not limited to, fixed load vehicles, farm tractors, farm trailers, all-terrain vehicles, and golf carts as these vehicles are defined in ORS Chapter 801.
- (22) "On-Road Motor Vehicle" means any motor vehicle which is required to be registered under ORS 803.300 or exempt from registration under ORS 803.305(5), 803.305(6), or 803.305(15) through 803.305(19). "On-Road Motor Vehicle" includes, but is not limited to: passenger cars, trucks, vans, motorcycles, mopeds, motor homes, truck tractors, buses, tow vehicles, trailers other than farm trailers,

- and camper shells.
- (23) "Person" means the federal government, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever.
 - (24) "Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)
 - (25) "Precoat Coating" means a coating applied to bare metal primarily to deactivate the surface for corrosion resistance to a subsequent water-base primer.
 - (26) "Pretreatment Wash Primer" means a coating which contains at least 0.5% acid, by weight, which is used to provide surface etching and is applied directly to bare metal surfaces to promote corrosion resistance and adhesion.
 - (27) "Primer" means a coating applied for purposes of corrosion resistance or adhesion of subsequent coatings.
 - (28) "Primer Sealer" means a coating applied prior to the application of a topcoat for the purpose of color uniformity, or to promote the ability of a underlying coating to resist penetration by the topcoat.
 - (29) "Primer Surfacer" means a coating applied for the purpose of corrosion resistance or adhesion, and which promotes a uniform surface by filling in surface imperfections.
 - (30) "Public Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.
 - (31) "Rocker Panel" means the panel area of a motor vehicle which is no more than 10 inches from the bottom of a door, quarter panel, of fender.
 - (32) "Rubberized Asphaltic Underbody Coating" means a coating applied to the wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, of the underside of the motor vehicle itself for the purpose of sound deadening or protection.
 - (33) "Specialty Coating" means any of the following coatings when used in accordance with each coating's specialized design purpose: adhesion promoters, uniform finish blenders, elastomeric materials, impact-resistant coatings, anti-glare safety coatings, rubberized asphaltic underbody coatings, water hold-out coatings, weld-through coatings, bright metal trim repair coatings, and surface appearance additives.
 - (34) "Spot Repairs" mean motor vehicle refinishing repairs in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.
 - (35) "Stencil Coating" means an ink or a pigmented coating which is rolled or brushed onto a template or a stamp in order to add identifying letters, symbols, or numbers to motor vehicles, mobile equipment, or their parts and components.
 - (36) "Surface Appearance Additive" means gloss control additives, fish-eye eliminators, retarders, and other additives designed to achieve the surface appearance of the

original equipment specifications.

- (37) "Three-Stage Coating System" means a topcoat system composed of a basecoat portion, a midcoat portion, and a transparent clearcoat portion. For compliance purposes, the VOC content of a three-stage coating system shall be calculated according to the following formula:

$$\text{VOC}_{3\text{-stage}} = \frac{\text{VOC}_{\text{bc}} + \text{VOC}_{\text{mc}} + 2 \text{VOC}_{\text{cc}}}{4}$$

Where: $\text{VOC}_{3\text{-stage}}$ = the composite VOC content, less water and less exempt compounds in the three-stage coating system.

VOC_{bc} = the VOC content of any given basecoat as prepared for use, less water and less exempt compounds.

VOC_{mc} = the VOC content of any given midcoat as prepared for use, less water and less exempt compounds.

2VOC_{cc} = twice the VOC content, as prepared for application, of any given clearcoat.

- (38) "Topcoat" means a coating applied over any coating, for the purpose of appearance, identification, or protection.
- (39) "Touch-up Coating" means a coating applied by brush or non-refillable aerosol can to cover minor surface damage and dispensed in containers of no more than 8 ounces.
- (40) "Uniform Finish Blender" means a coating which is applied in spot repairs for the purpose of blending a paint overspray area of a repaired topcoat to match the appearance of an adjacent existing topcoat.
- (41) "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.
- (42) "Volatile Organic Compound" or "VOC" means those compounds of carbon defined in OAR 340-22-102. For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-22-760.
- (43) "Water Hold-Out Coating" means a coating applied to the interior cavity areas of doors, quarterpanels, and rocker panels for the purpose of corrosion resistance to prolonged water exposure.
- (44) "Weld-Through Coating" means a coating applied to metal immediately prior to welding to provide corrosion resistance.

Coating Standards and Exemptions

OAR 340-22-720

- (1) Where required by OAR 340-22-730 and 340-22-740, motor vehicle refinishing coatings shall not exceed the VOC content limitations in Table C when prepared in accordance with the manufacturer's instructions, except as provided in section (2) of this rule.

Table C
VOC Content Limits of Motor Vehicle Refinishing Coatings

Coating Type	VOC Content Limits* (lbs/gal)
Pretreatment Wash Primer	6.5
Precoat	6.5
Primer	4.8
Primer Surfacer	4.8
Primer Sealer	4.6
Topcoat	5.0
Basecoat/Clearcoat Topcoat System	5.0
Three-Stage Coating System	5.2
Multi-Color Coating	5.7
Specialty Coating	7.0

VOC content is determined as prepared for use in accordance with manufacturer's instructions, and shall be calculated by the following equation:

$$\text{Pounds of VOC per gallon} = \frac{W_{\text{voc}}}{V_m - V_w - V_{\text{ec}}}$$

Where: W_{voc} = Weight of VOC in pounds, or the weight of all volatile compounds less the weight of water, less the weight of exempt compounds;
 V_m = Volume of material in gallons;
 V_w = Volume of water in gallons;
 V_{ec} = Volume of exempt compounds, in gallons.

[Note: * VOC emission limits are expressed as pounds of VOC per gallon of coating excluding the volume of water and exempt compounds.]

- (2) Exemptions. The VOC content limits in section (1) of this rule shall not apply to:
- Coatings supplied in aerosol spray cans;
 - Touch-up coatings;
 - Stencil coatings;
 - Coatings used for graphic design applications.

Requirements for Manufacture and Sale of Coatings

OAR 340-22-730

- (1) Manufacture. Any person who manufactures motor vehicle refinishing coatings for sale within Oregon after January 1, 1996 shall:
 - (a) Provide written instructions for preparation of the product; and
 - (b) Designate in writing the VOC content of these products as prepared for use in accordance with the manufacturer's instructions.
- (2) Shipment to the Portland AQMA. Except as provided in section (4) of this rule, no person shall knowingly sell, ship or provide a motor vehicle refinishing coating after January 1, 1996 for use within the Portland AQMA unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in OAR 340-22-720 when prepared in accordance with the manufacturer's instructions.
- (3) Sale within Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill Counties. Except as provided in section (4) of this rule, no person shall sell motor vehicle refinishing coatings after January 1, 1996 within Clackamas, Columbia, Marion, Multnomah, Washington or Yamhill Counties unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in OAR 340-22-720 when prepared in accordance with the manufacturer's instructions.
- (4) Sale for use outside the Portland-Vancouver Interstate AQMA. Motor vehicle refinishing coatings which do not comply with the VOC limitations of OAR 340-22-720 may be sold for shipment to the Portland AQMA, or sold within Clackamas, Columbia, Marion, Multnomah, Washington, or Yamhill Counties if:
 - (a) The product is to be used outside the boundary of the Portland-Vancouver Interstate AQMA; and
 - (b) The purchaser provides written certification to the seller in the manner described by section (5) of this rule that the product is to be used outside of the Portland-Vancouver Interstate AQMA.
- (5) Purchase Certifications. When required by section (4) of this rule, certifications of intended use shall at a minimum contain the following information:
 - (a) Purchaser's name and address;
 - (b) Date of Purchase;
 - (c) Name of coating or coating system purchased;
 - (d) Type of coating;
 - (e) Quantity of coating purchased;
 - (f) Address of location where the coating will be used;
 - (g) A statement certifying that the coating will not be used within the Portland-Vancouver Interstate AQMA to the best of the purchaser's knowledge; and
 - (h) Purchaser's signature.

Requirements for Motor Vehicle Refinishing in Portland AQMA

OAR 340-22-740 Except as provided in section (3) of this rule, persons

performing motor vehicle refinishing of on-road motor vehicles within the Portland AQMA shall:

- (1) After January 1, 1996:
 - (a) Use motor vehicle refinishing coatings which are identified by the manufacturer as complying with the VOC limits established in OAR 340-22-720; and
 - (b) Prepare and apply the coatings in accordance with the manufacturer's instructions; and
- (2) After June 1, 1996:
 - (a) Clean any spray equipment, including paint lines, in a device which:
 - (A) Minimizes solvent evaporation during the cleaning, rinsing, and draining operations;
 - (B) Recirculates solvent during the cleaning operation so the solvent is reused; and
 - (C) Collects spent solvent to be available for proper disposal or recycling; and
 - (b) Apply motor vehicle refinishing coatings by one of the following methods:
 - (A) High Volume Low Pressure spray equipment, operated and maintained in accordance with the manufacturer's recommendations;
 - (B) Electrostatic application equipment, operated and maintained in accordance with the manufacturer's recommendations;
 - (C) Dip coat application;
 - (D) Flow coat application;
 - (E) Brush coat application;
 - (F) Roll coat application;
 - (G) Hand-held aerosol cans; or
 - (H) Any other coating application method which can be demonstrated to effectively control VOC emissions, and which has been approved in writing by the Department.
- (3) This rule shall not apply to any person who performs motor vehicle refinishing without compensation, and who performs refinishing on two or fewer on-road motor vehicles, or portions thereof, in any calendar year.

Recordkeeping and Reporting Requirements

OAR 340-22-750

- (1) Recordkeeping.
 - (a) Manufacturers of motor vehicle refinishing coatings sold in Oregon shall maintain records which demonstrate that the VOC content designated under OAR 340-22-730(1) is true and accurate. These records shall be maintained for at least two (2) years after a manufacturer's sale of a product for use in Oregon, and may include, but are not limited to, product formulation data and test results using test methods specified in OAR 340-22-760.

- (b) Persons who sell motor vehicle refinishing coatings within the State of Oregon shall maintain records for at least 2 years which are sufficient to allow a determination of compliance with OAR 340-22-730 (3) and (4). These records shall include, but are not limited to, purchase certifications and sales information specifying the coating identification, quantity sold, and date of sale.
 - (c) Persons who perform motor vehicle refinishing of on-road motor vehicles within the Portland AQMA shall maintain records for at least 2 years which are sufficient to allow determination of compliance with OAR 340-22-740. These records shall include, but are not limited to, manufacturers' instructions for preparation of coatings used and purchase information specifying the coating identification, quantity purchased and date of purchase.
- (2) Reporting. Following request and within a reasonable period of time, records specified in section (1) of this rule shall be made available to the Department.
 - (3) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in OAR 340-22-1120.

Inspection and Testing Requirements

OAR 340-22-760

- (1) The owner or operator of any facility subject to OAR 340-22-700 through 340-22-760 shall, at any reasonable time, make the facility available for inspection by the Department.
- (2) Upon request of the Department, any person subject to OAR 340-22-700 through 340-22-760 shall furnish samples of motor vehicle refinishing coatings selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-22-720.
- (3) Testing conducted under this rule shall be in accordance with EPA Method 24 or Method 25 as described in **CFR Title 40 Part 60** (July 1, 1994), or by other methods approved by the Department and EPA.

The text of the following rules is entirely new:

Consumer Products

Applicability

OAR 340-22-800 OAR 340-22-800 through 340-22-860 apply to any manufacturer, distributor or retailer of consumer products for sale or use in the Portland AQMA.

Definitions

OAR 340-22-810 As used in OAR 340-22-800 through 340-22-860:

- (1) "Aerosol product" means a pressurized spray system that dispenses product ingredients by means of propellant or mechanically induced force. This does not include pump sprays.
- (2) "Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers which are intended for home use, use in structural pest control, industrial use, or institutional use. Subsections (a) through (d) are for purposes of this section only.
 - (a) Home use means use in a household or its immediate environment.
 - (b) Structural pest control means a use requiring a license.
 - (c) Industrial use means use for or in a manufacturing, mining, or chemical process, or use in the operation of factories, processing plants, and similar sites.
 - (d) Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.
- (3) "Air freshener" means any consumer product including, but not limited to sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This does not include products that are used on the human body, products that function primarily as cleaning products, or disinfectant products claiming to deodorize by killing germs on surfaces. It does include spray disinfectants and other products that are expressly represented for use as air fresheners. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label and packaging, and in the product's literature and advertising may be considered. The presence of and representations about a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.
- (4) "All other forms" means all consumer product forms for which no form-specific VOC standard is specified under OAR 340-22-820(1). Unless specified otherwise by the applicable VOC standard, this includes, but is not limited to, solids,

- liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).
- (5) "Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.
 - (6) "ASTM" means the American Society for Testing and Materials.
 - (7) "Automotive windshield washer fluid" means Any liquid designed for use in a motor vehicle windshield washer fluid system either as an anti-freeze or for the purpose of cleaning, washing, or wetting the windshield(s). This does not include any fluid which is placed in the washer fluid system of a motor vehicle prior to the time of initial sale.
 - (8) "Bait station insecticide" means a container enclosing an insecticidal bait, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.
 - (9) "Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. This does not include products specifically designed to clean toilet bowls or toilet tanks.
 - (10) "Carburetor-choke cleaner" means a product designed to remove dirt and other contaminants from a carburetor. This does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.
 - (11) "Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This does not include subsections (a) through (d):
 - (a) Electrical starters and probes,
 - (b) Metallic cylinders using paper tinder,
 - (c) Natural gas, and
 - (d) Propane.
 - (12) "Commission" means the Environmental Quality Commission.
 - (13) "Complying consumer product" means a consumer product which complies with the VOC content limits in OAR 340-22-820.
 - (14) "Construction and panel adhesive" means any one-component household adhesive sold in containers of one gallon or less, having gap filling capabilities, and which distributes stress throughout the bonded area resulting in reduction or elimination of mechanical fasteners.
 - (15) "Consumer" means any person who purchases or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not considered consumers of that product.
 - (16) "Consumer product" means any chemically formulated product, or article, held by any person, the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds, and which is included in the product categories listed in OAR 340-22-820(1). This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, architectural coatings or aerosol spray paint.

- (17) "Contact adhesive" means any household adhesive that:
- (a) Is nitrile-based, or contains polychloro-butadiene (neoprene, chloroprene, bayprene), or latex;
 - (b) When applied to two substrates, forms an instantaneous, non-repositionable bond;
 - (c) When dried to touch, exhibits a minimum 30-minute bonding range; and,
 - (d) Bonds only to itself without the need of reactivation by solvents or heat.
- (18) "Container" or "Packaging" means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.
- (19) "Cooking spray aerosols" means any aerosol product designed either to reduce sticking in or on cooking and baking surfaces or to be applied on food, or both.
- (20) "Crawling bug insecticide" means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish, or spiders. This does not include products designed to be used exclusively on humans or animals.
- (21) "Deodorant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.
- (22) "Device" means any instrument or contrivance (other than a fire-arm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than humans and other than bacteria, viruses, or other micro-organism on or in living humans or other living animals), but not including equipment used for the application of pesticides for which the pesticides are sold separately.
- (23) "Department" means the Oregon Department of Environmental Quality.
- (24) "Distributor" means any person who sells or supplies a consumer product for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self-distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies consumer products directly to a retail outlet. "Distributor" does not include consumers.
- (25) "Double-phase aerosol air freshener" means an aerosol air freshener with the contents in two or more distinct phases that require the product container be shaken before use to mix the phases, producing an emulsion.
- (26) "Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This does not include products which consist entirely of compressed gases for use in electronic or other specialty applications.
- (27) "Exempt compounds" means compounds of carbon specifically excluded from the

definition of VOC.

- (28) "Exempt VOCs" means VOCs exempted from OAR 340-22-820(1) under OAR 340-22-820(3).
- (29) "Engine degreaser" means a cleaning product designed to remove grease, grime, oil, and other contaminants from the external surfaces of engines and other mechanical parts.
- (30) "Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. This does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of ten fluid ounces or less.
- (31) "Flea and tick insecticide" means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. This does not include products that are designed to be used exclusively on humans or animals and their bedding.
- (32) "Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber seamless vinyl, and vinyl composite flooring.
- (33) "Floor polish or wax" means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, or coatings subject to architectural and industrial maintenance coating regulations.
- (34) "Flying bug insecticide" means any insecticide product that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths, or gnats. This does not include wasp and hornet insecticide, or products that are designed to be used exclusively on humans or animals.
- (35) "Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2mm mercury at 20° Celsius (C), which is added to a consumer product to impart an odor or scent or to counteract a objectionable odor.
- (36) "Furniture maintenance product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. This does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.
- (37) "Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.
- (38) "General purpose adhesive" means any non-aerosol household adhesive designed for use on a variety of substrates, not including contact adhesives or construction and panel adhesives.
- (39) "General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This includes products designed for general floor cleaning,

- kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces. This does not include non-water-based degreasers.
- (40) "Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. This does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, or photocopying machines.
- (41) "Hairspray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.
- (42) "Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.
- (43) "Hair styling gel" means a high viscosity, often gelatinous product that contains a resin and is designed for application to hair to aid in styling and sculpting of the hair coiffure.
- (44) "High volatility organic compound or "HVOC" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters mercury when measured at 20°C.
- (45) "Household adhesive" means any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, two part resorcinol resin based adhesive, or any other product with an adhesive incorporated onto or in an inert substrate.
- (46) "Household product" means any consumer product that is primarily designed to be used in or in the vicinity of living quarters or residences that are occupied or intended for habitation.
- (47) "Initial sale" means the bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in Oregon or elsewhere; and such a bargain, sale, transfer, or delivery, accompanied by registration or licensing of said vehicle in Oregon or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.
- (48) "Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:
- (a) For agricultural use;
 - (b) For use in maintaining building structures; or
 - (c) Restricted materials that require a permit for use and possession.
- (49) "Insecticide fogger" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.
- (50) "Institutional product" means a consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit; or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile

service and parts centers, health clubs, theaters, or transportation companies. Institutional products do not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

- (51) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.
- (52) "Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements or contributes to the effectiveness of laundry detergents or provides specialized performance.
- (53) "Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This includes, but is not limited to, fabric finish, sizing, and starch.
- (54) "Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.
- (55) "Liquid" means a substance or mixture of substances which is capable of flow as determined under **ASTM D-4359-90**. This does not include powders or other materials that are composed entirely of solid particles.
- (56) "Manufacturer" means the company, firm or establishment which is listed on the product container or package. If the product container or package lists two companies, firms or establishments, the manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the product container or package. If the product container or package does not list a company, firm or establishment, the manufacturer is the party who imported, produced, packaged or assembled the product.
- (57) "Nail polish" means any clear or colored coating designed for application to the fingernails or toenails and including, but not limited to, lacquers, enamels, acrylics, base coats, and top coats.
- (58) "Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.
- (59) "Non-aerosol product" means any product that is not dispensed by a pressurized spray system.
- (60) "Noncomplying consumer product" means a consumer product which does not comply with the VOC content limits in OAR 340-22-820.
- (61) "Nonresilient flooring" means flooring of a mineral content which is not flexible, including but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.
- (62) "Oven cleaner" means any product designed to clean or remove dried food deposits from oven walls.
- (63) "Percent-by-weight" means the total weight of VOC less exempt VOCs, expressed

as a percentage of the total net weight of the product exclusive of the container or package as calculated according to the following equation:

$$\text{Percent-By-Weight} = \frac{(B - C) \times 100}{A}$$

Where:

- A = net weight of unit (excluding container and packaging)
- B = weight of VOCs, per unit
- C = weight of VOCs, exempted under OAR 340-22-820(3), per unit

- (64) "Pesticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, providing that the term pesticide will not include any substance, mixture of substances, or device which the U.S. Environmental Protection Agency does not consider to be a pesticide.
- (65) "Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)
- (66) "Principal display panel or panels" means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.
- (67) "Product category" means the applicable category which best describes the product as listed in this rule.
- (68) "Product form" means the applicable form which most accurately describes the product's dispensing form, including aerosol products, gels, liquids, pump sprays, and solids.
- (69) "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.
- (70) "Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.
- (71) "Restricted materials" means any pesticides established for restricted use under Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 United States Code § 136, et seq.
- (72) "Retailer" means any person who sells, supplies, or offers consumer products for sale directly to consumers.
- (73) "Retail outlet" means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

- (74) "Single-phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.
- (75) "Shaving cream" means an aerosol product which dispenses a foam lather intended for use with a blade, cartridge razor, or other wet shaving system in the removal of facial or other bodily hair.
- (76) "Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of flow as determined under **ASTM D-4359-90**.
- (77) "Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.
- (78) "Subsequent sale" means the bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than alien, of a motor vehicle which has been registered or licensed outside of the Portland AQMA, except when such vehicle is not required under law to be registered or licensed in Oregon or elsewhere; and any such bargain, sale, transfer, or delivery of a motor vehicle after same has been registered or licensed shall constitute a subsequent sale, irrespective of where bargain, sale, transfer, or delivery occurred.
- (79) "Usage directions" means the text or graphics on the product's label or accompanying literature which describes to the user the manner and quantity in which the product is to be employed.
- (80) "Volatile Organic Compound" or "VOC" means those compounds of carbon defined in OAR 340-22-102(73). For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-22-860.
- (81) "Wasp and hornet insecticide" means any insecticide product that is designed for use against wasps, hornets, yellow jackets, or bees by allowing the user to spray a high-volume directed stream or burst from a safe distance at the intended pest or its hiding place.
- (82) "Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.
- (83) "Wood floor wax" means wax-based products for use solely on wood floors.

Consumer Product Standards and Exemptions

OAR 340-22-820

- (1) Where required by OAR 340-22-830, consumer products shall not exceed the VOC content limits in Table D or HVOC content limits in Table E, as modified by the special conditions and exemptions in sections (2) and (3) of this rule.

Table D

CONSUMER PRODUCT VOC CONTENT LIMITS

<u>Product Category</u>	<u>Percent-by-weight VOC</u>
Air Fresheners	
Single-phase Aerosols	70
Double-phase Aerosols	30
Liquids & Pump Sprays	18
Solids & Gels	3
Automotive Windshield Washer Fluids	23.5
Bathroom & Tile Cleaners	
Aerosols	7
All Other Forms	5
Carburetor-Choke Cleaners	75
Charcoal Lighter Material	See subsection (2)(c) of this rule
Cooking Spray Aerosols	18
Dusting Aids	
Aerosol	35
All Other Forms	7
Engine Degreasers	75
Fabric Protectants	75
Floor Polishes & Waxes	
Products for Flexible Flooring	7
Products for Nonresilient Flooring	10
Wood Floor Wax	90
Furniture Maintenance Products	
Aerosols	25
General Purpose Cleaners	10

Table D (continued)

<u>Product Category</u>	<u>Percent-by-weight VOC</u>
Glass Cleaners	
Aerosols	12
All other forms	8
Hairsprays	80
Hair Mousses	16
Hair Styling Gels	6
Household Adhesives	
Aerosol	75
Contact	80
Construction and Panel	40
General Purpose	10
Insecticides	
Crawling Bug	40
Flea and Tick	25
Flying Bug	35
Foggers	45
Lawn and Garden	20
Laundry Prewash	
Aerosols & Solids	22
All Other Forms	5
Laundry Starch Products	5
Nail Polish Removers	75
Oven Cleaners	
Aerosols & Pump Sprays	8
Liquids	5
Shaving Creams	5

Table E

ANTIPERSPIRANT/DEODORANT HVOC CONTENT LIMITS

<u>Product Category</u>	<u>Percent-by-weight HVOC</u>
Antiperspirants	
Aerosols	60
Non-aerosols	0
Deodorants	
Aerosols	20
Non-aerosols	0

- (2) Special conditions. The following conditions shall apply to products subject to VOC or HVOC limits under section (1) of this rule:
- (a) For consumer products for which the usage directions specifically state that the product should be diluted prior to use, the limits specified in section (1) of this rule shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, the usage directions shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.
 - (b) Notwithstanding the definition of product category in OAR 340-22-810, if anywhere on a consumer product or in any promotion of the product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC standard is specified in section (1) of this rule, then the lowest VOC standard shall apply. This requirement does not apply to general purpose cleaners or antiperspirants.
 - (c) The requirements for charcoal lighter materials are as follow:
 - (A) Where required by OAR 340-22-830, charcoal lighter material emissions shall not exceed an average of 0.020 pounds of VOC per start when used in accordance with the directions on the label of the product.
 - (B) Compliance with this subsection shall be demonstrated by:
 - (i) Testing in accordance with procedures specified in OAR 340-22-860; or
 - (ii) Certification of charcoal lighter materials by Executive Order of the California Air Resources Board (CARB), unless the CARB certification is revoked.
 - (C) Charcoal lighter material labels and accompanying literature shall clearly show usage directions for the product. For liquid charcoal

lighter materials, the directions shall accurately reflect the required quantity of charcoal lighter material per pound of charcoal for that product that was used in determining compliance with this subsection.

- (3) Exempt VOCs. The requirements of section (1) of this rule shall not apply to:
- (a) Fragrances or colorants up to a combined level of 2.0% VOC by weight contained in any consumer product.
 - (b) VOCs of products subject to section (1) Table D of this rule that:
 - (A) Contain more than 12 carbon atoms per molecule, and for which the vapor pressure is unknown;
 - (B) Have a vapor pressure of 0.1 mm Hg or less at 20°C; or
 - (C) Have a melting point higher than 20°C and do not sublime (e.g. do not change directly from a solid into a gas without melting), if the vapor pressure is unknown.
 - (c) VOCs of products subject to section (1) Table E of this rule that:
 - (A) Contain more than 10 carbon atoms per molecule, and for which the vapor pressure is unknown; or
 - (B) Has a vapor pressure of 2 mm Hg or less at 20°C.
 - (d) Air fresheners and insecticides containing at least 98% paradichlorobenzene.
 - (e) Adhesives sold in containers of one fluid ounce or less combined net weight.
 - (f) Bait station insecticides.
 - (g) Air fresheners that are comprised entirely of fragrance and compounds which are not defined as VOC under OAR 340-22-810 or exempted under subsection (b) of this section.
 - (h) Products for which an innovative product exemption has been approved under OAR 340-22-840 provided the manufacturer complies with the terms and conditions of such approval and the approval has not been revoked.

Requirements for Manufacture and Sale of Consumer Products

OAR 340-22-830

- (1) Manufacturers. Except as provided in section (4) of this rule, any person who manufactures consumer products after January 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, for retail sale within the Portland AQMA shall:
- (a) Manufacture complying consumer products for products marketed in the Portland AQMA;
 - (b) Clearly display on each consumer product container or package, the date on which the product was manufactured, or a code indicating such date;
 - (c) If a noncomplying product is manufactured, provide written notification to all distributors supplied with products in that product category that:
 - (A) Allows identification of complying consumer products and noncomplying consumer products in the product category; and

- (B) Informs distributors that noncomplying consumer products shall not be distributed, directly or indirectly, to retail outlets in the Portland AQMA; and
 - (d) Notify direct purchasers of products manufactured for sale within the Portland AQMA upon determining that any noncomplying consumer products have been supplied in violation of this rule.
- (2) Distributors. Except as provided in section (4) of this rule, any distributor of consumer products manufactured after January 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet within the Portland AQMA shall:
 - (a) Ensure that any consumer products identified by the manufacturer as noncomplying consumer products are not distributed directly to retail outlets in the Portland AQMA;
 - (b) Provide any information about a consumer product supplied by a manufacturer under subsection (1)(c) of this rule to any other distributor to whom the consumer product is sold, supplied or distributed for subsequent distribution to a retail outlet in the Portland AQMA; and
 - (c) Notify direct purchasers of products distributed for sale within the Portland AQMA upon determining that any noncomplying consumer products have been supplied in violation of this rule.
- (3) Retailers.
 - (a) Except as provided in section (4) of this rule, no retailer shall knowingly sell within the Portland AQMA any noncomplying consumer product manufactured after January 1, 1996.
 - (b) Upon notification by the Department, a manufacturer, or a distributor that any noncomplying consumer products have been supplied, a retailer shall remove noncomplying products from consumer-accessible areas of retail outlets within the Portland AQMA.
- (4) Exceptions.
 - (a) For consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, §136 et seq.), this rule applies to consumer products manufactured after January 1, 1997.
 - (b) For consumer products which have been granted a compliance extension under OAR 340-22-1110, this rule applies to consumer products manufactured after the date specified in the compliance extension order.
 - (c) This rule does not apply to automotive windshield washer fluids that are contained in motor vehicles at the time of initial sale, or at the time of subsequent sale of vehicles registered or licensed outside of the Portland AQMA.

Innovative Products

OAR 340-22-840

- (1) The Department shall exempt a consumer product from the requirements of OAR

340-22-820 if a manufacturer demonstrates that, due to some characteristic of the product formulation, design, delivery system, or other factors, the use of the product will result in equal or less VOC emissions as compared to:

- (a) The VOC emissions from a representative consumer product which complies with the VOC standards specified in 340-22-820(1); or
- (b) The calculated VOC emissions from a representative noncomplying consumer product, if the product had been reformulated to comply with the VOC standards specified in 340-22-820(1).

(2) Determination of calculated emissions.

- (a) Except as provided in subsection (b) of this section, determination of VOC emissions made pursuant to subsection (1)(b) of this rule shall be calculated using the following:

$$E_R = E_{NC} \times \frac{VOC_{STD}}{VOC_{NC}}$$

Where: E_R = The VOC emissions from the representative noncomplying consumer product, had it been reformulated.

E_{NC} = The VOC emissions from the representative noncomplying consumer product in its current formulation.

VOC_{STD} = The VOC standard specified in 340-22-820.

VOC_{NC} = The VOC content of the noncomplying consumer product in its current formulation.

- (b) If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristics of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Department.

(3) For the purposes of this rule, a representative consumer product is one which:

- (a) Is subject to the same VOC limit in 340-22-820(1) as the innovative product;
- (b) Is of the same product form, unless the innovative product uses a form which was nonexistent in the product category on the date of application under section (4) or this rule; and
- (c) Has at least similar efficacy as other consumer products in the same category based on generally accepted tests for that category.

(4) A manufacturer shall apply in writing to the Department for any exemption claimed under this rule. Information claimed by the applicant as confidential or otherwise exempt from disclosure shall be submitted in accordance with OAR 340-22-1120. The application shall include:

- (a) The supporting documentation that demonstrates the actual emissions from

- the innovative product, including the physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product use;
- (b) Any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content of the innovative product; and
 - (c) Test methods for determining VOC content.
- (5) Within 30 days of receipt of the exemption application the Department shall determine whether an application is complete.
 - (6) The Department shall within 90 days after an application has been deemed complete, determine whether, under what conditions, and to what extent, an exemption from the requirements of 340-22-820(1) shall be approved. The applicant and the Department may mutually agree to extend the period for making a determination, and additional supporting documentation may be submitted by the applicant before the determination is reached. The Department shall notify the applicant in writing of the determination and the terms and conditions established under section (8) of this rule.
 - (7) In approving an innovative product exemption, the Department shall establish terms and conditions which allow the emission limitations established under section (1) of this rule to be enforced. Such terms and conditions may include, but are not limited to, the VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the Department to be necessary. The Department shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.
 - (8) Notwithstanding section (6) of this rule, if a product has been granted an Innovative Product exemption by the California Air Resources Board (CARB), that product shall be granted an exemption under this rule provided:
 - (a) The CARB Innovative Product exemption is valid as of February 20, 1995;
 - (b) The manufacturer submits to the Department an Executive Order relating to Innovative Products granted by CARB under Section 94511, Title 17, California Code of Regulations, together with information required by section (4) of this rule prior to the applicable compliance date;
 - (c) The manufacturer complies with the terms and conditions established in the CARB Innovative Product exemption; and
 - (d) The manufacturer notifies the Department in writing within 30 days of any changes in the terms and conditions of the exemption.
 - (9) For any product for which an exemption has been approved pursuant to this rule, the manufacturer shall notify the Department in writing within 30 days prior to any change in the product's formulation or directions for use, and shall also notify the Department within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application.
 - (10) If VOC standards are lowered for a product category through adoption of

subsequent regulations, all innovative product exemptions granted for products in the product category, except as provided in this section, shall have no force and effect as of the effective date of the modified VOC standard. This section shall not apply to those innovative products which have VOC emissions less than the appropriate new VOC standard, and for which a written notification of the product's VOC emissions compared to the appropriate new VOC standard has been submitted to and approved by the Department at least 60 days before the effective date of such standard.

- (11) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in section (1) of this rule, the Department may modify or revoke the exemption as necessary to ensure that the product will meet these criteria. The Department shall notify the applicant in writing if an exemption is modified or revoked under this section.

Recordkeeping and Reporting Requirements

OAR 340-22-850

- (1) Recordkeeping
- (a) Manufacturers subject to OAR 340-22-830 shall maintain the following records for at least 2 years after a product is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Portland AQMA:
- (A) Records, based upon testing or chemical composition records as set forth in OAR 340-22-860, which document the VOC content of consumer products;
 - (B) Records for use in determining compliance of charcoal lighter materials with OAR 340-22-820 including, but not limited to, emission testing results, physical property data, and formulation data;
 - (C) An explanation of any code indicating the date of manufacture of any consumer products other than consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, § 136);
 - (D) Documentation of information provided to distributors under OAR 340-22-830(1)(c);
 - (E) Information used to substantiate an application for an innovative product exemption under OAR 340-22-840;
 - (F) Information used to substantiate an application for a compliance extension OAR 340-22-1110;
- (b) Distributors shall maintain documentation of information provided to them under OAR 340-22-830(1)(c) and 340-22-830(2)(b) for at least 2 years after a product is no longer sold, offered for sale, supplied or distributed by the distributor, directly or indirectly, to a retail outlet in the Portland AQMA.
- (2) Reporting. Following request and within a reasonable period of time, records

- specified in section (1) of this rule shall be made available to the Department.
- (3) Product Registration. Manufacturers subject to OAR 340-22-830 shall submit product registration information to the Department.
- (a) At a minimum, product registration information shall include the following:
- (A) Manufacturer's name, address and telephone number;
 - (B) A complete list, by product category, of names, trademarks or other identifiers of the manufacturer's products subject to OAR 340-22-820;
 - (C) Identification of complying and noncomplying products or a statement that only complying products are manufactured; and
 - (D) The dated signature of an authorized representative of the manufacturer.
- (b) Product registration information shall be submitted by the later of:
- (A) January 1, 1996;
 - (B) January 1, 1997 for consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 United States Code, § 136 et seq.); or
 - (C) For products introduced by previously unregistered manufacturers, the date products subject to OAR 340-22-820 are initially sold, supplied or distributed, directly or indirectly, to a retail outlet in the Portland AQMA.
- (c) Product registration information shall be updated and resubmitted:
- (A) Upon introduction by the manufacturer of a new noncomplying product since the last registration information submittal; and
 - (B) Within a reasonable period of time following request by the Department.
- (4) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures in OAR 340-22-1120.

Inspection and Testing Requirements

OAR 340-22-860

- (1) The owner or operator of a facility subject to OAR 340-22-800 through 340-22-860 shall, at any reasonable time, make the facility available for inspection by the Department.
- (2) Upon request of the Department, any person subject to OAR 340-22-800 through 340-22-860 shall furnish samples of consumer products selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-22-820.
- (3) Testing to determine compliance with OAR 340-22-820 shall be performed using one or more of the following methods:
 - (a) **Method 24-24A, 40 CFR Part 60 (July 1, 1994);**
 - (b) **Method 18, Federal Register 48, no 202, October 18, 1983;**

- (c) **Method 1400, NIOSH Manual of Analytical Methods, Volume 1, February 1984;**
 - (d) **EPA Method 8240 "GC/MS Method for Volatile Organics," September 1986;**
 - (e) For charcoal lighter materials, the procedures specified in the **South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991)** or other methods which are approved by the Department and are shown to provide equivalent results;
 - (f) Calculation of the VOC content from records of amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents; or
 - (g) Alternative methods which are shown to accurately determine the concentration of volatile organic compounds (VOCs) in a subject product or its emissions upon approval of the Department.
- (4) If a method specified in section (3) of this rule to measure VOC also measures exempt compounds, the exempt compounds may be excluded from the VOC content if the amount of such compounds is accurately quantified. The Department may require a manufacturer to provide methods and results demonstrating, to the satisfaction of the Department, the amount of exempt compounds in the product or the product's emissions.
- (5) Testing to determine whether a product is a liquid or solid shall be performed using **ASTM D4359-90 (May 25, 1990)**, which is incorporated by reference herein.
- (6) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using **ASTM D86-90 (September 28, 1990)**, which is incorporated by reference herein.

The text of the following rules is entirely new:

Spray Paint

Applicability

OAR 340-22-900 OAR 340-22-900 through 340-22-950 apply to any manufacturer, distributor, retailer or commercial applicator of spray paint for sale or use in the Portland AQMA.

Definitions

OAR 340-22-910 As used in OAR 340-22-900 through 340-22-950:

- (1) "Adhesive" means a product used to bond one surface to another.
- (2) "Anti-Static Spray" means a product used to prevent or inhibit the accumulation of static electricity.
- (3) "Art Fixative or Sealant" means a clear coating, including art varnish, workable art fixative, and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces, or other closely related art uses, to provide a final protective coating or to fix preliminary stages of art work while providing a workable surface for subsequent revisions.
- (4) "ASTM" means the American Society for Testing and Materials.
- (5) "Auto Body Primer" means an automotive primer or primer surfacer coating designed and labeled exclusively to be applied to a vehicle body substrate for the purpose of corrosion resistance and building a repair area which can be sanded to a smooth condition after drying.
- (6) "Automotive Bumper and Trim Product" means a product, including adhesion promoters and chip sealants, designed and labeled exclusively to repair and refinish automotive bumpers and plastic trim parts.
- (7) "Automotive Underbody Coating" means a flexible coating which contains asphalt or rubber and is labeled exclusively for use on the underbody of motor vehicles to resist rust, abrasion and vibration, and to deaden sound.
- (8) "Aviation Propeller Coating" means a coating designed and labeled exclusively to provide abrasion resistance and corrosion protection for aircraft propellers.
- (9) "Aviation or Marine Primer": means a coating designed and labeled exclusively to meet federal specification TT-P-1757.
- (10) "Belt Dressing" means a product applied on auto fan belts, water pump belting, power transmission belting, industrial equipment belting, or farm machinery belting to prevent slipping, and to extend belt life.
- (11) "Cleaner" means a product designed and labeled primarily to remove soil or other contaminants from surfaces.
- (12) "Clear Coating" means a coating which is colorless, containing resins but no pigments, except flattening agents, and is designed and labelled to form a transparent or translucent solid film.

- (13) "Coating Solids" means the nonvolatile portion of a spray paint, consisting of the film forming ingredients, including pigments and resins.
- (14) "Complying spray paint" means a spray paint which complies with the VOC content limits in OAR 340-22-820.
- (15) "Consumer" means any person who purchases or acquires any spray paint for personal, family, or household use. Persons acquiring a spray paint product for resale are not considered consumers of that product.
- (16) "Commercial Applicator" means any person who purchases, acquires, applies, or contracts for the application of spray paint for commercial, industrial or institutional uses, or any person who applies spray paint in the course of an activity from which compensation is derived.
- (17) "Corrosion Resistant Brass, Bronze, or Copper Coating" means a clear coating formulated and labeled exclusively to prevent tarnish and corrosion of uncoated brass, bronze or copper metal surfaces.
- (18) "Department" means the Oregon Department of Environmental Quality.
- (19) "Distributor" means any person who sells or supplies spray paint for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self-distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies spray paint products directly to a retail outlet. "Distributor" does not include consumers.
- (20) "Dye" means a product containing no resins which is used to color a surface or object without building a film.
- (21) "Electrical Coating" means a coating designed and labeled to be used exclusively to coat electrical components such as electric motor windings to provide electrical insulation or corrosion protection.
- (22) "Enamel" means a coating which cures by chemical cross-linking of its base resin and is not resoluble in its original solvent.
- (23) "Engine Paint" means a coating designed and labeled exclusively as such, which is used exclusively to coat engines and their components.
- (24) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.
- (25) "Exact Match Finish, Automotive" means a topcoat which meets all of the criteria in subsections (a) through (c) of this section:
 - (a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes;
 - (b) The product is labeled with the original equipment manufacturer's name for which it was formulated; and
 - (c) The product is labeled with one of the following:
 - (A) The original equipment manufacturer's (OEM) color code;
 - (B) The color name; or
 - (C) Other designation identifying the specific OEM color to the purchaser.

- (d) Notwithstanding subsections (a) through (c) of this section, automotive clear coatings designed and labeled exclusively for use over automotive exact match finishes to replicate the original factory applied finish shall be considered to be automotive exact match finishes.
- (26) "Exact Match Finish, Engine Paint" means a coating which meets all of the criteria in subsections (a) through (c) of this section:
- (a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint;
 - (b) the product is labeled with the original equipment manufacturer's name for which it was formulated; and
 - (c) the product is labeled with one of the following:
 - (A) The original equipment manufacturer's (OEM) color code;
 - (B) The color name; or
 - (C) Other designation identifying the specific OEM color to the purchaser.
- (27) "Exact Match Finish, Industrial" means a coating which meets all of the criteria in subsections (a) through (c) of this section:
- (a) The product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products;
 - (b) The product is labeled with the original equipment manufacturer's name for which it was formulated; and
 - (c) The product is labeled with one of the following:
 - (A) The original equipment manufacturer's (OEM) color code;
 - (B) The color name; or
 - (C) Other designation identifying the specific OEM color to the purchaser.
- (28) "Exempt compounds" means compounds of carbon specifically excluded from the definition of VOC.
- (29) "Flat Paint Product" means a coating which, when fully dry, registers specular gloss less than or equal to 15 on an 85° gloss meter, or less than or equal to 5 on a 60° gloss meter, or which is labeled as a flat coating.
- (30) "Flatting Agent" means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.
- (31) "Floral Spray" means a coating designed and labeled exclusively for use on fresh flowers, dried flowers, or other items in a floral arrangement for the purpose of coloring, preserving or protecting their appearance.
- (32) "Fluorescent Coating" means a coating labeled as such which converts absorbed incident light energy into emitted light of a different hue.
- (33) "Glass Coating" means a coating designed and labeled exclusively to be applied to glass or other transparent material, to create a soft, translucent light effect, or to create a tinted or darkened color while retaining transparency.
- (34) "Ground/Traffic Marking Coating" means a coating designed and labeled exclusively to be applied to dirt, gravel, grass, concrete, asphalt, warehouse floors,

- or parking lots. Such coatings must be in a container equipped with a valve and sprayhead designed to direct the spray downward when the can is held in an inverted position.
- (35) "High Temperature Coating" means a coating, excluding engine paint, which is designed and labeled exclusively for use on substrates which will, in normal use, be subjected to temperatures in excess of 400 degrees Fahrenheit.
 - (36) "Hobby/Model/Craft Coating" means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces in weight or less.
 - (37) "Ink" means a fluid or viscous substance used in the printing industry to produce letters, symbols or illustrations, but not to coat an entire surface.
 - (38) "Lacquer" means a thermoplastic film-forming finish dissolved in organic solvent, which dries primarily by solvent evaporation, and is resolvable in its original solvent.
 - (39) "Layout Fluid" or "Toolmaker's Ink" means a coating designed and labeled exclusively to be sprayed on metal, glass or plastic, to provide a glare-free surface on which to scribe designs, patterns or engineering guide lines prior to shaping the piece.
 - (40) "Leather Preservative" means a leather treatment material applied exclusively to clean, condition or preserve leather.
 - (41) "Lubricant" means a substance such as oil, petroleum distillates, grease, graphite, silicone, lithium, etc., that is applied to surfaces to reduce friction, heat, or wear when applied between surfaces.
 - (42) "Manufacturer" means the company, firm or establishment which is listed on the product container or package. If the product container or package lists two companies, firms or establishments, the manufacturer is the party which the product was "manufactured for" or "distributed by", as noted on the product container or package.
 - (43) "Marine Spar Varnish" means a coating designed and labeled to be exclusively used as a protective sealant for marine wood products.
 - (44) "Maskant" means a coating applied directly to a component to protect surfaces during chemical milling, anodizing, aging, bonding, plating, etching, or other chemical operations.
 - (45) "Metallic Coating" means a topcoat which contains at least 0.5 percent by weight elemental metallic pigment in the formulation, including propellant, and is labeled as "metallic", or with the name of a specific metallic finish such as "gold", "silver", or "bronze".
 - (46) "Mold Release" means a coating applied to molds to prevent products from sticking to mold surfaces.
 - (47) "Multi-Component Kit" means a spray paint system which requires the application of more than one component, (e.g. foundation coat and top coat), where both components are sold together in one package.
 - (48) "Noncomplying spray paint" means a spray paint which does not comply with the VOC content limits in OAR 340-22-820.

- (49) "Non-Flat Paint Product" means a coating which, when fully dry, registers a specular gloss greater than 15 on an 85° gloss meter or greater than 5 on a 60° gloss meter.
- (50) "Photograph Coating" means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.
- (51) "Pleasure Craft" means privately owned boats used for noncommercial purposes.
- (52) "Pleasure Craft Finish Primer/Surfacer/Undercoat" means any coating designed and labeled exclusively to be applied before the application of a pleasure craft topcoat for the purpose of corrosion resistance and adhesion of a topcoat, and which promotes a uniform surface by filling in surface imperfections.
- (53) "Pleasure Craft Topcoat" means a coating designed and labeled exclusively to be applied to a pleasure craft as a final coat above the water line and above and below the water line when stored out of water. This category does not include clear coatings.
- (54) "Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)
- (55) "Primer" means a coating labeled as such, which is designed to be applied to a surface to promote a bond between that surface and subsequent coats.
- (56) "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from a container.
- (57) "Retailer" means any person who sells, supplies, or offers spray paint for sale directly to consumers or commercial applicators.
- (58) "Retail Outlet" means any establishment where spray paints are sold, supplied, or offered for sale directly to consumers or commercial applicators.
- (59) "Rust Converter" means a product which is designed and labeled exclusively to convert rust to an inert material, and which has a minimum acid content of 0.5 percent by weight, and which has a maximum coating solids content of 0.5 percent by weight.
- (60) "Shellac Sealer" means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (*Laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.
- (61) "Slip-Resistant Coating" means a coating designed and labeled exclusively as such which is formulated with synthetic grit, and used as a safety coating.
- (62) "Spatter Coating/Multicolor Coating" means a coating labeled exclusively as such in which spots, globules, or spatters of contrasting colors appear on or within the surface of a contrasting or similar background.
- (63) "Spray Paint" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications.
- (64) "Spray Paint Category" means the applicable category which best describes a

- spray paint listed in this rule.
- (65) "Stain" means a coating labeled as such which is designed and labeled to change the color of a surface without concealing the surface from view.
 - (66) "Topcoat" means a coating applied over any coating, for the purpose of appearance, identification, or protection.
 - (67) "Vinyl/Fabric/Polycarbonate Coating" means a coating designed and labeled exclusively to coat vinyl, fabric, or polycarbonate substrates.
 - (68) "Volatile Organic Compound" or "VOC" means those compounds of carbon defined in OAR 340-22-102. For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-22-950.
 - (69) "VOC Content" means the ratio of the weight of VOC to the total weight of the product contents expressed as follows:

$$\text{VOC Content} = W_{\text{VOC}}/W_{\text{TOTAL}} \times 100$$

Where:

W_{VOC} = the weight of volatile organic compounds; and

W_{total} = the total weight of the product's contents.

- (70) "Webbing/Veiling Coating" means a spray product designed and labeled exclusively to produce a stranded or spider-webbed decorative effect.
- (71) "Weld-Through Primer" means a coating designed and labeled exclusively to provide a bridging or conducting effect to provide corrosion protection following welding.
- (72) "Wood Stain" means a coating which is formulated to change the color of a wood surface without concealing the surface from view.
- (73) "Wood Touch-Up/Repair/Restoration Coatings" mean coatings designed and labeled exclusively to provide an exact color or sheen match on finished wood products.

Spray Paint Standards and Exemptions OAR 340-22-920

- (1) Where required by OAR 340-22-930, spray paint shall not exceed the VOC content limits in Table F, as modified by the special conditions and exemptions in sections (2) and (3) of this rule.

Table F

SPRAY PAINT VOC CONTENT LIMITS

<u>Spray Paint Category</u>	<u>VOC Content (Percent-by-weight)</u>
General Coatings	
Clear Coating	67.0
Flat Paint Products	60.0
Fluorescent Coatings	75.0
Lacquer Coating Products	80.0
Metallic Coating	80.0
Non-Flat Paint Products	65.0
Primer	60.0
Specialty Coatings	
Art Fixative or Sealant	95.0
Auto Body Primer	80.0
Automotive Bumper and Trim Products	95.0
Aviation or Marine Primer	80.0
Aviation Propeller Coating	84.0
Corrosion Resistant Brass, Bronze, or Copper Coatings	92.0
Exact Match Finish	
Engine Enamel	80.0
Automotive	88.0
Industrial	88.0
Floral Spray	95.0
Glass Coating	95.0
Ground Traffic Marking Coating	66.0
High Temperature Coating	80.0*
Hobby/Model/Craft Coating	
Enamel	80.0
Lacquer	88.0
Clear or Metallic	95.0
Marine Spar Varnish	85.0
Photograph Coating	95.0
Pleasure Craft Finish Primer	75.0
Surfacer or Undercoater	
Pleasure Craft Topcoat	80.0

Table F (continued)

SPRAY PAINT VOC CONTENT LIMITS

<u>Spray Paint Category</u>	<u>VOC Content Percent-by-weight</u>
Shellac Sealer	
Clear	88.0
Pigmented	75.0
Slip-Resistant Coating	80.0
Spatter/Multicolor Coating	80.0
Vinyl/Fabric/Polycarbonate Coating	95.0
Webbing/Veil Coating	90.0
Weld-Through Primer	75.0
Wood Stains	95.0
Wood Touch-Up, Repair, or Restoration Coatings	95.0

*The VOC limit for High Temperature Coating shall be 88.0% until July 1, 1999, after which the 80.0% limit shall apply.

- (2) Special Conditions. The following conditions shall apply to spray paint subject to VOC content limits under section (1) of this rule:
 - (a) The total weight of VOC contained in a multi-component kit shall not exceed the total weight of VOC that would be allowed in the multi-component kit had each component product met the applicable VOC standards.
 - (b) (A) Except as provided in paragraph (B) of this subsection, if anywhere on the principal display panel of any spray paint or in any promotion of the product, any representation is made that the product may be used as, or is suitable for use as a spray paint for which a lower VOC standard is specified in section (1) of this rule, then the lower VOC standard shall apply.
 - (B) If a spray paint is subject to both a general coating limit and a specialty coating limit under section (1) of this rule, and the product meets all the criteria of the applicable specialty coating category as specified in OAR 340-22-910, then the specialty coating limit shall apply instead of the general coating limit.
- (3) Exemption. Section (1) of this rule shall not apply to aerosol lubricants, mold releases, automotive underbody coating, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes, inks, leather preservatives, or spray paint assembled by adding

bulk paint to aerosol containers of propellant and solvent used for minor finish repairs during the original manufacture of products.

Requirements for Manufacture, Sale and Use of Spray Paint

OAR 340-22-930

- (1) **Manufacturers.** Except as provided in section (6) of this rule, any person who manufactures spray paint after July 1, 1996 which is sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet in the Portland AQMA shall:
 - (a) Manufacture complying spray paint for spray paint marketed in the Portland AQMA;
 - (b) Clearly display the following information on each product container such that it is readily observable upon hand-held inspection without removing or disassembling any portion of the product container or packaging:
 - (A) The maximum VOC content of the spray paint, expressed as a percentage by weight;
 - (B) The spray paint category as defined in OAR 340-22-910, or an abbreviation of the spray paint category; and
 - (C) The date on which the product was manufactured, or a code indicating such date; and
 - (c) Notify direct purchasers of products manufactured for sale within the Portland AQMA upon determining that any noncomplying spray paint has been supplied in violation of this rule.
- (2) **Distributors.** Except as provided in section (6) of this rule, any distributor of spray paint manufactured after July 1, 1996 which is sold, offered for sale, supplied or distributed to a retail outlet within the Portland AQMA shall:
 - (a) Distribute to the Portland AQMA only spray paints are labeled as required under subsection (1)(b) of this rule;
 - (b) Distribute to the Portland AQMA only spray paints labeled with VOC contents that meet the VOC limits specified in OAR 340-22-920; and
 - (c) Notify direct purchasers of products distributed for sale within the Portland AQMA upon determining that any noncomplying spray paint has been supplied in violation of this rule.
- (3) **Retailers.**
 - (a) Except as provided in section (6) of this rule, no retailer shall knowingly sell within the Portland AQMA any noncomplying spray paint manufactured after July 1, 1996.
 - (b) Upon notification by the Department, a manufacturer, or a distributor that any noncomplying spray paint has been supplied, a retailer shall remove noncomplying spray paint from consumer-accessible areas of retail outlets within the Portland AQMA.
- (4) **Commercial Applicators.** Except as provided in section (6) of this rule, no commercial applicator shall, within the Portland AQMA, knowingly use or contract for the use of any noncomplying spray paint manufactured after July 1,

- 1996.
- (5) Label Alteration. No person shall remove, alter, conceal or deface the information required in subsection (1)(b) of this rule prior to final sale of the product.
 - (6) Exception. For spray paint which has been granted a compliance extension under OAR 340-22-1110, this rule applies to spray paint manufactured after the date specified in the compliance extension.

Recordkeeping and Reporting Requirements

OAR 340-22-940

- (1) Recordkeeping. Manufacturers subject to OAR 340-22-830 shall maintain the following records for at least 2 years after a product is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Portland AQMA:
 - (a) VOC content records of spray paint based methods provided in OAR 340-22-950;
 - (b) An explanation of any code indicating the date of manufacture of any spray paint; and
 - (c) Information used to substantiate an application for a compliance extension OAR 340-22-1110;
- (2) Reporting. Following request and within a reasonable period of time, records specified in section (1) of this rule shall be made available to the Department.
- (3) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in OAR 340-22-1120.

Inspection and Testing Requirements

OAR 340-22-950

- (1) The owner or operator of a facility subject to OAR 340-22-900 through 340-22-950 shall, at any reasonable time, make the facility available for inspection by the Department.
- (2) Upon request of the Department, any person subject to OAR 340-22-900 through 340-22-950 shall furnish samples of spray paint products selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-22-920.
- (3) Except as provided in Section (5) of this rule, testing to determine compliance with OAR 340-22-920 shall be performed using:
 - (a) VOC Content. The VOC content shall be determined by:
 - (A) The procedures set forth in **Bay Area Air Quality Management District Manual of Procedures, Volume III, Laboratory Procedures, Method 35, "Determination of Volatile Organic Compounds (VOC) in Solvent Based Aerosol Paints,"** as amended January 19, 1994, and, for water-containing spray paints, by ASTM D 5325-92,

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"Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992; or

- (B) Calculation of VOC content from records of amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents.
 - (b) Exempt Compounds. If a method specified in subsection (a) of this section to measure VOC also measures exempt compounds, the exempt compounds may be excluded from the VOC content if the amount of such compounds is accurately quantified. The Department may require a manufacturer to provide methods and results demonstrating, to the satisfaction of the Department, the amount of exempt compounds in the spray paint or the spray paint's emissions.
- (4) Except as provided in Section (5) of this rule, testing to establish the spray paint category as defined in OAR 340-22-910 shall be performed using:
- (a) Metal Content. The metal content of metallic aerosol coating products shall be determined by South Coast Air Quality Management District Test Method 311 (SCAQMD **"Laboratory Methods of Analysis for Enforcement Samples" manual**), June 1, 1991, after removal of the propellant following the procedure in ASTM Method 5325-92, **"Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints"**, November 15, 1992.
 - (b) Specular Gloss. Specular gloss of flat and non-flat coatings shall be determined by ASTM Method D 523-89, **March 31, 1989**.
 - (c) Acid Content. The acid content of rust converters shall be determined by ASTM Method D-1613-85, **"Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates used in Paint, Varnish, Lacquer, and Related Products"**, May 31, 1985, after removal of the propellant following the procedure in ASTM Method D-5325-92, **"Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints"**, November 15, 1992.
- (5) Alternative test methods which are shown to accurately determine the VOC content, exempt compounds, metal content, specular gloss, or acid content in a spray paint may also be used if approved in writing by EPA and the Department.

The text of the following rules is entirely new:

Architectural Coatings

Applicability

OAR 340-22-1000 OAR 340-22-1000 through 340-22-1050 apply to any manufacturer, distributor, retailer, or commercial applicator of architectural coatings for sale or use in the Portland AQMA.

Definitions

OAR 340-22-1010 As used in OAR 340-22-1000 through 340-22-1050:

- (1) "AAMA" means the American Architectural Manufacturers Association.
- (2) "Alkali Resistant Primers" mean high performance primers formulated to resist reaction with alkaline materials including, but not limited to, lime, cement, and soap.
- (3) "Antenna Coatings" mean coatings formulated and recommended for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.
- (4) "Anti-Fouling Coatings" mean high performance coatings formulated and recommended for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms, including, but not limited to, coatings registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.) and nontoxic foul-release coatings.
- (5) "Anti-Graffiti Coatings" mean clear or opaque high performance coatings specifically labelled as anti-graffiti coatings and both formulated and recommended for application to graffiti-prone surfaces to deter adhesion of graffiti and to facilitate graffiti removal.
- (6) "Appurtenance" means an accessory to a stationary structure, whether installed or detached at the proximate site of installation, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating, air conditioning, or other fixed mechanical equipment or large stationary tools; lamp posts; partitions; piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks and fire escapes; and window screens.
- (7) "Architectural Coatings" mean coatings formulated and recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs.
- (8) "ASTM" means the American Society for Testing and Materials.
- (9) "Below-Ground Wood Preservatives" mean coatings formulated and recommended to protect below-ground wood from decay or insect attack which are registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.).
- (10) "Bituminous Coatings and Mastics" mean coatings and mastics formulated and recommended for roofing, pavement sealing, or waterproofing that incorporate

bitumens as a principal component. Bitumens are black or brownish materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude petroleum or low grades of coal. Bitumens include asphalt, tar, pitch and asphaltite.

- (11) "Bond Breakers" mean coatings formulated and recommended for application to concrete to prevent the formation of a bond to a subsequently placed concrete layer.
- (12) "Chalkboard Resurfacers" mean coatings formulated and recommended for application to chalkboards to restore a suitable surface for writing with chalk.
- (13) "Clear Coating" means a coating that when dry allows light to pass so the substrate may be distinctly seen.
- (14) "Clear & Semitransparent Stains" mean transparent or translucent coatings formulated and recommended for application to wood-based substrates to impart a desired color without completely concealing the surface or its natural texture or grain pattern.
- (15) "Clear & Semitransparent Wood Preservatives" mean coatings formulated and recommended to protect exposed wood from decay or insect attack, registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136, et seq.), that may change the color of the substrate but do not completely conceal the substrate.
- (16) "Clear Waterproofing Sealers & Treatments" mean coatings which are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which do not alter the surface appearance or texture.
- (17) "Coating Category" means the applicable category which best describes the coating as listed in this rule.
- (18) "Colorant" means a concentrated pigment dispersion of water, solvent, or binder that is added to an architectural coating or tint base after the coating or tint base has been shipped from its place of manufacture.
- (19) "Commercial Applicator" means any person who purchases, hires, acquires, applies or contracts for the application of architectural coatings for commercial, industrial or institutional uses, or any person who applies architectural coatings for compensation.
- (20) "Complying Architectural Coating" means a coating which complies with the VOC content limits of OAR 340-22-1020.
- (21) "Concrete Curing Compounds" mean coatings formulated and recommended for application to recently cast concrete to retard the evaporation of water.
- (22) "Concrete Protective Coatings" mean high build coatings formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surface. These coatings are formulated to be primerless, one-coat systems which can be applied over form release compounds or uncured concrete. These coatings prevent spalling of concrete in freezing temperatures by providing long term protection from water and chloride ion intrusion.

- (23) "Department" means the Oregon Department of Environmental Quality.
- (24) "Distributor" means any person who sells or supplies architectural coating for the purposes of resale or distribution in commerce. "Distributor" includes activities of a self-distributing retailer related to the distribution of products to individual retail outlets. "Distributor" does not include manufacturers except for a manufacturer who sells or supplies products directly to a retail outlet. "Distributor" does not include consumers.
- (25) "Dry Fog Coatings" mean coatings formulated and recommended only for circumstances in which overspray droplets are desired to dry before contacting incidental surfaces in the vicinity of a surface coating activity.
- (26) "Environmental Protection Agency", or "EPA" means the United States Environmental Protection Agency.
- (27) "Exempt compounds" mean compounds of carbon excluded from the definition of VOC.
- (28) "Exterior Coatings" mean coatings formulated and recommended for use in conditions exposed to the weather.
- (29) "Extreme High Durability Coatings" mean air dry fluoropolymer based coatings formulated and recommended for the protection of architectural subsections and which meet the weathering requirements of **AAMA 605.2-1985 Section 7.9**.
- (30) "Fire-Retardant/Resistive Coatings" mean clear or opaque coatings formulated and recommended to retard ignition and flame spread, or to delay melting or structural weakening due to high heat, and which are fire-tested and rated by a certified laboratory for use in bringing buildings or construction materials into compliance with building code requirements applicable to the place of use.
- (31) "Flat Coatings" mean coatings which register gloss less than 15 on an 85 degree meter and less than 5 on a 60 degree meter according to **ASTM Method D 523, Standard Test Method for Specular Gloss**.
- (32) "Floor Coatings" mean coatings formulated and recommended for application to flooring, including, but not limited to, decks, porches, and steps, and which have a high degree of abrasion resistance.
- (33) "Flow Coatings" mean coating materials formulated and recommended to maintain the protective coating systems present on utility transformers.
- (34) "Form-Release Compounds" mean coatings formulated and recommended for application to concrete forms to prevent formation of a bond between the form and concrete cast within.
- (35) "Graphic Arts Coatings" or "Sign Paints" mean coatings formulated and recommended for hand-application either on-site or in-shop by artists using brush or roller techniques to indoor or outdoor signs (excluding structural components) and murals, including lettering enamels, poster colors, and copy blockers.
- (36) "Heat Reactive Coatings" mean high performance phenolic based coatings requiring a minimum temperature of 191° Celsius (C) [375° Fahrenheit (F)] to 204° C (400° F) to obtain complete polymerization or cure. These coatings are formulated and recommended for commercial and industrial use to protect substrates from degradation and maintain product purity in which one or more of

the following extreme conditions exist:

- (a) Continuous or repeated immersion exposure to 90 to 98% sulfuric acid or oleum;
 - (b) Continuous or repeated immersion exposure to strong organic solvents;
 - (c) Continuous or repeated immersion exposure to petroleum processing at high temperatures and pressures; or,
 - (d) Continuous or repeated immersion exposure to food or pharmaceutical products which may or may not require high temperature sterilization.
- (37) "High Temperature Coatings" mean high performance coatings formulated and recommended for application to substrates exposed continuously or intermittently to temperatures above 201° C (400° F).
- (38) "Impacted Immersion Coatings" mean high performance maintenance coatings formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage caused by floating ice or debris.
- (39) "Industrial Maintenance Coatings" mean high performance architectural coatings including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions:
- (a) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
 - (b) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, chemical mixtures or solutions;
 - (c) Repeated exposure to temperatures above 120° C (250° F);
 - (d) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or
 - (e) Exterior exposure of metal structures and structural components.
- (40) "Interior Coatings" mean coatings formulated and recommended for use in conditions not exposed to natural weathering.
- (41) "Interior Clear Wood Sealers" mean low viscosity coatings formulated and recommended for sealing and preparing porous wood by penetrating the wood and creating a uniform and smooth substrate for a finish coat of paint or varnish.
- (42) "Lacquers" mean clear or opaque wood finishes, including lacquer sanding sealers, formulated with cellulosic or synthetic resins to cure by evaporation without chemical reaction, and to provide a solid, protective film.
- (43) "Lacquer Stains" mean interior semitransparent stains formulated and recommended specifically for use in conjunction with clear lacquer finishes and lacquer sanding sealers.
- (44) "Manufacturer" means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.
- (45) "Magnesite Cement Coatings" mean coatings formulated and recommended for

- application to magnesite cement decking to protect against water erosion.
- (46) "Mastic Texture Coatings" mean coatings formulated and recommended for concealing holes, minor cracks, or surface irregularities, and which are applied in a single coat of at least 10 mils (0.010 inches) dry film thickness.
 - (47) "Metallic Pigmented Coatings" mean non-bituminous coatings containing at least 0.4 pounds of metallic pigment per gallon (0.048 kilograms per liter) of coating, including but not limited to zinc pigment.
 - (48) "Multi-Color Coatings" mean coatings that exhibit more than one color when applied and which are packaged in a single container.
 - (49) "Noncomplying Architectural Coating" means a coating which does not comply with the VOC content limits of OAR 340-22-1020.
 - (50) "Nonferrous Metal Lacquers & Surface Protectants" mean clear coatings formulated and recommended for application to ornamental architectural surfaces of bronze, stainless steel, copper, brass or anodized aluminum to prevent oxidation, corrosion, or surface degradation.
 - (51) "Non-Flat Coatings" mean coatings that register a gloss of 15 or greater on an 85 degree gloss meter, or 5 or greater on a 60 degree gloss meter.
 - (52) "Not Otherwise Specified" or "N.O.S." means not otherwise specified as a coating category.
 - (53) "Nuclear Power Plant Coatings" mean any protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to service-life cumulative radiation exposure as determined by **ASTM D 4082-83**, relatively easy to decontaminate as determined by **ASTM D 4256-83**, and resistant to various chemicals to which the coatings are likely to be exposed as determined by **ASTM D 3912-80**. General protective requirements are outlined by the Department of Energy, formerly U.S. Atomic Energy Commission, **Regulatory Guide 1.54**).
 - (54) "Opaque Coating" means a coating producing a dry film that does not allow light to pass, so the substrate is concealed from view.
 - (55) "Opaque Stains" mean coatings labeled as stains that are recommended to hide a surface but not conceal its texture.
 - (56) "Opaque Waterproofing Sealers & Treatments" mean coatings with pigments that are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which alter the surface appearance and texture.
 - (57) "Opaque Wood Preservatives" mean coatings formulated and recommended to protect wood from decay or insect attack, and that are not classified as clear, semitransparent, or below-ground wood preservatives, and are registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (**7 USC 136 et seq.**).
 - (58) "Other Surfaces" mean paved parking areas (both publicly and privately owned), airport runways, airport taxiways, driveways, sidewalks, bikepaths and curbs.
 - (59) "Post-Consumer Coating" means a leftover architectural coating collected as a

- waste product from previous users that is employed as a raw material in the manufacture of a recycled coating product for reentry to the marketplace.
- (60) "Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)
- (61) "Pre-treatment Wash Primers" mean primers which contain a minimum of 0.5 percent acid by weight, and that are applied directly to bare metal surfaces in thin films to provide corrosion resistance, and to promote adhesion of subsequent topcoats.
- (62) "Primers" mean coatings formulated and recommended for application directly to substrates to provide a firm bond between the substrate and subsequent coats.
- (63) "Public Streets & Highways" mean publicly owned surfaces used primarily for vehicular traffic such as streets, roads, and highways.
- (64) "Quick-Dry Enamels" mean non-flat coatings that:
- (a) Are capable of being applied directly from the container under normal conditions, with ambient temperatures between 19° Celsius (C) [60° Fahrenheit (F)] and 27°C (80°F); and
 - (b) When tested in accordance with **ASTM Method D 1640, Standard Test Method for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature**, are set to touch in two hours or less, are tack free in four hours or less, and dry hard in eight hours or less by the mechanical method.
- (65) "Quick-Dry Primers, Sealers, and Undercoaters" mean primers, sealers and undercoaters which are dry to touch in one-half hour, and can be recoated in two hours, when tested in accordance with **ASTM D 1640, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature**.
- (66) "Recycled Coating Product" means an architectural coating that contains post-consumer coating.
- (67) "Repair and Maintenance Thermoplastic Coatings" mean industrial maintenance coatings with a primary resin of vinyl or chlorinated rubber which are formulated and recommended solely for the repair of existing coatings that also have a primary resin of vinyl or chlorinated rubber without the full removal of the existing coating system.
- (68) "Retailer" means any person who sells, supplies, or offers architectural coating for sale directly to consumers or commercial applicators.
- (69) "Retail Outlet" means any establishment where architectural coatings are sold, supplied, or offered for sale directly to consumers or commercial applicators.
- (70) "Roof Coatings" mean non-bituminous and non-thermoplastic rubber coatings formulated and recommended for application to exterior roofs for the primary purpose of preventing penetration of the substrate by water, or reflecting heat and reflecting ultraviolet radiation.
- (71) "Rust Preventive Coatings" mean coatings formulated and recommended for use in preventing the corrosion of ferrous metal surfaces.

- (72) "Sanding Sealers" mean clear wood coatings formulated and recommended for application to bare wood to seal the wood and to provide a coating that can be sanded to create a smooth surface.
- (73) "Sealers" means coatings formulated and recommended for application to substrates for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate; to prevent harm to subsequent coatings from materials in the substrate; to block stains, odors, or efflorescence; to seal water, smoke or fire damage; or to condition chalky surfaces.
- (74) "Shellacs" mean clear or opaque coatings formulated solely with the resinous secretions of the lac beetle, (*lacifer lacca*), that are soluble in alcohol, and dry by evaporation without chemical reaction.
- (75) "Solicit" means to require for use or to specify, by written or oral contract.
- (76) "Swimming Pool Coatings" mean coatings formulated and recommended to coat the interior of swimming pools and to resist swimming pool chemicals.
- (77) "Thermoplastic Rubber Coatings & Mastics" mean coatings and mastics formulated and recommended for application to roofing and other structural surfaces which incorporate no less than 40% thermoplastic rubbers by weight of the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments, and modifying resins.
- (78) "Tint Base" means an architectural coating to which colorants are added after the coating has been shipped from its place of manufacture.
- (79) "Topcoat" means a coating applied over any coating, for the purpose of appearance, identification, or protection.
- (80) "Traffic Marking Paints" mean coatings formulated and recommended to be used for marking or striping streets, highways and other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots and airport runways.
- (81) "Undercoaters" mean coatings formulated and recommended to provide a smooth surface for subsequent coats.
- (82) "Varnishes" mean clear or semitransparent coatings which are not lacquers or shellacs, and which are formulated to provide a durable, solid protective film. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.
- (83) "Volatile Organic Compound" or "VOC" means compounds of carbon defined in OAR 340-22-102. For purposes of determining compliance with VOC content limits, VOC shall be measured by an applicable method identified in OAR 340-22-1050.
- (84) "VOC Content" means the weight of VOCs contained in a volume of architectural coating. For products listed in OAR 340-22-1020(1) Table G, VOC content shall be determined on a "VOC Per Liter - Less Water Basis".
- (85) "VOC Per Liter - Less Water Basis" means the weight of VOCs per combined volume of VOC and coating solids at the maximum thinning level recommended by the manufacturer, less water, less exempt compounds, and before the addition of colorants added to tint bases, and shall be calculated as follows:

$$\text{VOC Content} = W_{\text{VOC}} / (V_{\text{M}} - V_{\text{H}_2\text{O}} - V_{\text{EC}})$$

Where: W_{VOC} = weight of VOCs not consumed during curing, in grams.
 V_{M} = volume of material prior to curing, in liters.
 $V_{\text{H}_2\text{O}}$ = volume of water not consumed during curing, in liters.
 V_{EC} = volume of exempt compounds not consumed during curing, in liters.

Standards

OAR 340-22-1020

- (1) Where required by OAR 340-22-1030, architectural coatings shall not exceed the VOC content limits listed in Table G on a "VOC Per Liter - Less Water Basis" as modified by the special conditions and exemptions in sections (2) and (3) of this rule:

Table G

ARCHITECTURAL COATING VOC CONTENT LIMITS

VOC PER LITER - LESS WATER BASIS

Coating Category	VOC (g/l)
Alkali Resistant Primers	550
Antenna Coatings	500
Anti-Fouling Coatings	450
Anti-Graffiti Coating	600
Bituminous Coatings and Mastics	500
Bond Breakers	600
Chalkboard Resurfacers	450
Concrete Curing Compounds	350
Concrete Protective Coatings	400
Dry Fog Coatings	400
Extreme High Durability Coatings	800
Fire-Retardant/Resistive Coatings	
Clear	850
Opaque	450
Flat Coatings - N.O.S.:	
Exterior	250
Interior	250
Floor Coatings	400
Flow Coatings	650
Form-Release Compounds	450
Graphic Arts Coatings or Sign Paints	500
Heat Reactive Coatings	420
High Temperature Coatings	650
Impacted Immersion Coatings	780
Industrial Maintenance Coatings	450
Lacquers	680
Lacquer Stains	780
Magnesite Cement Coatings	600
Mastic Texture Coatings	300
Metallic Pigmented Coatings	500
Multi-Color Coatings	580
Nonferrous Metal Lacquers & Surface Protectants	870

Table G (continued)

ARCHITECTURAL COATING VOC CONTENT LIMITS

VOC PER LITER - LESS WATER BASIS

Coating Category (continued)	VOC (g/l)
Non-Flat Coatings - N.O.S:	
Exterior	380
Interior	380
Nuclear Power Plant Coatings	450
Pretreatment Wash Primers	780
Primers and Undercoaters - N.O.S.	350
Quick-Dry Coatings	
Enamels	450
Primers, Sealers and Undercoaters	450
Repair and Maintenance Thermoplastic Coatings	650
Roof Coatings	250
Rust Preventive Coatings	400
Sanding Sealers - (other than lacquer)	550
Sealers - (including interior clear wood sealers)	400
Shellacs:	
Clear	650
Opaque	550
Stains & Wood Preservatives:	
Below Ground Wood Preservatives	550
Clear & Semitransparent	550
Opaque	350
Swimming Pool Coatings	850
Thermoplastic Rubber Coatings & Mastics	550
Traffic Marking Paints	
Public Streets & Highways	150*
Other Surfaces	250
Varnishes	450
Waterproofing Sealers & Treatments:	
Clear	600
Opaque	400

*Prior to Jan. 1, 1997, a VOC content limit of 250 grams per liter applies to Traffic Marking Paints for Public Streets & Highways.

- (2) Special Conditions. The following conditions shall apply to architectural coatings subject to VOC content limits under section (1) of this rule:
- (a) Notwithstanding the definition of coating category in OAR 340-22-1010, if anywhere on the coating container, or in any promotion of an architectural coating, any representation is made that the coating may be used as, or is suitable for use as a coating for which a lower VOC limit is specified in Section (1) of this rule, then the lower VOC limit shall apply. This requirement shall not apply to:
 - (A) High-Temperature Coatings, which may be represented as metallic pigmented coatings for use consistent with the High Temperature Coating definition;
 - (B) Lacquer, which may be recommended for use as sanding sealers in conjunction with clear lacquer topcoats;
 - (C) Metallic Pigmented Coatings, which may be recommended for use as primers, sealers, undercoaters roof coatings, or industrial maintenance coatings;
 - (D) Shellacs;
 - (E) Fire Retardant/Resistive Coatings;
 - (F) Sanding sealers which may be represented as quick dry sealers; and,
 - (G) Varnish, which may be recommended for use as a floor coating.
 - (b) VOC Content of Recycled Coating Products.
 - (A) For coatings manufactured domestically containing post-consumer coating, compliance with the VOC limits of Table G of this rule shall be determined by the adjusted VOC content at the maximum thinning recommended by the manufacturer using the following equation:

$$VOC_{ADJUSTED} = VOC_{ACTUAL} \times [1 - (Recycled\%/100)]$$

Where:

$VOC_{ADJUSTED}$ = The adjusted VOC content of a recycled coating product expressed as grams VOC per liter, less water.

VOC_{ACTUAL} = The VOC content of the recycled coating product as determined by procedures specified in OAR 340-22-1050(3) with the exception that VOCs in colorants of post-consumer coatings shall not be excluded from the VOC determination.

Recycled % = The volume percent of the recycled coating

product that is post-consumer coating as determined by paragraph (B) of this subsection.

- (B) The percent recycled shall be determined using the following equation:

$$\text{Recycled \%} = \text{VOL}_{\text{POST-CONS}} \times 100 / (\text{VOL}_{\text{POST-CONS}} + \text{VOL}_{\text{VIRGIN}})$$

Where:

$\text{VOL}_{\text{POST-CONS}}$ = The volume of post-consumer coating per gallon used in the production of a recycled coating product.

$\text{VOL}_{\text{VIRGIN}}$ = The volume of virgin coating materials used in the production of a recycled coating product.

- (3) Exemptions. Section (1) of this rule shall not apply to:
- (a) Colorants added to tint bases by a retailer or commercial applicator.
 - (b) Coatings that are sold in containers with a volume of not more than one quart (32 fluid ounce or 0.95 liter) or in non-refillable aerosol containers.

Requirements for Manufacture, Sale and Use of Architectural Coating
OAR 340-22-1030

- (1) Manufacturers. Except as provided in section (6) of this rule, any person who manufactures architectural coatings after July 1, 1996 which are sold, offered for sale, supplied or distributed, directly or indirectly, to a retail outlet in the Portland AQMA shall:
- (a) Manufacture complying architectural coatings for architectural coatings marketed in the Portland AQMA;
 - (b) Clearly display the following information on each product container such that it is readily observable upon hand-held inspection without removing or disassembling any portion of the product container or packaging:
 - (A) The date on which the product was manufactured, or a code indicating such date;
 - (B) The maximum VOC content of the coating, at the maximum thinning recommended by the manufacturer, expressed as grams of VOC per liter of coating, less water and exempt compounds, or distinguishing markings that identify the product's VOC content as described above, through reference to printed information that accompanies the product through distribution and is displayed at the point of sale;
 - (C) A statement of the manufacturer's maximum recommended thinning with diluents other than water, and, if thinning of the coating prior

- to use under normal environmental and application conditions is not necessary, a statement indicating the product is not to be thinned under normal circumstances; and
- (D) For containers of recycled coating products, the phrase "CONTAINS NOT LESS THAN ___ PERCENT POST-CONSUMER COATING" where the percent, by volume, of the recycled coating is inserted before the word "percent".
- (c) Notify direct purchasers of products manufactured for sale within the Portland AQMA upon determining that any noncomplying architectural coatings have been supplied in violation of this rule.
- (2) Distributors. Except as provided in section (6) of this rule, any distributor of architectural coating manufactured after July 1, 1996 which is sold, offered for sale, supplied or distributed to a retail outlet within the Portland AQMA shall:
 - (a) Ensure that architectural coatings are labeled as required under subsection (1)(b) of this rule;
 - (b) Ensure that the VOC content indicated under subsection (1)(b)(B) of this rule does not exceed the VOC standard specified in OAR 340-22-1020; and
 - (c) Notify direct purchasers of products distributed for sale within the Portland AQMA upon determining that any noncomplying architectural coatings have been supplied in violation of this rule.
- (3) Retailers.
 - (a) Except as provided in section (6) of this rule, no retailer shall knowingly sell within the Portland AQMA any noncomplying architectural coating manufactured after July 1, 1996.
 - (b) Upon notification by the Department, a manufacturer, or a distributor that any noncomplying architectural coating has been supplied, a retailer shall remove noncomplying architectural coatings from consumer-accessible areas of retail outlets within the Portland AQMA.
- (4) Commercial Applicators. Except as provided in section (6) of this rule:
 - (a) No commercial applicator shall, within the Portland AQMA, knowingly use or contract for the use of any noncomplying architectural coating manufactured after July 1, 1996;
 - (b) No commercial applicator shall, within the Portland AQMA, knowingly use any noncomplying architectural coating manufactured after July 1, 1996 in a manner inconsistent with the coating category for which the product is formulated and recommended;
 - (c) All VOC-containing materials shall be stored in closed containers when not being accessed, filled, emptied, maintained, repaired or otherwise used.
 - (d) It is recommended that architectural coatings be applied under the conditions and with the application techniques recommended by the coating's manufacturer.
- (5) Label Alteration. No person shall remove, alter, conceal or deface the information required in subsection (1)(b) of this rule prior to final sale of the

product.

(6) Exceptions.

(a) Traffic marking paints seasonal requirements.

(A) Traffic marking paints which exceed the VOC content limits of OAR 340-22-1020(1) may be manufactured, distributed to retail outlets, offered for sale to commercial applicators, and sold to commercial applicators within the Portland AQMA if purchasers are provided with written information indicating that the product shall not be applied within the Portland AQMA during the period June 1 through August 31, and the labeling requirements of OAR 340-22-1030(1)(b)(A) and (B) are maintained.

(B) Traffic marking paints which exceed the VOC limits of OAR 340-22-1020(1) may be purchased by commercial applicators for use within the Portland AQMA provided they shall not be applied during the period June 1 through August 31.

(b) For architectural coating which has been granted a compliance extension under OAR 340-22-1110, this rule applies to coating manufactured after the date specified in the compliance extension.

Recordkeeping and Reporting Requirements

OAR 340-22-1040

(1) Recordkeeping. Manufacturers subject to OAR 340-22-1030 shall maintain the following records for at least 2 years after an architectural coating is sold, offered for sale, supplied or distributed by the manufacturer, directly or indirectly, to a retail outlet in the Portland AQMA:

(a) VOC content records of architectural coatings based on methods provided in OAR 340-22-1050;

(b) An explanation of any code indicating the date of manufacture of any architectural coating; and

(c) Information used to substantiate an application for a compliance extension under OAR 340-22-1110.

(2) Reporting. Following request and within a reasonable period of time, records specified in section (1) of this rule shall be made available to the Department.

(3) Exemption from disclosure. If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the procedures specified in OAR 340-22-1120.

Inspection and Testing Requirements

OAR 340-22-1050

(1) The owner or operator of a facility subject to OAR 340-22-1000 through 340-22-1050 shall, at any reasonable time, make the facility available for inspection by the Department.

(2) Upon request of the Department, any person subject to OAR 340-22-1000

- through 340-22-1050 shall furnish samples of architectural coatings selected by the Department from available stock for testing by the Department to determine compliance with OAR 340-22-1020.
- (3) Except as provided in Section (4) of this rule, testing to determine compliance with OAR 340-22-1020 shall be performed using:
- (a) VOC Content. The VOC content of an architectural coating shall be determined by:
 - (A) Procedures set forth in EPA Test Method 24 (**40 CRF 60, Appendix A, July 1, 1994**) ; or
 - (B) Calculation of VOC content from records of amounts of constituents used to manufacture the product and the chemical compositions of the individual product constituents.
 - (b) Exempt Compounds. If the method specified in paragraph (a)(A) of this section also measures compounds excluded from the definition of VOCs, those compounds may be excluded from the VOC content if the amount of such compounds can be accurately quantified. The Department may require a manufacturer to provide conclusive evidence (such as production records, formulation data and test results) demonstrating, to the satisfaction of the Department, the amount of exempt compounds in the architectural coating or the coating's emissions.
 - (c) Specular gloss of flat and non-flat coatings shall be determined by **ASTM Method D 523-89, March 31, 1989**.
- (4) Alternative test methods which are shown to accurately determine the VOC content of architectural coatings may also be used if approved in writing by EPA and the Department.

The text of the following rules is entirely new:

Area Source Common Provisions

Applicability

OAR 340-22-1100 OAR 340-22-1100 through 340-22-1130 apply to OAR 340-22-700 through OAR 340-22-1050.

Compliance Extensions

OAR 340-22-1110 Any manufacturer, as defined in OAR 340-22-810, who cannot comply with the requirements specified in OAR 340-22-700 to 340-22-1050 by the applicable compliance date because of conditions specified in section (4) of this rule may apply in writing to the Department for a compliance extension of up to 3 years in renewable 1 year increments.

- (1) A manufacturer shall apply in writing to the Department for any compliance extension under this section. Information claimed by the applicant as confidential or otherwise exempt from disclosure shall be submitted in accordance with OAR 340-22-1120. The application shall include:
 - (a) An explanation of the specific grounds addressing each subsection under section (4) of this rule on which the compliance extension is sought;
 - (b) The requested terms and conditions;
 - (c) The specific method(s) by which compliance with the requested terms and conditions will be achieved;
 - (d) Any interim measures which may be taken during the period of the compliance extension to limit the amount of emissions in excess of the rule limits; and
 - (e) If applicable, any compliance extension, alternate control requirement or variance order granted by another local, state or federal air pollution control agency.
- (2) Within 30 days of receipt of the compliance extension application, the Department shall determine whether an application is complete.
- (3) Within 90 days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, a compliance extension shall be approved. The applicant and the Department may mutually agree to extend the period for making a determination, and additional supporting documentation may be submitted by the applicant before the determination is reached.
- (4) In considering whether to approve a compliance extension, the Department shall consider the following:
 - (a) Conditions beyond the control of the applicant;
 - (b) Special circumstances which render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause;
 - (c) Strict compliance would result in substantial curtailment or closing down of

- a business, plant, or operation; or
- (d) No other alternative facility or method of handling is yet available.
- (5) Any compliance extension order shall specify terms and conditions, including a date by which final compliance shall be achieved. The final compliance date shall not exceed 3 years after the applicable compliance date. A compliance extension shall be granted in 1 year increments which may be renewed until the final compliance date upon a showing by the manufacturer that any increments of progress and other terms and conditions in the order have been met.
- (6) The Department shall notify the applicant in writing of the determination under section (3) of this rule and the terms and conditions established under section (5) of this rule.
- (7) Notwithstanding Section (4) of this rule, if, prior to the applicable compliance date, a manufacturer, as defined in OAR 340-22-810, submits to the Department a variance order granted by the California Air Resources Board (CARB) which is valid as of February 20, 1995, the manufacturer shall be granted a 1 year extension from the applicable compliance date. Such compliance extensions may be revoked by the Department if the Department believes that the manufacturer is not in compliance with the terms and conditions of the CARB variance order.
- (8) For any product for which a compliance extension has been approved pursuant to this rule, the manufacturer shall notify the Department in writing within 30 days if the manufacturer learns that information submitted to the Department under this rule has changed in a manner which could modify the basis of the Department's approval.
- (9) If the Department believes that a product for which a compliance extension has been granted no longer meets the criteria for a compliance extension specified in this rule, the Department may modify or revoke the extension as necessary to ensure that the product will meet these criteria. The Department shall notify the applicant in writing if a compliance extension is modified or revoked under this section.

Exemption from Disclosure to the Public

OAR 340-22-1120

- (1) If a person claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the person shall comply with the following procedures:
- (a) The writing shall be clearly marked with a request for exemption from disclosure. For a multi-page writing, each page shall be so marked.
- (b) The person shall state the specific statutory provision under which it claims exemption from disclosure and explain why the writing meets the requirements of that provision.
- (c) For writings that contain both exempt and non-exempt material, the proposed exempt material shall be clearly distinguishable from the non-exempt material. If possible, the exempt material shall be arranged so that it is placed on separate pages from the non-exempt material.

- (2) For a writing to be considered exempt from disclosure as a "trade secret," it shall meet all of the following criteria:
 - (a) The information shall not be patented;
 - (b) It shall be known only to a limited number of individuals within a commercial concern who have made efforts to maintain the secrecy of the information;
 - (c) It shall be information which derives actual or potential economic value from not being disclosed to other persons; and
 - (d) It shall give its users the chance to obtain a business advantage over competitors not having the information.

Future Review

OAR 340-22-1130 Within a reasonable period of time following adoption by the United States Environmental Protection Agency of regulations intended to reduce VOC emissions from one or more products subject to OAR 340-22-700 through OAR 340-22-1050, the Department shall provide the following information to the Environmental Quality Commission:

- (1) A comparison of the federal regulation with OAR 340-22-700 through 340-22-1050;
- (2) An estimate of the change in emissions which would occur from repeal of provisions in OAR 340-22-700 through 340-22-1050 applicable to such product or products;
- (3) An assessment of the effect of eliminating or modifying the provisions of OAR 340-22-700 through 340-22-1050 on the State Implementation Plan adopted under OAR 340-20-047, including any need for substitute measures; and
- (4) A recommendation regarding amendment to eliminate such provisions and, if applicable, a schedule for amendment.

HOUSEKEEPING AMENDMENTS TO OAR 340 DIVISION 22

Definitions

OAR 340-22-102

- (52) ~~["Potential emissions before add-on controls" means the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source, based on the design capacity or maximum production capacity of the source and 8760 hours per year before the application of capture systems or control devices.] "Potential to emit" has the meaning as defined in OAR 340-28-110.~~
- (73) "Volatile Organic Compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.
- (a) Excluded from the definition of VOC are those compounds which the U.S. Environmental Protection Agency classifies as being of negligible photochemical reactivity, including: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane(methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane(CFC-113); Trichlorofluoromethane(CFC-11); dichlorodifluoromethane(CFC-12); chlorodifluoromethane(HCFC-22); trifluoromethane(HCFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane(CFC-114); chloropentafluoroethane(CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane(HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane(HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane(HFC-134); 1,1,1-trifluoroethane(HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride(PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:
- (A) Cyclic, branched, or linear, completely fluorinated alkanes;
- (B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- ~~{(73) "Volatile Organic Compound", or "VOC", means any organic compound which participates in atmospheric photochemical reactions to form ozone; that is, any precursor organic compound which would be emitted during use, application, curing or drying of a surface coating, solvent, or other material. Excluded from this category are those compounds which the U.S. Environmental Protection~~

~~Agency classifies as being of negligible photochemical reactivity which includes methane, ethane, methylene chloride, 1,1,1 trichloroethane (methyl chloroform), trichlorofluoromethane (CFC-11), dichlorodifluoromethane [(CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).]~~

General Requirements for New and Existing Sources

OAR 340-22-104

- (1) Notwithstanding the emission limitations in OAR 340-22-100 through 340-22-300, all new major sources or major modifications at existing sources, located within the areas cited in section (2) of this rule, shall comply with OAR ~~{340-20-220 through 340-20-276}~~ **340-28-1900 through 340-28-2000** (New Source Review).
- (4) All new and existing sources inside the designated nonattainment areas identified in section (2) of this rule shall apply Reasonably Available Control Technology (RACT) subject to the categorical RACT requirements set forth in OAR 340-22-100 through 340-22-300, or as described in sections (5) and (6) of this rule. Compliance with the conditions set forth in OAR 340-22-100 through 340-22-300 shall be presumed to satisfy the RACT requirement.
- (5) Sources **operating prior to November 15, 1990** for which no categorical RACT requirements exist and which have ~~{potential emissions before add-on equipment of}~~ **the potential to emit (as defined in OAR 340-28-110)** over 100 tons per year (TPY) of VOC from aggregated, non-regulated emission units, shall have RACT requirements developed on a case-by-case basis by the Department. **Sources that have complied with New Source Review requirements per OAR 340-28-1900 through 340-28-2000 and are subject to Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements are presumed to have met RACT requirements.** A source may request RACT not be applied by demonstrating to the Department that ~~{potential emissions are}~~ **their potential to emit is** below 100 tons ~~{due to a permanent reduction in production or capacity}~~. Once a source becomes subject to RACT requirements under OAR 340-22-100 through 340-22-300, it shall continue to be subject to RACT, unless emissions fall below 100 tons and the source requests that RACT be removed, by demonstrating to the Department that ~~{potential emissions are}~~ **their potential to emit is** below 100 tons ~~{due to a permanent reduction in production or capacity}~~.
- (6) Within 3 months of written notification by the Department of the applicability of **section (5) of** this rule, or, for good cause shown, up to an additional 3 months as approved by the Department, the source shall submit to the Department a complete analysis of RACT for each category of emission unit at the source, taking into account technical and economic feasibility of available control technology, and the emission reductions each technology would provide. This analysis does not need to include any emission units subject to a specific RACT requirement

under OAR 340-22-100 through 340-22-300. These RACT requirements approved by the Department shall be incorporated in the source's Air Contaminant Discharge Permit **or Oregon Title V Operating Permit**, and shall not become effective until approved by EPA as a source specific SIP revision. The source shall have one year from the date of notification by the Department of EPA approval to comply with the applicable RACT requirements.

Surface Coating in Manufacturing

OAR 340-22-170

- (2) Exemptions:
 - (b) This rule does not apply to:
 - (A) Sources whose potential **to emit** ~~[emissions]~~ from activities identified in section (5) of this rule ~~[before add-on controls]~~ of volatile organic compounds are less than 10 tons per year (or 3 lb. VOC/hr or 15 lb. VOC/day actual); or

Aerospace Component Coating Operations

OAR 340-22-175

- (3) Exemptions: This rule does not apply to the following:
 - (b) Sources whose potential **to emit** ~~[emissions]~~ from activities identified in section (1) of this rule ~~[before add-on controls]~~ of volatile organic compounds are less than 10 tons per year (or 3 lb. VOC/hr or 15 lb. VOC/day actual);

Rotogravure and Flexographic Printing

OAR 340-22-210

- (1) No owner or operator of a packaging rotogravure, publication rotogravure, flexographic or specialty printing facility, with the potential to emit ~~[before add-on controls]~~ greater than 90 mg/year (100 ton/year), employing ink containing solvent may operate, cause, allow or permit the operation of the press unless:

NOTICE OF PROPOSED RULEMAKING HEARING

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

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

DATE:	TIME:	LOCATION:
March 22, 1995	7:00 PM	Portland Building, Meeting Room C 1120 S.W. Fifth Avenue Portland, Oregon 97201-1972

HEARINGS OFFICER(s): Dave Nordberg**STATUTORY AUTHORITY:** ORS 468.020 and ORS 468A.035

ADOPT: OAR 340-22-700 through 760,
OAR 340-22-800 through 860,
OAR 340-22-900 through 950,
OAR 340-22-1000 through 1050, and
OAR 340-22-1100 through 1130.

AMEND: OAR 340-22-102(52),(73),
OAR 340-22-104(1),(5),(6),
OAR 340-22-170(2)(b)(A),
OAR 340-22-175(3)(b), and
OAR 340-22-210(1).

REPEAL: Not Applicable

Amendments or additions to other related sections of Division 22 may result if changes are made pursuant to additional information or public comment.

- 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:

New Area Source rules are proposed to support the Portland Ozone Maintenance Plan for the redesignation of the Portland Air Quality Maintenance Area to Attainment status for ozone. Rules will reduce the emission of Volatile Organic Compounds (VOCs) in the areas of Motor Vehicle Refinishing, Consumer Products, Spray Paint, and Architectural Coatings.

The rulemaking package also contains housekeeping measures to exclude new compounds found by the EPA to be of negligible photochemical reactivity from the definition of "VOC", and to remove an unintended duplicative requirement from the Categorical RACT rule.

LAST DATE FOR COMMENT: March 23, 1995 by 5:00 PM

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:
ADDRESS:

Dave Nordberg
Department of Environmental Quality
Air Quality Division, 11th Floor
811 S. W. 6th Avenue
Portland, Oregon 97204
(503) 229-5519
or Toll Free 1-800-452-4011

TELEPHONE:

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

Dave Nordberg
Signature

2-15-95
Date

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

VOC Area Source Rules for the Portland Ozone Maintenance Plan

Date Issued:	February 15, 1995
Public Hearing:	March 22, 1995
Comments Due:	March 23, 1995

**WHO IS
AFFECTED:**

Manufacturers, distributors, retailers, and Portland area users of: automotive paint, architectural paint, aerosol spray paint, and solvent-containing household products.

**WHAT IS
PROPOSED:**

Proposed rules are part of the Portland Ozone Maintenance Plan to preserve the Portland area's current air quality by offsetting increased pollution associated with future population growth.

**WHAT ARE THE
HIGHLIGHTS:**

This proposal would establish limits for the amount of Volatile Organic Compounds (VOCs) that can be used in paints and household products available in the Portland Air Quality Maintenance Area (AQMA). The proposal would also require the use of higher efficiency spray guns and spray gun cleaning equipment in most automotive repainting activities.

**HOW TO
COMMENT:**

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

March 22, 1995 at 7:00 PM

Portland Building, Meeting Room C
1120 SW 5th Avenue
Portland, Oregon 97204

Written comments must be received by 5:00 PM on March 23, 1995 at the following address: (see reverse)



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

11/1/86

FOR FURTHER INFORMATION: - 1 -

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

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

Copies of the proposed rules may be reviewed at the above address. A copy may be obtained from the Department by calling the Air Quality Division at 229-5519 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

Rulemaking Proposal
for

VOC Area Source Rules for Portland Ozone Maintenance Plan: Motor Vehicle Refinishing, Consumer Products, Spray Paint and Architectural Coatings

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

As a condition for redesignation to Attainment status, an Ozone Maintenance Plan must be prepared for the Portland Air Quality Maintenance Area which will demonstrate how attainment will be maintained in spite of future growth. Area Source Rules provide significant reductions of VOC ozone precursors in support of that plan.

3. Principal Documents Relied Upon in this Rulemaking

These documents are available for review at DEQ Headquarters, Air Quality Division, 811 SW 6th Ave., Portland, Oregon 97204-1390:

Alternative Control Techniques Document: Automobile Refinishing, EPA 453/R-94-031, April 1994.

Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options, STAPPA/ALAPCO, September 1993.

Initial Statement of Reasons for a Proposed Statewide Regulation to Reduce Volatile Organic Compound Emissions from Aerosol Coating Product and Amendments to the

Alternative Control Plan for Consumer Products, California EPA Air Resources Board, February 3, 1995.

Report to Congress (Draft): Volatile Organic Compound Emissions from Consumer and Commercial Products, Volume 2, Comprehensive Emissions Inventory, U.S. EPA, August 1994.

A Proposed Regulation to Reduce Volatile Organic Compound Emissions from Antiperspirants and Deodorants, California Air Resources Board, Staff Report and Technical Support Documents, September 1989.

Proposed Regulation to Reduce Volatile Organic Compound Emissions from Consumer Products, California Air Resources Board, Staff Report and Technical Support Documents, August 1990.

Proposed Amendments to the Statewide Regulation to Reduce Volatile Organic Compound Emissions from Consumer Products - Phase II, California Air Resources Board, Staff Report, Technical Support Document, and Appendices, October 1991.

Industry Proposed Rule for Consumer Products, Chemical Specialties Manufacturer's Association, submitted Oct. 14, 1994.

NPCA Suggested State Model Rule for Architectural and Maintenance Coatings, National Paint & Coatings Association, submitted Dec. 8, 1994.

Consumer Products and Antiperspirant and Deodorant regulations, California Air Resources Board, Dec. 15, 1992.

State of California Air Resources Board: Variance Orders G-785-1 through G-785-7, Executive Orders G-712-1 through G-712-8, and successive Variance Orders and Executive Orders of these series which are valid as of the date of adoption of proposed rules.

Rule 1113. Architectural Coatings, South Coast Air Quality Management District, dated Sept. 6, 1991.

Special Meeting documents of the South Coast Air Quality Management District Board, February 1, 1990.

Technical Review Group's Proposed Architectural Coatings Suggested Control Measure, ARB Staff Report, State of California Air Resources Board, Apr. 20, 1989.

ARB-CAPCOA Suggested Control Measure for Architectural Coatings, Technical Support Document, State of California Air Resources Board, July 1989.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

VOC Area Source Rules for Portland Ozone Maintenance Plan: Motor Vehicle Refinishing, Consumer Products, Aerosol Spray Paint, Architectural Coatings, and Housekeeping Amendments.

Fiscal and Economic Impact Statement

Introduction

These regulations apply to a broad range of consumer and painting products, and professional painting activities. Taken as a whole, the fiscal impact of reducing 1 ton of Volatile Organic Compounds (VOCs) from the air as required by these measures has been estimated to vary from a cost of about \$13,000 to an approximate net savings of \$9,000. Estimates include costs for the development of new formulations, many of which are now available.

Motor Vehicle Refinishing: Cost projections for rules are based on "Alternative Control Techniques Document: Automobile Refinishing" produced by the U.S. EPA in April 1994. The proposed regulation is expected to reduce emissions from this source by 40%, which in terms of 1992 emissions would eliminate 767 tons of VOCs per year.

Consumer Products: DEQ estimates adoption of this portion of the proposal will reduce total annual VOC emissions to the Portland airshed by 377 tons. In the development of the California Consumer Products regulations, the California Air Resources Board (CARB) estimated costs of their related regulations to vary from a net savings to a cost of \$3,400 per ton of VOC eliminated. Because the proposed Oregon Consumer Products rules avoid the technology forcing components of the CARB rule, costs will be lower.

Spray Paint: Oregon spray paint rules are closely modeled on regulations currently proposed by CARB for the state of California. The Oregon proposal is expected to reduce the emission of 72 tons of VOCs per year within the Portland Air Quality Maintenance Area (AQMA). Assuming that costs of complying with the regulations will be the same for both the Portland area and California, this regulation is estimated to cost between \$5,700 to \$6,400 per ton of reduced VOC emission to the atmosphere.

Architectural Coatings: Proposed regulations are expected to reduce emissions from Architectural Coatings, Industrial Maintenance Coatings and Traffic Markings by approximately 19%. Based on 1992 emissions, this would remove 653 tons of VOC from the Portland airshed per year.

Compliance with the proposed regulation can be achieved either by substituting an existing complying coating for a noncomplying coating, or reformulating a noncomplying coating to meet the new limit. Substitution is often the more economical approach as it avoids research and development costs associated with reformulation. A 1984 CARB market survey suggests that the option of substitution is feasible for many manufacturers. For coatings that would be reformulated, CARB estimated in 1989 the cost of complying with their more restrictive Suggested Control Measure (SCM) varies from a cost of \$12,800 to a savings of \$8,600 per ton of VOC removed from the atmosphere.

VOC Definition (Housekeeping): This change adds new compounds to the list of those exempted from the definition of VOC, and therefore represents a relaxation of existing regulations. No costs will be incurred, and some manufacturers may realize a net savings through wider availability of usable compounds.

Categorical RACT (Housekeeping): This rule will remove an unintended requirement that is duplicated elsewhere in the point source rules. Costs will vary from no impact to a net benefit.

General Public

Motor Vehicle Refinishing: Without considering the purchase and use of HVLP spray guns, these rules would produce an overall savings of \$4.2 million per year if applied on a national level.¹ HVLP spray technology is generally considered to produce additional (but unquantified) net savings by reducing the amount of paint used. These savings may be captured by the refinishing or insurance industries, or passed to the public in the form of lower costs for auto insurance premiums and repair.

Automotive hobbyists painting more than 2 vehicles per year would be required to purchase an HVLP spray gun and spray gun cleaner. Purchase of this equipment would cost an estimated \$1,425 per user. In the worst case, a hobbyist who paints 3 vehicles per year would not recover the equipment costs through material savings due to low rate of use. For such a person, first year costs of the program would be very close to the full cost of the equipment. The number of hobbyist painters in the Portland AQMA is unknown.

Consumer Products: During Phase II of the California consumer products rules, CARB estimated costs of reformulation would be passed on to the consumer in the form of price increases ranging from \$0.01 to \$0.60 per unit of product. This estimate included costs for meeting more restrictive VOC limits than are in the proposed rules. More recently,

the Chemical Specialties Manufacturers Association estimated the costs for non-personal care products distributed nationally would rise less than one percent as a result of the Oregon regulation.²

Spray Paint: CARB estimated the costs of their closely related regulation in two ways. In one analysis, it was estimated the rule would increase manufacturers' sales prices by an average of \$0.04 to \$0.34 per can. Consumer costs would be higher following the addition of distribution and retail mark-ups. In a separate analysis, CARB compared the cost of spray paint within the San Francisco Bay area where spray paint is restricted to VOC levels similar to this proposal, to the cost of spray paint in an unregulated area. Using this method, CARB found spray paint in the regulated area to be 6% more expensive on average. Products at the low end of the price range were most dramatically affected, however, and reflected much greater price increases.

Architectural Coatings: Based on the 1984 survey and a comparison of costs to cover a fixed area per year, CARB estimated the Suggested Control Measure would affect the price of paint between a \$1.10 per gallon increase and a \$3.60 per gallon price reduction. This comparison applies to cases involving reformulation of existing coatings.³ The results of the estimate seem to reflect the "high solids" content common to many lower-VOC coatings. Because reformulated coatings often contain more coating solids, a gallon can typically cover a larger area.

Small Business

Motor Vehicle Refinishing: Paint distributors would need to be trained to provide necessary advice to their customers. Total cost is estimated to be \$80,000 on a national, annualized basis.

Approximately 300 auto body shops are located in the Portland AQMA. Many would be subject to costs of purchasing gun cleaning equipment (plus its upkeep) and retraining. Gun cleaners cost approximately \$1,000 each, and require maintenance of an additional 4%. However, compared to manual cleaning, these cleaners use about 7 ounces less solvent per use producing a net savings of \$1.23 million on a national, annualized basis. Body shops would realize significant additional savings through the purchase of less paint resulting from the use of more efficient HVLP spray guns.

Individual painters traditionally provide their own painting equipment. Full-time professional automotive painters are estimated to need an average of 6 HVLP guns to accommodate various types of paint. The typical full-time painter would be expected to have separate spray guns for color coats, clear coats, whites, metallics, primers, and small or "detail" areas. The painter who previously had no guns complying with the regulation is estimated to be subject to approximately \$2300 in nonrecurring charges.⁴

Consumer Products: In the development of a more restrictive family of consumer product regulations between 1989 and 1991, CARB evaluated the impact rules would have on the Return on Owner's Equity (ROE). CARB concluded that small businesses engaged in the manufacture, distribution and sale of consumer products would probably not be affected by the regulation.⁵ Comments regarding consumer products cited under the Large Business section also apply.

Spray Paint: Aerosol paint manufacturers range from very small companies to large nationwide corporations. Impacts to individual companies vary widely, and are related more to the type of their products than company size, and this assessment applies to both large and small manufacturers. CARB surveyed spray paint manufacturers and reported that costs to individual companies is expected to vary from \$0 to \$3.6 million annually when amortized over a 10 year period.⁶ CARB further estimated that applying their regulation to the whole state of California would have a total annual cost of \$12 to \$13 million, also based on a ten year amortization. Costs for the proposed regulation are expected to be lower in rough proportion to the population of the Portland AQMA.

Californian investigators additionally calculated costs to businesses in the form of Return on Owner's Equity (ROE). Assuming that no cost increases could be recovered through higher consumer prices, CARB determined the regulation would decrease ROE between 8.5% and 0%, with an overall average ROE decrease of 3%.

Architectural Coatings: Smaller paint manufacturers frequently rely more heavily than major manufacturers on solvent based products to serve specialized high performance niche markets. This segment of the industry would be the most likely to encounter the costs of reformulation cited above.

Painting contractors may also be affected by any paint price increases, or modifications of work activities that may result from differing characteristics (such as increased drying time) of coatings reformulated to lower VOC levels.

Large Business

Motor Vehicle Refinishing: Coating manufacturers will incur costs for process modifications and training. If regulations were applied on a national scale, process modification costs would approximate \$430,000 per year to provide pumping and mixing equipment to process high-solids coatings. Training costs are estimated at \$60,000 per year. Both estimates are based on an annualized period of 10 years at 7% interest.

Consumer Products: In the 1990 phase of the California regulations, CARB identified significant costs associated with the reformulation of products to meet VOC limits. These are costs for: 1) research & development, 2) efficacy testing, 3) stability testing, 4) safety testing, and 5) label modification.⁷ Assuming that reformulated products could be marketed nationally, CARB estimated their more stringent rule would cost as much as

\$3,400/ton of reduced VOC emissions. This factor and the anticipated reduction of 377 tons per year establish an upper limit for the cost of the proposed Consumer Products regulations. CARB further estimated that these costs would be passed on to the consumer and reflected in increased retail prices of \$0.01 and \$0.23 per individual product.

Spray Paint: The economic effects of the proposed spray paint regulation for large businesses is expected to vary as is described under Small Business section above.

Architectural Coatings: Large paint manufacturers typically emphasize the sale of water-based coatings to a mass market. Because water-based coatings contain lower amounts of VOC, this segment of the industry would be less frequently affected than small manufacturers by the costs of substitution or reformulation.

VOC Definition (Housekeeping): Manufacturers of consumer and personal care products who petitioned EPA to add methylated siloxanes and parachlorobenzotrifluoride to the list of negligibly photoreactive compounds can be expected to see a positive economic effect from use of these compounds in their products. However, the amount of this expected benefit is unknown.

Categorical RACT (Housekeeping): In the regulation's current form, new industries in the Portland AQMA must analyze the benefits of installing RACT (the least stringent level of pollution control), but actually install higher levels of pollution controls under federal requirements. This housekeeping measure would save major sources the cost of conducting a RACT analysis which could not be legally used.

State Agencies & Local Governments (except DEQ)

Motor Vehicle Refinishing: Local public agencies operating motor vehicle refinishing facilities would be subject to the same costs and benefits cited under the Small Business category entries for both Body Shops and Individual painters.

Consumer Products: No significant effects on government agencies are expected.

Spray Paint: No significant effects on government agencies are expected.

Architectural Coatings: A water-based traffic marking which meets a recently approved Oregon D.O.T. specification, and which also meets the 150 g/l limit of the proposed regulation presently costs 20% more than the existing product. This increased cost may be partially offset by the increased longevity of the lower VOC product. Use of water-based products also requires the use of modified application equipment to work with water-borne paints. The cost of such new equipment ranges from approximately \$150,000 to \$280,000 per unit. However, it is understood that each public agency that

conducts traffic marking operations in the Portland AQMA has acquired, or is in the process of acquiring suitable equipment in anticipation of a federal paint regulation.

Department of Environmental Quality

These regulations are modelled on what the Department expects EPA to require nationally in the future. Adoption of federal rules will generally eliminate the need to enforce state rules, since noncomplying products would not be made or offered for sale in the entire country.

Because these rules are expected to be temporary, it would be inefficient to fund their implementation with a short-lived permit fee program. The rules will not generate revenue. Instead, the Department proposes to use EPA 105 Special Project funds to perform technical assistance, enforcement, regulated community notification, and evaluation of applications for variance.

We estimate direct and indirect costs for a minimal program to be as follow:

ES3	1	\$62,692
ES2	1	55,941
OS1	1/2 @ 28,309	14,155
Aerosol VOC Tests	120 @ 72	8,640
Non-Aerosol VOC Tests	120 @ 36	4,320
Sample Purchases	240 @ 5	<u>1,200</u>

Annual Program Costs: \$146,948

Tests will be performed by the DEQ lab.

The Department is proposing an automatic review of these "area source" rules after adoption of EPA regulations. If it is determined that federal rules are inadequate and state rules need to be retained, EQC's reconsideration could include other measures to provide program support.

Assumptions

General: VOC reductions for the Portland airshed are estimated on the basis of Emission Inventory data for 1992.

Motor Vehicle Refinishing: Costs are presented on a national scale and are based on an annualized period of 10 years at 7% interest unless otherwise noted. Because VOC reductions resulting from the use of HVLP cannot be reliably determined, this analysis credits no VOC reductions from their use. Costs of HVLP guns, however, are included.

Consumer Products: For the purpose of this assessment, the effects of the Oregon rules are assumed to be the same as estimated for California regulations. Actually, Oregon rules avoid the most restrictive (and potentially technology forcing) future VOC limits adopted in California .

Spray Paint: Effects of the proposed regulation are assumed to be the same as estimated for the anticipated California state-wide rule.

Architectural Coatings: Unless otherwise noted, this impact assessment assumes costs of complying with the proposed Oregon regulation will be the same as estimated costs for the Suggested Control Measure (SCM) developed by CARB. In fact, the Oregon proposed limits are more restrictive than the SCM in only three product categories (Roof Coatings, Clear Shellacs, and Traffic Marking Paints), while the SCM is more restrictive in a minimum of nineteen product categories.

¹ U.S. EPA "Alternative Control Techniques Document: Automobile Refinishing", publication EPA 453/R-94-031, Table 5-1: Calculation based on costs of "Option 1" column less \$780 cited for Surface Preparation.

² Telecon. Nordberg, Dave, Oregon DEQ with Ziman, Barry, CSMA, February 3, 1995. Costs of regulation.

³ ARB-CAPCOA Suggested Control Measure for Architectural Coatings, Technical Support Document, State of California, July 1989.

⁴ Telecon. Nordberg, Dave, Oregon DEQ with Nelson, Don, T & T Sales Inc. January 30, 1995. Costs of regulation.

⁵ State of California Air Resources Board Stationary Source Division, "Proposed Amendments to the Statewide...Consumer Products - Phase II", October 1991

⁶ California EPA, Air Resources Board "Initial Statement of Reasons for a Proposed...Aerosol Coating Products..", released February 3, 1995.

⁷ State of California Air Resources Board Stationary Source Division, "Proposed Regulation to Reduce Volatile...Consumer Products", Staff Report, August 1990.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

VOC Area Source Rules for Portland Ozone Maintenance Plan: Motor Vehicle Refinishing, Consumer Products, Aerosol Spray Paint, and Architectural Coatings.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

These rules are proposed to reduce the per capita emission of VOCs to the Portland airshed. They will primarily affect the manufacture of a variety of consumer and commercial products. These regulations are developed as part of the Portland Ozone Maintenance Plan which is necessary for the area's redesignation to attainment status.

The Motor Vehicle Refinishing rules are expected to have a positive effect beyond the purpose of VOC reduction by reducing solvent odors produced by this industry. In addition to restricting the use of high VOC paints, regulations will lower solvent evaporation by requiring more efficient spray guns and gun cleaning equipment. These measures could benefit the significant number of nuisance complaints generated by this industry.

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 N/A No ___ (if no, explain):

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

Because regulations will improve the control of ozone precursors, rules will enhance Portland Air Quality and therefore support statewide goal 6.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

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

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

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

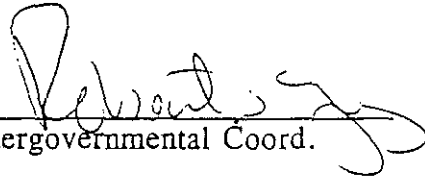
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

These rules apply to the formulation of products made available to consumers in the Portland AQMA; as such, in applying the above criteria it has been determined that the rules do not significantly affect land use.

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

Does not apply.

Division _____


Intergovernmental Coord.

Date 2/15/95

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. This proposal offers measures to reduce VOC emissions in the Portland AQMA as part of the Portland Ozone Maintenance Plan, which is required by the Clean Air Act for redesignation to Attainment status.

Individual area source rules were selected because future federal rules are expected in the same areas. Each rule is equally or less restrictive than its anticipated federal counterpart with certain exceptions:

- Federal Architectural Coatings rules are expected to allow an initial two year exemption for smaller manufacturers.
- Federal Architectural Coatings rules are expected to allow VOC standards to be exceeded with the payment of an "exceedance fee".
- Federal Motor Vehicle Refinishing rules are not expected to require HVLP spray guns or gun cleaning equipment.
- Federal rules for Refinishing, Spray Paint, and Architectural Coatings are not expected to include requirements that commercial applicators use products which comply. (Focus will be on manufacturers; because requirements are nationwide, only complying products will be available.)

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

Requirements of the Clean Air Act for redesignation to Attainment are performance based.

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

Because the requirements are performance based, preparation of a Maintenance Plan allows strategies to be developed locally to best meet the needs of the affected area.

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

No. Measures contained in this proposal generally affect products and activities which have been unregulated.

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

Yes. Redesignation to Attainment requires the Maintenance Plan to address the future ten year period. Delay of rule adoption would move the maintenance period farther into the future and a period of ever-increasing growth-related pollution. In turn, this would require the adoption of increasingly aggressive pollution control measures. Prompt initiation of the plan allows more modest control measures to be used.

Federal versions of rules contained in this proposal are currently scheduled to be finalized between March 1995 and March 1997, however completion by the scheduled dates is not assured.

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

Yes. The Maintenance Plan provides a margin for increased industrial growth to address a potential impediment to the Portland area's future economic vitality. To accommodate uncertainty, the Plan is designed to maintain ambient air quality standards at a 95% level of confidence.

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

Yes. Strategies within the Ozone Maintenance Plan were approved by the Motor Vehicle Task Force and address a wide variety of activities. They include an increased focus on non-industrial "area" sources of pollution which have previously gone unregulated. Rules in this proposal represent moderate measures applied to a broad range of such area sources.

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

Potentially. If these rules are not adopted and the Maintenance Plan is inadequate to achieve redesignation, new and expanding industries must install the most costly level of pollution controls which exist as a means to reduce the area's VOC and NOX emissions. Also, failure to develop an adequate Maintenance Plan would increase the risk of future violations of the ozone standard which would elevate the AQMA to a more stringent level of Nonattainment. This potential "bump-up" would increase control costs to industry and increase the risk of sanctions on federal highway funds.

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. Proposed rules represent normal procedural measures. Individual rules, however, include some provisions which are not expected in the federal rules now being developed. These measures require commercial users of regulated products to use only products which comply with VOC standards for Motor Vehicle Refinishing, Spray Paint, and Architectural Coatings. These user requirements are necessary to diminish leakage of readily available noncomplying products through the border of the regulated area. (Such requirements are unnecessary for regulations adopted on a national scale.)

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

Yes. Area Source regulations reflect rules currently in effect in other regions of the country.

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. Motor Vehicle Refinishing rules require equipment which will reduce the amount of paint and clean-up solvent needed for refinishing. Material costs, hazardous waste disposal costs, and VOC emissions will be reduced as a result.

Other rules of this proposal have a potential for incrementally preventing pollution and reducing hazardous waste disposal costs by lowering the average amount of solvents used in regulated products.

Area Source measures have "cost per ton of VOC removed" factors that on average compare favorably with regulations currently in place.

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 29, 1995

To: Environmental Quality Commission

From: Dave Nordberg *DN*

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: March 22, 1995, beginning at 7:00 pm
Hearing Location: Portland Building, Meeting Rm. C
Portland, Oregon

Title of Proposal: VOC Area Source Rules for Portland Ozone
Maintenance Plan

The rulemaking hearing on the above titled proposal was convened at 7:10 pm. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Eight people attended, and three signed up to give testimony.

Prior to receiving testimony, I briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

1. Megge Van Valkenburg: Speaking on behalf of Thompson.Minwax, Ms. Van Valkenburg indicated the company's general support for the proposed Architectural Coatings due to their consistency with VOC requirements previously established by other agencies. She added however, that the company does object to a provision that would lower the VOC content of varnish from 450 to 400 g/l when the coating is used on floors. Written comments will also be provided to the Department.
2. John Powell: As a representative of the Cosmetic, Toiletry, and Fragrance Association, Mr. Powell first noted the industry's preference that DEQ wait for EPA to adopt consumer product rules nationwide, but continued to say that CTFA

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March 22, 1995 Rulemaking Hearing
Page 2

worked with DEQ in the rule development, and the organization supports the proposed VOC regulations. Mr. Powell cited CTFA's particular support for the consistency with other state regulations and provisions which simplify compliance procedures. Supplementary written comments would be submitted shortly.

3. Joe Weideman: As an area painting contractor, Mr. Weideman advocated a different regulatory approach to more properly reduce VOC emissions from Architectural Coatings. Focusing on application methods, Mr. Weideman noted several areas of VOC loss resulting from spray operations. These are paint loss due to overspray, use of solvents (VOCs) to thin paint for spraying, and decreased coating durability leading to more frequent repainting. Without making specific regulatory recommendations, Mr. Weideman also spoke against the use of lacquer and inexpensive coatings, and in favor of high quality coating types. The written text of his comments was also submitted.

Those who did not testify offered no written comments.

There was no further testimony and the hearing was closed at 7:30 pm.

Attachments:

Written Testimony Submitted for the Record.

Index of All Public Comments
VOC Area Source Rules

MOTOR VEHICLE REFINISHING:

<u>Name</u>	<u>Affiliation</u>	<u>Abbreviation</u>
Jim Sell	National Paint & Coatings Association	NPCA
Leon Cole	Surface Protection Industries	SPI
Robert J. Inglis	BASF Corporation	BASF
James R. Kantola	ICI Paints	ICI

CONSUMER PRODUCTS:

<u>Name</u>	<u>Affiliation</u>	<u>Abbreviation</u>
Thomas J. Donegan, Jr.	The Cosmetic, Toiletry, and Fragrance Association	CTFA
R. Bruce Dickson	Chlorobenzene Producers Association	CPA
Matt Stewart	DAP Inc.	DAP
Ralph Engel	Chemical Specialties Manufacturers Association	CSMA
Doug Raymond	The Sherwin-Williams Company	S-W
Laurel Jamison	Rudd Company, Inc.	RUDD

SPRAY PAINT:

<u>Name</u>	<u>Affiliation</u>	<u>Abbreviation</u>
Heidi K. McAuliffe	National Paint & Coatings Association	NPCA
Doug Raymond	The Sherwin-Williams Company	S-W

Laurel Jamison Rudd Company, Inc. RUDD

ARCHITECTURAL COATINGS:

<u>Name</u>	<u>Affiliation</u>	<u>Abbreviation</u>
Jim Sell	National Paint & Coatings Association	NPCA
Jay A. Haines	Textured Coatings of America	TCA
Phil Chertudi	Morton Traffic Markings	MTM
Henry M. Tobey	Zehring Corporation	ZRG
Margaret M. Van Valkenburg	Thompson.Minwax Company	TMC
Laurel Jamison	Rudd Company, Inc.	RUDD
Joseph M. Weideman	Painting Contractor	JMW
Robert Wendoll	Environmental Legislative & Regulatory Advocacy Program of the Southern California Paint & Coatings Association	ELRAP
Doug Raymond	The Sherwin-Williams Company	S-W
Richard H. Pfiffner	Wood Kote	W-K
Robert Senior	Wm. Zinsser & Co., Inc.	ZIN

ALL VOC AREA SOURCE RULES:

<u>Name</u>	<u>Affiliation</u>	<u>Abbreviation</u>
Grant Higginson	Oregon Health Division Department of Human Resources	OHD

DEPARTMENT'S EVALUATION OF PUBLIC COMMENT
VOC AREA SOURCE RULES

Twenty-one interested parties submitted verbal or written comments on the proposed VOC Area Source rules during the public comment period. Issues raised are addressed in the order that the topic appeared in the proposed regulations.

A summary of each comment is shown in italic print. Each summary is immediately followed by the Department's response in normal faced print.

Motor Vehicle Refinishing:

1. Ref: OAR 340-22-700

Commenter: ICI

Control Area. Motor Vehicle Refinishing regulations could be simplified by restricting their applicability to the six counties cited rather than the whole state.

Proposed refinishing regulations apply in differing degrees to different portions of the state. Within the Portland Air Quality Maintenance Area (AQMA), the following applies: paint vendors must provide only coatings that comply with the VOC limits (with certain exceptions), painters must use coatings that comply with VOC limits, and also use efficient (HVL) spray guns plus gun cleaning equipment. In the area surrounding the Portland AQMA, (Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill Counties) painters have no requirements, but paint vendors may sell high-VOC paint only with written certification that it will not be used in the AQMA. Throughout the entire state, paint manufacturers must designate the VOC content of coatings and provide instructions for their proper use.

The Department acknowledges these multi-tiered requirements introduce more complexity than a single set of requirements applied uniformly to a given area. DEQ has rejected the latter approach however, because it would place requirements on areas that already meet the standards established by the Clean Air Act. The multi-tiered approach used in the rules concentrates the requirements in the AQMA where VOC reduction benefits are needed. The additional requirements extended out to the six county region and whole state beyond are very modest and are necessary to provide a buffer to ensure the rules can be properly enforced in the Portland area.

2. Ref: OAR 340-22-710(22) Commenter: ICI

AQMA Location. The definition of the Portland AQMA does not easily convey which cities or counties are affected. Are all six counties included in the AQMA?

The Portland AQMA is included within the boundaries of Clackamas, Multnomah and Washington Counties. Columbia, Marion and Yamhill Counties referred to in other parts of the rules lie outside the AQMA.

3. Ref: OAR 340-22-710(24) Commenters: NPCA, BASF, ICI

Pretreatment Wash Primer. The definition of Pretreatment Wash Primer includes the requirement that the coating contain no more than 12% solids by weight. Traditionally, the solids content of these coatings has been 20-25%. The 12% limitation was used in previous California regulations to prevent materials in this relatively high-VOC category from being used as Primer Surfacer. Basic characteristics of Pretreatment Wash Primers such as the minimum 0.5% acid content make them unsuitable for that application. The limitation is inappropriate and should be eliminated, or at the least, relaxed to permit a solids content of 16%.

The Department agrees that the 12% solids requirement for this category is unlikely to be needed to prevent abuse as Primer Surfacer, and that the limit is not included in rules of several other states. The rule proposed for adoption by the Environmental Quality Commission (EQC) is revised to remove the 12% limit on solids content.

4. Ref: OAR 340-22-720 Commenter: ICI

Control Area. Do the VOC content limits apply to all motor vehicle refinish coatings sold in Oregon or just the Portland AQMA?

VOC content limits apply primarily to the Portland AQMA, but have secondary applications in other areas. For example, a paint vendor located outside the AQMA but in the six county area must have a purchaser certify the paint will not be used in the AQMA to legally sell a coating that exceeds the Table C limits. In addition, no person within any area of the state shall "knowingly sell, ship, or provide" coatings to the AQMA that exceed those same limits.

5. Ref: OAR 340-22-720 Commenter: ICI

On-Road/Non-Road Applicability. Do the VOC content limits apply to the refinishing of Non-Road Vehicles as well as On-Road Vehicles?

Those refinishing non-road vehicles in the AQMA will not be required to use complying coatings, specified application techniques, or gun cleaning equipment. However, paint sellers will be required to provide only coatings which comply with the VOC limits for use within the Portland AQMA.

6. Ref: OAR 340-22-720(1) Commenter: SPI

Multi-Color Coatings. Multi-color coatings perform a useful role by providing a durable, wear-resistant protective finish on surfaces such as cargo beds of pickup trucks and other utility vehicles. The only marketable product developed to date requires a VOC content of 5.7 lbs. per gallon which exceeds VOC limits of the proposed regulations. Provide an additional category for Multi-color coatings with a maximum VOC content of 5.7 lbs. per gallon.

The Department agrees, and has revised the proposed rule to allow this product to be used for protection of vehicle cargo areas.

7. Ref: OAR 340-22-720(1) Commenter: ICI

Unused Symbol. The symbol W_w is not used in the equation for VOC content, and is unnecessary.

This typographical error has been removed from the rule proposed for EQC adoption.

8. Ref: 340-22-730(3) Commenter: ICI

Manufacture Date. Modify this section to link rule requirements to products manufactured after January 1, 1996 rather than products sold after January 1, 1996.

The linkage of Refinishing rule requirements to the date of a coating's sale rather than its date of manufacture is intentional, and a feature that distinguishes it from all other VOC Area Source regulations. This structure is necessary because the VOC content of many automotive coatings depends more on how paint components are combined for application rather than the composition of an individual component at the time of its manufacture. This topic was discussed at the second meeting of an auto refinishing advisory committee which DEQ consulted during rule development. At that meeting the committee recommended use of this approach with the provision that the rule would not take effect sooner than six months after adoption. OAR 340-22-730(3) is maintained as originally proposed.

During evaluation of this comment it was observed that the previous section OAR

340-22-730(2) does link the requirements for shipment of coatings to the AQMA to their date of manufacture. This is contrary to the committee's recommendation and the structure of the rest of the rules. The word "manufactured" is removed from this section in the rule proposed for EQC adoption.

9. Ref: OAR 340-22-740 Commenter: ICI

Non-Road Exemption. The opening statement specifies only on-road vehicles for this section. Are non-road vehicles exempt from VOC content limits, equipment standards and recordkeeping?

The term "Motor Vehicle Refinishing" is defined as the application of surface coating to both on-road and non-road motor vehicles. This term is key to correctly determining some rule requirements. For the refinishing of Non-Road vehicles: VOC limits apply to manufacturers and sellers, but not painters; and recordkeeping requirements apply to manufacturers, sellers and painters alike; and there are no equipment requirements.

These requirements are a consequence of the Department's need to establish regulations that can be clearly enforced. While the intent is to reduce VOC emissions from the refinishing of On-Road vehicles, the same coatings are used for the refinishing of both On-Road and Non-Road groups. Because the Department has no practical means of determining that high-VOC coatings sold will actually be used for Non-Road vehicles alone, the rules prohibit the sale of all non-complying coatings within the AQMA.

However, upon further evaluation the Department recognizes that recordkeeping requirements for painters of non-road vehicles in the Portland AQMA are unlikely to produce any environmental or rule enforcement benefit. OAR 340-22-750(1)(c) is amended in the revised proposed regulations to apply painter recordkeeping requirements only to refinishing of on-road vehicles.

10. Ref: OAR 340-22-750 Commenter: NPCA

Recordkeeping Clarification. Recordkeeping requirements specified for automotive paint manufacturers and sellers need to be clarified. As presently worded, the provision could be interpreted to mean manufacturers must retain records for two years after the final sale of a product by a distributor to the ultimate user. As the ultimate sale of a product is beyond a manufacturer's control, the manufacturer's retention period should be coupled to the manufacturer's date of sale.

The Department agrees that wording originally proposed is ambiguous. OAR 340-22-750(1)(a) as proposed for EQC adoption is amended as follows:

"Manufacturers of motor vehicle refinishing coatings sold in Oregon shall maintain records which demonstrate that the VOC content designated under OAR 340-22-730(1) is true and accurate. These records shall be maintained for at least two (2) years after ~~the product is sold~~ **a manufacturer's sale of a product for use** in Oregon, and may include, but are not limited to, product formulation data and test results using test methods specified in OAR 340-22-760."

11. Ref: OAR 340-22-760 Commenter: ICI

VOC Content Determination. Will VOC content limits be determined by calculations of formulation data or test measurements? Test measurement is preferred as an existing EPA test method is available.

The Department's intention is to determine VOC content by either EPA test method 24 or 25, or by calculation of ingredients used in the product's manufacture. Test measurements used alone introduce a margin of error and are cumbersome in determining the amount of any exempt compounds.

12. Ref: OAR 340-22-700 to 340-22-760 Commenter: NPCA

General Acceptance. Proposed Motor Vehicle Refinishing rules are expected to achieve significant VOC reductions without imposing too great an economic or technological burden on the industry.

The Department notes this observation.

Consumer Products:

13. Ref: OAR 340-22-810(14) Commenter: DAP

Construction and Panel Adhesive. The definition for "Construction and Panel Adhesive" is narrowly restrictive and does not accurately reflect the container size for such adhesives. The Oregon regulation limits the definition to products delivered from caulking cartridges which unreasonably excludes adhesives offered in other containers.

The Department agrees that the original definition is too narrow. The definition proposed for EQC adoption is revised as follows:

"Construction and panel adhesive' means any one-component household adhesive ~~applied with caulking type cartridges~~ **sold in containers of one gallon or less**, having gap filling capabilities, and which distributes stress throughout the bonded area resulting in reduction or elimination of

mechanical fasteners.

14. Ref: OAR 340-22-810(16) Commenter: CTFA

Consumer Product Definition. The current definition of "consumer product" should be clarified. The term is defined as "any substance, product, or article..." while other states regulate the end product or "chemically formulated product". Use of the term "substance" potentially could be construed to include components of products, not end products as intended.

The Department agrees. The rule proposed for EQC adoption is revised to incorporate this modification.

15. Ref: OAR 340-22-810(45) Commenter: DAP

Resorcinol. A unique two-part resorcinol resin based adhesive system offers superior performance for waterproof structural applications. This product contains approximately 14% VOCs and would no longer be available as a General Purpose Household Adhesive (VOC limit 10%) under the proposed regulation. No comparable substitute exists. Allow this adhesive to continue to be available by either excluding it from the definition of "Household Adhesive" or by establishing a new product subcategory for "Structural Waterproof Adhesive" with a VOC content limit of 15%.

The Department acknowledges the value of high performance adhesives for use demanding applications. The rule proposed for EQC adoption is revised to exclude two part resorcinol resin based adhesives from the definition of household adhesive.

16. Ref: OAR 340-22-810(67) Commenter: CTFA

Principal Display Panel. To clarify when a product is subject to the consumer product standards, the definition of product category should be modified to read:

*"Product category" means the applicable category which best describes the product as listed in this rule, **and which appears on the product's principal display panel.***

While this provision would clarify exactly which products are subject to the rule, it would also provide a mechanism to avoid regulation, thereby diminishing the rule's effectiveness and enforceability. Many products have wide brand name recognition, and the purpose of such products is generally understood. Aerosols such as "Glade" or "Scotchguard" do not need labels stating "air freshener" or "fabric protectant" for them to be recognized as being used primarily for those

purposes. The proposed "product category" definition is consistent with rules of other states, and is proposed for EQC adoption without changes.

17. Ref: OAR 340-22-820 Commenter: CTFA

VOC Standards. CTFA supports the proposed consumer product standards as well as the 1-1-96 compliance date. The VOC content limits are challenging but technologically feasible, and will allow continued availability of all regulated personal care products without product bans. VOC standards are also consistent with regulations in other states. The proposed compliance date allows adequate time to prepare for compliance.

The revised proposed rules maintain the same VOC limits and compliance date as originally proposed.

18. Ref: OAR 340-22-820 Commenter: DAP

Aerosol Adhesive. The VOC limit for "aerosol adhesives" will require DAP to withdraw from this market in Portland. The company's experience has shown that it is extremely difficult to formulate an aerosol adhesive that can meet the VOC limit of 75%.

Proposed Consumer Product rules attempt to minimize disruption of current markets, but the intent of these regulations is to promote use of lower VOC products in cases such as this—where feasible alternatives exist. The 75% VOC limit for aerosol adhesives is consistent with consumer product rules of other states, and is retained in the revised proposed rules.

However, the Department does realize the creation of product restrictions could potentially pose grave consequences for some regulated parties. To avoid any unwarranted negative effects, proposed rules allow a safety mechanism in the form of a possible Compliance Extension. This mechanism is specified in 340-22-1110, and is applicable to all "Area Source" rules of this package.

19. Ref: OAR 340-22-820(2)(b) Commenter: CTFA

Most Restrictive Limit. CTFA would prefer that the provision known as the "most restrictive limit" be deleted or modified. If the most restrictive limit is retained, CTFA supports the exemption for antiperspirant and deodorant.

The "most restrictive limit" provision provides that if a product is represented as being suitable for use in a category having a lower VOC limit, the category with the lowest VOC limit shall apply. This prevents a product from avoiding normal regulation by claiming a secondary use in category with a higher VOC limit, and

is therefore necessary to for adequate enforcement of the rule. The Department agrees however, that aerosol antiperspirants (HVOC limit 60%) are simultaneously used as aerosol deodorants (HVOC limit 20%), and that this use should be allowed to continue to maintain consistency with rules of other states. The "most restrictive limit"--with an exception for antiperspirant/deodorants--is retained in the revised proposed rule.

20. Ref: OAR 340-22-820(3)(d) Commenter: CPA

PDCB Exemption. The Chlorobenzene Producers Association (PCA) supports the proposed rule's exemption of air fresheners and insecticides containing at least 98% paradichlorobenzene (PDCB). Exempted products are composed almost entirely of the active ingredient which gradually volatilizes to perform valuable roles as mothballs and commercial bathroom deodorizers. There are no feasible alternatives to replace PDCB's sustained deodorizing and insecticidal properties. Exemption of PDCB is consistent with the consumer product regulations of other states.

The Department notes that if a lower VOC limit for PDCB products were established, manufacturers would be likely to meet the VOC percentage limit merely by adding useless inert ingredients. The revised proposed rule retains the PDCB exemption.

21. Ref: OAR 340-22-830 Commenter: CTFA

Manufacture Date. The personal care products manufacturing industry supports the proposed rule's use of the date of manufacture (rather than the date of sale) for regulating consumer product VOCs. Use of this regulatory structure removes a major compliance hurdle for regulated parties.

The Department agrees with the recommendation of the advisory committee consulted during rule development that linking compliance to the date of manufacture offers the most efficient regulatory approach. The alternate method of prohibiting sale of higher-VOC products beyond a given date requires manufacturers, distributors and retailers to thoroughly inspect their stocks and dispose of non-complying material. The date of manufacture approach was selected with the recognition that non-complying product availability will steadily decline with natural market turnover, and that an unnecessary burden can be avoided. The date of manufacture approach is retained in the rule proposed for EQC adoption.

22. Ref: OAR 340-22-840 Commenter: CTFA

Innovative Products. CTFA supports retaining the Innovative Products provision

in the consumer products regulation. This feature allows compliance flexibility and leads to greater reduction of VOC emissions.

The Department recognizes that products which may not otherwise meet the letter of the rule may be designed so they are used in such a way that actually reduces VOC emissions. Innovative Products provisions are retained in the revised proposed rule.

23. Ref: OAR 340-22-860(1) Commenter: CTFA

Inspection. The proposed regulation provides that DEQ may inspect manufacturing facilities producing products for the Portland AQMA. This provision is intrusive, potentially threatening to the maintenance of trade secrets, unnecessary, and inconsistent with consumer product regulations of other states.

The Department considers the right to inspect the manufacture of products as being necessary for adequate enforcement of the rules. Through testing alone it is difficult to determine the amount of exempt volatile organic compounds (VOCs) present in a given formulation. Therefore, testing of products with exempt VOCs must frequently be followed by a review of formulation data submitted by the manufacturer at the Department's request. To verify that submitted data accurately reflect ingredients used in actual production, the ability to inspect the manufacturing process is necessary.

24. Ref: OAR 340-22-800 to 340-22-860 Commenter: CSMA

No Opposition. The Chemical Specialties Manufacturing Association (CSMA) represents over 400 companies in the consumer products industry, and is primarily concerned that consumer product regulations be both commercially and technologically feasible, and conform with regulations of other states. CSMA finds the proposed Consumer Products rule meets these criteria, and does not oppose rule adoption.

The Department acknowledges CSMA's lack of opposition.

25. Ref: OAR 340-22-800 to 340-22-860 Commenter: CTFA

Conditional Support. The Cosmetic, Toiletry, and Fragrance Association represents 500 companies in the personal care products industry, and believes nationally uniform consumer product regulations are the best way to reduce VOC emissions from this source. CTFA would prefer that the Department wait for EPA to develop its national rule, but recognizes the Department's effort to produce a regulation that is consistent with the requirements of other states. With modifications offered by CTFA's comments, the association supports the proposed

rules.

The Department notes CTFA's conditional support.

26. Ref: OAR 340-22-800 to 340-22-860 Commenter: RUDD, S-W

General Support. Two companies involved in the aerosol packaging industry offer general support of the proposed consumer products regulations citing their consistency with regulations developed in other states.

The Department acknowledges this support.

SPRAY PAINT

27. Ref: OAR 340-22-920(3) Commenter: RUDD

Bulk Paint Exemption. The proposed language for OAR 340-22-920(3) exempts spray paint assembled by adding bulk paint to aerosol containers of propellant and solvent. This wording should be clarified to indicate that the exemption is not to apply to products offered for resale, but is limited to in-shop touch-up during original production processes.

The Department agrees. To properly reflect the intent of the advisory committee's recommendation regarding this exemption, the revised proposed rule is modified to include this clarification.

28. Ref: OAR 340-22-930(2) Commenter: NPCA

Knowing Distribution. Under OAR 340-22-930, requirements to provide only complying products are more stringent for distributors than those for retailers. Retailers' obligations are limited to refraining from the knowing sale of noncomplying products, while the obligations of distributors lack the same qualification. Distributors' responsibilities should be limited only to taking "reasonable prudent precautions" to assure the coating is not improperly distributed, which mirrors Section 94523 of the California Aerosol Coatings regulation.

The Department disagrees with the suggested modification. Of the parties involved in the flow of goods to consumers, distributors are uniquely situated to efficiently control the types of products entering an area the size of the Portland Air Quality Maintenance Area (AQMA). For regulations which apply nationwide, the most efficient point of control would be the manufacturer which is the highest actor in the distribution chain that can exercise control over the broad market to

which a product is shipped. For a small area like the Portland AQMA, the primary responsibility to achieve the rule's objective could be placed on individual retailers. Each retailer could be required to check the labeled VOC content of each shipment of spray paint for comparison with the allowable limits. However, the Department feels this activity is much more efficiently and appropriately performed at the distribution level. The rule proposed for EQC adoption retains the provision originally proposed.

29. Ref: OAR 340-22-900 to 950 Commenter: RUDD

Economic Feasibility for Regional Manufacturers. There is concern that regional manufacturers are not currently selling into regulated markets (such as California), and that such companies may not be financially able to develop and carry both compliant and noncompliant product lines.

The Department is also concerned that regulations not place unnecessary burdens on the regulated community, and has attempted to avoid putting any given segment of the industry at disadvantage. For this reason the Department has provided for the possibility of compliance extensions under OAR 340-22-1110 for unusual circumstances, and has also developed standards which closely conform to the recently adopted California regulation.

In addition, the Department recognizes that EPA's national rule (which is expected to be proposed in early 1997) may differ from the proposed standard. For this reason the Department has also proposed OAR 340-22-1130 to require prompt review and possible repeal of this local measure when national rules are adopted.

30. Ref: OAR 340-22-900 to 950 Commenters: NPCA, S-W, RUDD

General Support. Spray paint manufacturers offer general support for the proposed rule for establishing standards which are technologically feasible, and consistent with the standards of other regulated areas.

The Department notes the industry's general support.

ARCHITECTURAL COATINGS

31. Ref: OAR 340-22-1000 Commenters: NPCA, ELRAP

Rule Applicability. The proposed regulation requires only "commercial applicators", (rather than all applicators) to use complying architectural coatings. As a matter of fairness, the same requirements should be established for all paint users without regard for their commercial status.

The Department disagrees. The proposed regulation intentionally distinguishes between commercial users and do-it-yourselfers for two reasons. The first is a recognition of the fact that commercial applicators apply far greater amounts of paint than typical noncommercial users. Due to their larger scale of regular use, commercial applicators can be expected to be more likely to import significant amounts of noncomplying coatings from outside the Portland AQMA boundary if no "user" requirements were in effect. Noncommercial users on the other hand can be expected to continue to purchase paints from local retail outlets, which are obligated to provide only complying coatings to the Portland area. The second reason is that extending the rule to all painters would be to add requirements that are beyond the means of the Department to enforce.

32. Ref: OAR 340-22-1010(18)

Commenter: NPCA

Colorant Definition. The proposed definition of colorant should be replaced with the following to conform to the definition expected to be used in EPA's national rule:

"Colorant' means a concentrated pigment dispersion of water solvent, and or binder that is added to an AIM coating or tint base to produce a desired color after the coating or tint base has been shipped from its place of manufacture. The term colorant includes clear colorants that are used to standardize the volume of tint bases for weight and measurement purposes before they are sold."

The Department agrees in part. The definition of colorant as described by the initial sentence of this suggested definition describes the material under consideration more accurately than the definition of the proposed rule. The second sentence of the suggested definition, however, does not seem to be consistent with regulations adopted by other states, and is unnecessary.

Colorants are typically added to cans of "tint base" at the point of sale in amounts that vary with the particular shades and hues produced. One reason for excluding colorants from VOC limits is to avoid the added complexity of calculating the exact amount of VOC added by this process. For cases where "clear colorant" is added to standardize volume and weight, the amount of colorant is made constant, and the previous problems of complexity are removed. Clear colorants which do not exceed the allowable VOC content of the tint base can still be added to standardize volume without penalty.

In addition, pure solvent (100% VOC) would meet the description of "clear colorant". As no limit is suggested for the total colorant that can be used, a VOC exclusion for this broad definition of colorants could become an avenue for adding uncontrolled amounts of VOCs in the future.

The revised proposed definition is modified as described.

33. Ref: OAR 340-22-1010(22) Commenter: NPCA

Concrete Protective Coatings Definition. The term "sub-zero" should be replaced with the word "freezing" in the third sentence of the proposed definition.

The Department agrees. This modification correctly reflects the purpose of the coating product and is incorporated in the revised proposed rule.

34. Ref: OAR 340-22-1010(32) Commenter: NPCA

Floor Coatings Definition. Change the word "abrasive" to "abrasion".

The suggested substitution is included in the revised proposed rule.

35. Ref: OAR 340-22-1010(39) Commenters: NPCA, TCA

Industrial Maintenance Coatings Definition. Remove the word "Industrial" and replace the list of qualifying conditions with the following:

- "a) Frequent scrubbing or abrading including mechanical wear and repeated cleaning with industrial agents and/or disinfectants;*
- b) Steam;*
- c) Continuous or repeated exposure to temperatures above 200°F;*
- d) Immersion in water or waste water or chronic exposure of surfaces to moisture condensation;*
- e) Exposure to chemicals such as acids, alkalies, organic solvents, oxidizing or reducing agents, salt spray, or other corrosive materials or mixtures, including exposure by immersions, splash, spill or fumes; and*
- f) Exterior exposure of metal structures and structural components."*

The Department does not agree. The definition of the proposed rule closely follows definitions used by California Air Quality Management Districts, and current EPA draft regulations.

The intent of the Industrial Maintenance category is to allow greater formulation flexibility for specialized high performance coatings traditionally used in industrial settings subject to unusually aggressive environments. Suggested changes would remove all reference to the "industrial" nature of the product category, and suggest criteria that are unnecessarily broad. For example, qualifying conditions include any surfaces exposed to "steam", or "frequent scrubbing", which arguably would include typical residential conditions such as household kitchens,

bathrooms and other surfaces not normally intended require the higher VOC limit.

The revised proposed rule retains the criteria listed in the original definition with the exception that a general reference to exposure to "extreme environmental" conditions is now added, and in OAR 340-22-1010(39)(c), 120°C is incorrectly converted to (200°F). This is corrected to show (250°F).

36. Ref: OAR 340-22-1010(42) Commenter: NPCA, ELRAP

Lacquer Definition. The definition for lacquer should not be limited to clear finishes, and should also allow opaque lacquer.

The Department agrees. The revised proposed rule includes this modification.

37. Ref: OAR 340-22-1010(53) Commenter: NPCA

"Not Otherwise Specified" Definition. The term Not Otherwise Specified (N.O.S.) properly refers to descriptions contained in the definitions of other coating categories, and has no bearing on the VOC limits of those categories. Reference to VOC limits in the definition should be removed.

The Department agrees. The definition included in the revised proposed rule is modified to read:

"Not Otherwise Specified" or "N.O.S." means not otherwise specified as a coating category.

38. Ref: OAR 340-22-1010(75) Commenters: ZRG, ZIN

Shellac Definition. The proposed definition allows the use of cheap natural substitutes such as Manilla Gum, Copal and Rosins for natural shellac. These substitutes do not match the superior performance characteristics of natural shellac for which a high VOC limit was originally allowed. The definition should be narrowed to include only coatings made of natural resin derived from secretions of the Lac beetle.

See response to Comment 39 directly below.

39. Ref: OAR 340-22-1010(75) Commenter: ELRAP

Shellac Definition. The definition for "Shellacs" should be broadened by deleting the word "natural". Many shellac products now make use of synthetic resins soluble in alcohol, either exclusively or in combination with natural resins.

Natural shellac, (with resin derived from the Lac beetle) is an expensive coating with unique performance characteristics for specialized applications. Uses include sealing knots in new wood, sealing in stains, sealing smoke odor from fire damage, and (because shellac is an FDA approved food additive), coatings for food handling areas and children's toys and furniture. Cheaper shellac substitutes do not offer the same level of performance and are more likely to be used for applications not requiring high VOCs. The Department therefore agrees with the related comment above (Comment 38) that the definition of shellac should be restricted to the natural Lac beetle resin. The revised proposed rule is modified accordingly.

40. Ref: OAR 340-22-1010(88) Commenter: NPCA

Waterborne Definition. Delete this definition as being unnecessary.

This definition is removed from the revised proposed rule.

41. Ref: OAR 340-22-1010(16),(33),(39),(54),(57). Commenter: ELRAP

Definitions Linked to "Use". Definitions for the following coating categories should be changed to remove the linkage to the circumstances for which they are "applied" or "used": (16) Clear Waterproofing Sealers & Treatments, (33) Flow Coatings, (39) Industrial Maintenance Coatings, (54) Nuclear Power Plant Coatings, and (57) Opaque Waterproofing Sealers & Treatments.

These categories should properly be defined with reference to either the purposes for which they are formulated and recommended, or with reference to specified compositional or performance criteria. Retaining the words "used" or "applied" would mean no coating could meet the definition until after it is applied.

The Department agrees that the definitions cited are better served by the term "formulated and recommended for". This modification clarifies the responsibilities of coating manufacturers which could otherwise be held accountable for the use to which others put their products. These definitions are therefore modified as suggested in the rule proposed for EQC adoption. However, the Department does wish to avoid the misuse of coatings for purposes other than those for which they are formulated and recommended. Therefore, the rule proposed for EQC adoption is also revised to add at OAR 340-22-1030(4)(b) a requirement that commercial applicators use coatings that are consistent with the coating category for which they were formulated. With this requirement, use for a purpose covered by a different coating category (including the "Not Otherwise Specified" categories) would be subject to the most restrictive limit provisions.

42. Ref: OAR 340-22-1020 Commenter: JMW

Maintain High Quality Coatings. Regulations should avoid provisions that would restrict the use of high durability coatings such as: alkyd primers, spar urethanes, spar varnishes, boiled linseed oil & thinner for wood preservatives, and high solids acrylic latexes. Use of coatings with high amounts of VOC and low solids content such as lacquer should be discouraged.

Maintaining the quality of architectural coatings has been an important criterion during development of the proposed rule. On average, the rule will lead to improved coating quality as much of the solvent (which is relatively cheap) is replaced with more expensive solids which are responsible for a coating's performance. Of the specific coatings specified, all will continue to be allowed by the proposed rule with the exception of the linseed oil & thinner.

43. Ref: OAR 340-22-1020(1) Commenter: ELRAP

Lacquer Stains. A new category should be added for Lacquer Stains and defined as "semitransparent stains formulated and recommended specifically for use in conjunction with clear lacquer finishes and lacquer sanding sealers". The category should be assigned a VOC limit of 800 grams per liter.

The Department agrees primarily. The rule proposed for EQC adoption is revised to include Lacquer Stains as a new coating category. However, the Department believes the VOC limit proposed in the NPCA model rule to be the more appropriate level of control, and therefore has included a limit of 780 g/l for the new category in the revised proposed rule.

44. Ref: OAR 340-22-1020(1) Commenter: ELRAP

Non-Flat Coatings Limit. The VOC limit for Non-Flat Coatings should be raised from 380 to 400 g/l. Because survey data from which VOC reductions are calculated are listed in 50 gram increments, no additional reductions can be attributed for the 20 gram difference. Also, a limit of 400 g/l will allow manufacture of a higher quality coating.

The Department disagrees. The proposed Non-Flat limit of 380 g/l represents the VOC limit recommended by the industry in the "Model Rule" developed by the National Paint and Coatings Association. VOC reduction credits can be calculated between points included in the industry survey by interpolation.

45. Ref: OAR 340-22-1020(1) Commenter: ELRAP

Primers, Sealers & Undercoaters. The proposed category for "Primers and

Undercoaters" should be combined with the category for "Sealers" to form a single category of "Primers, Sealers & Undercoaters" with a limit of 400 g/l. This is appropriate because most primers are sealers, most sealers are primers, and both are used as undercoaters.

The Department disagrees. Previous regulations (SCAQMD and Jefferson Co. KY) listed all three coatings as a single category with a VOC limit of 350 g/l. The proposed regulation reflects a relaxation of the limit for Sealers to 400 g/l that is consistent with the NPCA Model Rule. Recombining these coatings into a single category at the higher limit is unnecessary and erodes the VOC reductions produced by the rule. This suggestion is not incorporated in the revised proposed rule.

46. Ref: OAR 340-22-1020(1) Commenter: ELRAP

Quick-Dry Primers, Sealers & Undercoaters. The VOC limit for this category should be raised to 500 g/l to preserve a variety of specialized coatings for which no adequate substitutes exist.

The Department disagrees. The VOC limit of 450 g/l for this category is consistent with the value anticipated in EPA's national rule. This change is not included in the revised proposed regulation.

47. Ref: OAR 340-22-1020(1), & 340-22-1030(6)(a) Commenter: NPCA

Traffic Markings. The separation of requirements for traffic markings applied to public sector surfaces and those applied to commercial surfaces is a good compromise that NPCA supports. The specification of seasonal requirements for traffic markings in OAR 340-22-1030(6)(a) addresses the concerns voiced by the Advisory Committee and industry.

Traffic Marking Coatings are unique in this regulation for the establishment of requirements that apply primarily to coatings applied during the summer season. The Department acknowledges this support.

48. Ref: OAR 340-22-1020(1), Table B Commenter: NPCA

Low Solids VOC Limits. With the VOC limits for Clear and Semitransparent Stains & Wood Preservatives set at 550 g/l, Low Solids categories listed in Table B are not needed.

The Department agrees. Table B and related definitions are deleted from the revised proposed rule.

49. Ref: OAR 340-22-1020(2)(a)(B) Commenter: ELRAP

Lacquer Exemption from Most Restrictive Limits. Lacquer should replace Lacquer Sanding Sealers in the list of exemptions from the "most restrictive limits" clause because pigmented lacquers are sometimes used as primers, sealers and undercoaters.

The Department agrees. The most restrictive limit exemption for lacquer sanding sealers applies to the relatively narrow circumstance in which this coating is used in conjunction with lacquer topcoats. The rule proposed for EQC adoption is revised to include this modification

50. Ref: OAR 340-22-1020(2)(a) Commenter: NPCA, TCM

Varnish on Floors. The proposed VOC limit of 450 g/l should be maintained for Varnish when applied to floors. This could be accomplished either by excluding Varnish from the definition of Floor Coatings, or by exempting Varnish used on floors from the "most restrictive limit" clause.

The Department agrees. The revised proposed rule is modified to include an exemption to the "most restrictive limit" clause for the narrow situation where Varnish is recommended for use as a Floor Coating.

51. Ref: OAR 340-22-1020(3)(b) Commenters: ELRAP, W-K

Small Container Exemption. The proposed regulation exempts coatings in containers "less than one quart". This exemption should be revised to exempt coatings of "not more than one quart", or "less than one liter".

The Department agrees. An exemption of containers of one quart or less is consistent with previous regulations. The proposed rule is revised accordingly.

52. Ref: OAR 340-22-1030 Commenter: MTM

Traffic Marking Transition Period. The sale of Traffic Marking coatings is combined with a hazardous waste disposal service whereby coating containers are returned to a coating manufacturer with residual amounts of unused paint. This paint is later used in the production of new coating batches. During transition from solvent-based to water-based coatings, solvent-based residual paint will be returned in amounts that cannot be consumed by the reduced amount of solvent coating production. While the ramifications of this situation are not fully understood, the Department's attention is called to this potential problem.

The Department acknowledges the potential problem, and notes several courses

of action are possible within the proposed rule. The manufacturer could: a) store the residue for coatings applied outside the summer season; b) produce coatings for use outside the Portland AQMA; c) phase-in water-based coatings before the 1997 season; or d) apply to the Department for a Compliance Extension under OAR 340-22-1110.

53. Ref: OAR 340-22-1030 Commenter: JMW

Correct Conditions of Use. Rules should reduce VOCs by restricting improper application conditions which reduce durability and cause more frequent repainting. These include lacquer applied to exterior surfaces or those subject to direct sunlight, and paints applied to incorrect or improperly prepared substrates.

Proper application of coatings does enhance reduction of VOCs, but it would not be feasible to specify application methods for all circumstances, and enforcement would be impractical. However the rule is modified to add a recommendation that coatings be applied as recommended by the manufacturer.

54. Ref: OAR 340-22-1030 Commenter: JMW

Spray Application. The Department should consider discouraging spray application of paint as a means of reducing VOC emissions from Architectural Coatings. Spray painting results in coating losses of 10 to 35% under the best conditions, and promotes the use of large amounts of VOCs (thinners) to reduce coating viscosity for easy spraying. Spray application also produces a porous paint film which traps moisture and speeds deterioration. This in turn leads to more frequent repainting and additional VOC emissions.

The Department agrees that spray methods may produce greater VOC emissions than manual methods such as brush or roller. These potentially higher emissions seem to be associated with greater use of diluting thinners, and more frequent repainting caused by a failure to consolidate or "tip in" the paint film by brush or roller following application. VOC emissions attributed to "overspray" losses seem to be equivalent or less than emissions attributed to unnecessarily thick coating films produced by manual application. (Construction estimating guides indicate spray methods on average use lower amounts of paint per square foot compared to hand methods including losses for overspray.)

However, a regulatory approach that focuses on application methods is fundamentally different than regulations established by other states and local air quality management agencies. Also, this approach will not be part of the national rule as EPA is authorized to regulate only coating manufacturers. The revised proposed rule avoids mandatory controls on spray application to provide greater consistency with the anticipated federal rule. The rule is modified, however, to

add a recommendation that coatings be applied as recommended by the manufacturer to increase their durability and benefit air quality by less frequent repainting. The Department will also consider ways to increase public awareness of these matters during implementation of this rule.

55. Ref: OAR 340-22-1000 to 340-22-1050 Commenters: NPCA, TMC

General Support. The proposed Architectural Coating regulation is considered economically and technologically reasonable, and is generally supported except as otherwise indicated.

The Department notes the general support of these commenters.

AREA SOURCE COMMON PROVISIONS

56. Ref: 340-22-1110 Commenter: CTFA

Compliance Extensions. CTFA supports a procedure for allowing companies to apply for an extension of the compliance date for those facing severe economic hardship, and also supports the proposed rule's recognition of compliance extensions granted previously by the California Air Resources Board (CARB).

The Department agrees that the compliance extension mechanism is needed to function as a safety valve for those facing unusual circumstances. Recognition of existing CARB compliance extensions removes administrative burdens from the Department as well as qualifying companies.

57. Ref: OAR 340-22-1130 Commenter: NPCA

Future Review. The paint manufacturing industry is deeply concerned that the proposed rule may prove to be inconsistent with the federal rule, and believes it is essential that the Future Review provision is included in the final rule.

The Department is prohibited from adopting prospective regulations, or those that depend on the future actions of another agency, and therefore cannot adopt an automatic "sunset" clause as some other agencies have done. However, the proposed rule includes a provision that requires a review of the Architectural Coating regulation once the national rule is finalized. The review is conducted with a view toward adjusting or repealing the Department's regulation in light of the national measure. The Future Review provision is maintained in the revised proposed rule.

ALL VOC AREA SOURCE RULES

58. Ref: OAR 340-22-700 to 340-22-1130 Commenter: OHD

General Support. The Oregon Health Division believes the proposed VOC Area Source Rules will have a substantial positive effect on the air quality of the Portland area. The Division supports both the general concepts and the particulars of the proposed rules without relaxation of requirements.

This broad support is noted. Rules proposed for EQC adoption include moderate revisions detailed above.

VOC AREA SOURCE RULES

Detailed Changes to Original Rulemaking Proposal
Made in Response to Public Comment

The following provides a comparison of rules that were modified upon evaluation of official public comments. Changes are listed in order of rule number in which they appear. Each change first shows the rule section or subsection as it was proposed for public comment. This is immediately followed by the revised section or subsection as it appears in the rules proposed for adoption by the Environmental Quality Commission.

MOTOR VEHICLE REFINISHING:1. Manufacturer Definition

No definition for Manufacturer was initially listed.

OAR 340-22-710(13) is now added as:

"Manufacturer" means the company, firm or establishment which is listed on the coating container. If the container lists two companies, firms or establishments, the manufacturer is the party which the coating was "manufactured for" or "distributed by", as noted on the product.

2. Multi-Color Coatings Definition

No definition for Multi-Color Coatings was initially listed.

OAR 340-22-710(19) is now added as:

"Multi-Color Coating" means a coating which is packaged in a single container that exhibits more than one color when applied, and is used to protect surfaces of vehicle cargo areas.

3. Person Definition

OAR 340-22-710(21) initially appeared as:

"Person" means the federal government, any state, individual, public or

private corporation, political subdivision, governmental agency, municipality, industry, partnership, association, firm, trust, estate, or any other legal entity whatsoever.

This is revised as OAR 340-22-710(23), and the word "industry" is deleted.

4. Portland AQMA

OAR 340-22-710(22) initially included no parenthetical comment to compare the Portland AQMA to the affected Oregon counties.

This definition is now revised as OAR 340-22-710(24) to read:

"Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)

5. Pretreatment Wash Primer

OAR 340-22-710(24) initially appeared as:

"Pretreatment Wash Primer" means a coating which contains no more than 12% solids, by weight, and at least 0.5% acid, by weight, which is used to provide surface etching and is applied directly to bare metal surfaces to promote corrosion resistance and adhesion.

This is revised as OAR 340-22-710(26) to read:

"Pretreatment Wash Primer" means a coating which contains at least 0.5% acid, by weight, which is used to provide surface etching and is applied directly to bare metal surfaces to promote corrosion resistance and adhesion.

6. Renamed Table

The Table of VOC Limits of OAR 340-22-720(1) initially was identified as "Table A".

All references to the table of VOC content limits in OAR 340-22-700 through 340-22-760 are now revised from "Table A" to "Table C".

7. Multi-Color VOC Limit

No VOC Limit for Multi-Color Coatings was initially listed.

OAR 340-22-720(1) Table C is revised to add:

Coating Type	VOC Content Limits* (lbs/gal)
Multi-Color Coating	5.7

8. Unused Symbol

The formula for VOC content limits following the table of OAR 340-22-720(1) initially appeared as:

$$\text{Pounds of VOC per gallon} = \frac{W_{\text{voc}}}{V_{\text{m}} - V_{\text{w}} - V_{\text{ec}}}$$

Where:

- W_{voc} = Weight of VOC in pounds, or the weight of all volatile compounds less the weight of water, less the weight of exempt compounds;
- W_{w} = Weight of water in pounds;
- V_{m} = Volume of material in gallons;
- V_{w} = Volume of water in gallons;
- V_{ec} = Volume of exempt compounds, in gallons.

This is now revised to delete:

W_{w} = Weight of water in pounds;

9. Manufacture Date

OAR 340-22-730(2) initially appeared as:

Shipment to the Portland AQMA. Except as provided in section (4) of this rule, no person shall knowingly sell, ship or provide a motor vehicle refinishing coating manufactured after January 1, 1996 for use within the Portland AQMA unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in OAR 340-22-720 when prepared in accordance with the manufacturer's instructions.

This is now revised to read:

Shipment to the Portland AQMA. Except as provided in section (4) of this rule, no person shall knowingly sell, ship or provide a motor vehicle refinishing coating after January 1, 1996 for use within the Portland AQMA unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in OAR 340-22-720 when prepared in accordance with the manufacturer's instructions.

10. Sale for Use Within the Portland-Vancouver Interstate AQMA

OAR 340-22-730(4) & (5) initially appeared as:

- (4) Sale for use outside the AQMA. Motor vehicle refinishing coatings which do not comply with the VOC limitations of OAR 340-22-720 may be sold for shipment to the Portland AQMA, or sold within Clackamas, Columbia, Marion, Multnomah, Washington, or Yamhill Counties if:
 - (a) The product is to be used outside the boundary of the Portland AQMA; and
 - (b) The purchaser provides written certification to the seller in the manner described by section (5) of this rule that the product is to be used outside of the Portland AQMA.
- (5) Purchase Certifications. When required by section (4) of this rule, certifications of intended use shall at a minimum contain the following information:
 - (a) Purchaser's name and address;
 - (b) Date of Purchase;
 - (c) Name of coating or coating system purchased;
 - (d) Type of coating;
 - (e) Quantity of coating purchased;
 - (f) Address of location where the coating will be used;
 - (g) A statement certifying that the coating will not be used within the Portland AQMA to the best of the purchaser's knowledge;
 - (h) Purchaser's signature.

This is now revised to read:

- (4) Sale for use outside the Portland-Vancouver Interstate AQMA. Motor vehicle refinishing coatings which do not comply with the VOC limitations of OAR 340-22-720 may be sold for shipment to the Portland AQMA, or sold within Clackamas, Columbia, Marion, Multnomah, Washington, or Yamhill Counties if:

- (a) The product is to be used outside the boundary of the Portland-Vancouver Interstate AQMA; and
 - (b) The purchaser provides written certification to the seller in the manner described by section (5) of this rule that the product is to be used outside of the Portland-Vancouver Interstate AQMA.
- (5) Purchase Certifications. When required by section (4) of this rule, certifications of intended use shall at a minimum contain the following information:
- (a) Purchaser's name and address;
 - (b) Date of Purchase;
 - (c) Name of coating or coating system purchased;
 - (d) Type of coating;
 - (e) Quantity of coating purchased;
 - (f) Address of location where the coating will be used;
 - (g) A statement certifying that the coating will not be used within the Portland-Vancouver Interstate AQMA to the best of the purchaser's knowledge; and
 - (h) Purchaser's signature.

11. Manufacturers' Recordkeeping

OAR 340-22-750(1)(a) initially appeared as:

Manufacturers of motor vehicle refinishing coatings sold in Oregon shall maintain records which demonstrate that the VOC content designated under OAR 340-22-730(1) is true and accurate. These records shall be maintained for at least two (2) years after a product is sold in Oregon, and may include, but are not limited to, product formulation data and test results using test methods specified in OAR 340-22-760.

This is now revised to read:

Manufacturers of motor vehicle refinishing coatings sold in Oregon shall maintain records which demonstrate that the VOC content designated under OAR 340-22-730(1) is true and accurate. These records shall be maintained for at least two (2) years after a manufacturer's sale of a product for use in Oregon, and may include, but are not limited to, product formulation data and test results using test methods specified in OAR 340-22-760.

12. Painters' Recordkeeping

OAR 340-22-750(1)(c) initially appeared as:

Persons who perform motor vehicle refinishing within the Portland AQMA shall maintain records for at least 2 years which are sufficient to allow determination of compliance with OAR 340-22-740. These records shall include, but are not limited to, manufacturer's instructions for preparation of coatings used and purchase information specifying the coating identification, quantity purchased and date of purchase.

This is now revised to read:

Persons who perform motor vehicle refinishing of on-road motor vehicles within the Portland AQMA shall maintain records for at least 2 years which are sufficient to allow determination of compliance with OAR 340-22-740. These records shall include, but are not limited to, manufacturers' instructions for preparation of coatings used and purchase information specifying the coating identification, quantity purchased and date of purchase.

CONSUMER PRODUCTS:

13. Construction and Panel Adhesive Definition

OAR 340-22-810(14) initially appeared as:

"Construction and panel adhesive" means any one-component household adhesive applied with caulking-type cartridges having gap filling capabilities, and which distributes stress throughout the bonded area resulting in reduction or elimination of mechanical fasteners.

This is now revised to read:

"Construction and panel adhesive" means any one-component household adhesive sold in containers of one gallon or less, having gap filling capabilities, and which distributes stress throughout the bonded area resulting in reduction or elimination of mechanical fasteners.

14. Consumer Product Definition

OAR 340-22-810(16) initially appeared as:

"Consumer product" means any substance, product, or article, held by any person, the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds, and which is included in the product categories listed in OAR 340-22-820(1). This does not include

fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, architectural coatings or aerosol spray paint.

This is now revised to read:

"Consumer product" means any chemically formulated product, or article, held by any person, the use, consumption, storage, disposal, or destruction of which may result in the release of volatile organic compounds, and which is included in the product categories listed in OAR 340-22-820(1). This does not include fuels, fuel additives, motor vehicles, non-road vehicles, non-road engines, architectural coatings or aerosol spray paint.

15. Resorcinol

OAR 340-22-810(45) initially appeared as:

"Household adhesive" means any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

This is now revised to read:

"Household adhesive" means any household product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, two part resorcinol resin based adhesive, or any other product with an adhesive incorporated onto or in an inert substrate.

16. Portland AQMA

OAR 340-22-810(65) initially included no parenthetical comment to compare the Portland AQMA to the affected Oregon counties.

This definition is now revised to read:

"Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)

17. Renamed Tables

The Tables of VOC and HVOC Limits of OAR 340-22-820(1) initially were identified as "Table A" and "Table B".

All references to the tables in OAR 340-22-800 through 340-22-860 are now revised from "Table A" to "Table D", and from "Table B" to "Table E".

SPRAY PAINT:

18. Portland AQMA

OAR 340-22-910(54) initially included no parenthetical comment to compare the Portland AQMA to the affected Oregon counties.

This definition is now revised to read:

"Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)

19. Renamed Table

The Table of VOC Limits of OAR 340-22-920(1) initially was identified as "Table A".

All references to the table of VOC content limits in OAR 340-22-900 through 340-22-950 are now revised from "Table A" to "Table F".

20. Bulk Paint Exemption

OAR 340-22-930(3) initially appeared as:

Exemption. Section (1) of this rule shall not apply to aerosol lubricants, mold releases, automotive underbody coating, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes, inks, leather preservatives, or spray paint assembled by adding bulk paint to aerosol containers of propellant and solvent.

This is now revised to read:

Exemption. Section (1) of this rule shall not apply to aerosol lubricants, mold releases, automotive underbody coating, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes, inks, leather preservatives, or spray paint assembled by adding bulk paint to aerosol containers of propellant and solvent used for minor finish repairs during the original manufacture of products.

ARCHITECTURAL COATINGS:

21. Clear Waterproofing Sealers & Treatment Definition

OAR 340-22-1010(16) initially appeared as:

"Clear Waterproofing Sealers & Treatments" mean coatings which are applied to porous substrates for the primary purpose of preventing the penetration of water and which do not alter the surface appearance or texture.

This is now revised to read:

"Clear Waterproofing Sealers & Treatments" mean coatings which are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which do not alter the surface appearance or texture.

22. Colorant Definition

OAR 340-22-1010(18) initially appeared as:

"Colorant" means a concentrated solution of dye or suspension of pigment used to color a tint base after the tint base has been shipped from its place of manufacture.

This is now revised to read:

"Colorant" means a concentrated pigment dispersion of water, solvent, or binder that is added to an architectural coating or tint base after the coating or tint base has been shipped from its place of manufacture.

23. Complying Coating Definition

OAR 340-22-1010(20) initially appeared as:

"Complying architectural coating" means a coating which complies with the VOC content limits of the appropriate table in OAR 340-22-1020.

This is now revised to read:

"Complying Architectural Coating" means a coating which complies with the VOC content limits of OAR 340-22-1020.

24. Concrete Protective Coatings Definition

OAR 340-22-1010(22) initially appeared as:

"Concrete Protective Coatings" mean high build coatings formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surface. These coatings are formulated to be primerless, one-coat systems which can be applied over form release compounds or uncured concrete. These coatings prevent spalling of concrete in sub-zero temperatures by providing long term protection from water and chloride ion intrusion.

This is now revised to read:

"Concrete Protective Coatings" mean high build coatings formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surface. These coatings are formulated to be primerless, one-coat systems which can be applied over form release compounds or uncured concrete. These coatings prevent spalling of concrete in freezing temperatures by providing long term protection from water and chloride ion intrusion.

25. Floor Coatings Definition

OAR 340-22-1010(32) initially appeared as:

"Floor Coatings" mean coatings formulated and recommended for application to flooring, including, but not limited to, decks, porches, and steps, and which have a high degree of abrasive resistance.

This is now revised to read:

"Floor Coatings" mean coatings formulated and recommended for application to flooring, including, but not limited to, decks, porches, and steps, and which have a high degree of abrasion resistance.

26. Flow Coatings Definition

OAR 340-22-1010(33) initially appeared as:

"Flow Coatings" mean coating materials used to maintain the protective coating systems present on utility transformers.

This is now revised to read:

"Flow Coatings" mean coating materials formulated and recommended to maintain the protective coating systems present on utility transformers.

27. Industrial Maintenance Coatings

OAR 340-22-1010(39) initially appeared as:

"Industrial Maintenance Coatings" mean high performance architectural coatings including primers, sealers, undercoaters, intermediate coats, and topcoats formulated for and applied to substrates exposed to one or more of the following conditions:

- (a) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
- (b) Acute or chronic exposure to corrosive, caustic, to acidic agents, or to chemical fumes, chemical mixtures or solutions;
- (c) Repeated exposure to temperatures above 120° C (200° F);
- (d) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or
- (e) Exterior exposure of metal structures and structural components.

This is now revised to read:

"Industrial Maintenance Coatings" mean high performance architectural coatings including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions:

- (a) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
- (b) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, chemical mixtures or solutions;
- (c) Repeated exposure to temperatures above 120° C (250° F);
- (d) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or
- (e) Exterior exposure of metal structures and structural components.

28. Lacquer Definition

OAR 340-1010(42) initially appeared as:

"Lacquers" mean clear wood finishes, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to cure by evaporation without chemical reaction, and to provide a solid, protective film.

This is now revised to read:

"Lacquers" mean clear or opaque wood finishes, including lacquer sanding sealers, formulated with cellulosic or synthetic resins to cure by evaporation without chemical reaction, and to provide a solid, protective film.

29. Lacquer Stains

No definition for Lacquer Stains was initially listed.

OAR 340-22-1010(43) is now added as:

"Lacquer Stains" mean interior semitransparent stains formulated and recommended specifically for use in conjunction with clear lacquer finishes and lacquer sanding sealers.

30. Low Solids Stains Definition

OAR 340-22-1010(43) initially appeared as:

"Low Solids Stains" mean wood stains containing one pound or less of solids per gallon (0.12 kilograms per liter) of coating material and containing water as at least half of the volume of the volatile portion of the liquid coating.

This is now deleted.

31. Low Solids Wood Preservatives Definition

OAR 340-22-1010(44) initially appeared as:

"Low Solids Wood Preservatives" mean coatings characterized by all of the following conditions:

- (a) Formulated to protect exposed wood from decay or insect attack;
- (b) Registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act;
- (c) Contains one pound or less of solids per gallon (0.12 kilograms per liter) of coating material; and,
- (d) Contains water as at least half the volume of the volatile portion of the liquid coating.

This is now deleted.

32. Noncomplying Coating Definition

OAR 340-22-1010(50) initially appeared as:

"Noncomplying Architectural Coating" means a coating which does not comply with the VOC content limits of the appropriate table in OAR 340-22-1020.

This is now revised as OAR 340-22-1010(49) to read:

"Noncomplying Architectural Coating" means a coating which does not comply with the VOC content limits of OAR 340-22-1020.

33. "Not Otherwise Specified" Definition

OAR 340-22-1010(53) initially appeared as:

"Not Otherwise Specified" or "N.O.S." means not otherwise specified as a coating for which a different volatile organic compound standard applies.

This is now revised as OAR 340-22-1010(52) to read:

"Not Otherwise Specified" or "N.O.S." means not otherwise specified as a coating category.

34. Nuclear Power Plant Coatings

OAR 340-22-1010(54) initially appeared as:

"Nuclear Power Plant Coatings" mean any protective coating used to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to service-life cumulative radiation exposure as determined by ASTM D 4082-83, relatively easy to decontaminate as determined by ASTM D 4256-83, and resistant to various chemicals to which the coatings are likely to be exposed as determined by ASTM D 3912-80. General protective requirements are outlined by the Department of Energy, formerly U.S. Atomic Energy Commission Regulatory Guide 1.54).

This is now revised as OAR 340-22-1010(53) to read:

"Nuclear Power Plant Coatings" mean any protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to service-life cumulative radiation exposure as determined by ASTM D 4082-83, relatively easy to decontaminate as determined by ASTM D 4256-83, and resistant to various chemicals to which the coatings are likely to be exposed as determined by ASTM D 3912-80. General protective requirements are outlined by the Department of Energy, formerly U.S. Atomic Energy Commission Regulatory Guide 1.54).

35. Portland AQMA

OAR 340-22-1010(61) initially included no parenthetical comment to compare the Portland AQMA to the affected Oregon counties.

This definition is now revised as OAR 340-22-1010(60) to read:

"Portland Air Quality Maintenance Area" or "Portland AQMA" is the Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone as defined in OAR 340-31-500. (The Portland AQMA includes portions of Clackamas, Multnomah and Washington Counties.)

36. Opaque Waterproofing Sealers & Treatments

OAR 340-22-1010(57) initially appeared as:

"Opaque Waterproofing Sealers & Treatments" mean coatings with pigments that are applied to porous substrates for the primary purpose of preventing the penetration of water and which alter the surface appearance and texture.

This is now revised as OAR 340-22-1010(56) to read:

"Opaque Waterproofing Sealers & Treatments" mean coatings with pigments that are formulated and recommended for application to porous substrates for the primary purpose of preventing the penetration of water and which alter the surface appearance and texture.

37. Sanding Sealers Definition

OAR 340-22-1010(73) initially appeared as:

"Sanding Sealers" mean clear wood coatings formulated and recommended for application to bare wood to seal the wood and to provide a coating that can be sanded to create a smooth surface. Sanding sealers that also meet the definition of lacquer sanding sealers shall not be considered in this category, but shall be considered to be in the lacquer category. Sanding sealers that also meet the definition of quick dry sealers shall be considered in this category, not in the quick dry sealer category.

This is now revised as OAR 340-22-1010(72) to read:

"Sanding Sealers" mean clear wood coatings formulated and recommended for application to bare wood to seal the wood and to provide a coating that can be sanded to create a smooth surface.

38. Shellac Definition

OAR 340-22-1010(75) initially appeared as:

"Shellacs" mean clear or opaque coatings formulated with natural resins soluble in alcohol (including, but not limited to, the resinous secretions of the lac beetle, *Lacifer lacca*), and that dry by evaporation without chemical reaction to provide a quick-drying, solid protective film that may be used for blocking stains.

This is now revised as OAR 340-22-1010(74) to read:

"Shellacs" mean clear or opaque coatings formulated solely with the resinous secretions of the lac beetle, (lacifer lacca), that are soluble in alcohol, and dry by evaporation without chemical reaction.

39. VOC Content Definition

OAR 340-22-1010(85) initially appeared as:

"VOC Content" means the weight of VOCs contained in a volume of architectural coating. For products listed in OAR 340-22-1020(1) Table A, VOC content shall be determined on a "VOC Per Liter - Less Water Basis" as described in section (86) of this rule. For products listed in OAR 340-22-1020(1) Table B, VOC content shall be determined on a "VOC Per Liter - Material Basis" as described in section (87) of this rule.

This is now revised as OAR 340-22-1010(84) to read:

"VOC Content" means the weight of VOCs contained in a volume of architectural coating. For products listed in OAR 340-22-1020(1) Table G, VOC content shall be determined on a "VOC Per Liter - Less Water Basis".

40. "VOC Per liter - Material Basis" Definition

OAR 340-22-1010(87) initially appeared as:

"VOC Per Liter - Material Basis" means the weight of VOCs per volume of coating material at the maximum thinning level recommended by the manufacturer, and before the addition of colorants added to tint bases, and shall be calculated as follows:

$$\text{VOC Content} = W_{\text{VOC}}/V_{\text{M}}$$

Where: W_{VOC} = weight of VOCs not consumed during curing, in grams
 V_{M} = volume of material prior to curing, in liters
curing, in liters.

This is now deleted.

41. Waterborne Definition

OAR 340-22-1010(88) initially appeared as:

"Waterborne Coating" means a coating which contains at least five percent water by volume.

This is now deleted.

42. Renamed Table

The first of two tables of VOC Limits of OAR 340-22-1020(1) was initially identified as "Table A".

All references to the first table of VOC content limits in OAR 340-22-1000 through 340-22-1050 are now revised from "Table A" to "Table G".

43. Lacquer Stains VOC Limit

No VOC limit for Lacquer Stains was initially listed.

OAR 340-22-1020(1) Table G (formerly Table A) is revised to add:

Coating Category	VOC (g/l)
Lacquer Stains	780

44. Footnote

The footnote following OAR 340-22-1010(1) Table A initially read:

*VOC limit of 250 grams per liter for Traffic Marking Paints applied July or August 1996.

This is now revised as a footnote following Table G to read:

*Prior to Jan. 1, 1997, a VOC content limit of 250 grams per liter applies to Traffic Marking Paints for Public Streets & Highways.

45. Low Solids VOC Limits

OAR 340-22-1020(1) initially included a table for Low Solids coatings and appeared as:

Table B

ARCHITECTURAL COATING VOC CONTENT LIMITS

VOC PER LITER - MATERIAL BASIS

Coating Category	VOC (g/l)
Low Solids Stains	120
Low Solids Wood Preservatives	120

In OAR 340-22-1000 through 340-22-1050, Table B and all references to Table B are now deleted.

46. Lacquer Exemption from Most Restrictive Limits

OAR 340-22-1020(2)(a)(B) initially appeared as:

Lacquer Sanding Sealers, which may be recommended for use as sanding sealers in conjunction with clear lacquer topcoats;

This is now revised to read:

Lacquer, which may be recommended for use as sanding sealer in conjunction with clear lacquer topcoats;

47. Varnish on Floors

OAR 340-22-1020(2)(a) initially listed no exemption from the most restrictive limits for varnish used on floors.

OAR 340-22-1020(2)(a) is now revised to add as 340-22-1020(2)(a)(G):

Varnish, which may be recommended for use as a floor coating.

48. Low Solids Table, Test Reference

OAR 340-22-1020(2)(b)(A) initially appeared as:

For coatings manufactured domestically containing post-consumer coating, compliance with the VOC limits of Table A or B of this rule shall be determined by the adjusted VOC content at the maximum thinning recommended by the manufacturer using the following equation:

$$\text{VOC}_{\text{ADJUSTED}} = \text{VOC}_{\text{ACTUAL}} \times [1 - (\text{Recycled\%/100})]$$

Where:

$\text{VOC}_{\text{ADJUSTED}}$ = The adjusted VOC content of a recycled coating product expressed as grams VOC per liter, less water.

$\text{VOC}_{\text{ACTUAL}}$ = The VOC content of the recycled coating product as determined by the formula of Section (4) of this rule with the exception that VOCs in colorants of post-consumer coatings shall not be excluded from the VOC determination.

Recycled % = The volume percent of the recycled coating product that is post-consumer coating as determined by subsection (B) of this section.

This is now revised to read:

For coatings manufactured domestically containing post-consumer coating, compliance with the VOC limits of Table G of this rule shall be determined by the adjusted VOC content at the maximum thinning recommended by the manufacturer using the following equation:

$$\text{VOC}_{\text{ADJUSTED}} = \text{VOC}_{\text{ACTUAL}} \times [1 - (\text{Recycled\%/100})]$$

Where:

$\text{VOC}_{\text{ADJUSTED}}$ = The adjusted VOC content of a recycled coating product expressed as grams VOC per liter, less water.

$\text{VOC}_{\text{ACTUAL}}$ = The VOC content of the recycled coating product as determined by procedures specified in OAR

340-22-1050(3) with the exception that VOCs in colorants of post-consumer coatings shall not be excluded from the VOC determination.

Recycled % = The volume percent of the recycled coating product that is post-consumer coating as determined by paragraph (B) of this subsection.

49. Colorant Exemption

OAR 340-22-1020(3)(a) initially appeared as:

Colorants added to tint bases by a retailer or user.

This is now revised to read:

Colorants added to tint bases by a retailer or commercial applicator.

50. Small Container Exemption

OAR 340-22-1020(3)(b) initially appeared as:

Coatings that are sold in containers with a volume less than one quart (32 fluid ounce or 0.95 liter) or in non-refillable aerosol containers.

This is now revised to read:

Coatings that are sold in containers with a volume of not more than one quart (32 fluid ounce or 0.95 liter) or in non-refillable aerosol containers.

51. Commercial Applicators

OAR 340-22-1030(4) initially appeared as:

Commercial Applicators. Except as provided in section (6) of this rule:

- (a) No commercial applicator shall, within the Portland AQMA, knowingly use or contract for the use of any noncomplying architectural coating manufactured after July 1, 1996;
- (b) All VOC-containing materials shall be stored in closed containers when not being accessed, filled, emptied, maintained, repaired or otherwise used.

This is now revised to read:

Commercial Applicators. Except as provided in section (6) of this rule:

- (a) No commercial applicator shall, within the Portland AQMA, knowingly use or contract for the use of any noncomplying architectural coating manufactured after July 1, 1996;
- (b) No commercial applicator shall, within the Portland AQMA, knowingly use any noncomplying architectural coating manufactured after July 1, 1996 in a manner inconsistent with the coating category for which the product is formulated and recommended;
- (c) All VOC-containing materials shall be stored in closed containers when not being accessed, filled, emptied, maintained, repaired or otherwise used.
- (d) It is recommended that architectural coatings be applied under the conditions and with the application techniques recommended by the coating's manufacturer.

AREA SOURCE COMMON PROVISIONS:

52. Compliance Extension Applicability

The first sentence of OAR 340-22-1110 initially appeared as:

Any person who cannot comply with the requirements specified in OAR 340-22-700 to 340-22-1050 by the applicable compliance date because of conditions specified in section (4) of this rule may apply in writing to the Department for a compliance extension of up to 3 years in renewable 1 year increments.

This is now revised to read:

Any manufacturer, as defined in OAR 340-22-810, who cannot comply with the requirements specified in OAR 340-22-700 to 340-22-1050 by the applicable compliance date because of conditions specified in section (4) of this rule may apply in writing to the Department for a compliance extension of up to 3 years in renewable 1 year increments.

CONSUMER PRODUCTS - AIM COATINGS ADVISORY COMMITTEE MEMBERS

<u>Name</u>	<u>Organization</u>	<u>Interest</u>
Tom Donegan (202) 331-1770	Cosmetic, Toiletry, and Fragrance Association (CTFA)	Producers' Association
Barry Ziman (202) 872-8110	Chemical Specialties Manufac- turers Association (CSMA)	Producers' Association
Keith DiBrino (503) 227-6497	Pacific Northwest Paint Council/Drew Paints	Paint Assoc. (Manufacturer)
Steve McCoid (503) 363-3768	Oregon Food Industries (OFI)	Grocers' Association
Barry Naone (503) 797-5617	Fred Meyer, Inc.	Retailer
Ken Thompson (503) 833-1000	United Grocers	Wholesaler
John Buckinger (503) 255-0190	Pacific Northwest Paint Council/Miller Paint	Paint Assoc. (Distributor)
Eugene Rosolie (503) 295-0490	Northwest Environmental Advocates	Environmental
Tim Raphael (503) 231-4181	Oregon State Public Interest Research Group (OSPIRG)	Environmental/ Consumer
Dave Shannon (503) 232-3171	Oregon Consumer League	Consumer
Ken Kauffman (503) 731-4015	Oregon Health Division	Indoor Air Quality
Jim Quinn (503) 797-1662	Metropolitan Service District ("Metro")	Solid Waste/ Recycling
Laurel Jamison (206) 284-5400	Rudd Company	Spray Paint Manuf. Assoc.
Doug Raymond (216) 498-6049	Sherwin-Williams	Spray Paint Manuf.

AUTO REFINISHING PARTICIPANTS

<u>Name</u>	<u>Organization</u>	<u>Interest</u>
Tom Ethen (503) 231-7817	PATA (Pacific Automotive Trades Association)	Industry
Al Elkins (503) 646-5360	OACA (Oregon Autobody Craftsman Association)	Industry
Susan Ferguson (503) 232-3600	ASA (Automotive Services Association)	Industry
Jim Sell (202) 462-6272	NPCA (National Paint & Coatings Association: Automotive Refinishing Coalition)	Paint Association
Ron Hilovsky (216) 671-7152	PPG Industries	Paint Manufacturers
Vern McCall (503) 639-1159	Kadel's Auto Body	Autobody Shop
Don Blazer (503) 245-9030	West Hills Body & Paint	Autobody Shop
Al Sinner (503) 239-0084	Autobody Warehouse Distributing	Paint Suppliers ("Jobbers")
Marcus Essig (503) 657-6958 x2354	Clackamas Commmunity College	Hobbyists
Don Nelsen (206) 573-2714	T&T Sales	Spray Gun Manufacturers

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
VOC Area Source Rules for the Portland Ozone Maintenance Plan
and Housekeeping Amendments

Rule Implementation Plan

Summary of the Proposed Rules

VOC Area Source Rules will apply to four categories of widely available products: Motor Vehicle Refinishing, Consumer Products, Aerosol Spray Paint, and Architectural Coatings. These rules will establish limits for the amount of Volatile Organic Compounds (VOCs) that can be used in products sold within the Portland Air Quality Maintenance Area (AQMA). Regulations will apply to manufacturers, distributors, retailers and Portland area commercial users. The requirements will also mandate the use of higher efficiency spray guns and spray gun cleaning equipment in most automotive repainting activities.

Housekeeping amendments will update the definition of VOC, and modify Categorical RACT ("Reasonably Available Control Technology) rules to remove a duplicative requirement. These amendments constitute a minor relaxation of permitting rules for the regulated community.

Proposed Effective Dates of the Rules

Motor Vehicle Refinishing	
Coating Requirements:	Jan. 1, 1996
Spray Guns & Cleaners:	June 1, 1996
Consumer Products:	Jan. 1, 1996
Spray Paint:	July 1, 1996
Architectural Coatings:	July 1, 1996
Housekeeping Amendments:	Upon Adoption

Proposal for Notification of Affected Persons

Notifications will be made primarily through industry trade associations, with supplemental direct mailings and distribution of pamphlets where indicated:

- Motor Vehicle Refinishing: National Paint & Coatings Assoc., Oregon Automotive Crafts Assoc., Pacific Automotive Trades Assoc., and Automotive Services Assoc., and pamphlets delivered to automotive paint stores to inform the affected public.
- Consumer Products: Chemical Specialties Manufacturers Assoc., The Cosmetic Toiletries & Fragrance Assoc., and Oregon Food Industries Assoc.
- Spray Paint: National Paint & Coatings Assoc., Oregon Food Industries Assoc.
- Architectural Coatings: National Paint & Coatings Assoc., Home Builders Assoc., Assoc. of General Contractors, Paint & Decorating Contractors of America, American Institute of Architects, Engineering Societies, Oregon Department of Transportation, and the local Painting Union. Printed pamphlets will be made available to local paint stores for public information.

DEQ staff will be available to speak at local trade association meetings, or other public gatherings.

Proposed Implementing Actions

DEQ implementation will be conducted by the Air Quality Planning Section at DEQ Headquarters from July to October 1995, when the program will be moved to the Air the Department's Northwest Regional office.

During the period before the effective dates of the rules, the Department will focus on the development of program forms and procedures, development of informational materials, notification of and consultation with the regulated communities, registration of complying products, and evaluation of applications for compliance extensions. As the rule effective dates come to pass, activities will transition to conducting on site inspections, sampling regulated materials, and testing of regulated materials at the DEQ Organics Lab.

Actions that need to be taken by the regulated community to comply with the Consumer Products, Spray Paint and Architectural Coatings apply only to products manufactured after the effective date. These requirements generally are:

Manufacturers

- Produce complying products after the effective date,
- Mark products with date of manufacture,
- Indicate whether a product complies through product labeling, product registration with DEQ, or information provided directly to distributors,
- Maintain records of product VOC content for 2 years,
- Provide VOC records to DEQ upon request.

Distributors

- Distribute complying products.

Retailers

- Sell complying products
- Withdraw from sale any products found to be noncomplying.

Users

- Commercial applicators of spray paint and architectural coatings must use complying products.

Regulated community actions required for the Motor Vehicle Refinishing rule are linked directly to the rule effective date. Requirements for these groups are:

Manufacturers

- Produce complying products,
- Provide instructions how product must be prepared in order to comply,
- Designate VOC content of product when properly prepared,
- Maintain records of product VOC content for 2 years,
- Provide VOC records to DEQ upon request.

Distributors

- Distribute only complying products to the AQMA after the effective date.

Retailers

- Sell only complying products for use within the AQMA after the effective date.

Users

- Painters may use only complying products after the effective date.
- Painters must use efficient spray guns and gun cleaning equipment after a second effective date.

Housekeeping Measures require no modification of existing implementation programs.

Proposed Training/Assistance Actions

Training of VOC Area Source program staff will be conducted through the California Air Resources Board (CARB) training program. Staff will attend the Fundamentals of Enforcement course, and may also participate in the CARB offerings for the inspection of consumer products and surface coating operations. Additional specialized training will not be required. No need for technical assistance training is foreseen.

March 23, 1995

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



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MAR 23 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

Dear Dave:

I am writing on behalf of the NPCA Automotive Refinish Coalition to provide a couple of final comments concerning the proposed refinish regulation. I understand that some individual members of the Coalition already have commented on the two matters that I address here.

As you know, as a general matter the Coalition supports the proposed rule as one that should achieve significant VOC reductions from the refinish industry while not imposing too great an economic or technological burden on the industry.

Nonetheless, there are two issues remaining that we believe should be addressed.

The Pretreatment Definition: The Coalition believes that the maximum 12% solids content requirement for the coating should be eliminated. This restriction has the effect of unnecessarily limiting the chemistries that would be available to formulate the coating. Perhaps more importantly it has the perverse effect of often requiring the end user to add solvent solely for the purpose of ensuring that the 12% solids requirement is met.

The worry that has motivated some regulators in California (e.g., the SCAQMD) to incorporate the solids limit is that with the material's relatively high VOC content and therefore more rapid drying capabilities, there may be incentives to improperly use the material as a primer surfacer or filler material. In answering this concern, one must first understand that the material is formulated to pacify metal, not to act as a primer surfacer or filler. As a result, it lacks certain essential properties of primer fillers or surfacers, the chief one being that when it is sanded, it leaves a smooth surface. The filler materials required for this property are simply not put in pretreatment wash primers. Additionally, as already noted the acid content of the material does not make it a good material to be applied in type of thick films associated with primer surfacers and fillers because of the increased possibility that the acid in the thicker film would not fully react before the application of the subsequent coating.


We recognize that some end users may improperly use the pretreatment as a primer surfacer or filler. When they do so, it is against the manufacturers' recommendations and any coating failures, e.g., the acid content attacks a subsequently applied coating, will not be under the manufacturers' warranties.

Recordkeeping Requirements: The recordkeeping requirements as specified for the manufacturers and sellers of automotive refinish products into the state need to be clarified. As presently worded, the provision could be interpreted to mean that the manufacturers would have to retain product formulation records for two years after the final sale of a product to an end user in the state. Manufacturers for the most part sell to middlemen distributors and some products can be held by the distributors for several years prior to a final sale to an end user. Additionally, the manufacturers do not know when the final sale occurs. Consequently, the provision as worded could impose on manufacturers the difficult burdens to retain the records for several years beyond their sale of the products to the distributors and to constantly monitor when the products are finally sold by the distributors. We suggest that the recordkeeping provision be reworded to make it clear that a manufacturer is required to retain records for two years after the first sale of a product by the manufacturer.

We appreciate the opportunity to comment on the regulation.

Additionally, I would like to take this opportunity to thank you and the other staff members that we have worked with over the last year in developing the proposal. The Coalition has dealt with a number of state and local agencies over the last several years, and I have to say on behalf of the Coalition that you and your colleagues are among the best. You kept us fully informed, you conducted excellent workshops that evidenced a great deal of prior thought and preparation, you brought into the process a fully representative group from industry, and you took the time to understand our positions and arguments.

Sincerely,



Jim Sell
Senior Counsel
Secretary, NPCA Automotive Refinish Coalition

SURFACE PROTECTION INDUSTRIES, INC.

March 22, 1995

Mr. David K. Nordberg
Oregon Department of
Environmental Quality
Air Quality Division
811 S.W. 6th Avenue
Portland, OR 97204

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MAR 23 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

RE: Proposed Rule 340-22-700
Motor Vehicle Refinishing Operations

Dear Mr. Nordberg:

Surface Protection Industries (SPI) would like to offer the following comments regarding your proposed Rule 340-22-700, Motor Vehicle Refinishing Operations.

COMPANY

Surface Protection Industries is a paint and coatings manufacturer based in Los Angeles, California. SPI's principal line of products consist of multicolor coatings. SPI manufactures unique multicolor coatings which contain two or more pigments with separate and distinct color particles which, when applied from a single container in a single application, form a variegated and textured surface. A sample of our product, as applied, is attached.

PRODUCT

Multicolor coatings possess characteristics superior to single-color paints in several different respects. The variegated color patterns formed by a multicolor coating permits patches and repairs to be performed at a fraction of the cost of single-color paints. The multicolor finish's "camouflage" effect avoids the environmental harm associated with repainting entire surfaces after the performance of spot repairs or maintenance. When spray applied, our coatings provide a durable, textured protective coating on many types of surfaces.

Corporate Headquarters
3440 E. 14th Street
Los Angeles, California 90023
(213) 965-9999
(213) 965-9667 Fax

Customer Service,
Manufacturing & Warehouse
3411 E. 15th Street
Los Angeles, California 90023
(213) 969-9923
(213) 963-8069 Fax

Offices & Distribution Center
400 Charter Way
N. Billerica, Massachusetts 01862
(508) 663-0050
(508) 663-8885 Fax

In addition, multicolor coatings are manufactured to be more wear-resistant than single color paints, affording a coating that is durable. Unlike single color paints, the multicolor coating can absorb minor scratches, nicks and other wear and tear without visibly affecting its finish. Currently, multicolor coatings comprise about 80% (percent) of SPI's business.

PRODUCT USE

Some principal uses are automotive topcoats and coatings used to line the cargo beds of pickup trucks and other utility vehicles, as a substitute for plastic truck bed liners. For this reason, regulations which affect the quality or consumer acceptance of multicolor coatings can adversely affect SPI's ability to compete with non-paint market substitutes.

VOLATILE ORGANIC COMPOUND (VOC)

The volatile organic compound (VOC) content of the various types of multicolor coatings is regulated by the South Coast Air Quality Management District (SCAQMD). As the air quality regulator for the four-county South Coast Air Basin, the SCAQMD is known as having among the strictest air quality restrictions in the nation. SPI's automotive multicolor topcoats are regulated under SCAQMD Rule 1151. Because of SPI's intensive efforts to reduce the VOC content of its multicolor products, while preserving their quality, SPI is able to satisfy these current stringent restrictions.

Despite being a relatively small company, over the past several years SPI has expended thousands of laboratory hours and hundreds of thousands of dollars in efforts to reduce the VOC content of its multicolor coatings consistent with customer demands for product quality. To date, these efforts have not been totally successful for those multicolor products specific to automotive refinishing. SPI has conducted extensive market testing of lower VOC multicolor automotive coatings. At this time, the only marketable product has a VOC concentration of 5.70 pounds per gallon.

SPI's initiatives have allowed it to achieve remarkable reductions in the VOC content of most of its multicolor coatings, and to comply with current SCAQMD VOC content requirements for its products relative to the architectural community. Moreover, SPI's efforts continue on a intensive basis with the goal of achieving even greater VOC reduction while maintaining product quality and ability to compete with market substitutes.

SPI believes that imposition of VOC limits on its multicolor coatings more stringent than those imposed under SCAQMD rules is both unwarranted, and would render SPI technologically and economically unable to serve its market.

Although the proposed VOC content restrictions would apply equally to paints and multicolor coatings, they would disproportionately affect SPI's line of multicolor coatings. Unlike other coatings and paints, SPI's multicolor products tend to compete directly with non-paint substitute products. Thus even broad based VOC restrictions tend to place SPI's products at a competitive disadvantage. For example, SPI's automotive multicolor topcoats are seen by the market as a substitute for plastic pickup truck cargo bed liners. The consequence is that VOC restrictions on coatings which make SPI unable to provide the product performance characteristics demanded by the market, puts SPI's products at a unique competitive disadvantage. If overly restrictive VOC limits make SPI's products less attractive, the customer may choose alternatives that are both less satisfactory to it, and also more harmful to the environment.

CONSUMER DEMAND/MARKETING

Pick-up trucks and similar sports/utility vehicles are an important segment of the new vehicle market. While in the past consumers bought them for off-road, towing, or other heavy duty use, many consumers now acquire these vehicles as their primary car, the one used for commuting, and for driving to family and social occasions. Thus, the aesthetic quality of such vehicles has become a principal consideration.

At the same time, consumers want to use their trucks for hauling, moving furniture and other large purchases, and for various recreational and sports purposes. This conflict has created a burgeoning secondary market for products which protect the truck bed from aesthetic deterioration due to scratches, dings, and weathering. At present, the most prevalent product in this category is the plastic truck bed liner. The plastic truck bed liner is molded in one piece and set into the cargo bed of the truck. It provides protection, but wears out in three to five years, and then must be discarded, ultimately, in a landfill. The liner has the additional disadvantage of trapping moisture next to the cargo bed, causing premature corrosion. Most important, the aesthetic appeal of the truck bed liner is limited. While the truck's original finish may be protected, it is also covered and hidden by the liner. And, the liner itself, like the Ford Model T., only comes in black.

As a consequence of the foregoing, there is a fast growing market, which SPI serves, for multicolor coatings which provide excellent durability and protection to the truck bed, while providing the consumer an aesthetically superior multicolor finish. Thus to the extent SPI is able to compete in this market, and expand their market share, the production and solid waste disposal impacts of plastic truck bed liners will be diminished.

Mr. David K. Nordberg
March 22, 1995

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TECHNICAL ANALYSIS

As noted above, SPI currently complies with the SCAQMD's VOC limits for its automotive multicolor topcoats. Recently, while proposing amendments to Rule 1151, the SCAQMD did a technical analysis of the entire market for automotive paints and coatings. As a result of its analysis, while proposing the tightening of VOC limits for nearly all other automotive coatings to 3.50 pounds per gallon, the District proposed creating a new category for multicolor coatings which, in view of their unique properties and characteristics, were allowed a maximum VOC limit of 5.70 pounds per gallon. In support of its recommendations, the District's Staff Report made this finding: "To date, efforts by the manufacturer (SPI) to reduce the VOC content of the multicolored multi-stage topcoat system have proved unsuccessful as the lower VOC topcoat system has failed to meet the vigorous performance characteristics required by their customers." (SCAQMD Staff Report RE: Amendments to Rule 1151, October, 1994). While SPI continues with its efforts to reduce the VOC content of its multicolor coatings, at this time, it does not appear that it can meet its customers' performance demands with coatings with materially lower VOC content than 5.70 pounds per gallon.

CONCLUSIONS

Therefore, as the Oregon Department of Environmental Quality Board considers the proposal for the new Rule 340-22-700, we request that they include multicolor coatings as a separate and unique category, with VOC limits not to exceed 5.70 pounds per gallon.

Surface Protection Industries would appreciate the opportunity to work with you through the regulatory process. Please advise when we can further discuss these comments.

Very truly yours,



Leon Cole, Senior Vice President
and General Manager

LC:eh

cc: Robert C. Davidson, Jr.
President

William Freedman, Attorney at Law
McCutchen, Doyle, Brown & Enersen

Attachments

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AIR QUALITY DIVISION
Oregon Department of Environmental Quality



Paints

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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MARCH 27 1995
AIR QUALITY DIVISION

Mr. David Nordberg
DEPARTMENT OF ENVIRONMENTAL QUALITY
Air Quality Division
811 SW 6th Avenue, 11th Floor
Portland, Oregon 97204-1390

ICI Paints
801 Canterbury Road
Westlake
Ohio 44145 U S A
Telephone (216) 835-7050
Fax (216) 835-7034

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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March 21, 1995

AIR QUALITY DIVISION

Dear Mr. Nordberg:

We have taken some time to review the draft VOC rules for the automobile refinish industry and would like to share our comments with you. I have assembled our comments in the same format as the proposed rule for ease of reference.

Applicability OAR 340-22-700

Item (1) "Who sells, offers for sale, distributes or manufactures motor vehicle refinishing coatings for sale in Oregon"

To avoid any confusion in reading and interpreting this rule, it may make sense to limit the application to the six counties referenced in the rule rather than the entire state of Oregon.

Definitions OAR 340-22-710

Item (22) "Portland Air Quality Maintenance Area"

The definition does not identify the counties and/or cities covered by the Portland AQMA. Since Portland AQMA is used several times throughout the rule, it would be helpful to know if all six counties referenced are covered by the Portland AQMA.

Item (24) "Pretreatment Wash Primer"

The percent solids for this category should be raised to 15% from the stated 12%. The 15% value is a much more realistic and practical level.

Coating Standards and Exemptions OAR 340-22-720

Item (1) Table A " VOC Content Limits of Motor Vehicle Refinishing Coatings"

Do these VOC content limits apply to:

- a) All refinish coatings sold in Oregon or just the Portland AQMA?
- b) Refinishing of Non-Road Vehicles as well as On-Road Vehicles?



Coating Standards and Exemptions OAR 340-22-720 (continued)

Item (1) VOC Content Limits

Will the enforcement and interpretation of these limits be based on the calculated VOC content or the measured VOC content. We would like to see the measured VOC content as the primary basis since there is an EPA approved testing method

Coating Standards and Exemptions OAR 340-22-720

Item (1) W_w = Weight of water in pounds

The equation does not reference W_w so there is no need for it in the explanation of symbols.

Requirements for Manufacture and Sale of Coatings OAR 340-22-730

Item (1) "Any person who manufactures motor vehicle refinishing coatings for sale within Oregon after January 1, 1996 shall:"

To avoid any confusion in reading and interpreting these rules, it may make sense to limit this requirement to the Portland AQMA.

Item (3) "...no person shall sell motor vehicle refinishing coatings after January 1, 1996 within Clackamas, Columbia, Marion, Multnomah, Washington or Yamhill Counties unless the VOC content of the product as designated by the manufacturer complies with the VOC content limits in OAR 340-22-720..."

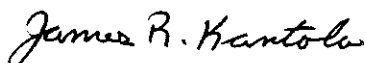
This sentence should be changed to read: "no person shall sell motor vehicle refinishing coatings manufactured after January 1, 1996..." This would allow retailers and shops to use the remainder of their stock rather than shipping any non-compliant products back to the distributors or manufacturers.

Requirements for Motor Vehicle Refinishing in Portland AQMA OAR 340-22-740

The opening statement specifies only on-road vehicles for this section. Are non-road vehicles exempt from the VOC content limits, equipment requirements, and recordkeeping?

I hope you find these comments helpful in the development of your final rule. We want to thank you for allowing us the opportunity to share our thoughts and concerns in reviewing the proposed automobile refinish regulation and its affect on the industry.

Sincerely,



James R. Kantola
Regulatory Specialist

MAR 24 '95

8:50

FROM ICI REFINISH

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Paints



ICI Autocolor 801 Canterbury Road, Westlake, OH 44145 USA
Telephone (216) 835-7050

Fax Cover Sheet

FAX (216) 835-7034

To

DAVE NORDBERG

Company Name

DEQ AIR QUALITY DIVISION

From

JIM KANTOLA

Date

Time

3/24/95

No. of pages following cover note

1

Cover note

REVISED COMMENT.

Late Comment

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MAR 24 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

In the event of poor transmission:
call (216) 835-7050

**Paints**

Mr. David Nordberg
DEPARTMENT OF ENVIRONMENTAL QUALITY
Air Quality Division
811 SW 6th Avenue, 11th Floor
Portland, Oregon 97204-1390

March 23, 1995

ICI Paints
801 Canterbury Road
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Ohio 44145 U S A
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*Late
Comment*

Dear Mr. Nordberg:

Upon further review of the proposed automotive refinish rules and discussions with our technical team, I would like to revise one of my comments in my March 21, 1995 letter. The proposed rule defines "Pretreatment Wash Primer" as a coating which contains no more than 12% solids, by weight. We feel that the percent solids requirement should be eliminated completely. In order to obtain a 12% solids or less, the coating would have to be thinned and thus increasing the VOC's being emitted. Since the objective of these rules is to minimize the emissions of volatile organic compounds, unnecessary thinning would seem to defeat that objective.

If the Department of Environmental Quality feels that a certain percent solids is necessary for pretreatment wash primers, then I would suggest a level similar to California's South Coast Air Quality Management District Rule 1151. Rule 1151 defines a pretreatment wash primer with a percent solids of not more than 16%, by weight.

I hope that this revision has not caused any confusion with our written comments and their intent.

Should you have any questions, please contact me at (216) 835 7134 and I would be happy to discuss them with you.

Sincerely,

James R. Kantola
Regulatory Specialist

Automotive Refinish

February 22, 1995

Mr. David Nordberg
Department of Environmental Quality
Air Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204

Dear Mr. Nordberg:

On behalf of BASF Corporation, a major supplier of automotive refinish coatings, I am requesting you give strong consideration to the following changes to the proposed regulation for Motor Vehicle Refinishing (OAR 340-22-700).

Definitions: OAR 340-22-710 (24)

Present definition for Pretreatment Wash Primer states that the coatings in this category must be limited to no more than 12% solids by weight and a maximum V.O.C. of 6.5 lbs/gal for the category as stated in Table A. Products that are used for this application traditionally have a weight solids content of 20-25% at application and fall below 6.5 lbs/gal V.O.C. To achieve the weight solids of maximum of 12% for many products will result in greater than the 6.5 lbs/gal maximum V.O.C. specified in your regulation. For those that will comply with the requirements, the resultant V.O.C. will be considerably higher than what would result if you did not have the solids restriction. With the exception of California's SCAQMD Rule 1151, none of the current regulations or proposals for regulating automobile refinishing in the United States have solids restrictions on Pretreatment. SCAQMD, because of unfounded fear of abuse of use of Pretreatment as Primer Surfacer, has maximum solids limits. However, even SCAQMD has acknowledged the unfeasibility of 12% maximum solid limit coupled with V.O.C. requirement of 6.5 lbs/gal and have revised their maximum weight solids requirement to 16% solids, (see attached from current SCAQMD Rule 1151, which was approved 12-9-94).

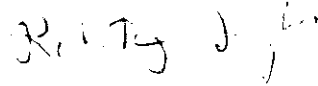
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AIR QUALITY DIVISION
Dept. Environmental Quality

It is my strong suggestion that the Department of Environmental Quality eliminate the solids limitation specified for Pretreatment coatings definition OAR 340-22-710 (24). If you still choose to have maximum solids requirement in your rule, then it must allow a maximum of 16% by weight for the category if manufacturers are not to be forced to produce products that would be unique to use in Portland AQMD, which is not economically feasible.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Handwritten signature of Robert J. Inglis in black ink.

BASF Corporation
Robert J. Inglis
Director-Product Planning

RJI/bt
Attachment

Proposed Amended Rule 1151 (Cont.)

- ~~(35)~~(33) **PRETREATMENT COATING** is a coating which contains no more than ~~42~~ 16 percent solids, by weight, and at least 1/2-percent acid, by weight, is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion for subsequent coatings.
- ~~(36)~~(34) **PRIMER** is a coating applied for purposes of corrosion resistance or adhesion of subsequent coatings.
- ~~(37)~~(35) **PRIMER SEALER** is a coating applied prior to the application of a topcoat for the purpose of color uniformity, or to promote the ability of an underlying coating to resist penetration by the topcoat.
- ~~(38)~~(36) **PRIMER SURFACER** is a coating applied for the purpose of corrosion resistance or adhesion, and which promotes a uniform surface by filling in surface imperfections.
- ~~(39)~~(37) **ROCKER PANEL** is the panel area of a motor vehicle which is no more than ten inches from the bottom of a door, quarter panel or fender.
- ~~(40)~~(38) **RUBBERIZED ASPHALTIC UNDERBODY COATING** is a coating applied to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of the motor vehicle itself, for the purpose of sound deadening or protection.
- ~~(41)~~(39) **SOLVENT CLEANING OPERATIONS** is the removal of loosely held uncured adhesives, uncured inks, uncured coatings, and contaminants which include, but are not limited to, dirt, soil, and grease from parts, products, tools, machinery, equipment, and general work areas. Each distinct method of cleaning in a cleaning process which consists of a series of cleaning methods shall constitute a separate solvent cleaning operation.
- ~~(42)~~(40) **SPECIALTY COATING** is any of the following coatings: adhesion promoters, uniform finish blenders, elastomeric materials, anti-glare safety coatings, impact resistant coatings, rubberized asphaltic underbody coatings, water hold-out coatings, weld-thru coatings, and bright metal trim repair coatings.
- ~~(43)~~(41) **SPOT REPAIRS** are repairs to motor vehicles in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.



CHLOROBENZENE PRODUCERS ASSOCIATION

1100 NEW YORK AVENUE, N.W., SUITE 1090, WASHINGTON, D.C. 20005 • (202) 414-4100

March 21, 1995

VIA FEDERAL EXPRESS

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

CHLOROBENZENE PRODUCERS ASSOCIATION
COMMENTS ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S
PROPOSED REGULATIONS REGARDING THE
CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS FROM
CONSUMER PRODUCTS

The Chlorobenzene Producers Association ("CPA") submits the following comments on the Oregon Department of Environmental Quality's proposed regulations regarding volatile organic compound ("VOC") emissions from consumer products. CPA is an industry organization composed of United States producers of chlorobenzene chemicals, including para-dichlorobenzene ("PDCB"). CPA members manufacture PDCB for use both as a slow-releasing air freshener product and as a continuous-acting registered pesticide for long-term control of moths, moth larvae and carpet beetles to protect clothing and other fabrics.

CPA supports the proposed regulation's treatment of PDCB-containing products. Proposed OAR Section 340-22-820(3)(d) properly exempts "[a]ir fresheners and

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insecticides containing at least 98% paradichlorobenzene" from maximum VOC content restrictions. CPA encourages the DEQ to adopt the regulations as proposed. CPA representatives would welcome the opportunity to provide further information to explain or supplement these comments at the request of DEQ officials.

I. The Proposal Properly Exempts PDCB Products From VOC Content Limits.

- A. The proposal takes into account the fact that VOC content standards are technologically infeasible as applied to PDCB products because such products cannot practically be reformulated.**

PDCB serves as the active pesticidal or deodorant ingredient in PDCB products, and the moth control and deodorant effects of such products depend upon the gradual volatilization of sufficient quantities of PDCB. For this reason, PDCB-based products typically consist of more than 98 percent PDCB and a small amount of fragrance, in order to provide maximum effects, while minimizing useless inert ingredients. In fact, PDCB products are virtually all active ingredients.

CPA is advised by manufacturers of end use PDCB products that it is not technologically possible to reduce the VOC content of PDCB products. As discussed above, the

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effectiveness of such products depends upon sustained, gradual evaporation of PDCB, and evaporation will only occur if the PDCB is permitted to volatilize. Indeed, studies have shown that reducing evaporation of PDCB will reduce the effectiveness of PDCB moth control products. Combination of PDCB with other non-volatile compounds would reduce the release of PDCB and thereby impair utility as a pesticide and space deodorant.

- B. The proposal recognizes that VOC content standards for PDCB products would neither reduce emission of PDCB nor promote attainment of ambient air quality standards for ozone.**

Even if it were possible to reduce the PDCB content of products, the reformulated PDCB products' effectiveness would be reduced correspondingly. Because efficacy is a function of the airborne concentration of PDCB in the area or container in which it is placed, instructions would have to call for use of increased quantities of any lower VOC formulation.

As a result, reduced VOC content would not lead to reduced VOC emissions. Rather, effective moth control and/or deodorizing would simply require the use of more of the product to achieve the same airborne concentration of PDCB in any given area. Even if it were possible to

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Page 4

reformulate PDCB products, reformulation would simply increase the amount of diluent or other inert material which would remain as waste after the useful portion of the product (i.e., the PDCB) is expended.

- C. **The proposal appropriately prevents removal of irreplaceable moth control and deodorant products from the market due to unworkable VOC content standards.**

Because PDCB products function by gradual evaporation of the essential ingredient, they offer sustained action which other air fresheners and pesticides with lower VOC content cannot offer. Therefore, there are no feasible alternatives to PDCB products, and VOC content restrictions for PDCB products would deprive consumers of the only products providing extended protection against moth damage and unpleasant odors. The lack of feasible alternatives to PDCB products was a fact central to the California Air Resources Board's determination to exempt PDCB products from California VOC content limits for consumer products. See Cal. Admin. Code, tit. 17, § 94510(g).

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II. The Proposed Treatment Of PDCB Products Is Consistent With The Regulatory Treatment Of The Products In Other States.

The regulatory exemption proposed by the DEQ promotes consistent treatment of PDCB products in interstate commerce because the proposal parallels regulatory provisions adopted by the California Air Resources Board ("CARB"), the Texas Natural Resource Conservation Commission ("TNRCC"), the Massachusetts Department of Environmental Protection, and the Rhode Island Department of Environmental Management. The CARB, TNRCC and Massachusetts regulations governing VOC content in consumer products expressly exempt "air fresheners and insecticides containing at least 98% paradichlorobenzene," and the Rhode Island regulations use slightly different terms to establish the same exemption. Cal. Admin. Code, tit. 17, § 94510(g); Tex. Admin. Code, tit. 30, § 115.617(g); Mass. Regs. Code tit. 310, § 7.25(12)(d)(1)(b); R.I. Air Pollution Control Reg. § 31.2.3(c). Corresponding regulations promulgated by the New York Department of Environmental Conservation impose no VOC content limits for PDCB products (or any other air fresheners or insecticides). N.Y. Comp. Codes R. & Regs. tit. 6, Part 235.

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Page 6

The Texas Natural Resources Conservation Commission offered the following explanation for its recently-promulgated final regulation expressly exempting "air fresheners and insecticides containing at least 98% paradichlorobenzene" from VOC content limits:

Reformulation of paradichlorobenzene (PDCB) products, which typically contain greater than 98% PDCB, is not currently technically feasible Insecticides and air fresheners containing greater than 98% PDCB are not currently regulated for air quality reasons by any jurisdiction in the United States. PDCB . . . effectiveness depends on its ability to volatilize. Reformulating PDCB products to lower their volatility will reduce their effectiveness.

19 Tex. Reg. 3703, 3734 (May 13, 1994). As noted by the TNRCC, all other state agencies that have addressed the issue have appropriately recognized the need to exempt PDCB products from VOC content limitations. Also recognizing the need for consistency among states regulating VOC content in consumer products, a coalition of state and local air pollution administrators has recommended that "[s]tate and local agencies should consider adoption of the California consumer products regulations," and states such as Texas,

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Page 7

Rhode Island and Massachusetts have taken that recommended approach.^{1/}

Notably, the United States Environmental Protection Agency recently proposed to adopt the existing CARB exemption for PDCB products as an element of the Federal Implementation Plans for several ozone non-attainment areas in California. See 59 Fed. Reg. 23492 (May 5, 1994) (proposed 40 C.F.R. § 52.2957(a)(4)(vii)).

Like the DEQ's proposal, all other state and federal agencies that have addressed the issue have appropriately recognized the need to exempt PDCB products from VOC content limitations. CPA supports the DEQ's proposal to adopt regulations which further the sensible and consistent regulatory treatment of PDCB products.

^{1/} The recommendation that responsible state and local agencies follow California's lead in regulating VOC emissions from consumer products was set forth in a September 1993 publication of the State and Territorial Air Pollution Program Administrators ("STAPPA") and the Association of Local Air Pollution Control Officials ("ALAPCO") entitled Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options.

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Page 8

CONCLUSION

For the foregoing reasons, CPA supports the DEQ's proposed regulatory treatment of PCB-containing consumer products. CPA encourages DEQ officials to contact one of the individuals listed below if additional information is required to supplement these comments.

Respectfully submitted,

Chlorobenzene Producers Association
1100 New York Avenue, NW
Suite 1090
Washington, D.C. 20005

Of Counsel:

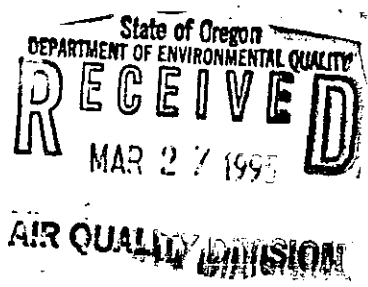
R. Bruce Dickson
Randall M. Stone
Paul, Hastings, Janofsky & Walker
Tenth Floor
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 508-9500

Follow-up hard copy
of fax received during
comment period

DN

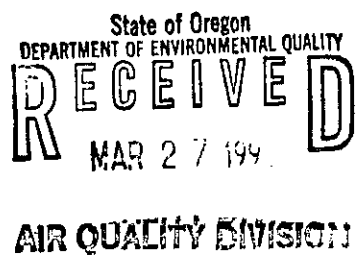


DAP Inc.
5300 Huberville Road
Dayton, Ohio 45431
513-667-4461



March 23, 1995

Oregon Department of Environmental Quality
Air Quality Division, 11th Floor
ATTENTION: VOC Rules
811 S.W. 6th Avenue
Portland, Oregon 97204



VIA FACSIMILE (503)229-5675

Re: Proposed Regulation For Consumer Products
OAR 340-22-800 through OAR 340-22-870

DAP Incorporated, headquartered in Dayton, Ohio, is a small to mid-sized manufacturer of a wide variety of home improvement products. We have been in this business for one hundred and thirty years and we employ approximately 700 individuals at nine facilities throughout the United States. We manufacture caulks & sealants, adhesives, grouts & mortars, spackling compounds and paints & coatings.

We have been following the development of numerous state's efforts with respect to developing VOC regulations for consumer and commercial products very closely over the past five years.

We are particularly concerned with the follow items in the Portland Oregon Consumer Product VOC Rule :

- 1) The definition for "construction and panel adhesive" is unduly restrictive and does not accurately reflect the container size for such adhesives. Presently, the Oregon regulation limits the definition of a construction and panel adhesive to products delivered from a caulking cartridge. This restriction is unreasonable and does not reflect all types of construction and panel adhesives offered on the retail market. This subset of construction and panel adhesives is also marketed and sold in containers of one gallon and more.

We strongly recommend that the Oregon DEQ eliminate the restriction on the method of delivery from the definition of a construction and panel adhesive.

We do not object to the VOC limits that have been placed on this category, only the size restrictions used in the category definition. We are aware that the State of California and the State of New Jersey have adopted similar size restrictions in their definition of a construction and panel adhesive and along with several other industry members, we are working with these states to appropriately modify their definitions.

March 23, 1995

Oregon Department of Environmental Quality

ATTENTION: VOC Rules

- 2) DAP offers a unique product for structural waterproof applications. This product is a two-part resorcinol resin based system formulated for use on bond lines that must be waterproof. As it stands this product would be classified as a "general purpose adhesive". The calculated VOC for this type of technology is approximately 14%, consequently such products would no longer be available for use in New Jersey as the regulation is written.

There is no technology available to the retail and commercial consumer that can be substituted for this type of a system.

We recommend that the Oregon DEQ do one of two things to address this concern.

- ① Preferably, this type of product should be excluded from the regulation by modifying the definition of "household adhesives". For example the definition would be modified as follows:

"Household adhesive" means any household ...by attachment. This term does not include two part resorcinol resin based (catalyzed) adhesives formulated to pass Federal Specification MMM-A-181 (Type 1, Grade A), and MIL-A-46051 (Type 1, Grade A and Grade C), products used on humans or animals, adhesive tape, contact paper.....

- ② As a second option, the Oregon DEQ may want to consider establishing a unique definition / category for such formulations if its determined that such adhesives must be regulated. If this option is chosen, we propose that the following category be added to the rule:

Structural Waterproof Adhesive: a two part resorcinol resin based (catalyzed) adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water. Such adhesives must pass Federal Specification MMM-A-181 (Type 1, Grade A), and MIL-A-46051 (Type 1, Grade A and Grade C). The VOC content for structural waterproof adhesives should not exceed 15% VOC by weight.

To further clarify the nature of this product, I have enclosed a product technical bulletin for our resorcinol glue, and a copy of the product label. As you can see from the unique performance attributes of such an adhesive, it cannot accurately be categorized as a general purpose adhesive - its purpose is very specific, it is for waterproof bonding.

Our annual sales of this product into the entire State of Oregon in 1994 were approximately 2,200 pounds. This represents a total VOC emission of less than 300 pounds (inconsequential compared to the total state-wide VOC emissions).

- 3) The VOC limit for "aerosol adhesives" will require DAP to withdraw from this market in Portland. As a leader in the formulation of aerosol home improvement products, our experience has shown that it is extremely difficult to formulate an aerosol adhesive that can meet the VOC limit of 75%.

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March 23, 1995
Oregon Department of Environmental Quality
ATTENTION: VOC Rules

We thank you for the opportunity to provide input on this regulation.. We also look forward to your response to our requests and comments as outlined above. If you have any question prior to your response to DAP, please contact me at (513) 667-4461 extension 2338.

Sincerely,

A handwritten signature in cursive script that reads "Matt Stewart".

Matt Stewart
Manager, Product Safety

/Encl

PRODUCT INFORMATION

DAP® WELDWOOD® Waterproof Resorcinol Glue

- Recommended for exterior structural applications.
- Withstands continuous immersion in water or severe weather conditions.
- Resistant to solvents, gasoline, oil, grease, acids and alkalis.
- Not affected by mold, fungi, bacteria and insects.
- Meets or exceeds requirements of MIL-A-46851 (Type I, Grade A) (Type II, Grade C) and MIL-A-22387 (Grade A).

USES

- Glues treated or untreated wood, leather, cork, linoleum, asbestos, concrete, plastic laminates, etc.
- Excellent for lumber arches, sills, beams, trusses and all woodwork.

COVERAGE

One part of mixture will cover approximately 21-22 sq. ft. of joint area.

EASY TO USE DIRECTIONS

PREPARATION

1. Surfaces to be bonded must be dry and free of grease, dirt, paint and other finishes. Glossy surfaces should be roughened with sandpaper to assure proper adhesion.
2. Temperature of the glue and the bonding surfaces must be at least 70°F during assembly and cure.

MIXING

- By Weight — Mix 4 parts Liquid Resin (B) with 1 part Powdered Catalyst (A).
By Volume — Mix 4 parts Liquid Resin (B) with 3 parts Powdered Catalyst (A).

Slowly pour the Powdered Catalyst (A) into the Liquid Resin (B) while stirring. Continue stirring mixture 5-10 minutes until a smooth consistency is reached.

ASSEMBLY

1. See Working Timetable for assembly times.
2. Apply mixed compound with brush, trowel or paint roller.
3. Coat both surfaces with mixed compound.
4. Allow the coated parts to remain exposed to air for 5-10 minutes before bonding, particularly on dense, nonporous surfaces. Bond pieces together and apply adequate pressure or clamp while glue is wet. Apply pressure after mazing surfaces.

CLEAN UP

Use cool water to clean tools, clothing and hands while glue is wet.

CAUTION: CONTAINS PARAFORMALDEHYDE, FORMALDEHYDE, SOFT WOOD FLOUR, AND HARD WOOD FLOUR. Powder will cause eye burns. Inhalation of powder may cause burns to upper respiratory tract. May cause allergic reaction and sensitization of the skin and respiratory tract. Possible cancer hazard. Formaldehyde is a suspect human carcinogen. Risk to your health depends on level and duration of exposure.

WARNING: This product contains a chemical known to the State of California to cause cancer.

PRECAUTIONARY MEASURES FOR USE, HANDLING, STORAGE AND DISPOSAL: Use in well ventilated area. Provide fresh air such that chemical odors cannot be detected during use and while drying. Do not

breathe dust or vapor. Do not reuse empty container. Keep container closed when not in use. Store away from oxidizers and caustics. Wear gloves. Avoid skin contact. Wear goggles or eye protection with side shields.

FIRST AID: SKIN CONTACT: Promptly wash with soap and water. **EYE CONTACT:** Flood with large quantities of water for 15 minutes. Contact physician immediately. **INHALATION:** Remove to fresh air. Contact physician immediately. **INGESTION:** Dilute by drinking large quantities of water. Contact physician or Regional Poison Control Center immediately for additional treatment instructions.

KEEP OUT OF REACH OF CHILDREN

This product was manufactured and intended for consumer use. If used in the work place, contact supplier for a Material Safety Data Sheet.

This product considered nonphotochemically reactive per SCAGMD Rule 102.

During application and curing:
VOC Less Water, Less Exempt Solvent — 10-15 gm/l

VOC Material — 10-15 gm/l
VOC Less Water, Less Exempt Solvent when mixed — 171 gm/l

Vapor Pressure @ 20°C — <40 mm HG

Ingredients per the New Jersey Right to Know Act: Formaldehyde 50-00-0, Paraformaldehyde 30525-89-4, Soft Wood Flour, Walnut Shell Flour and Hard Wood Flour.

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Dayton, Ohio 45401

Made and Printed in U.S.A. 40385



Part A
Powdered Catalyst
Mix with Liquid Resin
(Part B)

WATERPROOF

Weldwood® Resorcinol Glue

- Ideal for marine, sport and water vessel use
- For porous and nonporous surfaces
- Excellent weather, bacteria and insect resistance

**DANGER! INJURIOUS TO EYES AND SKIN.
HARMFUL IF SWALLOWED. STRONG SENSITIZER.**
Read back panel carefully for other cautions.

NET WT. 5 OZ. (141 g)

P 5 OZ. CAN RESORCINOL GLUE "A"

WORKING DRAWING

DATE 1/17/86

No 5005

JOB NO. 17

DAP® WELDWOOD® Waterproof Resorcinol Glue
(See Directions on Powdered Catalyst Can)

WORKING TIMETABLE

Temperature	70°F	80°F	90°F
Patches (shred bar) (hrs.)	3-4	2-2½	1½-1
Max. Assembly Times:			
Open — before bonding (min.)	15	10	7
Closed — after bonding (min.)	50	30	20
Pressure Period:			
Stress-free joints (hrs.)	10	6	3½
Stress-bearing joints (hrs.)	10	8	8

CAUTION: CONTAINS METHANOL, ETHANOL, RESORCINOL AND FORMALDEHYDE. Causes eye, skin, nose and throat irritation. May affect the brain or nervous system causing dizziness, headache or nausea. May cause allergic skin reaction and sensitization. May cause blindness if swallowed. Possible cancer hazard. Formaldehyde is considered a suspect human carcinogen. Risk to your health depends on level and duration of exposure.

WARNING: This product contains a chemical known to the State of California to cause cancer.

PRECAUTIONARY MEASURES FOR USE, HANDLING, STORAGE AND DISPOSAL: Use in well ventilated area. Provide fresh air such that chemical odors

cannot be detected during use and while drying. Vapors are heavier than air and will collect in low areas. Check all low areas (basements, stumps, etc.) for vapor before entering. Vapor may ignite explosively. Keep away from heat, spark and flame. Do not smoke. Do not reuse empty container. Keep container closed when not in use. Store away from oxidizers and caustics. Wear gloves. Avoid skin contact. Wear goggles or eye protection with side shields.

FIRST AID: SKIN CONTACT: Promptly wash with soap and water. **EYE CONTACT:** Flood with large quantities of water for 15 minutes. Contact physician immediately. **INHALATION:** Remove to fresh air. Contact physician immediately. **INGESTION:** Dilute by drinking large quantities of water. Contact physician or Regional Poison Control Center immediately for additional treatment instructions.

KEEP OUT OF REACH OF CHILDREN
This product was manufactured and intended for consumer use. If used in the work place contact your supplier for a Material Safety Data Sheet.

This product is considered nonphotochemically reactive per SCAQMD Rule 102.

SATISFACTION GUARANTEED: If you are not completely satisfied with this product's performance when used according to directions, return sales receipt and used container to DAP Inc.,

Customer Service, P.O. Box 277, Dayton, Ohio 45401, for product replacement. Seller will not accept liability for more than product replacement.

During application and curing:
VOC Less Water, Less Exempt Solvent — 290-295 gm/l
VOC Material — 290-295 gm/l
VOC Less Water, Less Exempt Solvent when mixed — 170-175 gm/l
Vapor Pressure @ 20°C — 44 mm Hg

Ingredients per the New Jersey Right to Know Act: Glycerine 56-81-5, Ethanol 64-17-6, Methanol 67-56-1, Water 7732-18-5, Resorcinol-Formaldehyde Copolymer 24969-11-7 and Formaldehyde 50-00-0.

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Dayton, Ohio 45401
Made and Printed in U.S.A. 40386



Part B
Liquid Resin
Mix with Powdered Catalyst (Part A)

Weldwood® Resorcinol Glue

WATERPROOF

- Ideal for marine, sport and water vessel use
- For porous and nonporous surfaces
- Excellent weather, bacteria and insect resistance

WARNING! COMBUSTIBLE LIQUID AND VAPOR. SKIN SENSITIZER. VAPOR HARMFUL. HARMFUL IF SWALLOWED.

Read back panel carefully for other cautions.

16 FL. OZ. (ONE U.S. PINT) 473 ml

P PINT CAN RESORCINOL GLUE "B"

WORKING DRAWING

DATE 1/17/86

JOB NO. 6.7

No 5006



PAI

PHYSICAL & CHEMICAL CHARACTERISTICS:

	<u>Liquid Resin</u>	<u>Catalyst</u>
Base:	Resorcinol Resin	Paraformaldehyde
Volatile:	Ethyl Alcohol	N/A
Flash Point:	110°F (CC)	158°F (CC)
Solids:	66%	100%
Weight/Gallon:	9.65	11.23
Specific Gravity:	1.16	1.35
Odor:	Alcohol	Formaldehyde
Color:	Dark Purple	Tan
Consistency:	Thick Liquid	Powder
Useful Temperature Range:	70°F Min. (application temp.)	
Bond Strength:	2,800 PSI Minimum. compression shear, ASTM D905	
Pot Life:	2 1/2 hours/73.5°F	
Freeze/Thaw Stability:	Stable	
Coverage:	100 - 150 sq. ft. per gallon	
Shelf Life:	One Year Minimum	
Storage:	Store below 70°F. Keep tightly closed.	

CLEANUP:

Mixing equipment, spreaders, brushes and all containers must be cleaned thoroughly immediately after use, with scrub brush and water. Resorcinol glue cannot be removed from most surfaces once cured; sanding, scraping or chiseling may be successful.

PACKAGING:

Standard Packaging: 1/4 Pint, Pint, Quart, Gallon, 5-Gallon & 55-Gallon (consists of liquid resin and catalyst)

LABEL WARNING:

CAUTION: CONTAINS ISOPROPANOL, ETHANOL, AND RESORCINOL. May cause eye, skin, nose and throat irritation. May affect the brain or nervous system causing dizziness, headache, or nausea. **NOTICE:** Reports have associated repeated and prolonged occupational overexposure to solvents with permanent brain and nervous system damage. Intentional misuse by deliberately concentrating and inhaling vapors may be harmful or fatal.

PRECAUTIONARY MEASURES FOR USE, HANDLING, STORAGE AND DISPOSAL:

Use in well ventilated area. Provide fresh air such that chemical odors can not be detected during use and while drying. Vapors are heavier than air and will collect in low areas. Check all low areas (basements, sumps, etc.) for vapors before entering. Vapor may ignite explosively. Keep away from heat, sparks, and flame. Do not smoke. Do not reuse empty container. Keep container closed when not in use. Store away from oxidizers and caustics. Wear gloves. Avoid skin contact. Wear eye protection.

FIRST AID:

SKIN CONTACT: Wash with soap and water.
EYE CONTACT: Flood with large quantities of water for 15 minutes. Contact physician immediately.
INHALATION: Remove to fresh air, contact physician immediately.
INGESTION: DO NOT INDUCE VOMITING. Contact physician or Regional Poison Control Center immediately.

KEEP OUT OF REACH OF CHILDREN

This product was manufactured for consumer use. If used in the workplace contact your supplier for a Material Safety Data Sheet.

This product considered nonphotochemically reactive per SCAQMD Rule 102.

VOC Less Water, Less Exempt Solvent - 171 gm/l

VOC Material - 171 gm/l

Vapor Pressure @ 20°C - 50 mmHG



DAP WELDWOOD WATERPROOF RESORCINOL GLUE

Page 5
of fax

DESCRIPTION:

DAP WELDWOOD WATERPROOF RESORCINOL GLUE is a high performance, two component adhesive designed to provide the strongest, most durable bonds in severe service application. Once cured, Resorcinol withstands continuous salt or fresh water immersion, outdoor exposure, tropical or sub zero temperatures. Conforms to requirements of Fed. Spec. MMM-A-181 B (Type I, Grade A) MIL-A-46051 (Type I, Grade A and Grade C) MIL-A-22397 (Grade A).

SUGGESTED USES:

DAP WELDWOOD WATERPROOF RESORCINOL GLUE is designed to laminate structural wood beams also provides durable bonds on a variety of porous and semi porous materials such as wood, particleboard, leather, cork, concrete (cured) and crockery (unglazed).

PERFORMANCE CHARACTERISTICS:

DAP WELDWOOD WATERPROOF RESORCINOL GLUE is impervious to salt and fresh water, temperature extremes, weather, solvents, oils, grease, mild acids or alkali. Highly resistant to degradation by molds, fungi, bacteria and insects. Resorcinol is a "purple" adhesive which may show at the glue line. Do not use where such a color is undesirable.

Resorcinol is a room temperature (70°F to 95°F) curing adhesive, but can cure faster at higher temperatures (95°F to 190°F). Poor bonds result from use below 70°F. Temperatures of the bonding surface and working area, as well as the adhesive, should be above 70°F. Relative humidity is a factor in curing. Moisture content of wood should be between 8% to 12%. Storage of wood in relative humidity of 60% to 70% should achieve the preferred content. Bonds on wood with moisture contents below 5% or above 15% are usually inadequate. When used properly, bond strengths exceeding 2800 psi can be achieved.

SURFACE PREPARATION & APPLICATION:

NOTE: The wearing of rubber gloves, protective clothing and facial protection is strongly recommended. Extra care is required during mixing and application.

MIXING: One can mix by weight or by volume using the following ratios:

	<u>WEIGHT</u>	<u>VOLUME</u>
Resin (Liquid)	1 lb.	4 units
Catalyst (Powder)	.25 lb.	3 units

Mixing by weight is a more precise method. Mix the desired ratio in an iron, steel or glass container. Do not expose to copper or copper alloys. Add the resin, then add the catalyst slowly while stirring and continue 5-10 minutes until a uniform dispersion is obtained.

POT LIFE: The working "pot" life of Resorcinol is sensitive to temperatures. Use this guide for reference:

	<u>TEMPERATURE</u>			
	<u>70°F</u>	<u>80°F</u>	<u>90°F</u>	<u>100°F</u>
Working Life (hours)	4	2.5	1.5	.75

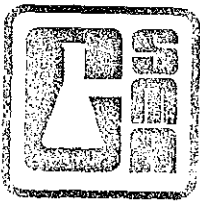
When the pot life is ending the adhesive will become too thick to use. Start fresh at that point, with a new mixture.

APPLICATION: Spread the mixture on both surfaces. Quantity applied should result in squeeze out when joint is placed under pressure. Before mating the surfaces, allow time for the adhesive to absorb into the wood. Maximum open times are:

	<u>TEMPERATURE</u>			
	<u>70°F</u>	<u>80°F</u>	<u>90°F</u>	<u>100°F</u>
Open Time (min)	30	20	15	10

Mate surfaces uniformly and squarely with a minimum sliding and repositioning. Apply pressure (clamps or jigs) immediately after mating surfaces. Glue line thickness should be about 0.005 inches. Pressures of 25 to 75 PSI should be sufficient.

	<u>TEMPERATURE</u>			
	<u>70°F</u>	<u>80°F</u>	<u>90°F</u>	<u>100°F</u>
Set Time (hours)	3-10	4-6	2.5-3.5	1.5-2



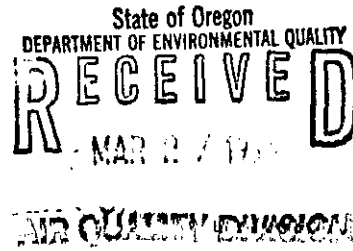
Founded 1914

1913 Eye St. N.W.
Washington, DC 20004

202 / 872-8110
Telefax 202 / 872-8114

CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

March 21, 1995



Mr. David Nordberg
Oregon Department of Environmental Quality
Air Quality Division
811 SW 6th Avenue
Portland, OR 97204-1390

RE: COMMENTS OF THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION ON THE PROPOSED PORTLAND OZONE MAINTENANCE PLAN RELATIVE TO CONSUMER PRODUCTS

Dear Mr. Nordberg:

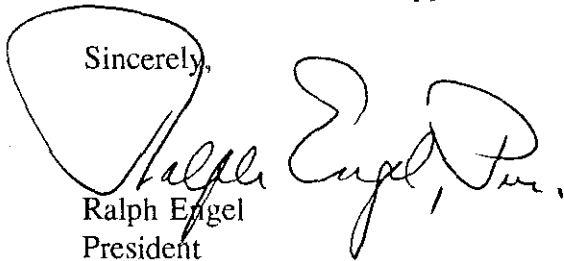
The Chemical Specialties Manufacturers Association (CSMA) is a voluntary, nonprofit trade association representing over 400 companies engaged in the formulation, manufacture, marketing and distribution of consumer products for household, institutional and industrial use. This does not include commercial products or paint products.

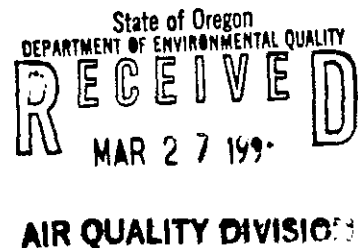
CSMA participated in the "work group" established by the Oregon DEQ to elicit industry and public comment on appropriate measures to regulate the VOC emissions from consumer products. Throughout this process, CSMA stressed that any regulation of consumer products be commercially and technologically feasible and conform with contemplated and existing regulations by other states. The proposed rule meets this criteria.

Issues that were raised in the "Work Group" process, we believe, have been resolved and have culminated in a proposal that meets the needs of Oregon retailers and Oregon consumers. The proposed rule is enforceable and appears to be achievable from a technological and commercial standpoint.

We, therefore, have no opposition to the rule as it is currently drafted and proposed.

Sincerely,


Ralph Engel
President



C T F A

THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION

March 23, 1995

David K. Nordberg
Environmental Specialist
Department of Environmental Quality
Air Quality Division
811 S.W. Sixth Avenue
Portland, Oregon 97204

RECEIVED
MAR 23 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

E. EDWARD KAVANAUGH
PRESIDENT

Re: Proposed New Source Rules for VOCs in Consumer Products, OAR 340-22-800 through 860; 340-22-102; 340-22-1100 through 1130.

Dear Mr. Nordberg:

The Cosmetic, Toiletry, and Fragrance Association (CTFA) submits these comments in response to the Oregon Department of Environmental Quality (DEQ) Air Quality Division's proposed rule to regulate volatile organic compounds (VOCs) in consumer products sold in the Portland Air Quality Maintenance Area (AQMA).

CTFA is the national trade association representing the personal care products industry. Founded in 1894, CTFA represents more than 500 companies involved in the personal care products industry. CTFA's 260 active members manufacture and distribute the vast majority of personal care products marketed in the United States. CTFA's 280 associate member companies supply goods and services, such as ingredients and packaging, to the industry's manufacturers and distributors. The personal care products industry prides itself on a long history of providing safe, reliable products to meet the diverse needs and personal tastes of the American consumer.

1101 17TH ST., N.W., SUITE 300 WASHINGTON, D.C. 20036-4702

202.331.1770 FAX 202.331.1969

SECURING THE INDUSTRY'S FUTURE SINCE 1894

I. Introduction

To respond to concerns about urban smog, the states have been forced to look beyond smokestacks and mobile sources to other, smaller sources of VOCs to regulate. Several states have gone to smaller contributors such as consumer products. Those states have regulated consumer products to satisfy the demands of their state implementation plans (SIP) as required by the U.S. Environmental Protection Agency (EPA). In the case of Oregon, the DEQ seeks to regulate consumer products not because of imminent EPA deadlines, but to offset an anticipated increase in future population growth in the Portland AQMA. The air quality of Oregon is superior to other states that have regulated consumer products yet the VOC limits proposed by Oregon are as strict as those in other states. Those proposed limits will yield appreciable decreases in consumer product VOC emissions for the state.

Currently, the U.S. EPA is at the beginning of its process to regulate consumer and commercial products on a national basis under Section 183(e) of the 1990 Amendments to the federal Clean Air Act. Although CTFA would prefer that Oregon defer any action to regulate consumer and commercial products until the EPA determines how it will develop national regulations for these products, we have worked with the DEQ staff in good faith based on the state's concerns. CTFA believes that uniform national standards for consumer products are the most efficient and effective means to achieve reasonable reductions of VOCs in these products. Regardless of which entity adopts consumer products regulations, it is critical to our industry that they allow the same products to be sold throughout the United States, while avoiding some of the errors that were made by other states in their early attempts to regulate certain personal care products.

We hope that the discussions between DEQ staff and industry have provided a better understanding of our products and of the history of the regulations developed for these product categories in other states. We wish to express our sincere appreciation for the courtesy extended by DEQ staff and for their efforts to draft a regulation that will meet the goals of both government and industry.

II. Detailed Comments

OAR 340-22-810: Definitions

16) The current definition of "consumer product" should be clarified. The term is defined as "any substance, product, or article..." while other states regulate the end product or "chemically formulated product" (California). The Oregon rule's use of the term "substance" potentially could be construed to include components of products, while the focus and intent of Oregon's proposed rule is to regulate end products.

67) The current definition of "product category" should be modified to add "and which appears on the product's principal display panel" at the end to make it clear to regulators and the regulated community to make it clear when a product is subject to the Consumer Product Standards.

OAR 340-22-820: Consumer Product Standards and Exemptions

CTFA supports the Consumer Product Standards as proposed in the rule with the accompanying compliance dates. It is important that companies have adequate time to comply with the VOC limits. CTFA supports the January 1, 1996 compliance deadline that DEQ has established. The proposed VOC content limits are consistent with those enacted in other states including Texas, Massachusetts and Rhode Island. The personal care products industry believes that although the limits are technologically challenging, they are feasible. All of the regulated personal care products will continue to be available to Oregon consumers in all forms of the

products, without product bans.

(2)(b) **Special conditions**

Section OAR 340-22-820 (2)(b) discusses special conditions to the proposed Table of Standards including a provision also known as "the most restrictive limit." CTFA would prefer that this provision be deleted or modified. If the limitation is retained, CTFA supports the exemption for antiperspirant and deodorant in the final rule for several reasons.

It unduly restricts the labeling of several types of products and may have other unforeseen consequences. The clearest case is represented by the common use of the term "antiperspirant/deodorant" to indicate an antiperspirant that also has deodorant characteristics. Deodorants, which are classified by the U.S. Food and Drug Administration (FDA) as cosmetics, differ from antiperspirants, which are classified and regulated by FDA as over-the-counter (OTC) drugs. Antiperspirants may have deodorant properties and are often labeled as "antiperspirant/deodorant" to indicate their dual use and function. The products are used for both purposes simultaneously and should not be restricted to the lower VOC standards because of their dual nature. This provision applies the lower 20 percent HVOC standard to antiperspirant products which also function as deodorants and are appropriately labelled as antiperspirants/deodorants. The Oregon proposed rule has recognized such a dilemma and would exempt antiperspirants from the lower limit requirement. CTFA supports the proposed rule's exemption of antiperspirants. However, there are other products where the most restrictive limit might cause difficulties.

OAR 340-22-830: Requirements for Manufacture and Sale of Consumer Products

CTFA supports the use of the date of manufacture as the criterion for determining compliance with the regulation. The regulation allows distributors and retailers to clear stock of consumer products through the normal business cycle. A manufacturer has definite control over the date of manufacture, but cannot exercise extensive control over what individual retailers do with their products. Once the goods have been bought and shipped to the retailers' warehouses, the manufacturer often no longer retains control of where or when the product is sold. In some national product distribution systems, manufacturers of consumer products do not control whether products go to Oregon or any other state. This provision prevents the costly effort to find and remove unsold units from store shelves, and it simplifies compliance and enforcement activities for the state. The code date for manufacture is easily verified and can be used to ensure that products being manufactured for sale in Oregon meet the requirements set forth in the regulation.

By this action, Oregon joins Texas, Massachusetts and New York in allowing the use of the date of manufacture as the date for compliance with consumer product VOC standards. By their actions, these states recognize that their enforcement efforts have been simplified and that a major compliance hurdle has been removed for industry.

OAR 340-22-840: Innovative Products

CTFA supports the proposed rule's inclusion of an innovative products provision as a means to reduce overall emissions. The provision exempts a consumer product from the VOC content requirements if the manufacturer demonstrates that use of the product will result in comparable VOC emissions reduction. This provision is a step in the right direction toward

achieving actual emission reductions because, unlike the regulation of VOC content, it takes into consideration the impact of product use on actual VOC emissions. We support the inclusion of this provision as the best means of explicitly addressing emission reductions.

An innovative product exemption has been adopted in every state to consider a consumer product VOC rule. The exemption was adopted initially in California and later in New York, Massachusetts, Rhode Island and Texas; all the exemptions are designed to encourage innovation in achieving emission reductions. It should permit a manufacturer to market an innovative product if it can be demonstrated that the emissions from that product would be the same or less than the emissions from a comparable product formulated to meet the VOC content limits. The innovative product provision in other states has resulted in the approval of important innovative products already on the market.

The intent of an innovative product exemption is to provide flexibility in complying with the regulation. An innovative product may result in lower emissions per use due to special features such as a more efficient application technique, a greater percentage of active ingredients, or more effective active ingredients than a product of the same product category which meets the applicable VOC limit. It is in the DEQ's interest to encourage this flexibility and innovation because innovations applied to regulated product categories may also have application to other consumer products, and also could result in emission reductions from unregulated product categories. The potential benefit to Oregon air quality from these innovations goes well beyond the limited focus of this regulation.

Industry must be allowed the flexibility of the innovative product approach to avoid a complete ban on some product types. The continued existence of some products, anhydrous hair

spray as an example, depends upon compliance based on emissions reductions. With current technology, the only way to avoid a complete product ban while products with lower VOC content are developed will be use of products which result in lower emissions through use of new technology. For those firms that cannot change an existing product to meet the proposed VOC content requirements, this will be the only feasible approach to compliance. Indeed, the technological feasibility of this entire proposed regulation requires a workable exemption for innovative products.

OAR 340-22-860: Inspection and Testing Requirements

CTFA objects to Section 340-22-860(1) that provides that the in-state or out-of-state facility of a manufacturer subject to the Oregon consumer products rule may be subject to inspection by the DEQ. No other state regulation for consumer products contains such a facilities inspection provision because it is unnecessary. Several provisions in the Oregon proposed rule obviate the need to do supplemental facility inspections. For example, the proposed rule requires that the manufacturer keep records on file regarding the compliance of its products and that those records are readily available to the agency. If DEQ has a question regarding a product's compliance, they can audit the company and the company must submit the requested data. Also, the manufacturers must give DEQ samples of consumer products selected by the Department from available stock which makes an independent plant visit for sampling by DEQ unnecessary.

Under the federal regulatory scheme for personal care products, the U.S. Food and Drug Administration reserves manufacturing facility inspections for assessing safety. In the VOC context, there is not a safety issue, but a formulation compliance issue, making the intrusiveness of a site inspection unwarranted. In addition, FDA's inspection authority has specific parameters

and procedures to safeguard trade secrets on which the Oregon proposed inspection provision is silent. Finally, a site inspection is unnecessary because this rule does not regulate VOCs emitted during the manufacture of the product, but instead it regulates the VOC content in the individual product which is verifiable through agency audit procedures.

OAR 340-22-1110: Compliance Extensions

CTFA supports a procedure allowing companies to apply for an extension of the compliance date. Several states have recognized the hardships certain companies face in complying with the law. Past recipients of such extensions have included smaller companies that faced severe economic hardship because they have limited research and development facilities to reformulate their products to meet the VOC limits. This procedure is entirely different from an innovative product exemption and is intended to allow temporary relief for a company that cannot comply with the VOC content standard. These limited extensions are essential to the feasibility of compliance with this regulation.

Finally, CTFA supports the DEQ's recognition of a compliance extension granted previously by the California Air Resources Board (CARB). This would avoid repetitive review of prior state-approved variances. Without such a provision, companies that have obtained an extension from CARB could have to re-apply to Oregon. In particular, the result of a delayed review of a variance request could spell economic ruin to smaller companies if the delay prevents a company from selling their products in the interim.

Conclusion

CTFA appreciates the efforts the state of Oregon and the DEQ have made to propose a

regulation that is consistent with requirements in other state consumer product VOC rules. With the modifications proposed by these comments, we can support the rule and look forward to working with DEQ to decrease VOCs from consumer products in the Portland AQMA.

Respectfully submitted,

Thomas J. Donegan, Jr. / ecb

Thomas J. Donegan, Jr.
Vice President-Legal and General Counsel

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AIR QUALITY DIVISION
Dept. Environmental Quality



RUDD COMPANY, INC.
MANUFACTURERS OF SURFACE COATINGS

March 22, 1995

Department of Environmental Quality
Air Quality Division, 11th Floor
Attn: VOC Rules
811 S.W. 6th Avenue
Portland, OR 97204-1390
FAX: (503) 229-5675

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AIR QUALITY DIVISION
Dept. Environmental Quality

Rudd Company, Inc. is a coatings manufacturer and aerosol packager located in Seattle, WA. As a small business with 53 employees, we are somewhat unique in that we will be affected by three of DEQ's proposed rules to limit VOC emissions: Architectural Coatings; Spray Paint; and, Consumer Products.

Our wood finishes are sold through distribution, and direct, to the OEM and contractor market in the western states. These products, when field applied, fall under the proposed regulation for Architectural Coatings. As a manufacturer and packager of spray paint under our own label, as well as a contract manufacturer and aerosol packager for regional and national brand owners, we will be affected by both the Spray Paint and Consumer Products regulations.

In general, Rudd Company supports all three proposed regulations. As a participant in the rule development process, we have been impressed with DEQ's effort to write clear and well organized rules. We also appreciate the willingness to address the specific concerns of individual companies, as well as, the appropriate trade associations.

All of the proposed VOC limits closely resemble those that have been established in other area rules or proposals. The majority appear to be acceptable given the current available technology. One of Rudd Company's primary concerns, with any rule development process, is that the final regulations provide a level playing field for all parties. It is our opinion that DEQ has been sensitive to that issue during this rule development activity.

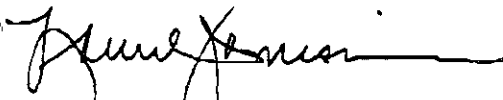
At this time, the most debatable issue, in our opinion, is that of economic feasibility. It is important to note that many of the regional paint and coatings manufacturers are not currently selling into California or other regulated markets. Although most manufacturers anticipate and budget for research and development costs, they may not be financially able to carry the costs of two product lines--one compliant and one non-compliant. Obviously DEQ

would like to see only compliant products being sold. However, the reality is that most consumers and/or users of our products do not make the switch to compliant alternatives unless forced to do so. Consequently, rules which affect only one geographic location within a much broader distribution or service area tend to disadvantage the smaller regional manufacturer with limited resources.

There is one area of clarification we would like added to the Spray Paint Rule. Under Section OAR 340-22-920 (3) Exemption, the proposed language reads that the rule shall not apply to spray paint assembled by adding bulk paint to aerosol containers of propellant and solvent. We request that the wording be expanded to clearly indicate that these products are not resale items and the only acceptable use be limited to in-shop touch-up by original equipment manufacturers. Although an unlikely situation, we would not want to see these do-it-yourself aerosol filling machines in every paint store, competing against the small custom color spray paint orders we produce for a variety of users and resellers in the area.

We sincerely appreciate the opportunity to participate in this rule development process and wish to specifically thank Dave Nordberg and Andy Ginsburg for their cooperation and hard work.

Sincerely,
RUDD COMPANY, INC.



Laurel Jamison
General Manager



March 22, 1995

David Nordberg
Department of Environmental Quality
Air Quality Division, 11th Floor
811 SW 6th Avenue
Portland, Oregon 97204

Re: Proposed Spray Paint VOC Regulation

Dear Mr. Nordberg:

Enclosed please find National Paint & Coatings Association, Inc.'s comments on the proposed regulation limiting the VOC content of spray paint. Thank you for this opportunity to address the proposed regulation.

If you have any questions about NPCA's comments, please do not hesitate to call me directly.

With kind regards,

A handwritten signature in black ink, appearing to read "Heidi K. McAuliffe".

Heidi K. McAuliffe

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MAR 23 1995
AIR QUALITY DIVISION
Dept. Environmental Quality

Before The Oregon Department of Environmental Quality

National Paint And Coatings Association, Inc.
Comments On The Proposed Spray Paint Regulation

Submitted By:
Heidi K. McAuliffe
Counsel, Government Affairs
March 23, 1995

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MAR 23 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

National Paint & Coatings Association (NPCA) is a voluntary, nonprofit industry association originally organized in 1888 and comprised today of over 500 member companies which manufacture consumer paint products and industrial coatings or the raw materials used in their manufacture.

The NPCA membership collectively produces some 80% of the total dollar volume of consumer paints and industrial coatings produced in the United States. NPCA represents a majority of the paint and coatings manufacturers in the state of Oregon, many of whom manufacture aerosol spray coatings for sale and use in the Portland Air Quality Management Area as well as the rest of the country. In addition, many other members that are located in various parts of the country manufacture aerosol coatings for shipment to and use in Portland.

NPCA and its Spray Paint Manufacturers Committee has been very active on the west coast, primarily the state of California, since the advent of regulatory activities specifically focussing on aerosol spray coatings. For instance, NPCA, through its Spray Paint Manufacturers Committee testified on several occasions before the South Coast Air Quality Management District when its Rule 1129 was being considered and drafted. Likewise, members of our committee were very active in maintaining a dialogue with the Bay Area Air Quality Management District when it was forced by a court order to promulgate its rule on aerosol paints. Furthermore, NPCA

and other industry representatives actively supported the legislation vesting the California Air Resources Board with sole authority to regulate aerosols. And, as you have seen through our members participation in the series of meetings and workshops surrounding this proposed aerosol regulation, we are committed to working with state environmental agencies to promulgate regulations that are reasonable and environmentally sound.

We are delighted to have this opportunity to comment on the proposed Aerosol Coatings Rule.

I. NPCA supports the general format and clarity of the proposed aerosol rule.

The proposed Aerosol Coatings Rule is organized in a clear and logical fashion. It closely resembles the Bay Area Air Quality Management District's rule in that it contains a definitions section relating to product categories and a corresponding Table of Standards.

II. The VOC limits contained in the Table of Standards are, with some exceptions, an appropriate set of standards given the current state of aerosol formulation technology.

As you are well aware, California's Bay Area aerosol rule has been in existence since 1990. Therefore, any manufacturer or marketer who markets an aerosol coatings product in Northern California must be able to comply with the limits established in that rule. Even five years later, there are still certain specialty products that cannot be marketed in Northern California because of the VOC limits in rule 49. Despite this fact,

experience of the last four years also indicates that the majority of the limits established in Regulation 8 - Rule 49 are appropriate given the current state of technology.

The VOC limits in the initial phase of this proposal largely mirror the VOC limits of the Bay Area rule. To the extent that this is true, NPCA believes that the VOC limits are appropriate.

III. The Distributors' Obligations Under OAR 340-22-930 Should Be Modified To Make It Consistent With The Retailers' Duties Regarding Sale of Noncomplying Spray Paint

Under Section OAR 340-22-930, retailers who sell spray paint products may not knowingly sell noncompliant products. It is important to note that a retailer is in violation of this rule only if he or she knows that the spray paint products do not comply with the VOC limits of the rule. The element of intent that is required protects the retailer who, even after taking all prudent and reasonable measures to assure that the product on his shelf complies with the law, receives an errant shipment of products intended for sale and distribution outside of the Portland AQMA.

There is a similar provision in the California Air Resources Board (CARB) proposed aerosol coatings rule, which is being offered to the Air Resources Board for approval today. In the CARB proposal, manufacturers, distributors or the responsible party are required to take reasonable prudent precautions to assure that the aerosol coating product is not distributed to California. See Section 94523 of the proposed Aerosol Coatings Product regulation.

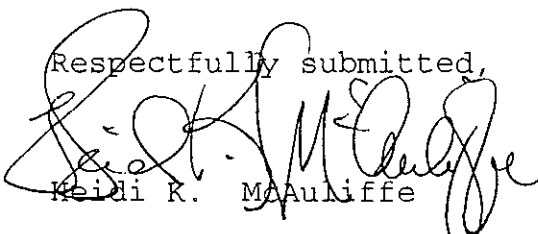
A similar protection should be inserted for distributors. Because distribution lines are complex and because the Portland AQMA is a minor portion of the state of Oregon, it is foreseeable that a manufacturer could mistakenly send a shipment of products intended for localities other than Portland to a distributor. A distributor who is generally careful and operates in a compliant manner should not be penalized merely because of crossed shipping lines.

IV. Conclusion

NPCA commends the DEQ staff for its efforts in attempting to understand the aerosol coatings industry while working on this proposed regulation. When voting on this regulation, the Association asks the Commissioners to carefully consider this discussion and make some minor adjustments to the rule before adopting it.

NPCA is pleased to submit its views on the proposed aerosol regulation and we hope to continue to work with the DEQ staff in the future on this and other matters affecting the paint and coatings industry.

Respectfully submitted,


Heidi K. MAuliffe



THE SPECIALTY DIVISION

The Sherwin-Williams Company
31500 Solon Road
Solon, Ohio 44139-3528
Phone (216) 498-2300
Fax (216) 498-2352

March 16, 1995

Mr. Dave Nordberg
Department of Environmental Quality
Air Quality Division
811 S.W. 6th Avenue
Portland, Oregon 97204

Dear Dave:

The Specialty Division of Sherwin-Williams has the following comments on the Proposed Regulation for reducing volatile organic compound emissions from aerosol coating products and consumer products in sections OAR-22-900 through OAR-22-950 and sections OAR-22-800 through OAR-22-870.

The Specialty Division is the largest manufacturer of aerosol coatings in the country. Our Division has actively participated in the rulemaking for aerosol coatings and consumer products in the state of California. Our involvement in the Bay Area Air Quality Management District (BAAQMD) Rule 49 was extensive. Also, the Division participated in the South Coast Air Quality Management District (SCAQMD) Rule 1129. We were active in recent legislative amendment AB 2783 Sher and AB 1890 Sher which provided the California Air Resources Board (CARB) with the authority to regulate aerosol coatings to provide a uniform regulation for most of the state. Our participation in this rulemaking has also been extensive. The goal of the Division has been to work with the CARB Staff to develop a rule which reduces VOC emissions from aerosol coatings, where technologically feasible, while maintaining high quality and useful products for the consumer.

The aerosol coating rule has been in the development stage since July 1994. Considerable discussions have occurred on the issues in the proposed rule namely, reporting requirements, the lacquer category and methylene chloride status. The reporting requirements of OAR-22-930 have been modified to provide the staff with information pertinent to compliance while not creating a paperwork burden or compromising confidentiality issues for the Industry.

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AIR QUALITY DIVISION
Dept. Environmental Quality

Mr. Dave Nordberg
March 21, 1995
Page Two

The lacquer issues which have been discussed is of vital concern to our company for we are the largest producer of lacquers. The failure to provide this category by the DEQ would have resulted in the outright ban of a niche category of coating which has unique characteristics unmatched by any other aerosol coating. Also, if this aerosol coating was not available, bulk lacquers which are readily available will be diluted and used in a spray gun because this would be the only acceptable means of producing the same finish as produced by an aerosol. Thus emissions would be greater, not less, when the total application system is reviewed. However, the inclusion of the lacquer category in OAR 340-22-920 provides the Industry with an opportunity to push our suppliers for new technology and to have some new raw materials more readily available.

The status of methylene chloride has been another debated issue. The Division stance on this issue was to simply have a fair use of methylene chloride. Either this solvent was exempt for all or not exempt for all. Methylene chloride is not a precursor to ozone formation, therefore it should not be regulated under this rule as proposed by the staff. Other factors regulate the use of this chemical. Thus the staff has been successful in providing a level "playing field" for the use of methylene chloride in aerosol coatings.

The consumer products rule also has been under development since July 1994. Our Division manufactures automotive, household, industrial and pesticide products under our brand name and also for other marketers. Our Division is a member of the CSMA and supports the model rule to maintain some national uniformity on these products.

As stated before, the Divisions' goal has been to assist staff in developing technologically feasible rules while reducing emissions and providing high quality and useful products for the consumer. These regulations accomplish that goal, thus the Specialty Division of The Sherwin-Williams Company support the regulations. The development of these rules have been an extensive undertaking in time and manpower. The Division appreciates the time and consideration the staff has taken on these rules. We urge the Board to adopt these rules to provide uniformity with California for the aerosol coating industry and national uniformity for the consumer products industry as submitted.

Mr. Dave Nordberg
March 21, 1995
Page Three

Thank you again for your time and consideration on this issue.

Sincerely,

Douglas Raymond
Douglas Raymond
Division Director Regulatory Affairs

015.95

Follow-up hard copy on
Fax received during comment period

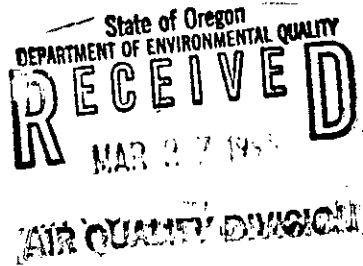
Wm. Zinsser & Co., Inc.

39 Belmont Drive • Somerset, NJ 08875-1285 • 908-469-8100 • FAX 908-469-4539



March 23, 1995

Dave Nordberg
Department of Environmental Quality
Air Quality Division
811 S. W. 6th Avenue
Portland, OR 97204



Dear Mr. Nordberg:

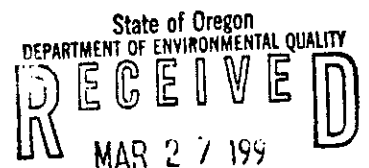
This letter is in reference to the draft of the AIM Regulations being developed by your department. With specific regard to the definition of shellac, we believe the Department of Environmental Quality will reach its air pollution reduction goals more quickly if the definition of shellac is maintained at the original definition which limits the resin used to the natural lac resin derived from the secretion of the lac beetle. Shellac was afforded higher levels of VOC than other resins due to its unique ability to seal in knots in new wood, odors from a variety of sources and fire and smoke damage.

Allowing other resins than natural shellac which do not perform at the same level, allows the category of shellac to be a loophole in the VOC regulations such that much greater quantities of VOC would be allowable in everyday commerce. We strongly believe the limited availability of shellac, the high cost of natural shellac, and the unique performance advantages of shellac justify a special category but this category should not be broadened so as to allow other natural alcohol soluble resins to be used for a long list of additional real world applications.

Sincerely,

Robert Senior
President

RS/gg



AIR QUALITY DIVISION



ENVIRONMENTAL LEGISLATIVE & REGULATORY ADVOCACY PROGRAM
OF THE SOUTHERN CALIFORNIA PAINT & COATINGS ASSOCIATION

March 22, 1995

Mr. David K. Nordberg, Environmental Specialist
Planning & Development Section
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
Air Quality Division, 11th Floor
811 SW 6th Avenue
Portland, Oregon 97204-1390

RE: PROPOSED REGULATIONS FOR ARCHITECTURAL COATINGS

Dear Dave:

This letter is to summarize and expand upon, for the record, the comments I conveyed to you in our recent telephone conversation. Comments are arranged in the order of the proposed rule sections.

APPLICABILITY

We are still concerned about restricting the applicability of the rule to "commercial applicators" (as defined) rather than all applicators, or alternatively, excluding all applicators from coverage under the rule. As it stands, the rule would unfairly, and possibly unlawfully, discriminate between different classes of users, and could have anti-competitive impacts on professional painting contractors.

DEFINITIONS

Categorical definitions should be of two types only: (1) coatings that are formulated and recommended for specified applications, or (2) coatings that are formulated to meet specified compositional or performance requirements. Definitions given for the categories listed below, however, include the word "applied" or "used", which means that no coating could meet the definition until after it is applied or used. Definitions for the following categories should therefore be revised to eliminate the words "applied" or "used":

155 WEST HOSPITALITY LANE
SUITE 260
SAN BERNARDINO, CALIFORNIA
92408-3318
PHONE: (909) 885-5714
FAX: (909) 885-2827

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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AIR QUALITY DIVISION

- (16) "Clear Waterproofing Sealers & Treatments"
- (33) "Flow Coatings"
- (39) "Industrial Maintenance Coatings"
- (54) "Nuclear Power Plant Coatings"
- (57) "Opaque Waterproofing Sealers & Treatments"

The definition for "Lacquers" should be revised to include "clear or opaque coatings, including lacquer sanding sealers", etc. A new definition for "Lacquer Stains" should be added, as follows: "semitransparent stains formulated and recommended specifically for use in conjunction with clear lacquer finishes and lacquer sanding sealers."

The definition for "Shellacs" should be revised to delete the word "natural." Many shellac products now make use of synthetic resins soluble in alcohol, either exclusively or in combination with natural resins.

STANDARDS

The limit for "Non-Flat Coatings, N.O.S.", should be set at 400 g/L, since all the data points in the NPCA survey of 1990 coatings, which provide the basis for calculating projected reductions, are given in increments of 50 g/L. Thus, no added reductions can be credited for using 380 g/L instead of 400 g/L, and the higher limit, in fact, allows the manufacture of higher-quality non-flats that will lead to greater reductions in the long-term.

The "Lacquer Stains" category needs to be added to the list of standards, with a limit of 800 g/L. This is a low-volume but essential category. "Primers and Undercoaters" should be combined with "Sealers" to form a single category of "Primers, Sealers & Undercoaters," with a limit of 400 g/L. This is appropriate because most primers are sealers, and vice versa, and both are often used as undercoaters. Also, the "Quick-dry Primers, Sealers & Undercoaters" should be allowed a limit of 500 g/L to preserve a variety of specialized coatings for which no adequate substitutes exist.

In Section (2)(a), "Lacquers" should be designated in place of "Lacquer Sanding Sealers" because pigmented (opaque) lacquers are sometimes used as primers, sealers and undercoaters. These products are recommended, in particular, to seal masonite, chipboard, and other pressed wood substrates for the purpose of preventing potentially hazardous formaldehyde emissions.

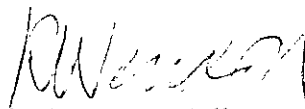
In Section (3)(b), the exempt small container size should be either "less than one liter" or "not more than one quart." This is a standard exempt size in all the California and Arizona local district rules.

Mr. David K. Nordberg
March 22, 1995
Page 3

Thank you for your consideration of our recommended changes, which, we believe, would greatly reduce the possibility of industry objection to the rule. If you have any questions regarding this letter, please call me at (213) 771-3330, extension 2263.

Very truly yours,

EL RAP

A handwritten signature in dark ink, appearing to read "RWendoll", written in a cursive style.

Robert Wendoll
Chairman

RW/hm

16416 S.W. 72nd Avenue
Portland, Oregon 97224
Telephone (503) 684-3136
Wats (800) 547-4556
FAX 1-503-684-1887

Zehring Corporation

March 22, 1995

Dave Nordberg
Dept. of Environmental Quality
Air Quality Division
811 S.W. 6th Avenue
Portland, Oregon 97204

Dear Mr. Nordberg:

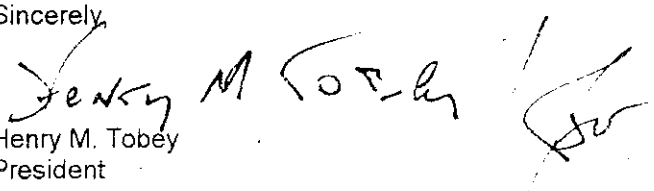
This letter confirms the verbal request made yesterday by Zehring Corporation concerning the definition of Shellac as it appears in the most recent draft of the AIM regulations being developed by DEQ. Specifically, we are asking that the definition be changed back to the original form which excludes resins other than those derived from secretions of the Lac beetle.

Our concern is that the definition as it stands, permits the use of cheap alcohol soluble resins, such as Manilla gum, Copal and Rosins. These products are much cheaper than Shellac and do not match its performance, either as stain blocking barrier coats or adhesion promoting bond coats.

More importantly, Shellac is an approved FDA food additive. Accordingly, Shellacs are often used in food handling areas and for children's toys and furniture. The definition as written would permit products other than Shellac to be labeled Shellac and used in potentially sensitive areas. The fact that the natural substitutes are much cheaper than Shellac would also encourage greater usage within this category for simple economic reasons.

Fundamentally, we feel that Shellac has demonstrated a variety of useful and unique properties for many, many years. We believe strongly that government regulations should not be written to encourage the labeling of non Shellac products as "Shellac."

Sincerely,


Henry M. Tobey
President

HMT:pnl

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Dept. Environmental Quality

BULLIVANT HOUSER
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MARGARET M. VAN VALKENBURG
Admitted in Oregon and Washington
Direct Dial (503) 499-4471

March 23, 1995

Dave Nordberg
Department of Environmental Quality
Air Quality Division, 11th Floor
811 SW Sixth Avenue
Portland, OR 97204-1390

Re: Proposed VOC Rules

Dear Dave:

Enclosed please find the written comments of Thompson. Minwax Company on the proposed rule to regulate VOC emissions from Architectural Coatings. Please do not hesitate to call me if you would like any more information on the matters discussed in the comment.

Great job on the hearing last night. I hope the rest of the process goes smoothly.

Very truly yours,

Margaret M. Van Valkenburg

MMV:lm
cc: Thompson.Minwax

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AIR QUALITY DIVISION
Dept. Environmental Quality

COMMENTS OF THOMPSON.MINWAX COMPANY

SUBMITTED TO THE

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

On The Proposed Rule
To Regulate Emissions Of Volatile Organic Compounds
From Architectural Coatings

OAR 340-22-1000 - 340-22-1050

March 23, 1995

I. Introduction

Thompson.Minwax Company ("Thompson") hereby submits its comments on the proposal of the State of Oregon, Department of Environmental Quality ("the Department") to adopt new area source rules that would limit emissions of volatile organic compounds ("VOCs") from architectural coatings. (Proposed OAR 340-22-1000 through 340-22-1050).

Thompson manufactures and distributes a wide variety of consumer "do-it-yourself" products including Thompson's waterproofing sealers and exterior stains, Minwax and Dura Seal stains and clear finishes, and Red Devil enamels, stains, and clear finishes.

II. Statement of Position

Thompson generally supports the Department's proposed rule. The emission limitations reflected in the proposed rule would provide enforceable and quantifiable emission reductions in the categories of product manufactured by Thompson, consistent with standards already promulgated by the States of New York, New Jersey, Kentucky and Massachusetts, and with a contingency rule adopted by the State of Rhode Island. The proposed standards are also consistent with the Architectural and Industrial Maintenance Coating Model Rule (the "Model Rule") developed by the National Paint and Coatings Association ("NPCA").

Thompson supports the proposed rule as it would apply to products manufactured by Thompson, but respectfully requests that the Department make one important modification to the rule. Thompson requests that the Department revise the proposed rule to ensure that the VOC limit prescribed for the category of "Floor Coatings" will not be applied to "Varnishes," although a varnish may be recommended for use on floors. This clarification can be accomplished by revising the definition of "Floor Coatings" to exclude from that category any "Varnishes" that are recommended for uses that include the coating of floors. Alternatively, the "Special Conditions" requirements reflected in proposed section OAR 340-22-1020(2)(a) could be amended to state that the lower VOC limit which is applicable to "Floor Coatings" shall not apply to "Varnishes," which may be recommended for use as floor coatings.

III. Discussion

Thompson manufactures coatings in a number of the categories covered by the proposed rule, including the categories of "waterproofing sealers," "clear and semi-transparent stains," and "varnishes." The proposed rule will achieve significant emission reductions in all of these categories without sacrificing product efficacy, provided one important clarification is made to the rule. While the proposed rule is similar in most respect to rules promulgated by other states, it differs from virtually all

other state rules in that a varnish, which is intended to be subject to a VOC limit of 450, may actually become subject to a lower limit of 400 if the varnish is used as a floor coating. This lower limit would apply because, under the "Special Conditions" of Section 2(a) of the proposed rule, a coating which is clearly in one category, but which is represented as being useful in another category that has a lower VOC limit, will be subject to that lower VOC limit.

A. The Characteristics And Performance Standard for Varnishes

Varnishes will typically bear labels which recommend their use on floors. However, a varnish is formulated to impart a unique quality to any treated substrate. Unlike stains and waterproofing sealers which penetrate or are absorbed into a surface, varnishes are intended to provide a durable, solid, protective film at and above the surface of the substrate. Varnishes are formulated with oils and resins to dry by chemical reaction when exposed to air.

Products at VOC levels below 450 g/ltr have proven unacceptable to consumers and professionals alike. The viscosity of these formulations is too high for the product to be applied properly. The resulting product is far too thick to be applied at the recommended coverage rates. The resulting over-application leads to very slow drying times and produces films that are easily damaged for many days after application. Waterborne clear finishes can comply with a lower VOC limit, but possess limited durability and, as a result, do not meet consumer needs in high-wear applications.

B. Other State Rules Distinguish Varnishes From Floor Coatings And The Model Rule Is Being Corrected To Provide The Same Clarification

The 450 g/ltr limit has been identified as the minimum workable VOC limit in discussions with other states and in the context of rulemaking proceedings in other jurisdictions throughout the nation. Only in California and in the metropolitan area of Phoenix, Arizona, is the VOC limit for varnishes below 450.

California was the first to promulgate any standard for varnishes and Arizona simply copied that standard immediately thereafter. There was, at the time, no historical experience from which to determine the feasibility of a standard below 450. Experience and experimentation since then has clearly demonstrated that a lower limit is not feasible. After 6 years of effort, industry has been unable to develop a varnish that meets the California standard or that can be effective at any level below 450 g/ltr VOC. Varnishes offered for sale in California and Phoenix have been a total failure in the eyes of

the consumer. They have been rejected by consumers and professionals alike.

New York and New Jersey adopted AIM rules after California and had the benefit of California's experience in selecting workable standards for their jurisdictions. They adopted limitations that were different from California's, including a 450 standard for varnishes. As the New Jersey Department of Environmental conservation stated in its response to public comments, "[a]s architectural coatings rules are relatively new and have only been adopted in a few states, it is appropriate to improve on the rules. It is illogical for all states to copy the first rule. A certain amount of adjustment and improvement must be expected." 22 N.J.R. 2145, 2146 (July 16, 1990).

Thompson acknowledges that the unintended application of a lower limit for varnishes occurs even in the NPCA Model Rule as currently drafted. The failure to distinguish varnishes, which may be used on floors, from floor coatings, was an oversight that has been recognized by the drafters of the Model Rule. NPCA is in the process of correcting that oversight. Thompson respectfully requests that the Department make the same correction to the proposed rule.

IV. Conclusion

Thompson supports the Department's proposed standards, but requests that the Department provide a clarification which would ensure that the VOC limit prescribed for "Floor Coatings" will not be applied to "Varnishes" which may be recommended for use on floors. As noted above, this clarification can be accomplished by revising the definition of "Floor Coatings" to exclude from that category any "Varnishes" that are recommended for uses that include the coating of floors. Alternatively, the "Special Conditions" requirements reflected in proposed section OAR 340-22-1020(2)(a) could be amended to provide an additional exclusion which states that the lower VOC limit which is applicable to "Floor Coatings" shall not apply to "Varnishes," which may be recommended for use as floor coatings.

Respectfully submitted,
Thompson.Minwax Company

By 
Margaret M. Van Valkenburg

BULLIVANT HOUSER BAILEY
PENDERGRASS & HOFFMAN
a Professional Corporation
300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204

3-22-95 In regards to Proposed Architectural Coatings
Modifications, Reformulations & Select Eliminations

My name is Joe Weideman and I am a Painting Contractor Registered with the State of Washington. I have been in business as such for 6 years & have many years of painting experience prior to that.

I am here tonight to draw your attention to an aspect of the painting industry & in particular the practices associated with residential coatings application in lieu of eliminating or reformulating some essential products.

Since what is being determined at this meeting & by this committee is just what to do about the pollution associated with the application of residential coatings, I find it quite interesting that the methods of application are singularly absent from any consideration.

I refer to the use of spray-machinery which is quite widespread & almost exclusively the technique for painting & coatings application in new residential work.

The three basic forms of spray equipment are: conventional or pressure pot; airless, and HVLP or High ~~Pressure~~ ^{Volume} Low Pressure. By official manufacturers' admissions, conventional equipment has a transfer efficiency loss of 30 to 35%; airless equipment a loss of 20 to 30% and the manufacturers of HVLP equipment actually brag about the increased profits to be made in materials savings alone by their "Highly Efficient" up to 90% sure-transfer rate. But the amount of surface area that can be coated with that transfer rate is barely more than what can be coated by brush with little or no loss, amounting to 1% or less. You must also be made aware that these transfer efficiencies are under IDEAL circumstances; i.e.: New Equipment; Highly skilled applicators, totally flat surfaces, Ideal pump pressures, Ideal materials viscosity, Ideal temperatures, Ideal atmospheric humidity levels, No air movement such as wind or breeze, and Ideal angle ratio of substrate to spray flow. Obviously, Ideal circumstances Do Not Exist in Reality. Furthermore, it is common practice to dilute the paint or coating with an appropriate thinner using an average of one quart thinner to one gallon of paint just in order to get the paint or coating through the equipment including the spray-gun tip such that by simply reformulating to a higher solids content will be obviated by the spray painter at the time of application.

Some of the more common residential coatings can't even be applied by any method other than spraying. These include all lacquers & quick-dry enamels, electrostatic coatings; certain waterproofings; and epoxies. Also, some of these materials have extremely low solids content, in particular the lacquer which has only 10 to 15% solids content, and the solvents that make up the balance of the content are among the most volatile in the business. Toluenes, Methyl Ethyl Ketones, etc.

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AIR QUALITY DIVISION
Dept. Environmental Quality

Then there is the aspect of durability. Lacquers have NO UV Resistance. They are also so hard that when they are applied to porous, organic substrates such as wood, they are unable to expand and contract at the same rate as the substrate and thus readily crack and check and come off the surface permitting water, humidity, and dry rot to destroy the wood in only a couple of years. I have seen window sills and woodwork totally ruined in 3 year old homes with lacquered woodwork. Add to this the common practice of using lacquer on the exteriors of wood doors & door frames. These doors & door frames are essentially ruined in less than 2 years.

Also, there is the matter of the consequences of the effect of spray application of paint on the dried paint film itself. Imagine, if you can, a stack of cannon balls. There is a significant amount of space in between each cannon ball. When a coating such as paint is sprayed, the atomized cloud of paint particles stack up on each other upon the surface & immediately skin-over, trapping these microscopic air bubbles in the paint film. These bubbles are of a size that they are unable to overcome the surface tension in the wet paint film and thus dry inside the coating itself such that the effect resembles ~~that~~ the porosity of a sponge. These bubbles of air soon trap moisture from dew & rain and then are subjected to barometric & temperature changes which can be quite rapid as in the case of the early morning sun shining directly on an overnight-chilled surface or when the sun suddenly appears from behind a cloud. The fluid thus trapped will expand and contract much more rapidly (by the dynamics inherent in liquids compared to solids) thus causing the slower flexing dry paint film to crack & slough off on a microscopic scale, deteriorating that paint film at a rate significantly accelerated from what would otherwise have been the case, had the paint been applied by brush or roller. The end result is that re-painting must be done 2- to-3 times as often costing many times the monetary & material expenditures that would otherwise have been spent. And that still does not take into account the greatly reduced lifespan of the substrate itself.

All this begs the question: Why hasn't anyone told you this before?

Do you really expect paint manufacturers to tell you this when their very livelihood & profitability depends upon the sheer volume of the materials they sell?

Do you really think the manufacturers of spray equipment would admit to the "real" transfer efficiencies as practiced in the real world?

Do you really think that general contractors or their painting sub-contractors will tell you the truth when both have profit mark-ups on the materials used & thus the more materials used the more in mark-up generated profits

they will make?

Do you really think that the banks & mortgage companies want more efficient & more durable coatings & coatings application methods used when doing otherwise means the home owners/buyers must borrow more money more often to deal with an accelerated maintenance schedule due to the effects of the spray application methods?

And while we're on the subject, there is also the question of the great variance in the quality & grade of paint & like materials. Do you really think a \$6⁰⁰ a gallon of paint is going to perform anywhere near the performance of a \$20⁰⁰ a gallon paint?

I ask you to please re-consider your approach to the question at hand. There are viable, realistic justifications for the use of certain materials; such as Alkyd primers, Spar Urethanes & Varnishes, Boiled linseed oil & thinner combinations for outdoor wood preserving & waterproofing, High quality 100% Acrylic latexes with high percentage per gallon of acrylic resins ~~per~~ content. These ~~and~~ and others out-perform the lesser quality coating and certainly outperform wrong coating, wrong substrate, wrong conditions & methods as commonly practiced today. When properly applied, the overall environmental cost is minimal both in terms of peripheral pollution & in materials & resources.

Finally, In the Portland/Vancouver area each year there is over a million gallons of exterior paint alone ^{that} is sprayed. Add to that the Oil & latex stains, preservatives, primers, lacquers, etc that are sprayed applied you may get the true picture. If the loss to overspray alone each year were to happen at once, the environmental damage of several hundred thousand gallons of paint & coatings being dumped here in River City would be heard about 'round the world. Then consider the consequences occurring in larger cities & the cumulative effect in small town & rural spraying.

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MAR 22 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

Joseph M. Weideman
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Vancouver WA 98668-5187

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DN

JAY A. HAINES

A PROFESSIONAL LAW CORPORATION
4275 EXECUTIVE SQUARE, SUITE 320
LA JOLLA, CALIFORNIA 92037

TELEPHONE: (619) 622-0460
FACSIMILE: (619) 622-1161

March 7, 1995

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MAR 10 1995

AIR QUALITY DIVISION
Dept. Environmental Quality

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

Re: Oregon Regulations of Architectural and Industrial Maintenance Coatings

To Whom it May Concern:

As you are undoubtedly aware, the Federal Regulatory Negotiation for Architectural and Industrial Maintenance Coatings ("AIM") ended after approximately 2 1/2 years of negotiation. I was an active participating member of the Federal Regulatory Committee and am an active member of the National Paint & Coatings Association. I previously represented Textured Coatings of America (hereinafter "TCA") and other small specialty niche paint and coating manufacturers during those proceedings. I currently represent TCA (which has paint manufacturing plants in both California and Florida), and other specialty coating manufacturers in the development of state AIM regulations.

The Federal Regulatory Negotiation participants worked tremendously hard in trying to compromise all the various environmental, economic, and competitive interests in trying to negotiate a rule which each participating member could agree to. The process produced a wealth of information regarding AIM coatings. Many participants in the negotiations convincingly argued that there are adverse impacts associated with the majority of AIM coatings when VOC levels are reduced past their optimal limits.

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The Federal Regulatory Negotiating Committee members, prior to disbanding, developed an AIM coatings rule framework for VOC limits and definitions similar to Oregon's draft AIM Rule. In addition, the National Paint & Coatings Association, since the

March 7, 1995

Page 2

breakup of the Federal Regulatory Negotiation Committee, has developed a state model AIM rule with virtually identical 1996 VOC limits and definitions. It appears that, based on the latest draft of Oregon's proposed AIM regulation, Oregon intends to go forward with limits and definitions for an AIM coating regulation which are, for the most part, consistent with the framework previously developed by the Federal Regulatory Negotiating Committee and National Paint and Coatings Association. Below, however, are recommendations and facts about several categories which were apparently unintentionally left out of the proposed Oregon draft AIM coatings rule and are extremely important to Textured Coatings of America and other small specialty niche coating manufacturers.

The following are high performance coating categories proposed during the Federal Regulatory Negotiation Committee hearings and are included in the National Paint and Coatings Association model state AIM rule. Please include the following definitions and corresponding VOC limitations in the Oregon AIM rule:

(39) ~~Industrial~~ Maintenance Coatings. Means high performance architectural coatings, including primers, sealers, undercoaters, intermediate coats and topcoats formulated and applied to substrates exposed to one or more of the following conditions:_____

- (a) Frequent scrubbing or abrading including mechanical wear and repeated cleaning with industrial agents and/or disinfectants;
- (b) Steam;
- (c) Continuous or repeated exposure to temperatures above 200°F;
- (d) Immersion in water or waste water or chronic exposure of surfaces to moisture condensation;
- (e) Exposure to small chemicals such as acids, alkalies, organic solvents, oxidizing or reducing agents, salt spray, or other corrosive materials or mixtures, including exposure by immersions, splash, spill or fumes;
and
- (f) Exterior exposure of metal structures and structural components.

Please note it is imperative that all substrates that counter chronic exposure to moisture condensation and/or salt spray be included in your definition for Industrial Maintenance Coatings. I would appreciate your incorporating said changes into your proposed rule for AIM coatings.

March 7, 1995
Page 3

Very truly yours,

JAY A. HAINES, A.P.L.C.

JAY A. HAINES

JAH/kcs
Enclosure

cc: Textured Coatings of America, Inc.

REGNEG/Oregon.1



March 22, 1995

Mr. David Nordberg
Oregon Department of Environmental Quality
Air Quality Division
811 S.W. 6th Avenue
Portland, Oregon 97204

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MAR 23 1995

Dear Mr. Nordberg:

AIR QUALITY DIVISION
Dept. Environmental Quality

The National Paint and Coatings Association appreciates the opportunity to provide comments on the February 15, 1995 Oregon Department of Environmental Quality (DEQ) proposed rule for the control of VOC content of architectural and industrial maintenance (AIM) coatings that are sold and applied in the Portland AQMA.

The National Paint and Coatings Association, Inc. (NPCA) is a voluntary non-profit industry association organized in 1888. NPCA currently represents some 500 member companies engaged in the manufacture and distribution of paint and coatings, as well as the raw materials used in the manufacture of these products. The membership collectively produces approximately 75% of the total volume of these products and raw materials.

The NPCA and particularly the members of the Pacific Northwest Paint Council, compliment the efforts of the DEQ and its staff to provide an open forum in the form of the AIM Advisory Committee in which industry has been able to work with the DEQ in the development of this proposal.

While NPCA supports most aspects the proposed rule and considers the VOC limits contained therein to be economically and technologically reasonable, we would like to offer some recommendations, as well as comments on specific aspects of the proposal.

Applicability

As a matter of fairness and general efficiency, we are concerned about the provisions that would apply the regulation only to commercial applicators and not to homeowners. While the present proposal specifies sufficiently high VOC limits that we do not expect any important differences to arise between the two markets, we remain concerned that as a general proposition it is not fair or wise from a regulatory vantage point to attempt to distinguish between the use of our products by commercial applicators and private homeowners. Should the limits ever become more stringent for commercial applicators, the attempt to bifurcate the markets could become a real problem, with higher VOC coatings being sold to homeowners and lower VOC coatings

being sold to commercial applicators. In addition to the difficulties that this would present to the manufacturers' distribution systems, the bifurcated system would invite abuse. (For example, how would a seller of an AIM product know whether it is selling a product to a private homeowner or a commercial applicator who claims to be a homeowner?)

Definitions

The proposed definitions appear to be mostly based on the definitions from EPA's current AIM draft plus a number of hybrid definitions that are neither from NPCA nor EPA documents. While most of the proposed definitions do not present any problems to industry, we urge the DEQ to consider the following revisions to the definitions. These revisions which in some cases seem to be only minor word changes are important in providing consistency between current AIM rules and the future national rule.

(18) Colorant: Replace the proposed definition of "colorant" with the following definition:

"Colorant" means a concentrated pigment dispersion of water, solvent, and or binder that is added to an AIM coating or tint base to produce a desired color after the coating or tint base has been shipped from its place of manufacture. The term colorant includes clear colorants that are used to standardize the volume of tint bases for weight and measurement purposes before they are sold.

(22) Concrete Protective Coatings: Replace "sub-zero" in the third sentence of the definition with "freezing". The sentence should read:

... concrete. These coatings prevent spalling of concrete in freezing temperatures by providing long term protection from water and chloride ion intrusion.

(32) Floor Coatings: Change the word "abrasive" to "abrasion".

(39) Industrial Maintenance Coatings: Replace the list of conditions in the proposed definition with the following:

- a) frequent scrubbing or abrading including mechanical wear and repeated cleaning with industrial agents and/or disinfectants;
- b) steam;
- c) continuous or repeated exposure to temperatures above 200°F;
- d) immersion in water or wastewater or chronic exposure of surfaces to moisture condensation;
- e) exposure to chemicals such as acids, alkalies, organic solvents, oxidizing or reducing agents, salt spray, or other corrosive materials or mixtures, including exposure by immersions, splash, spill, or fumes;
- f) exterior exposure of metal structures and structural components.

In addition we are recommending that this category be renamed "Maintenance Coatings". This revised name is a better description of the true nature of this category of coatings and represents the consensus view of the industry on this issue.

(42) Lacquers: The definition of lacquer should not be limited to clear wood finishes. Opaque or pigment lacquer should be included in this category. The substance of the definition found in the NPCA model rule should be used.

" Lacquers" mean clear or opaque coatings, including lacquer sanding sealers, formulated with cellulosic or acrylic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

(43) Low Solids Stains: Delete this definition. As proposed the rule does not require the use of "special low solids" categories. These categories only become necessary when the VOC limits for stains and wood preservative categories are technology forcing.

(44) Low Solids Wood Preservatives: Delete as explained above.

(53) Not Otherwise Specified or N.O.S.: We recommend that the proposed definition be replaced with the definition from the NPCA Model Rule:

"N.O.S." means not otherwise specified; that is, not otherwise specified as a coating for which a more specific definition applies.

The term N.O.S. refers to the category definition not to the VOC limit. The limit of a more specific or restrictive coatings category could be higher or lower than that set for N.O.S. categories.

(88) Waterborne Coating: Delete. This definition is not necessary.

Standards

While the VOC content limits specified in Table A are for the most part consistent with those specified in the NPCA Suggested State AIM Model Rule (which was submitted to the DEQ on December 8, 1994), we are requesting that the DEQ consider the following recommendations and comments.

Traffic Marking Coatings: We concur with the revised approach for setting the VOC limits for traffic marking coatings. The idea of separating public sector traffic surfaces from the commercial ones is a good compromise and is one that we support. We also believe that the statement on the seasonal requirements for traffic marking coatings in OAR 340-22-1030 (6) Exceptions, addresses the concerns voiced by members of the Advisory Committee and industry.

Low Solids Stains and Low Solids Wood Preservatives: With the VOC limits for clear and semi transparent stains and wood preservatives set at the 550 level, the need for these categories is eliminated. To simplify the rule they should be deleted.

Varnishes

We endorse the comments that have been provided to you by Thompson Minwax Company concerning the need to ensure that "varnishes" are not eliminated as floor coatings under the application of the regulation. The proposed rule recognizes that commercially viable varnish coatings require a VOC limit of 450 grams per liter. It, however, also would set the limit for floor coatings, including varnish floor coatings, at 400 grams of VOC per liter. This requirement, coupled with the provision that a coating which is recommended for several uses must meet the lowest VOC limit for any one of the recommended uses, would mean that varnishes could not be used as floor coatings.

A significant amount of varnish is applied as floor coatings. As the proposed regulation is presently written, varnishes would no longer be permitted to be used as floor coatings because of the relatively low VOC limit that is specified for floor coatings.

As suggested by Thompson Minwax, this situation could be addressed by explicitly excluding varnishes from the definition of "floor coatings". Alternatively, varnishes which are recommended for use as floor coatings might avoid the restrictive VOC limit specified for floor coatings by a provision in the Special Conditions section of the regulation.

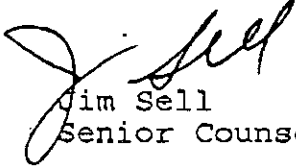
Future Review

In our December 8, 1994 comments to the DEQ we urged the DEQ to reconsider its schedule for promulgating the AIM rule in light of the EPA's latest memorandum concerning SIP credit for forthcoming federal AIM and autobody refinish rules. The DEQ has indicated that the issue has been discussed with EPA Region X officials who responded that reliance on any federal rulemaking concerning AIM products could jeopardize approval of the Oregon maintenance plan if the expected EPA rule should be delayed or liberalized.

We understand the DEQ's reasons for being unwilling to assume this risk and for continuing the development of the AIM rule. Nonetheless, we remain deeply concerned that state and local AIM rules may prove to be inconsistent with the forthcoming federal AIM rule.

In addition we are aware of the statutory requirements that limit the DEQ's authority to include an automatic sunset provision in the rule. Therefore, we believe that it is essential that the Future Review provision, OAR 340-22-1130, be included in the final rule. This provision would require a review of Oregon's AIM regulation after EPA issues the national AIM regulation with a view towards modifying or eliminating Oregon's regulation in light of the national rule.

Sincerely,



Jim Sell
Senior Counsel

JS:kak



Morton Traffic Markings

Norris/TMT/Bauer

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MAR 23 1995
AIR QUALITY DIVISION
Dept. Environmental Quality

March 23, 1995

To: Mr. David Nordberg
Department of Environmental Quality
Air Quality Division
811 S.W. 6th Avenue
Portland, OR 97204

Fax Number: 503-229-5675

From: Phil Chertudi, Plant Manager
Morton Traffic Markings, Norris/TMT Division
1675 Commercial St. N.E.
Salem, OR 97303

Phone Number: 503-224-1131, Fax Number: 503-364-1029

Subject: Official comment on area source rules pertinent to architectural coating V.O.C. content limits on traffic paint.

As a service to our customers, and for the purpose of eliminating a hazardous waste stream, Morton International has for a number of years shipped approximately 2.5 million gallons (7,200 totes) of product annually to our northwest customers. As the customer finishes using each container they securely cap and return the container to us along with the paint residue.

Upon receiving the container, Morton pumps and processes the residue into a form which will be used as raw material in future production of our traffic paint. Each year, as a result of providing this service, the volume of paint, in addition to the solvents required to clean the tanks and bring the residue to a usable specification, will reach approximately 50,000 gallons. As we approach the effective date for the transfer to low V.O.C. traffic paint, the residue which we have received and processed will exceed the existing high V.O.C. paint production into which it can be blended.

We realize that potential seasonal exemptions in the proposed regulation may provide us with some relief, but we cannot be assured that the reduced level of high V.O.C. paint production will be sufficient to allow us to dispose of the recycled material in a reasonable period of time.

In consideration of our situation, please be aware that because of our current efforts to reduce environmental waste, we may require cooperation from the Department of Environmental Quality to efficiently dispose of the final inventory of recycled high V.O.C. product. If you have any comments or require additional information, please don't hesitate to call me.

Sincerely,

Phil Chertudi,
Plant Manager

PC*v
cc: Bob Currell



February
March 22, 1995

Dept. of Environmental Quality
Air Quality Division
Attention: VOC Rules
811 S.W. 6th Avenue
Portland, OR 97204-1390

Dear Sirs,

I am writing to comment on the DEQ proposed rules regulation VOC's in architectural and industrial maintenance coatings intended for retail sale or use in the Portland air quality maintenance area.

The area that I am particularly concerned with is the exemption for small containers paragraph 3b.


I would encourage you to change this paragraph to include containers of 1 quart. I propose that the paragraph read:

(b) Coatings that are sold in containers with a volume equal to or less than one quart (32 fluid ounces or .95 liter) or in non-refillable aerosol containers.

I believe that if you do not include the quart size in the exemption it will be a grievous hardship on the manufactures and users of these types of product.

I believe it has be shown that the amount that small containers contribute to the VOC's in the attainment area are inconsequential, therefore I hope that you adopt the change I propose.

Sincerely,


Richard H. Pfiffner
VP Manufacturing Operations

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FEB 23 1995

AIR QUALITY DIVISION
Dept. Environmental Quality



March 22, 1995

*Copy of For
received 3-23-95
Duplicate*

Dave Norberg
Andy Ginsberg
Mary Forst
Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, Oregon 97204-1390

RE: Proposed VOC Source Rules for Portland Ozone Maintenance Area

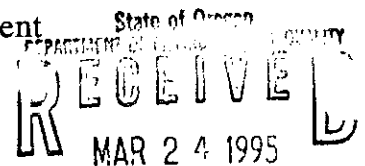
Dear Mr. Nordberg, Mr. Ginsberg and Ms. Forst:

We have received your February 15, 1995 mailing of proposed administrative rules designed to reduce the emission of VOC solvent products to the atmosphere in the Portland area.

I want to thank you for including the Health Division in your deliberations on this issue.

The Division wants to go on record as supporting these rules as they are proposed. I believe they will go a long way in the direction of maintaining or improving air quality in the Portland area. I am impressed with the level of support and participation you were able to achieve with the industries that will be most affected by these rules.

I understand that you have heard arguments against the adoption of these rules, and the Environmental Quality Commission will undoubtedly receive some adverse testimony about the concept as a whole or about particular aspects of it. There will be examples of products or product uses in which it will be argued that the VOC restrictions might actually increase VOC emissions over the long run. For example it may be claimed that some reduced-VOC products will have to be applied in greater quantity or more frequently than current products, which could result in the same or even greater release of VOC's. We do not doubt there will be some examples where this might be the case, but we believe these will be exceptional rather than representative circumstances.



AIR QUALITY DIVISION

John A. Kitzhaber
Governor

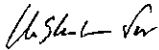


800 NE Oregon Str. 23
Portland, OR 97232-2162
(503) 731-4030 Emergency
(503) 252-7978 TDD
Emergency

Dave Norberg
Andy Ginsburg
Mary Forst
May 22, 1995
Page 2

We support both the general concepts and the particulars of the proposal. Feel free to contact us if there is further assistance we can give.

Sincerely,



Grant Higginson MD, MPH
Physician
Acting State Health Officer
Acting Deputy Administrator

GH:ab

CC: Ron Hall
Ken Kauffman

VOCSOURC.LTR

Environmental Quality Commission

X Rule Adoption Item

Action Item

Information Item

Agenda Item E
May 18, 1995 Meeting

Title:

Oregon Title V Operating Permit Fee Increase

Summary:


Costs of implementing and administering the Federal Operating Permit program in Oregon have increased as a result of inflation. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

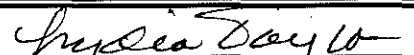
The rule amendments will raise the Annual Base Fee from \$2500/yr to \$2569/yr and the Emissions Fee from \$29.26/ton to \$30.07/ton based on an increase of 2.7% in the U.S. Consumer Price Index since the last rule adoption. These fees are charged to regulated major industrial sources.

Department Recommendation:

It is recommended that the Commission adopt the rule amendments regarding increases in the annual fees for major industrial air emissions sources as presented in Attachment A of the Department Staff Report.


Report Author


Division Administrator


Director

April 25, 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: May 3, 1995

To: Environmental Quality Commission
From: Lydia Taylor, Interim Director *Lydia Taylor*
Subject: Agenda Item E, May 18, 1995 EQC Meeting
Oregon Title V Operating Permit Fee Increase

Background

On January 11, 1995, the Interim Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would increase the annual Base and Emissions Fees for major air pollution sources with Oregon Title V Operating Permits. The fees would increase by an amount equal to the increase in the Consumer Price Index (2.7%) since the last rule adoption.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on February 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 January 20, 1995.

Public Hearings were held:

Date: March 1, 1995
Time: 5:30 p.m.
Place: 811 SW Sixth Ave., Room 3A
DEQ Headquarters, Portland

Date: March 2, 1995
Time: 5:30 p.m.
Place: 1375 NE Forbes, Room
City of Bend, Dept. of Public Works

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

Memo To: Environmental Quality Commission
Agenda Item E
May 18, 1995 Meeting
Page 2

Date: March 6, 1995
Time: 5:30 p.m.
Place: Jackson County Auditorium
Medford

with Maria Behlke serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the hearing.

Written comments were received through March 10, 1995. A list of written comments received is included as Attachment D. (Copies of the comments are available upon request.)

Department staff have evaluated the comments received (Attachment E). No modifications to the initial rulemaking proposal are being recommended by the Department, based upon that evaluation. However, a few changes have been made (Attachment F) based on staff discussions, in order to clarify the effective dates of these rule amendments and improve implementation.

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

Title V of the 1990 Federal Clean Air Act created an operating permit program applicable to stationary sources of air pollutants. It requires the owners of these sources to pay fees to the permitting agency that cover all of the reasonable direct and indirect costs of the program. In September 1992 the Air Quality Division prepared a workload analysis which it presented to the 1993 Legislature to support the Department's request for a new fee on major air pollution sources that would be permitted under Oregon's Title V Operating Permit program. Included in the legislation granting the Department authority to establish a fee schedule, was a provision to annually increase fees for inflation.

Memo To: Environmental Quality Commission
Agenda Item E
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As required by the federal rules [40 CFR Part 70], Oregon's Title V Operating Permit program was submitted to the EPA for approval. Included in the supporting documentation was a demonstration that the program would be fully funded by fees assessed on the regulated sources, with the statutory assurance that fees could be increased annually to keep pace with inflation and maintain program viability, as required by 40 CFR 70.9(b)(2)(iv).

The costs of implementing and administering Oregon's Title V Operating Permit program have increased as a result of the program now being fully staffed, and because of the increase in inflation since the initial program fees were established. Expenses associated with services and supplies, equipment requirements, and projected staff and salary increases will prevent the program from being completely supported by permitting fees. Since the program must remain 100% self-supporting to retain its federal approval status, the Department is requesting this rule amendment. The Department's 1995-97 budget reflects the additional revenue provided by this fee increase.

Relationship to Federal and Adjacent State Rules

A key requirement contained in the Federal rules for states implementing the Title V Operating Permit program is that the state demonstrate that it has adequate resources to accomplish that task. After extensive analysis by the Department, with review and approval by the 1993 Legislature, the Department established a fee structure which would support the program. Subsequent submittal of Oregon's Title V Operating Permit program to the EPA resulted in the Department gaining Federal approval to implement the program. Included in the statutory authority to establish fees was a provision which allowed for increases in the Annual Base and Emissions Fees to keep up with inflation.

This fee structure, while different in form, closely resembled the presumptive fee minimum established by the EPA. Most States have adopted fees in this same range, including California, Washington and Idaho.

Authority to Address the Issue

Statutory authority comes from ORS 468A.315 which allows the Commission to increase the Base and Emissions Fees annually by a percentage equal to the increase in the Consumer Price Index.

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

When this fee structure was initially developed the determination of staff resources needed to accomplish the required tasks was based on the Department's experience with similar activities. As a result of our experience with the first stages of implementation, new information has been gathered and we have a better idea of the real resource needs of the program. This increase in fees is required to offset increased costs since the fee was established two years ago. The Air Quality Division's Industrial Source Advisory Committee discussed this proposed rule making at its December 15, 1994 meeting. They decided to support this proposal as long as it simply reflected the increase in the Consumer Price Index.

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

The rule amendments will raise the annual Base Fee from \$2500/yr to \$2569/yr and the annual Emissions Fee from \$29.26/ton to \$30.07/ton because of an increase of 2.7% in the U.S. Consumer Price Index since the last rule adoption. These fees are charged to regulated major industrial sources.

Most industrial manufacturing facilities are major sources of air pollution and are subject to Oregon Title V Operating Permits and the associated fees. The largest source of air pollution in the state has approximately 8600 tons/yr of assessable emissions, and paid about \$250,000 in fees in 1994. The proposed fee increase would raise this 2.7% or about \$7,000 in 1995. The vast majority of sources fall in the 100 to 1000 tons/yr range.

Some industrial sources which are defined to be major sources of air pollution by rule may be considered small businesses. In general, these companies tend to emit less than 100 tons per year of air pollutants. The fee increase proposed would raise the fees of a 100 ton/yr source by a total of \$150/yr (from current \$2500 + \$2926 = \$5426 to proposed \$2569 + \$3007 = \$5576).

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Summary of Significant Public Comment and Changes Proposed in Response

The Department received a letter from the Lane Regional Air Pollution Authority that pointed out a mistake in the information included with the Notice of the Proposed Rulemaking. Their fee schedule is the same as the Department's and will change as the Department's changes, as described in the Title V program submittal to the EPA.

One commenter expressed concern that the revised rules would now include carbon monoxide as a regulated pollutant, and would require that the Emissions fee be applied to that pollutant as well. This was based on a misunderstanding and the Department is not proposing to assess a fee on carbon monoxide emissions.

The only other comment supported the fee increase as proposed but went on to suggest that the rule include a cap of \$35 per ton to limit future increases. Since the fee structure was established by the Legislature, the Department does not believe it is appropriate to include a cap within the rules without legislative direction.

While no changes are being proposed in response to these public comments, some clarifying language is being added as a result of staff discussions concerning the effective dates of these changes.

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

After adoption of this rule, major industrial facilities which have applied for, or are anticipated to apply for, an Oregon Title V Operating Permit will be billed at the new fee rate by the Department in June. Currently unidentified major sources will be billed at this new rate when their permit application is received. This new fee rate must be effective prior to the Department's June 1995 invoicing so that adequate revenues are collected to maintain the program.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding increases in the annual fees for major industrial air emissions sources as presented in Attachment A of the Department Staff Report.

PROPOSED RULE AMENDMENTS

Definitions

340-28-110 As used in this Division:

- (1) "Act" or "FCAA" means the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.
- (2) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.
 - (a) For purposes of determining actual emissions as of the baseline period:
 - (A) Except as provided in paragraph (B) of this subsection, actual emissions shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation;
 - (B) The Department may presume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A) of this subsection.
 - (b) For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.
 - (c) For purposes of determining actual emissions for Emission Statements under OAR 340-28-1500 through 340-28-1520, Major Source Interim Emission Fees under OAR 340-28-2400 through 340-28-2550, and Federal Operating Permit Fees under OAR 340-28-2560 through 340-28-2740, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.
- (3) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.
- (4) "Affected States" mean all States:
 - (a) Whose air quality may be affected by a proposed permit, permit modification or permit renewal and that are contiguous to Oregon; or
 - (b) That are within 50 miles of the permitted source.

- (5) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities shall be less than or equal to the lowest applicable level specified in this section. The aggregate insignificant emissions levels are:
- (a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;
 - (b) 120 pounds for lead;
 - (c) 600 pounds for fluoride;
 - (d) 500 pounds for PM₁₀ in a PM₁₀ nonattainment area;
 - (e) The lesser of the amount established in OAR 340-32-130, Table 1 or OAR 340-32-5400, Table 3, or 1,000 pounds;
 - (e) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.
- (6) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.
- (7) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340-28-1700 through 340-28-1790 and includes the application review report.
- (8) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.
- (9) "Applicable requirement" means all of the following as they apply to emissions units in a federal operating permit program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:
- (a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52 (July 1, 1993);
 - (b) Any standard or other requirement adopted under OAR 340-20-047 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;
 - (c) Any term or condition in an ACDP, OAR 340-28-1700 through 340-28-1790, including any term or condition of any preconstruction permits issued pursuant to OAR 340-28-1900 through 340-28-2000, (New Source Review), until or unless the Department revokes or modifies the term or condition by a permit modification;
 - (d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-28-800 through 340-28-820, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;
 - (e) Any term or condition in a Notice of Approval, OAR 340-28-2270, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a

- permit modification;
- (f) Any standard or other requirement under section 111 of the Act, including section 111(d);
 - (g) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;
 - (h) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
 - (i) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
 - (j) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
 - (k) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
 - (l) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
 - (m) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;
 - (n) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a federal operating permit; and
 - (o) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.
- (10) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-28-2420 or OAR 340-28-2610 from ~~one~~ an emission ~~point~~ unit and from an area within a major source. For routine process emissions, emissions of each pollutant in OAR 340-28-2420 or OAR 340-28-2610 from each emission ~~point~~ unit included in an ACDP or federal operating ~~program~~ permit shall be an assessable emission.
- (11) "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.
- (12) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
- (13) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event, shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.

- (14) "Calculated Emissions" as used in OAR 340-28-2400 through 340-28-2550 means procedures used to estimate emissions for the 1991 calendar year.
- (15) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.
- (a) constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;
 - (b) evaporative and tail pipe emissions from on-site motor vehicle operation;
 - (c) distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;
 - (d) natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;
 - (e) office activities;
 - (f) food service activities;
 - (g) janitorial activities;
 - (h) personal care activities;
 - (i) groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;
 - (j) on-site laundry activities;
 - (k) on-site recreation facilities
 - (l) instrument calibration;
 - (m) maintenance and repair shop;
 - (n) automotive repair shops or storage garages;
 - (o) air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;
 - (p) refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;
 - (q) bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;
 - (r) temporary construction activities;
 - (s) warehouse activities;
 - (t) accidental fires;
 - (u) air vents from air compressors;
 - (v) air purification systems;
 - (w) continuous emissions monitoring vent lines;
 - (x) demineralized water tanks;
 - (y) pre-treatment of municipal water, including use of deionized water purification systems;
 - (z) electrical charging stations;
 - (aa) fire brigade training;
 - (bb) instrument air dryers and distribution;
 - (cc) process raw water filtration systems;
 - (dd) pharmaceutical packaging;

- (ee) fire suppression;
 - (ff) blueprint making;
 - (gg) routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;
 - (hh) electric motors;
 - (ii) storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;
 - (jj) on-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;
 - (kk) natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;
 - (ll) pressurized tanks containing gaseous compounds;
 - (mm) vacuum sheet stacker vents;
 - (nn) emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;
 - (oo) log ponds;
 - (pp) storm water settling basins;
 - (qq) fire suppression and training;
 - (rr) paved roads and paved parking lots within an urban growth boundary;
 - (ss) hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;
 - (tt) health, safety, and emergency response activities;
 - (uu) emergency generators and pumps used only during loss of primary equipment or utility service;
 - (vv) non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;
 - (ww) non-contact steam condensate flash tanks;
 - (xx) non-contact steam vents on condensate receivers, deaerators and similar equipment;
 - (yy) boiler blowdown tanks;
 - (zz) industrial cooling towers that do not use chromium-based water treatment chemicals;
 - (aaa) ash piles maintained in a wetted condition and associated handling systems and activities;
 - (bbb) oil/water separators in effluent treatment systems;
 - (ccc) combustion source flame safety purging on startup;
 - (ddd) broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;
 - (eee) stock cleaning and pressurized pulp washing, excluding open stock washing systems; and
 - (fff) white water storage tanks.
- (16) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.
- (17) "CFR" means Code of Federal Regulations.

- (18) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-31-120.
- (19) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or
 - (b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.
- (20) "Commission" or "EQC" means Environmental Quality Commission.
- (21) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.
- (22) "Construction":
- (a) except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;
 - (b) as used in OAR 340-28-1900 through 340-28-2000 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.
- (23) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems and continuous parameter monitoring systems.
- (24) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, or lead.
- (25) "Department"
- (a) as used in OAR 340-28-100 through 340-28-2000 and OAR 340-28-2400 through 340-28-2550 means Department of Environmental Quality;
 - (b) as used in OAR 340-28-2100 through 340-28-2320 and OAR 340-28-2560 throughout 340-28-2740 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.
- (26) "Director" means the Director of the Department or the Director's designee.
- (27) "Draft permit" means the version of a federal operating permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-28-2290 or the EPA and affected State review under OAR 340-28-2310.
- (28) "Effective date of the program" means the date that the EPA approves the federal operating permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.
- (29) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- (30) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.
- (31) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.
- (32) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Sources shall use an emission factor approved by EPA or the Department.
- (33) "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
- (34) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340-28-1900 through 340-28-2000, New Source Review, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.
- (35) "Emission Reporting Form" means a paper or electronic form developed by the Department that shall be completed by the permittee to report calculated emissions, actual emissions or permitted emissions for interim emission fee assessment purposes.
- (36) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.
- (a) A part of a source is any machine, equipment, raw material, product, or byproduct which produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:
- (A) the group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply, and
- (B) the emissions from the emissions unit are quantifiable.
- (b) Emissions units may be defined on a pollutant by pollutant basis where applicable.
- (c) The term emissions unit is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.
- (d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-28-1930, OAR 340-28-1940, or OAR 340-28-2270, or for purposes of determining the applicability of any New Source Performance Standard (NSPS).
- (37) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.
- (38) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.
- (39) "Event" means excess emissions which arise from the same condition and which occur during a single calendar day or continue into subsequent calendar days.
- (40) "Excess emissions" means emissions which are in excess of a permit limit or any applicable air quality rule.

- (41) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.
- (42) "Federal operating permit" means any permit covering a federal operating permit program source that is issued, renewed, amended, or revised pursuant to OAR 340-28-2100 through 340-28-2320.
- (43) "Federal operating permit program" means a program approved by the Administrator under 40 CFR Part 70 July 1, 1993.
- (44) "Federal operating permit program source" means any source subject to the permitting requirements, OAR 340-28-2100 through 340-28-2320, as provided in OAR 340-28-2110.
- (45) "Final permit" means the version of a federal operating permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-28-2200 through 340-28-2320.
- (46) "Fugitive Emissions":
- (a) except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.
 - (b) as used to define a major federal operating permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (47) "General permit" means a federal operating permit that meets the requirements of OAR 340-28-2170.
- (48) "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new major sources and major modifications of sources.
- (49) "Immediately" means as soon as possible but in no case more than one hour after the beginning of the excess emission period.
- (50) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.
- (51) "Insignificant Change" means an off-permit change defined under OAR 340-28-2220(2)(a) to either a significant or an insignificant activity which:
- (a) does not result in a redesignation from an insignificant to a significant activity;
 - (b) does not invoke an applicable requirement not included in the permit; and
 - (c) does not result in emission of regulated air pollutants not regulated by the source's permit.
- (52) "Interim Emission Fee" means \$13 per ton for each assessable emission subject to emission fees under OAR 340-28-2420 for calculated, actual or permitted emissions released during calendar years 1991 and 1992.
- (53) "Large Source" as used in OAR 340-28-1400 through 340-28-1450 means any stationary source whose actual emissions or potential controlled emissions while operating full-time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL shall be used to determine actual emissions.
- (54) "Late Payment" means a fee payment which is postmarked after the due date.

- (55) "Lowest Achievable Emission Rate" or LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event, shall the application of this term permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.
- (56) "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase for any regulated air pollutant. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases shall take into account all accumulated increases and decreases in actual emissions occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340-28-1900 through 340-28-2000 for that pollutant, whichever time is more recent. Emissions from insignificant activities shall be included in the calculation of net emission increases. Emission decreases required by rule shall not be included in the calculation of net emission increases. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the New Source Review requirements, including the retrofit of required controls.
- (57) "Major Source":
- (a) except as provided in subsections (b) and (c) of this section, means a source which emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate, as defined in this rule. Emissions from insignificant activities shall be included in determining if a source is a major source.
 - (b) as used in OAR 340-28-2100 through 340-28-2320, Rules Applicable to Sources Required to Have Federal Operating Permits, 340-28-2560 through 340-28-2740, Federal Operating Permit Fees, and OAR 340-28-1740, Synthetic Minor Sources, means any stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control), belonging to a single major industrial grouping or are supporting the major industrial group and that are described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.
 - (A) A major source of hazardous air pollutants, which is defined as:
 - (i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants which has been listed pursuant to OAR 340-32-130, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator

may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

- (xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;
- (C) A major stationary source as defined in part D of Title I of the Act, including:
 - (i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
 - (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;
 - (iii) For carbon monoxide nonattainment areas
 - (I) that are classified as "serious," and
 - (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide;
 - (iv) For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM₁₀.
- (c) as used in OAR 340-28-2400 through 340-28-2550, Major Source Interim Emission Fees, means a permitted stationary source or group of stationary sources located within a contiguous area and under common control or any stationary facility or source of air pollutants which directly emits, or is permitted to emit:
 - (A) One hundred tons per year or more of any regulated pollutant, or
 - (B) Fifty tons per year or more of a VOC and is located in a serious ozone nonattainment area.
- (58) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.
- (59) "Nitrogen Oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide.
- (60) "Nonattainment Area" means a geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Environmental Quality Commission or the EPA.
- (61) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
- (62) "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a new major source or major modification of a source.

- (63) "Ozone Season" means the contiguous 3 month period of the year during which ozone exceedances typically occur (i.e., June, July, and August).
- (64) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January, 1992).
- (65) "Permit" means an Air Contaminant Discharge Permit or a federal operating permit issued pursuant to this Division.
- (66) "Permit modification" means a revision to a permit that meets the applicable requirements of OAR 340-28-1700 through 340-28-1790, OAR 340-28-1900 through 340-28-2000, or OAR 340-28-2240 through 340-28-2260.
- (67) "Permit revision" means any permit modification or administrative permit amendment.
- (68) "Permitted Emissions" as used in OAR 340-28-2400 through 340-28-2550, and OAR 340-28-2560 through 340-28-2740 means each assessable ~~emission~~ portion of the **annual** PSEL.
- (69) "Permittee" means the owner or operator of the facility, in whose name the operation of the source is authorized by the ACDP or the federal operating permit.
- (70) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.
- (71) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.
- (72) "PM₁₀":
- (a) when used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);
 - (b) when used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J (July, 1993).
- (73) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This definition does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.
- (74) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.
- (75) "Proposed permit" means the version of a federal operating permit that the Department or Lane Regional Air Pollution Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-28-2310.
- (76) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60, 61 or 63** (July 1, 1993).
- (77) "Regional Authority" means Lane Regional Air Pollution Authority.

- (78) "Regulated air pollutant" or "Regulated Pollutant":
- (a) as used in OAR 340-28-100 through 340-28-2320 means:
 - (A) Nitrogen oxides or any VOCs;
 - (B) Any pollutant for which a national ambient air quality standard has been promulgated;
 - (C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
 - (D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
 - (E) Any pollutant listed under OAR 340-32-130 or OAR 340-32-5400.
 - (b) as used in OAR 340-28-2400 through 340-28-2550 means PM₁₀, Sulfur Dioxide (SO₂), Oxides of Nitrogen (NO_x), Lead (Pb), VOC, and Carbon Monoxide (CO); and any other pollutant subject to a New Source Performance Standard (NSPS) such as Total Reduced Sulfur (TRS) from kraft pulp mills and Fluoride (F) from aluminum mills.
 - (c) as used in OAR 340-28-2560 through 340-28-2740 means any regulated air pollutant as defined in 340-28-110(78) except the following:
 - (A) Carbon monoxide;
 - (B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or
 - (C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(79) "Renewal" means the process by which a permit is reissued at the end of its term.

(80) "Responsible official" means one of the following:

- (a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (B) the delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Pollution Authority;
- (b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or
- (d) For affected sources:
 - (A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
 - (B) The designated representative for any other purposes under the federal

operating permit program.

- (81) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:
- (a) Emissions from ships and trains coming to or from a facility;
 - (b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.
- (82) "Section 111" means that section of the FCAA that includes Standards of Performance for New Stationary Sources (NSPS).
- (83) "Section 111(d)" means that subsection of the FCAA that requires states to submit plans to the EPA which establish standards of performance for existing sources and provides for the implementation and enforcement of such standards.
- (84) "Section 112" means that section of the FCAA that contains regulations for Hazardous Air Pollutants (HAP).
- (85) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.
- (86) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.
- (87) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.
- (88) "Section 112(r)(7)" means that subsection of the FCAA that requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.
- (89) "Section 114(a)(3)" means that subsection of the FCAA that requires enhanced monitoring and submission of compliance certifications for major sources.
- (90) "Section 129" means that section of the FCAA that requires the EPA to establish emission standards and other requirements for solid waste incineration units.
- (91) "Section 129(e)" means that subsection of the FCAA that requires solid waste incineration units to obtain federal operating permits.
- (92) "Section 182(f)" means that subsection of the FCAA that requires states to include plan provisions in the State Implementation Plan for NO_x in ozone nonattainment areas.
- (93) "Section 182(f)(1)" means that subsection of the FCAA that requires states to apply those plan provisions developed for major VOC sources and major NO_x sources in ozone nonattainment areas.
- (94) "Section 183(e)" means that subsection of the FCAA that requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.
- (95) "Section 183(f)" means that subsection of the FCAA that requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.
- (96) "Section 184" means that section of the FCAA that contains regulations for the control of interstate ozone air pollution.
- (97) "Section 302" means that section of the FCAA that contains definitions for general and administrative purposes in the Act.

- (98) "Section 302(j)" means that subsection of the FCAA that contains definitions of "major stationary source" and "major emitting facility."
- (99) "Section 328" means that section of the FCAA that contains regulations for air pollution from outer continental shelf activities.
- (100) "Section 408(a)" means that subsection of the FCAA that contains regulations for the Title IV permit program.
- (101) "Section 502(b)(10) change" means a change that contravenes an express permit term but is not a change that:
- (a) would violate applicable requirements;
 - (b) would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or
 - (c) is a Title I modification.
- (102) "Section 504(b)" means that subsection of the FCAA that states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.
- (103) "Section 504(e)" means that subsection of the FCAA that contains regulations for permit requirements for temporary sources.
- (104) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in **Table 1**. For sources of VOC or NO_x, a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

Table 1
OAR 340-28-110

**Significant Ambient Air Quality Impact
Which is Equal to or Greater Than:**

Pollutant Averaging Time

<u>Pollutant</u>	<u>Annual</u>	<u>24-Hour</u>	<u>8-Hour</u>	<u>3-Hour</u>	<u>1-Hour</u>
SO ₂	1.0 ug/m ³	5 ug/m ³		25 ug/m ³	
TSP or PM ₁₀	.2 ug/m ³	1.0 ug/m ³			
NO ₂	1.0 ug/m ³				
CO				0.5 mg/m ₃	2 mg/m ₃

(105) "Significant emission rate" , except as provided in subsections (a) through (c) of this section, means emission rates equal to or greater than the rates specified in **Table 2**.

Table 2
OAR 340-28-110

**Significant Emission Rates for Pollutants
Regulated Under the Clean Air Act**

<u>Significant Pollutant</u>	<u>Emission Rate</u>
(A) Carbon Monoxide	100 tons/year
(B) Nitrogen Oxides (NO _x)	40 tons/year
(C) Particulate Matter	25 tons/year
(D) PM ₁₀	15 tons/year
(E) Sulfur Dioxide	40 tons/year
(F) VOC	40 tons/year
(G) Lead	0.6 ton/year
(H) Mercury	0.1 ton/year
(I) Beryllium	0.0004 ton/year
(J) Asbestos	0.007 ton/year
(K) Vinyl Chloride	1 ton/year
(L) Fluorides	3 tons/year
(M) Sulfuric Acid Mist	7 tons/year
(N) Hydrogen Sulfide	10 tons/year
(O) Total reduced sulfur (including hydrogen sulfide)	10 tons/year
(P) Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year
(Q) Municipal waste combustor organics (measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 ton/year
(R) Municipal waste combustor metals (measured as particulate matter)	15 tons/year
(S) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tons/year

(a) For the Medford-Ashland Air Quality Maintenance Area, and the Klamath Falls Urban Growth Area, the Significant Emission Rate for particulate matter is defined in **Table 3**. For the Klamath Falls Urban Growth Area, the Significant Emission Rates in Table 3 for particulate matter apply to all new or modified sources for which permit applications have not been submitted prior to June 2, 1989.

**Table 3
OAR 340-28-110**

**Significant Emission Rates for the Nonattainment
Portions of the Medford-Ashland Air Quality
Maintenance Area and the Klamath Falls Urban Growth Area**

<u>Air Contaminant</u>	<u>Emission Rate</u>					
	<u>Annual</u>		<u>Day</u>		<u>Hour</u>	
	<u>Kilograms</u>	<u>(tons)</u>	<u>Kilogram</u>	<u>(lbs)</u>	<u>kilogram</u>	<u>(lbs)</u>
Particulate Matter or PM ₁₀	4,500	(5.0)	23	(50.0)	4.6	(10.0)

- (b) For regulated air pollutants not listed in Table 2 or 3, the Department shall determine the rate that constitutes a significant emission rate.
- (c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m³ (24 hour average) shall be deemed to be emitting at a significant emission rate.

- (106) "Significant Impairment" occurs when visibility impairment in the judgment of the Department interferes with the management, protection, preservation, or enjoyment of the visual experience of visitors within a Class I area. The determination shall be made on a case-by-case basis considering the recommendations of the Federal Land Manager; the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered with respect to visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.
- (107) "Small Source" means any stationary source with a regular ACDP (not a letter permit or a minimal source permit) or a federal operating permit which is not classified as a large source.
- (108) "Source":
- (a) except as provided in subsection (b) of this section, means any building, structure, facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control.
 - (b) as used in OAR 340-28-1900 through 340-28-2000, New Source Review, and the definitions of "BACT", "Commenced", "Construction", "Emission Limitation", "Emission Standard", "LAER", "Major Modification", "Major Source", "Potential to Emit", and "Secondary Emissions" as these terms are used for purposes of OAR 340-28-1900 through 340-28-2000, includes all pollutant emitting activities which belong to a single major industrial group (i.e., which have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987) or are supporting the major industrial group.
- (109) "Source category":
- (a) except as provided in subsection (b) of this section, means all the pollutant emitting activities which belong to the same industrial grouping (i.e., which have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987).
 - (b) as used in OAR 340-28-2400 through 340-28-2550, Major Source Interim Emission Fees, and OAR 340-28-2560 through 340-28-2740, Federal Operating Permit Fees, means a group of major sources determined by the Department to be using similar raw materials and having equivalent process controls and pollution control equipment.
- (110) "Source Test" means the average of at least three test runs during operating conditions representative of the period for which emissions are to be determined, conducted in accordance with the Department's Source Sampling Manual or other Department approved methods.
- (111) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.
- (112) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant.
- (113) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.
- (114) "Synthetic minor source" means a source which would be classified as a major source under OAR 340-28-110, but for physical or operational limits on its potential to emit air pollutants contained in an ACDP issued by the Department under OAR 340-28-1700 through 340-28-1790.

- (115) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:
- (a) a major modification subject to OAR 340-28-1930, Requirements for Sources in Nonattainment Areas;
 - (b) a major modification subject to OAR 340-28-1940, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas ;
 - (c) a change which is subject to a New Source Performance Standard under Section 111 of the FCAA; or
 - (d) a modification under Section 112 of the FCAA.
- (116) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the reference method described in 40 CFR Part 50, Appendix B (July 1, 1993).
- (117) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H₂S).
- (118) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-28-630. For existing sources, the emission limit established shall be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established shall be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations shall be based on information known to the Department considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required.
- (119) "Unavoidable" or "could not be avoided" means events which are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.
- (120) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment which may cause an excess emission.
- (121) "Verified Emission Factor" means an emission factor approved by the Department and developed for a specific major source or source category and approved for application to that major source by the Department.
- (122) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.
- (123) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.
- (a) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane(CFC-114); chloropentafluoroethane(CFC-

115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane(HFC-134);1,1,1-trifluoroethane(HFC-143a);1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

- (A) Cyclic, branched, or linear, completely fluorinated alkanes;
 - (B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
 - (C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
 - (D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- (b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds, as listed in subsection (a), may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.
- (c) As a precondition to excluding these compounds, as listed in subsection (a), as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

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

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from OAR 340-20-033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & ef. 1-30-92; DEQ 27-1992, f. & ef. 11-12-92; Renumbered from OAR 340-20-145; Renumbered from OAR 340-20-225; Renumbered from OAR 340-20-305; Renumbered from OAR 340-20-355; Renumbered from OAR 340-20-460; Renumbered from OAR 340-20-520, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ --1994, f. & ef. 10-28-94

Annual Base Fee

340-28-2580

- (1) The Department shall assess an annual base fee of ~~\$2,500~~**\$2569** for each major source subject to the federal operating permit program.
- (2) The annual base fee shall be paid to cover the period from November 15 of the current calendar year to November 14 of the following year.

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

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1992, f. & ef. 5-19-94

Emission Fee

340-28-2590

- (1) Based on the Federal Operating Permit Program Budget, prepared by the Department and approved by the 1993 Oregon Legislature, the Commission determines that an emission fee of ~~\$29.26~~**\$30.07** per ton is necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

(2) The emission fee shall be applied to emissions from the previous calendar year based on the elections made according to OAR 340-28-2640.

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

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

Election For Each Assessable Emission

340-28-2640

- (1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions for each the previous calendar year for each assessable emission and notify the Department in accordance with OAR 340-28-2660.
- (2) The owner or operator may elect to pay emission fees on permitted emissions for hazardous air pollutants. An owner or operator may elect a Hazardous Air Pollutant PSEL in accordance with OAR 340-28-1050. The HAP PSEL shall only be used for fee purposes.
- (3) If an owner or operator fails to notify the Department of the election for an assessable emission, the Department shall assess emission fees for the assessable emission based on permitted emissions. If the permit does not identify a PSEL for an assessable emission, the Department shall develop a PSEL.
- (4) An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

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

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

Emission Reporting

340-28-2650

- (1) For the purpose of assessing emission fees the owner or operator shall submit the following information on a form(s) developed by the Department for each assessable emission in tons per year, reported as follows:
 - (a) Particulate Matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as defined in OAR 340-28-110(71), as PM₁₀ or if permit specifies Total Suspended Particulate (TSP) then as TSP,
 - (b) Sulfur Dioxide as SO₂,
 - (c) Oxides of Nitrogen (NO_x) as Nitrogen Dioxide (NO₂),
 - (d) Total Reduced Sulfur (TRS) as H₂S in accordance with OAR 340-25-150(15),
 - (e) Volatile Organic Compounds as:
 - (A) VOC for material balance emission reporting, or
 - (B) Propane (C₃H₈), unless otherwise specified by permit, or OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.
 - (f) Fluoride as F.
 - (g) Lead as Pb.
 - (h) Hydrogen Chloride as HCl.
 - (i) Estimate of Hazardous Air Pollutants as specified in a Department approved test method.
- (2) The owner or operator electing to pay emission fees on actual emissions shall report emissions as follows:
 - (a) Round up to the nearest whole ton for emission values 0.5 and greater, and
 - (b) Round down to the nearest whole ton for emission values less than 0.5.

- (3) The owner or operator electing to pay emission fees on actual emissions shall:
 - (a) Submit complete information on the forms including all assessable emissions, emission units and sources, and
 - (b) Submit documentation necessary to support emission calculations.
- (4) The owner or operator electing to pay on actual emissions for an assessable emission shall report total emissions including those emissions in excess of 4,000 tons for each assessable emission.
- (5) The owner or operator electing to pay on permitted emissions for an assessable emission shall submit a statement to the Department that they shall pay on the PSEL in effect for the calendar year for which they are paying, in accordance with OAR 340-28-2640 and 340-28-2650.
- (6) If more than one permit is in effect for a calendar year for a major source, the owner or operator electing to pay on permitted emissions shall pay on the most current PSEL(s) ~~in effect for each day of that calendar year.~~

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

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94

Actual Emissions

340-28-2670 An owner or operator electing to pay on actual emissions shall obtain emission data and determine assessable emissions using one of the following methods:

- (1) Continuous monitoring systems used in accordance with OAR 340-28-2680,
- (2) Verified emission factors developed for that particular source in accordance with OAR 340-28-2720 for:
 - (a) Each assessable emission, or
 - (b) A combination of assessable emissions if there are multiple sources venting to the atmosphere through one common emission point (eg. stack). The owner or operator shall have a verified emission factor plan approved by the Department prior to conducting the source testing in accordance with OAR 340-28-2720,
- (3) Material balances determined in accordance with OAR 340-28-2690, OAR 340-28-2700, or OAR 340-28-2710, or
- (4) Verified emission factors for source categories developed in accordance with OAR 340-28-2720(11).
- (5) For specific assessable emissions of regulated air pollutants listed under OAR 340-32-130 and not subject by permit to a Plant Site Emission Limit, where the Department determines there are not applicable methods to demonstrate actual emissions, the owner or operator shall use the best representative data to develop an emission factor, subject to Department approval.

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

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

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:
March 1, 1995	5:30 p.m.	811 SW Sixth Ave., Room 3A DEQ Headquarters, Portland
March 2, 1995	5:30 p.m.	1375 NE Forbes, Room City of Bend, Dept. of Public Works
March 6, 1995	5:30 p.m.	Jackson County Auditorium Medford

HEARINGS OFFICER: Maria Behlke

STATUTORY AUTHORITY: ORS 468A.315

AMEND: OAR 340-28-110
OAR 340-28-2580
OAR 340-28-2590
OAR 340-28-2650
OAR 340-28-2670

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

SUMMARY:

Costs of implementing and administering the Federal Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

When this rule was initially developed the determination of staff resources needed to accomplish the required tasks was based on the Department's experience with similar activities. The Federal "presumptive minimum" of \$25 per ton of emissions, coupled with an annual base fee and specific user fees was determined to be adequate revenue to support this level of effort.

The rule amendments will raise the Annual Base Fee from \$2500/yr to \$2569/yr and the Emissions Fee from \$29.26/ton to \$30.07/ton based on an increase of 2.7% in the U.S. Consumer Price Index since the last rule adoption. These fees are charged to regulated major industrial sources.

As a result of our experience with the first stages of implementation, new information is being gathered to better ascertain the real resource needs of the program. The Air Quality Division's Industrial Source Advisory Committee was briefed on this proposed rule making. They decided to support this proposal, but if additional fees were determined by the Department to be required, a sub-committee would be formed to consider this new information and the proposed rule.

LAST DATE FOR COMMENT: March 10, 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: Gregg Lande
ADDRESS: Air Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204

TELEPHONE: (503) 229-6411
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.

Gregg E. Lande
Signature

1/5/95
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Federal Operating Permit Fee Increase

Rulemaking Statements

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

1. Legal Authority

ORS 468.020
ORS 468A.315

2. Need for the Rule

Costs of implementing and administering the Federal Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. The Federal Clean Air Act requires that fees be increased to keep pace with inflation and maintain this self-sufficiency.

3. Principal Documents Relied Upon in this Rulemaking

ORS 468A.315
OAR Chapter 340, Division 28
Oregon Department of Environmental Quality, Air Quality Program Title V
Workload Analysis (Sept. 1992)

Documents available at: DEQ Air Quality Division
811 S. W. Sixth Avenue
Portland, OR 97204

4. Advisory Committee Involvement

As a result of our experience with the first stages of implementation, new information was gathered to better ascertain the real resource needs of the program. The Air Quality Division's Industrial Source Advisory Committee was briefed on this proposed rule making. They decided to support this proposed increase based on the increase in the Consumer Price Index, but if additional fees were determined by the Department to be required, a sub-committee would be formed to consider this new information and the proposed rule.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Federal Operating Permit Fee Increase

Fiscal and Economic Impact Statement

Introduction

As a result of the increase in fees, regulated facilities will pay more for each ton of air pollution released. This may provide some incentive for reducing the quantities emitted. To the extent that a facility can avoid these higher fees by reducing their emissions they will enjoy a competitive advantage over other facilities with greater emissions.

In 1994 the Annual Base Fee was charged to 111 major industrial sources, with an additional 50 sources expected to enter the program in the next year. This fee would increase from \$2500/yr to \$2569/yr if the proposed rule amendment were made.

Assessable emissions in 1994 were 74,379 tons. These are projected to increase about 20%, based on revised emissions estimates being reported in Federal Operating Permit applications now being received by the Department. The proposed rule amendment will increase the fee paid per ton of pollution from \$29.26 to \$30.07.

General Public

Higher regulatory costs are likely to affect consumers through higher costs of goods and services.

Small Business

Some industrial sources which are defined to be major sources of air pollution by rule may be considered small businesses. In general, these companies tend to emit less than 100 tons per year of air pollutants. The fee increase proposed would raise the fees of a 100 ton/yr source by a total of \$150/yr (from \$2500 + \$2926 = \$5426 to \$2569 + \$3007 = \$5576).

Large Business

Most industrial manufacturing facilities are major sources of air pollution and are subject to Federal Operating Permits and the associated fees. The largest source of air pollution in the state has approximately 8600 tons/yr of assessable emissions, and paid about \$250,000 in fees in 1994. The proposed fee increase would raise this 2.7% or about \$7,000 in 1995. The vast majority of sources fall in the 100 to 1000 tons/yr range.

Local Governments

At this time Coos County, the Port of Portland, Oregon State University, and the Oregon Health Sciences University are the only public agencies required to receive Federal Operating Permits. Their permitting fees would also increase by 2.7%.

The Lane Regional Air Pollution Authority is the only other air permitting agency in Oregon. They must also demonstrate to the EPA that their Federal Operating Permit program is self-supporting but they establish their own fee schedule and this rule amendment will not necessarily affect them.

State Agencies

Costs of implementing and administering the Federal Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon. The proposed increase in revenue is intended to offset these increased costs in order to maintain this self-sufficiency, without any increase in FTE. Both revenue and expenditures are projected to increase by 2.7% over 1994, or approximately \$73,000.

Assumptions

Estimated expenditures are based on the assumption that almost all facilities subject to this program have been identified. It is also assumed that the workload analysis completed in September 1992 by the Air Quality Division is accurate. Revenue forecasts are also based on the assumption that the number of sources subject to this program are known, and that air emissions did not change significantly in 1994 (each billing is based on the previous year's emissions).

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Federal Operating Permit Fee Increase

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

Costs of implementing and administering the Federal Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

The rule amendments will raise the Annual Base Fee from \$2500/yr to \$2569/yr and the Emissions Fee from \$29.26/ton to \$30.07/ton based on a 2.7% increase in the U.S. Consumer Price Index since the last rule adoption.

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

Yes No

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

Oregon's Federal Operating Permit and Air Contaminant Discharge Permit programs which regulate air emissions from industrial sources.

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

Yes No (if no, explain):

Current procedures require local governments to determine land use compatibility before a Notice of Construction approved or an air permit is issued.

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.

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.

Gregory A. Arce
Division

Robert G. ...
Intergovernmental Coord.

1/5/95
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?*

Retaining Federal approval of Oregon's Federal Operating Permit program is the primary reason for this fee increase. Costs of implementing and administering the Federal Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

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

As mentioned above, one of the requirements for Federal approval of a state's Federal Operating Permit program is to have adequate funding to carry out that program (40 CFR Part 70). This requirement is also contained in the Federal Register notice which grants interim approval to the Oregon program (59 FR 61820).

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. The Oregon Legislature agreed that this program should be self-supporting and provided for increases in fees to compensate for increased expenses caused by inflation.

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

No

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

No

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

No

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

Equity is maintained since the fees are being increased by the same percentage for all Oregon facilities.

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

No

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

No

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

Yes

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

The fee structure is designed to allow market pressures to be brought to bear on facilities emitting air pollutants. As a result of the increase in fees, regulated facilities will pay more for each ton of air pollution released which may provide some incentive for reducing the quantities emitted. Higher regulatory costs are likely to be passed on to consumers through higher costs of goods and services. To the extent that a facility can avoid these higher fees by reducing their emissions they will enjoy a competitive advantage over other facilities with greater emissions.

Memo To: Environmental Quality Commission
Agenda Item E
May 19, 1995 Meeting
Page 6

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
- G. Advisory Committee Membership and Report
- H. Rule Implementation Plan

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:

Section:

Gregg E. Lande

Division:

Gregory A. Lande

Report Prepared By: Gregg Lande

Phone: 229-6411

Date Prepared: April 18, 1995

gel:GEL

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 9, 1995

To: Environmental Quality Commission
From: Maria Behlke
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 1, 1995, beginning at 5:30
Hearing Location: 811 S.W. Sixth Avenue, Room 3A
Portland, Oregon

Hearing Date and Time: March 2, 1995, beginning at 5:30
Hearing Location: 1375 N.E. Forbes, Department of Public
Works Training Room
Bend, Oregon

Hearing Date and Time: March 6, 1995, beginning at 5:30
Hearing Location: Oakdale & 8th Ave, Jackson County
Courthouse Auditorium
Medford, Oregon

Title of Proposal: Federal Operating Permit Fee Increase Rule Revision
Hazardous Air Pollutant Program Rules Adoption
Hazardous Air Pollutant Emission Standards Rule Adoption

The rulemaking hearings on the above titled proposals were convened at 5:30 p.m.

There was no attendance at any of the hearings.

The hearings were closed at 6:30, 6:15 and 6:15 respectively.

LIST OF WRITTEN COMMENTERS

William O. Dameworth
Pope & Talbot, Inc.
P.O. Box 400
Halsey, OR 97348

Mark E. Leary
Brown - Ferris Industries
915 L Street, Suite 1140
Sacramento, CA 95814

Sharon Moody
Lane Regional Air Pollution Authority
225 North Fifth, Suite 501
Springfield, OR 97477-4671

DEPARTMENT'S EVALUATION OF PUBLIC COMMENT

WRITTEN TESTIMONY

Comment

The letter submitted by Ms. Moody of LRAPA pointed out that contrary to the information in the rulemaking package LRAPA's fee schedule must remain the same as the Department's.

Department Response

The Department agrees with this comment. LRAPA's fee schedule, which was included in the program documentation submitted to the EPA for approval, must remain the same as the Department's in order to maintain program approval.

Comment

The letter submitted by Mr. Dameworth of Pope & Talbot expressed concern that the revised rules would now include carbon monoxide as a regulated pollutant, and would require that the Emissions fee be applied to that pollutant as well.

Department Response

This concern was based, not on the proposed rule revision, but on the most recent version of the Emissions Reporting forms which required that carbon monoxide emissions be reported. Mr. Dameworth believed that emissions fees would now also be based upon those emissions. However, carbon monoxide emissions are not now include as assessable emissions and these rule amendments do not propose to change that.

Comment

Mr. Leary's comments supported the fee increase as proposed but went on to suggest that the rule include a cap of \$35 per ton as a limit on future increases.

Department Response

Federal rules require that all the applicable direct and indirect costs of the program be supported by fees on the regulated community. The Legislature established the fee structure contained in ORS 468A.315 recognizing that cost of living increases must be accounted for over time. Inclusion of a cap is not appropriate because it could prevent the Department from obtaining the revenue it must have to maintain EPA approval and continue the program.

No **ORAL TESTIMONY** was presented.

DETAILED CHANGES TO ORIGINAL RULEMAKING PROPOSAL

Annual Base Fee

340-28-2580

- (2) The annual base fee shall be paid to cover Department activities in the year following the payment.

Emission Fee

340-28-2590

- (2) The emission fee shall be applied to emissions from the previous calendar year based on the elections made according to OAR 340-28-2640.

Election For Each Assessable Emission

340-28-2640

- (1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions for ~~each~~ the previous calendar year for each assessable emission and notify the Department in accordance with OAR 340-28-2660.

**Oregon Department of Environmental Quality
Air Quality Industrial Source Advisory Committee III
Members**

Chair

Judge Jacob Tanzer
Ball, Janik & Novack
One Main Place
101 SW Main Street
Portland, OR 97204
228-2525
FAX 2958-1058

Ex Officio

Don Arkell
LRAPA
225 N 5th #501
Springfield, OR 97477
1-503-726-2514
FAX 1-503-726-3782

Environmental

Tim Raphael (interim)
OSPIRG
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Portland, OR 97214
231-4181
FAX 231-4007

Public-at-Large

Shannon Bauhofer
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1-503-389-1444
FAX 1-503-389-0256

Business

Bonnie Gariepy
Intel Corporation, AL4-91
5200 NE Elam Young Parkway
Hillsboro, OR 97124
642-6592
FAX 649-3996

Business

Candee Hatch
CH₂M Hill
825 NE Multnomah #1300
Portland, OR 97232
235-5022 X 4336
FAX 235-2445

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Doug Morrison
representing Northwest Pulp and Paper Assoc.
Bogle & Gates
2 Union Square
601 Union Street
Seattle, WA 98101-2346
1-206-621-1413
Home 1-206-641-9352
FAX 1-206-621-2660

Environmental

Dr. Robert Palzer
1610 NW 118th Court
Portland, OR 97229-5022
520-8671
FAX 520-8671

Business

Jim Spear
Williams Air Controls
14100 SW 72nd Avenue
Tigard, OR 97226
684-8600
FAX 684-8610

Public-at-Large

Nancy Spieler
3530 16th Place
Forest Grove, OR 97116
359-5760

Environmental

Lisa Brenner (interim)
18181 SW Kummrow Road
Sherwood, OR 97140-9164
625-6891
FAX 625-6369

Business

Jim Whitty
Associated Oregon Industries
317 SW Alder #450
Portland, OR 97204
227-3730 X 103
FAX 227-0115

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Oregon Title V Operating Permit Fee Increase

Rule Implementation Plan

Summary of the Proposed Rule

Costs of implementing and administering Oregon's Title V Operating Permit program have increased as a result of inflation. This permitting program must remain 100% self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. The Federal Clean Air Act requires that fees be increased to keep pace with inflation and maintain this self-sufficiency.

The rule amendments will raise the annual Base Fee from \$2500/yr to \$2569/yr and the annual Emissions Fee from \$29.26/ton to \$30.07/ton because of an increase of 2.7% in the U.S. Consumer Price Index since the last rule adoption. These fees are charged to regulated major industrial sources.

Proposed Effective Date of the Rule

The Department plans to file the rule with the Secretary of State within one week of adoption and make it effective upon filing. This increase will affect Annual Base Fees, for the period from November 15, 1995 to November 14, 1996. It will also affect Emissions Fees paid on actual or permitted emissions in calendar year 1994.

Proposal for Notification of Affected Persons

Major industrial air emissions sources who are already paying the Annual Base and Emissions Fees received notice of this proposed rule revision. Permittees who are required to pay these fees will be sent letters describing the fee increases prior to receiving their annual invoices in June.

Department staff will be notified through e-mail of the adoption by the Commission, and when the rule has been filed and is effective. Revised rules will be sent to affected staff as they become available so that they are able to respond to questions from the regulated community.

Proposed Implementing Actions

After adoption of this rule the Department's Business Office will be notified so that June 1995 invoices will reflect the change. There are three categories of sources which will be affected differently by this fee increase.

- 1) Major industrial facilities (A1 sources) that have already been paying Oregon Title V Operating Permit fees will be billed at the new rates by the Department in June.
- 2) Industrial facilities (A2 sources) that have not already been paying Oregon Title V Operating Permit fees, because they still had the option of becoming synthetic minor sources, will be billed at the time of permit application. They will be paying an Annual Base fee for 1994-95 at the old rate and for 1995-96 at the new rate. They will also be paying Emissions fees, using the old rate for 1993 emissions and the new rate for 1994 emissions. (Note: This dual rate assessment will only occur during this initial phase of permitting. It is necessary to provide equity between sources identified by the Department that began paying Title V fees in November 1994 and those that held off until their status as Title V sources was certain.)
- 3) Major sources that apply for Oregon Title V Operating Permits in the future will be billed at this new rate when their permit application is received.

This new fee rate is reflected in the 1995-97 budget and must be effective prior to the Department's June 1995 invoicing so that adequate revenues are collected to maintain the program.

Proposed Training/Assistance Actions

These rule changes will not require any training for Department staff, or technical assistance to the regulated community, for implementation.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item F
05-18-95 Meeting

Title:

Boundary Descriptions: Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon

Summary:

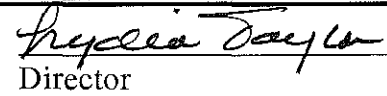
This rulemaking will give the Department and the public greater certainty when dealing with air quality control areas. It is providing legal definitions for boundaries that already exist, but often only in the form of maps.

Department Recommendation:

Adopt the rules regarding Boundary Descriptions as presented an Attachment A of the staff report.


Report Author


Division Administrator


Director

04-26-95

†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: 05-03-95

To: Environmental Quality Commission

From: Lydia Taylor, Acting Director *Lydia Taylor*

Subject: Agenda Item F, 05-18-95, EQC Meeting

Boundary Descriptions: Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon

Background

On 02-07-95, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would define existing air quality boundaries, allowing the public and the Department to rely on specific written descriptions rather than lines on maps. The existing air quality areas defined in this rulemaking include air quality control regions, nonattainment areas, maintenance areas, and the open burning control area for the Portland Metropolitan Area.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on 03-01-95. 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 02-17-95.

A Public Hearing was held 03-22-95, 7:00pm, at the Portland Building with Dave Nordberg serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through 03-23-95. 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.

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

Memo To: Environmental Quality Commission
Agenda Item F
May 18, 1995 Meeting
Page 2

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

This proposed rulemaking is intended to address the problem of not having air quality regions accurately defined. Currently, the majority of air quality regions exist as lines on maps.

Relationship to Federal and Adjacent State Rules

As set out in Attachment F, these rules do not pertain to requirements or standards. Federal requirements dictate that areas with special air quality needs be identified and adequately defined. That is what this proposal seeks to do.

Authority to Address the Issue

ORS 468.020, ORS 468A. 035

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

This rulemaking is an administrative clarification. As such, no advisory committee was used.

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

The Department presented a clarification to the boundaries of existing air quality regions. There were no significant issues because there was no substantive change.

Summary of Significant Public Comment and Changes Proposed in Response

There was only one comment received during the comment period. The commentor expressed concern over having to determine an Urban Growth Boundary. The Department is not proposing to make any changes because of this comment because Urban Growth Boundaries already exist; wherever appropriate, the Department is merely using those as they exist.

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

The regulated public will have to do nothing to comply with the proposed rules. This rulemaking is designed to help sources near air quality regions and the Department make a more certain determination as to whether a source lies within an air quality region. It will be implemented by being distributed as a part of OAR Chapter 340, Division 31.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the clarification of boundary descriptions of Air Quality Regions and Nonattainment and Maintenance areas of Oregon 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. Written Comment Received and Department's Evaluation of Comment
- E. Rule Implementation Plan

Memo To: Environmental Quality Commission
Agenda Item F
May 18, 1995 Meeting
Page 4

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:

Section:

John F. Kawalyke

Division:

At Quality Planning

Report Prepared By: Jeff Armstrong

Phone: 229-6446

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04-10-95

DIVISION 23

RULES FOR OPEN BURNING

Open Burning Prohibitions

Clackamas County

- 340-23-065 Open burning prohibitions for Clackamas County:
- (1) Industrial open burning is prohibited except as provided in OAR 340-23-100.
 - (2) Agricultural open burning is allowed subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal:
 - (a) Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day.
 - (b) Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-23-040(4)(c) and may be allowed, without addition of new waste material, to burn after hours and into prohibition condition days.
 - (3) Commercial open burning is prohibited except as may be provided by OAR 340-23-100.
 - (4) Construction and Demolition open burning is allowed outside of special control areas subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Unless authorized pursuant to OAR 340-23-100, Construction and Demolition open burning is prohibited within special control areas including the following:
 - (a) Areas in or within six (6) miles of the corporate city limits of Gladstone, Happy Valley, Lake Oswego, Milwaukie, Oregon City, Portland, Rivergrove, Tualatin, West Linn and Wilsonville.
 - (b) Areas in or within three (3) miles of the corporate city limits of Canby, Estacada, Gresham, Molalla and Sandy.
 - (5) Domestic open burning:
 - (a) ~~[As generally depicted in Figure 1A of OAR 340-23-115, domestic open burning is always prohibited within the following fire districts unless authorized pursuant to OAR 340-23-100: Clackamas County RFPD #1, that portion of Clackamas County RFPD #54 which lies within the Metropolitan Service District, that portion of Clackamas County RFPD #71 which lies west of a line extending due north of the western tip of Beebe Island in the Clackamas River, Glenmorrie RFPD #66, Gladstone, Lakegrove RFPD #57, Lake Oswego, Milwaukie, Oregon~~

~~City, Oak Lodge, Portland, Riverdale RFPD #60, Rosemont RFPD #67, that part of Tualatin Valley Fire and Rescue District which lies north of I 205 and West Linn.] Those areas where domestic burning is always prohibited:~~

~~(unless authorized under 340-23-100):~~

~~Beginning at the trisection of the Clackamas-Multnomah-Washington County Line; thence east and then northerly and then east following the Clackamas-Multnomah County Line to the intersection with the northwest corner of Section 27, T1S, R2E; thence south to the midpoint of the western boundary of Section 3, T2S, R2E; thence on a line east approximately 1/4 of a mile; thence south to the southern boundary of Section 3, T2S, R2E and the corner of Camp Withycombe (Oregon National Guard); thence west approximately 1/4 mile to the midpoint of the southern boundary of Section 3, T2S, R2E; thence on a line south to the Clackamas River and the Metropolitan Service District (METRO) Boundary as defined in Oregon Revised Statutes (ORS) Chapter 268.125; thence following the METRO Boundary first southerly and then westerly to the intersection with the Willamette River, excepting that portion listed in subsection (b)(2); thence northeasterly along the Willamette River to the confluence with the Tualatin River; thence northwesterly along the Tualatin River to the intersection with U.S. Interstate Highway 205 (I-205); thence westerly along I-205 to the intersection with the Clackamas-Washington County Line; thence north along the Clackamas-Washington County Line to the trisection of the Clackamas-Multnomah-Washington County Line, the point of beginning.~~

(b) ~~[In areas of Clackamas County generally depicted in Figure 1 of OAR 340 23 115 and not included in the area where burning is prohibited by OAR 340 23 065(5)(a), domestic open burning is prohibited except that open burning of yard debris is allowed within the following fire districts between March first and June fifteenth inclusive and between October first and December fifteenth inclusive, subject to OAR 340 23 040, 340 23 042 and 340 23 042 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal:—~~

~~(A) Beaver Creek RFPD #55, —~~

~~(B) Boring RFPD #59, —~~

~~(C) Canby, —~~

~~(D) Canby RFPD #62, —~~

~~(E) That portion of Clackamas Co. RFPD #1 which lies outside the Metropolitan Service District,~~

~~(F) That portion of Clackamas RFPD #1 which lies east of a line extending due north of the western tip of Beebe Island in the Clackamas River, —~~

- ~~(G) Happy Valley RFPD #65,~~
~~(H) Sandy RFPD #2,~~
~~(I) That part of Tualatin Valley Fire and Rescue District which lies south of I 205.]~~

Those areas where domestic open burning is prohibited except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-23-040, -042, and -043 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall, are the areas that lie within both Clackamas County and the METRO Boundary and are not included in OAR 340-23-065(a). Specifically, those areas are listed as follows:

- (A) The area beginning at the point on the Clackamas-Washington County Line where it is intersected by I-205; thence easterly along I-205 to the intersection with the Tualatin River; thence southeasterly along the Tualatin River to the confluence with the Willamette River; thence southerly along the Willamette River to the intersection with the northern boundary of Section 15, T3S, R1E; thence west to the northwest corner of Section 15, T3S, R1E; thence north to the northwest corner of Section 10, T3S, R1E; thence west to the northwest corner of Section 9, T3S, R1E; thence north to the northwest corner of Section 4, T3S, R1E; thence west to the intersection with the Clackamas-Washington County Line; thence north to the intersection with I-205, the point of beginning.
- (B) The area bounded by Henrici Road on the south; Highway 213 on the west; Beaver Creek Road on the east; and the southern boundary of Clackamas Community College on the north.
- (C) The area beginning at the point where the Clackamas-Multnomah County Line intersects the northwest corner of Section 27, T1S, R2E; thence south to the midpoint of the western boundary of Section 3, T2S, R2E; thence on a line east approximately 1/4 of a mile; thence south to the southern

boundary of Section 3, T2S, R2E and the corner of Camp Withycombe; thence west 1/4 mile to the midpoint of the southern boundary of Section 3, T2S, R2E; thence on a line south to the Clackamas River; thence easterly along the Clackamas River to the intersection with the western boundary of Section 18, T2S, R3E; thence north to the northwest corner of Section 18, T2S, R3E; thence east to the northwest corner of Section 14, T2S, R3E; thence north to the northwest corner of Section 11, T2S, R3E; thence east to the intersection with Epperson Road; thence north-northwesterly along Epperson Road to the intersection with the Clackamas-Multnomah County Line at the northern boundary of Section 29, T1S, R2E; thence west along the county line to the northwest corner of Section 27, T1S, R2E, the point of beginning.

- (c) Domestic open burning is allowed in all other areas of Clackamas County subject to OAR 340-23-040 and 340-23-042 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (d) No person shall cause or allow to be initiated or maintained any domestic open burning other than during daylight hours between 7:30 a.m. and two hours before sunset unless otherwise specified by Department pursuant to OAR 340-23-043.

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

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

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; AQ 18-1992, f. & ef. 3-11-92; AQ 1-1993, f. & ef. 3-9-93

Multnomah County

- 340-23-070 Open burning prohibitions for Multnomah County:
- (1) Industrial open burning is prohibited except as provided in OAR 340-23-100.
 - (2) Agricultural open burning is allowed subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal:
 - (a) Agricultural open burning within the purview of this rule will be prohibited between July 15 and September

15 unless specifically authorized by the Department on a particular day.

- (b) Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-23-040(4)(c) and may be allowed, without addition of new waste material, to burn after hours and into prohibition condition days.
- (3) Commercial open burning is prohibited except as provided in OAR 340-23-100.
- (4) Construction and Demolition open burning, unless authorized pursuant to OAR 340-23-100, is prohibited west of the Sandy River but is allowed east of the Sandy River subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Domestic open burning:
 - (a) ~~{As generally depicted in Figure 1A of OAR 340-23-115, open burning is always prohibited within the following area of Multnomah County unless authorized pursuant to OAR 340-23-100: west of a line beginning at the eastern most point where the Portland city limit meets the Multnomah-Clackamas Counties line, thence northward and eastward along the Portland city limits to Johnson Creek, thence continuing eastward and northward along Johnson Creek to the Gresham city limit, thence northward and eastward along the Gresham city limit to 182nd Avenue, thence northward along 182nd Avenue to its junction with 181st Avenue, thence northward along 181st Avenue to Sandy Boulevard, thence eastward along Sandy Boulevard to 185th Avenue, thence northward along 185th Drive and its extension to the Columbia River and the state line, but excluding that portion of western Multnomah County included in Skyline RFPD #20, Sauvie Island, Burlington Water District and all other areas in northwestern Multnomah County which are outside of a Fire Protection District.}~~

Those areas where open burning is always prohibited (unless authorized by 340-23-100):

- (A) The area encompassed by the line beginning at the point where the Multnomah, Clackamas, and Washington County lines meet at a trisection; thence east and then north and then east along the Multnomah-Clackamas County Line to the intersection with SE 172nd Avenue; thence north along SE 172nd Avenue to the intersection with SE Foster Road; thence southeasterly along SE Foster Road to the intersection with Jenne Road; thence northeasterly along Jenne Road to the intersection with SE 174th Avenue; thence north along SE 174th Avenue to the

intersection with SE Marie Street; thence east along SE Marie Street to the intersection with SE 182nd Avenue; thence north along SE 182nd Avenue and continuing north as SE 182nd Avenue merges into SE 181st Avenue and then turns into NE 181st Avenue to the intersection with NE Sandy Boulevard; thence easterly along NE Sandy Boulevard to the intersection with NE 185th Drive; thence north along NE 185th Drive to the intersection with Marine Drive; thence continuing on a line due north to the Columbia River and the state line; thence following the Columbia River and the state line to the confluence of the Columbia and Willamette Rivers; thence along the Willamette River to the confluence with the Multnomah Channel and the Portland City Limits; thence following the Portland City Limits generally southerly to the intersection with Section 27, T1N, R1W and the Multnomah-Washington County Line; thence following the Multnomah-Washington County Line southwesterly and then south to the trisection of the Multnomah-Clackamas-Washington County Line, the point of beginning.

(B) All areas in northwest Multnomah County that are not contained within a known Fire Protection District.

(C) The Burlington Water District.

- (b) ~~{As generally depicted in Figure 1 of OAR 340-23-115, domestic open burning is prohibited in areas of Multnomah County west of the Sandy River not included in the area where burning is prohibited by OAR 340-23-070(5)(a), except, that open burning of yard debris is allowed from March first to June fifteenth inclusive and from October first to December fifteenth inclusive, subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.}~~
Those areas where domestic open burning is prohibited except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-23-040, -042, and -043 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall, are the areas within Multnomah County that lie west of the Sandy River and are not included in OAR 340-23-070(a).

- (c) Domestic open burning is allowed east of the Sandy River subject to OAR 340-23-040, 340-23-042 and 340-23-

043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

- (d) No person shall cause or allow to be initiated or maintained any domestic open burning other than during daylight hours between 7:30 a.m. and two hours before sunset unless otherwise specified by Department pursuant to OAR 340-23-043.

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

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

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; AQ 18-1992, f. & ef. 3-11-92; AQ 1-1993, f. & ef. 3-9-93

Washington County

340-23-075 Open burning prohibitions for Washington County:

- (1) Industrial open burning is prohibited except as provided in OAR 340-23-100.
- (2) Agricultural open burning is allowed subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal:
 - (a) Agricultural open burning within the purview of this rule will be prohibited between July 15 and September 15 unless specifically authorized by the Department on a particular day.
 - (b) Burning hours are during daylight hours unless otherwise set by the Department. Large piles of land clearing debris or stumps shall be handled in accordance with OAR 340-23-040(4)(c) and may be allowed, without addition of new waste material, to burn after hours into prohibition condition days.
- (3) Commercial open burning is prohibited except as may be provided by OAR 340-23-100.
- (4) Construction and Demolition open burning, unless authorized pursuant to OAR 340-23-100, is prohibited in all incorporated areas and areas within rural fire protection districts. Construction and demolition open burning is allowed in all other areas subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Domestic open burning:
 - (a) ~~As generally depicted in Figure 1A of OAR 340-23-115, open burning is always prohibited within the following area of Washington County unless authorized pursuant to OAR 340-23-100:~~
 - (A) ~~That portion of Tualatin Valley Fire and Rescue District north of I 205 plus the area including the cities of Tualatin, Durham, Tigard and King City, which is north of a line starting at the~~

~~point where I-205 meets the Tualatin city limit, thence westward, southward, westward and finally northward along the Tualatin city limit to Highway 99W, thence northward along Highway 99W to the Tualatin River, thence westward along the Tualatin River to its intersection with the boundary of the Metropolitan Service District, thence generally northward and westward along the Metropolitan Service District Boundary between the Tualatin RFPD and Washington County RFPD #1.~~

~~(B) That part of the Tualatin Valley Fire and Rescue District which is within the Metropolitan Service District.~~

~~(C) That part of Washington County Rural Fire Protection District #2 starting at the point where Highway 26 crosses the eastern boundary of the fire district, thence westward along Highway 26 to Cornelius Pass Road, thence northward along Cornelius Pass Road to West Union Road, thence eastward along West Union Road to the fire district boundary, thence southerly along the district boundary to the point of beginning.]~~

The area where open burning is always prohibited (unless authorized by 340-23-100):

Beginning at the point where U.S. Interstate Highway 205 (I-205) intersects the Washington-Clackamas County Line; thence west along I-205 to the Tualatin City Limits; thence following along the Tualatin City Limits westerly, southerly, westerly and northerly to the intersection with U.S. Highway 99; thence northerly along U.S. Highway 99 to the intersection with the Metropolitan Service District (METRO) Boundary as defined in Oregon Revised Statutes (ORS) Chapter 268.125; thence following the METRO Boundary generally northerly and westerly to the intersection with the Tualatin Valley Highway; thence westerly along the Tualatin Valley Highway to the intersection with the western boundary of Section 11, T1S, R2W; thence north to the northwest corner Section 2, T1S, R2W; thence east to the northwest corner of Section 1, T1S, R2W; thence north to the intersection with U.S. Highway 26; thence northwesterly along U.S. Highway 26 to the intersection with Cornelius Pass Road; thence northeasterly along Cornelius Pass Road to the intersection with the northern boundary of Section 23, T1N, R2W; thence east approximately 1/5 mile along the northern boundary of Section 23, T1N, R2W to the southernmost point of the Orchard; thence north following the eastern boundary of the Orchard to the intersection with West Union Road;

thence southeasterly and then easterly along West Union Road approximately 1.1 miles to a point approximately 1/4 mile west of the eastern boundary of Section 24, T1N, R2W; thence north on a line approximately 1000 feet; thence northeasterly on a line approximately 1/4 mile to the intersection of NW 185th Avenue and NW Springville Road; thence northeasterly along NW Springville Road approximately 1/4 mile to the one-quarter point of the northern boundary of Section 19, T1N, R1W; thence north approximately 400 feet; thence east to the intersection with NW 185th Avenue; thence north along 185th Avenue approximately 800 feet to the one-quarter point of the western boundary of Section 18, T1N, R1W; thence gradually northeasterly such that the Rock Creek Campus of Portland Community College is within the boundary approximately 1/2 mile to the midpoint of Section 18, T1N, R1W; thence south following the eastern boundary of the Rock Creek Campus of Portland Community college and continuing on a line due south to the intersection with NW Springville Road and the southern boundary of Section 18, T1N, R1W; thence northeasterly along NW Springville Road to the intersection with the Washington-Multnomah County Line; thence following the Washington County line southeasterly and then southerly to the point where the Washington-Clackamas County Line intersects I-205, the point of beginning.

- (b) ~~[Excluding areas listed in subsection (a) of this section and the Tri-Cities RFPD, domestic open burning is prohibited in all municipal and rural fire protection districts of Washington County as generally depicted in Figure 1 of OAR 340-23-115, except that open burning of yard debris is allowed between March first and June fifteenth inclusive and between October first and December fifteenth inclusive subject to OAR 340-23-040, 340-23-042 and 340-23-043, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.]~~

Those areas where domestic open burning is prohibited except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-23-040, -042, and -043 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall:

- (A) All incorporated areas in Washington County not listed in OAR 340-23-075(a) or OAR 340-23-075(c).
- (B) All unincorporated areas within known municipal or rural fire districts.

(c) ~~{Domestic open burning is allowed in the Tri-Cities RFPD and in all unincorporated areas of Washington County outside of municipal or rural fire protection districts subject to OAR 340-23-040 and 340-23-042 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.}~~
Those areas where domestic burning is allowed, subject to OAR 340-23-040, and -042 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall:

(A) The area enclosed by a line beginning at the point where Highway 26 intersects the western boundary of Section 24, T2N, R4W; thence north to the northwest corner of Section 13, T2N, R4W; thence east to the midpoint of the northern boundary of Section 16, T2N, R3W; thence on a line south to the middle of Section 21, T2N, R3W; thence east to the intersection with the midpoint of the western boundary of Section 22, T2N, R3W; thence south to the southwest corner of Section 22, T2N, R3W; thence continuing south to the northern boundary of Washington County Donation Land Claim (DLC) #44; thence east south and east following the northern boundary of Washington County DLC #44 to the eastern boundary of Washington County DLC #44; thence southwesterly along the eastern boundary of DLC #44 to the intersection with DLC Plot #76; thence continuing southwesterly along the eastern boundary of DLC #76 to the intersection with the Burlington Northern Railroad Line; thence northwesterly along the Burlington Northern Railroad Line to the intersection with the southern boundary of Section 32, T2N, R4W; thence west to the southwest corner of Section 36, T2N, R4W; thence north to the point where Highway 26 intersects the western boundary of Section 24, T2N, R4W, the point of beginning.

(B) All unincorporated areas of Washington County outside of municipal or rural fire districts.

(d) No person shall cause or allow to be initiated or maintained any domestic open burning other than during daylight hours between 7:30 a.m. and two hours before sunset unless otherwise specified by Department pursuant to OAR 340-23-043.

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

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

Hist.: DEQ 27-1981, f. & ef. 9-8-81; DEQ 10-1984, f. 5-29-84, ef. 6-16-84; AQ 18-1992, f. & ef. 3-11-92; AQ 1-1993, f. & ef. 3-9-93

DIVISION 31

AIR POLLUTION
CONTROL STANDARDS FOR
AIR PURITY AND QUALITY

**Prevention of Significant
Deterioration**

Restrictions on Area Classification

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, as established by Public Law 88-577;
 - (b) Eagle Cap Wilderness, as established by Public Law 88-577;
 - (c) Hells Canyon Wilderness, as established by Public Law 94-199;
 - (d) Mt. Jefferson Wilderness, as established by Public Law 90-548;
 - (e) Mt. Washington Wilderness, as established by Public Law 88-577;
 - (f) Three Sisters Wilderness, as established by Public Law 88-577;
 - (g) Strawberry Mountain Wilderness, as established by Public Law 88-577;
 - (h) Diamond Peak Wilderness, as established by Public Law 88-577;
 - (i) Crater Lake National Park, as established by Public Law 57-121 and expanded in the 1990 Clean Air Act Amendments;
 - (j) Kalmiopsis Wilderness, as established by Public Law 88-577;
 - (k) Mountain Lake Wilderness, as established by Public Law 88-577;
 - (l) Gearhart Mountain Wilderness, as established by Public Law 88-577.
- (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; and
 - (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 section (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.

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

Hist.: DEQ 18-1979, f. & ef. 6-22-79; DEQ 4-1993, f. & cert. ef. 3-10-93

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

[THE FOLLOWING RULES, 340-31-500 THROUGH 340-31-530, ARE NEW]

The Air Quality Control Regions and
Nonattainment and Maintenance Areas of Oregon

Definitions

340-31-500 As used throughout the State Implementation Plan (SIP) and as specifically referenced in OAR 340, Divisions 20, 21, 22, 25, 28, 30, 31, and 34 and in Section 4 of the SIP:

- (1) "AQCR" means Air Quality Control Region.
- (2) "AQMA" means Air Quality Maintenance Area.
- (3) "CO" means Carbon Monoxide.
- (4) "CBD" means Central Business District.
- (5) "Criteria Pollutant" means any of the six pollutants set out by the Clean Air Act (sulfur oxides, particulate matter, ozone, carbon monoxide, nitrogen dioxide, and lead) for which the EPA has promulgated standards in 40 CFR 50.4 through 50.12 (July, 1993).
- (6) "Eugene-Springfield AQMA" means the area within the bounds beginning at the northwest corner of Section 6, Township 17 South, Range 4 West; extending south to the southwest corner of Section 6, Township 17 South, Range 4 West; thence east to the northwest corner of Section 8, Township 17 South, Range 4 West; thence south to the southwest corner of Section 32, Township 17 South, Range 4 West; thence east to the northeast corner of Section 4, Township 18 South, Range 4 West; thence south to the southwest corner of Section 3, Township 18 South, Range 4 West; thence east to the northwest corner of Section 12, Township 18 South, Range 4 West; thence south to the southwest corner of Section 13, Township 18 South, Range 4 West; thence east to the northeast corner of Section 24, Township 18 South, Range 4 West; thence south to the southeast corner Section 24, Township 18 South, Range 4 West; thence east to the northeast corner of Section 21, Township 18 South, Range 3 West; thence north to the northeast corner of Section 21, Township 18 South, Range 3 West; thence east to the northeast corner of Section 22, Township 18 South, Range 3 West; thence south to the southwest corner of Section 23, Township 18 South, Range 3 West; thence east to the southeast corner of Section 24, Township 18 South, Range 3 West; thence north to the southeast corner of Section 1, Range 3 West; thence east to the southeast corner of Section 2, Township 18 South, Range 2 West; thence north to the northeast corner of Section 26, Township 17 South, Range 2 West; thence west to the southwest corner of Section 20, Township 17 South, Range 2 West; thence north to the northwest corner of Section 20, Township 17 South, Range 2 West; thence west to the southwest corner of Section 13, Township 17 South, Range 3 West; thence north to the northwest corner of Section 13, Township 17 South, Range 3

West; thence west to the northwest corner of Section 13, Township 17 South, Range 3 West; thence west to the southwest corner of Section 11, Township 17 South, Range 3 West; thence north to the northwest corner of Section 11, Township 17 South, Range 3 West; thence west to the southwest corner of Section 6, Township 17 South, Range 3 West; thence north to the northwest corner of Section 31, Township 16 South, Range 3 West; thence west to the northwest corner of Section 34, Township 16 South, Range 4 West; thence west to the point of beginning.

- (7) "Eugene-Springfield UGA" means the area within the bounds beginning at the Willamette River at a point due east from the intersection of East Beacon Road and River Loop No.1; thence southerly along the Willamette River to the intersection with Belt Line Road; thence easterly along Belt Line Road approximately one-half mile to the intersection with Delta Highway; thence northwesterly and then northerly along Delta Highway and on a line north from the Delta Highway to the intersection with the McKenzie River; thence generally southerly and easterly along the McKenzie River approximately eleven miles to the intersection with Marcola Road; thence southwesterly along Marcola Road to the intersection with 42nd Street; thence southerly along 42nd Street to the intersection with the northern branch of US Highway 126; thence easterly along US Highway 126 to the intersection with 52nd Street; thence north along 52nd Street to the intersection with High Banks Road; thence easterly along High Banks Road to the intersection with 58th Street; thence south along 58th Street to the intersection with Thurston Road; thence easterly along Thurston Road to the intersection with the western boundary of Section 36, T17S, R2W; thence south to the southwest corner of Section 36, T17S, R2W; thence west to the Springfield City Limits; thence following the Springfield City Limits southwesterly to the intersection with the western boundary of Section 2, T18S, R2W; thence on a line southwest to the Private Logging Road approximately one-half mile away; thence southeasterly along the Private Logging Road to the intersection with Wallace Creek; thence southwesterly along Wallace Creek to the confluence with the Middle Fork of the Willamette River; thence generally northwesterly along the Middle Fork of the Willamette River approximately seven and one-half miles to the intersection with the northern boundary of Section 11, T18S, R3W; thence west to the northwest corner of Section 10, T18S, R3W; thence south to the intersection with 30th Avenue; thence westerly along 30th Avenue to the intersection with the Eugene City Limits; thence following the Eugene City Limits first southerly then westerly then northerly and finally westerly to the intersection with the northern boundary of Section 5, T18S, R4W; thence west to the intersection with Greenhill Road; thence north along Greenhill Road to the intersection with Barger Drive; thence

east along Barger Drive to the intersection with the Eugene City Limits (Ohio Street); thence following the Eugene City Limits first north then east then north then east then south then east to the intersection with Jansen Drive; thence east along Jansen Drive to the intersection with Belt Line Road; thence northeasterly along Belt Line Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection with Clear Lake Road; thence west along Clear Lake Road to the intersection with the western boundary of Section 9, T17S, R4W; thence north to the intersection with Airport Road; thence east along Airport Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection East Enid Road; thence east along East Enid Road to the intersection with Prairie Road; thence southerly along Prairie Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with the Southern Pacific Railroad Line; thence southeasterly along the Southern Pacific Railroad Line to the intersection with Irving Road; thence east along Irving Road to the intersection with Kalmia Road; thence northerly along Kalmia Road to the intersection with Hyacinth Road; thence northerly along Hyacinth Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with Spring Creek; thence northerly along Spring Creek to the intersection with River Road; thence northerly along River Road to the intersection with East Beacon Drive; thence following East Beacon Drive first east then south then east to the intersection with River Loop No.1; thence on a line due east to the Willamette River and the point of beginning.

- (8) "Grants Pass CBD" means the area within the City of Grants Pass enclosed by "B" Street on the north, 8th Street to the east, "M" Street on the south, and 5th Street to the west.
- (9) "Grants Pass UGB" as shown on the Plan and Zoning maps for the City of Grants Pass as of Feb. 1, 1988 is the area within the bounds beginning at the NW corner of Sec. 7, T36S, R5W; thence south to the SW corner of Sec. 7; thence west along the southern boundary of Sec. 12, T36S, R5W approx. 2000 feet; thence south approx. 100 feet to the northern right of way of the Southern Pacific Railroad Line (SPRR Line); thence southeasterly along said right of way approx. 800 feet; thence south approx. 400 feet; thence west approx. 1100 feet; thence south approx. 700 feet to the intersection with the Hillside Canal; thence west approx. 100 feet; thence south approx. 550 feet to the intersection with Upper River Road; thence southeasterly along Upper River Road and continuing east along Old Upper River Road approx. 700 feet; thence south approx. 1550 feet; thence west approx. 350 feet; thence south approx. 250 feet; thence west approx. 1000 feet; thence south approx. 600 feet to the north end of Roguela Lane; thence east approx. 400 feet; thence south approx. 1400 feet to the intersection with

Lower River Road; thence west along Lower River Road approx. 1400 feet; thence south approx. 1350 feet; thence west approx. 25 feet; thence south approx. 1200 feet to the south bank of the Rogue River; thence northwesterly along said bank approx. 2800 feet; thence on a line southwesterly and parallel to Parkhill Place approx. 600 feet; thence northwesterly at a 90 degree angle approximately 300 feet to the intersection with Parkhill Place; thence southwesterly along Parkhill Place approx. 250 feet; thence on a line southeasterly forming a 90 degree angle approximately 300 feet to a point even with Leonard Road; thence west approx. 1500 feet along Leonard Road; thence north approx. 200 feet; thence west to the west side of Schroeder Lane; thence north approx. 150 feet; thence west approx. 200 feet; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 450 feet; thence north approx. 300 feet; thence east approx. 150 feet; thence north approx. 400 feet; thence west approx. 500 feet; thence south approx. 300 feet; thence west to the intersection with Coutant Lane; thence south along Coutant Lane to the intersection with Leonard Road; thence west along Leonard Road to the intersection with Buena Vista Lane; thence north along the west side of Buena Vista Lane approx. 200 feet; thence west approx. 150 feet; thence north approx. 150 feet; thence west approx. 200 feet; thence north approx. 400 feet; thence west approx. 600 feet to the intersection with the western boundary of Sec. 23, T36S, R6W; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 300 feet; thence north approx. 600 feet to the intersection with Darneille Lane; thence northwesterly along Darneille Lane approx. 200 feet; thence west approx. 300 feet; thence south approx. 600 feet to the intersection with Leonard Road; thence west along Leonard Road approx. 700 feet; thence south approx. 1350 feet; thence east approx. 1400 feet to the intersection with Darneille Lane; thence south along Darneille Lane approx. 600 feet; thence west approx. 300 feet; thence south to the intersection with Redwood Avenue; thence east along Redwood Avenue to the intersection with Hubbard Lane and the western boundary of Sec. 23, T36S, R6W; thence south along Hubbard Lane approx. 1850 feet; thence west approx. 1350 feet ; thence south to the south side of U.S. Highway 199; thence westerly along U.S. 199 approx. 1600 feet to the intersection with the north-south midpoint of Sec. 27, T36S, R6W; thence south approx. 2200 feet; thence east approx. 1400 feet; thence north approx. 1000 feet; thence east approx. 300 feet; thence north approx. 250 feet to the intersection with the Highline Canal; thence northerly along the Highline Canal approx. 900 feet; thence east to the intersection with Hubbard Lane; thence north along Hubbard Lane approximately 600 feet; thence east approx. 200 feet; thence north approx. 400 feet to a point even with Canal Avenue; thence east

approx. 550 feet; thence north to the south side of U.S. 199; thence easterly along the southern edge of U.S. 199 to the intersection with Willow Lane; thence south along Willow Lane to the intersection with Demaray Drive; thence easterly along Demaray Drive and continuing along the southern edge of U.S. 199 to the intersection with Dowell Road; thence south along Dowell Road approx. 550 feet; thence easterly approx. 750 feet; thence north to the intersection with the South Canal; thence easterly along the South Canal to the intersection with Schutzwohl Lane; thence south approx. 1300 feet to a point even with West Harbeck Road; thence east approx. 2000 feet to the intersection with Allen Creek; thence southerly along Allen Creek approx. 1400 feet to a point even with Denton Trail to the west; thence west to the intersection with Highline Canal; thence southerly along Highline Canal to the intersection with the southern boundary of Sec. 25, T36S, R6W; thence east to the intersection with Allen Creek; thence southerly along Allen Creek to the intersection with the western boundary of Sec. 31, T36S, R5W; thence south to the SW corner of Sec. 31; thence east to the intersection with Williams Highway; thence southeasterly along Williams Highway approx. 1300 feet; thence east approx. 200 feet; thence north approx. 400 feet; thence east approx. 700 feet; thence north to the intersection with Espey Road; thence west along Espey Road approx. 150 feet; thence north approx. 600 feet; thence east approx. 300 feet; thence north approx. 2000 feet; thence west approx. 2100 feet; thence north approx. 1350 feet; thence east approx. 800 feet; thence north approx. 2800 feet to the east-west midline of Sec. 30, T36S, R5W; thence on a line due NE approx. 600 feet; thence north approx. 100 feet; thence east approx. 600 feet; thence north approx. 100 feet to the intersection with Highline Canal; thence easterly along Highline Canal approx. 1300 feet; thence south approx. 100 feet; thence east to the intersection with Harbeck Road; thence north along Harbeck Road to the intersection with Highline Canal; thence easterly along Highline Canal to a point approx. 250 feet beyond Skyway Road; thence south to the intersection with Skyway Road; thence east to the intersection with Highline Canal; thence southeasterly along Highline Canal approx. 1200 feet; thence on a line due SW to the intersection with Bluebell Lane; thence southerly along Bluebell Lane approx. 150 feet; thence east to the intersection with Sky Crest Drive; thence southerly along Sky Crest Drive to the intersection with Harper Loop; thence southeasterly along Harper Loop to the intersection with the east-west midline of Sec. 29, T36S, R5W; thence east approx. 400 feet; thence south approx. 1300 feet to a point even with Troll View Road to the east; thence east to the intersection with Hamilton Lane; thence north along Hamilton Lane to the intersection with the Highline Canal; thence northeasterly along the Highline Canal to the northern

boundary of Sec. 28, T36S, R5W; thence east approx. 1350 feet to the transmission line; thence north to the intersection with Fruitdale Drive; thence southwesterly along Fruitdale Drive approx. 700 feet; thence north to the northern edge of U.S. 199; thence easterly along the northern edge of U.S. 199 approx. 50 feet; thence north to the north bank of the Rogue River; thence northeasterly along the north bank of the Rogue River approx. 2100 feet to a point even with Ament Road; thence north to Ament Road and following Ament Road to U.S. Interstate Highway 5 (U.S. I-5); thence continuing north to the 1200 foot contour line; thence following the 1200 foot contour line northwesterly approx. 7100 feet to the city limits and a point even with Savage Street to the west; thence north following the city limits approx. 400 feet; thence west to the intersection with Beacon Street; thence north along Beacon Street and the city limits approx. 250 feet; thence east along the city limits approx. 700 feet; thence north along the city limits approx. 2200 feet; thence southwesterly along the city limits approximately 800 feet to the intersection with the 1400 foot contour line; thence northerly and northwesterly along the 1400 foot contour line approx. 900 feet to the intersection with the northern boundary of Sec. 9, T36S, R5W; thence west along said boundary approx. 100 feet to the NW corner of Sec. 9; thence south along the western boundary of Sec. 9 approx. 700 feet; thence west approx. 1400 feet; thence north approx. 2400 feet; thence west approx. 1350 feet; thence north approx. 1100 feet to the city limits; thence following the city limits first west approx. 1550 feet, then south approx. 800 feet, then west approx. 200 feet, then south approx. 200 feet, then east approx. 200 feet, then south approx. 300 feet, and finally westerly approx. 1200 feet to the intersection with the western boundary of Sec. 5, T36S, R5W; thence south along said boundary to the northern side of Vine Avenue; thence northwesterly along the northern side of Vine Avenue approx. 3150 feet to the intersection with the west fork of Gilbert Creek; thence north to the intersection with the southern right of way of U.S. I-5; thence northwesterly along said right of way approx. 1600 feet; thence south to the intersection with Old Highland Avenue; thence northwesterly along Highland Avenue approx. 650 feet; thence west approx. 350 feet; thence south approx. 1400 feet; thence east approx. 700 feet; thence south approx. 1000 feet; thence on a line SW approx. 800 feet; thence south approx. 1400 feet to the intersection with the northern boundary of Sec. 7, T36S, R5W; thence west to the NW corner of Sec. 7, the point of beginning.

- (10) "Klamath Falls UGB" means the area within the bounds beginning at the southeast corner of Section 36, Township 38 South, Range 9 East; thence northerly approximately 4500 feet; thence westerly approximately 1/4 mile; thence

northerly approximately 3/4 mile into Section 25, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 24, T38S, R9E; thence westerly approximately 1/2 mile to the southeast corner of Section 23, T38S, R9E; thence northerly approximately 1/2 mile; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 14, T38S, R9E; thence generally northwesterly along the 5000 foot elevation contour line approximately 3/4 mile; thence westerly 1 mile; thence north to the intersection with the northern boundary of Section 15, T38S, R9E; thence west 1/4 mile along the northern boundary of Section 15, T38S, R9E; thence generally southeasterly following the 4800 foot elevation contour line around the old Oregon Institute of Technology Campus to meet with the westerly line of Old Fort Road in Section 22, T38S, R9E; thence southwesterly along the westerly line of Old Fort Road approximately 1 and 1/4 miles to Section 27, T38S, R9E; thence west approximately 1/4 mile; thence southwesterly approximately 1/2 mile to the intersection with Section 27, T38S, R9E; thence westerly approximately 1/2 mile to intersect with the Klamath Falls City Limits at the northerly line of Loma Linda Drive in Section 28, T38S, R9E; thence northwesterly along Loma Linda Drive approximately 1/4 mile; thence southwesterly approximately 1/8 mile to the Klamath Falls City Limits; thence northerly along the Klamath Falls City Limits approximately 1 mile into Section 21, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1 mile into Section 17, T38S, R9E; thence westerly approximately 3/4 mile into Section 17, T38S, R9E; thence northerly approximately 1/4 mile; thence westerly approximately 1 mile to the west boundary of Highway 97 in Section 18, T38S, R9E; thence southeasterly along the western boundary of Highway 97 approximately 1/2 mile; thence southwesterly away from Highway 97; thence southeasterly to the intersection with Klamath Falls City Limits at Front Street; thence westerly approximately 1/4 mile to the western boundary of Section 19, T38S, R9E; thence southerly approximately 1 and 1/4 miles along the western boundary of Section 19, T38S, R9E and the Klamath Falls City Limits to the south shore line of Klamath Lake; thence northwesterly along the south shore line of Klamath Lake approximately 1 and 1/4 miles across Section 25, T38S, R9E and Section 26, T38S, R9E; thence westerly approximately 1/2 mile along Section 26, T38S, R9E; thence southerly approximately 1/2 mile to Section 27, T38S, R9E to the intersection with eastern boundary of Orindale Draw, thence southerly along the eastern boundary of Orindale Draw approximately 1 and 1/4 miles into Section 35, T38S, R9E; thence southerly approximately 1/2 mile into Section 2, T39S, R8E; thence easterly approximately 1/4 mile; thence northerly approximately 1/4 mile to the

southeast corner of Section 35, T38S, R8E and the Klamath Falls City Limits; thence easterly approximately 1/2 mile to the northern boundary of Section 1, T38S, R8E; thence southeasterly approximately 1/2 mile to Orindale Road; thence north 500 feet along the west side of an easement; thence easterly approximately 1 and 1/4 miles through Section 1, T38S, R8E to the western boundary of Section 6, T39S, R9E; thence southerly approximately 3/4 mile to the southwest corner of Section 6, T39S, R9E; thence easterly approximately 1/8 mile to the western boundary of Highway 97; thence southwesterly along the Highway 97 right-of-way approximately 1/4 mile; thence westerly approximately 1/2 mile to Agate Street in Section 7, T39S, R8E; thence northerly approximately 1/4 mile; thence westerly approximately 3/4 mile to Orindale Road in Section 12, T39S, R8E; thence northerly approximately 1/4 mile into Section 1, T39S, R8E; thence westerly approximately 3/4 mile to the Section 2, T39S, R8E boundary line; thence southerly approximately 3/4 mile along the Section 2, T39S, R8E boundary line to the northwest corner of Section 12, T39S, R8E; thence westerly approximately 1/8 mile into Section 11, T39S, R8E; thence southerly approximately 1/8 mile; thence northeasterly approximately 3/4 mile to the southern boundary of Section 12, T39S, R8E at Balsam Drive; thence southerly approximately 1/4 mile into Section 12, T39S, R8E; thence easterly approximately 1/4 mile to Orindale Road; thence southeasterly approximately 500 feet to Highway 66; thence southwesterly approximately 1/2 mile along the boundary of Highway 66 to Holiday Road; thence southerly approximately 1/2 mile into Section 13, T39S, R8E; thence northeasterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/4 mile along the eastern boundary of Section 13, T39S, R8E; thence westerly approximately 1/4 mile to Weyerhaeuser Road; thence northerly approximately 1/8 mile; thence easterly approximately 1/8 mile; thence northerly approximately 1/8 mile; thence westerly approximately 1/8 mile to Farrier Avenue; thence northerly approximately 1/4 mile; thence easterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/8 mile along the eastern boundary of Section 13, T39S, R8E; thence easterly approximately 1/4 mile along the northern section line of Section 18, T39S, R8E; thence southerly approximately 1/4 mile; thence easterly approximately 1/2 mile to the boundary of Highway 97; thence southerly approximately 1/3 mile to the Burlington Northern Right-of-Way; thence northeasterly approximately 1 and 1/3 miles along the high water line of the Klamath River to the Southside Bypass in Section 8, T39S, R9E; thence southeasterly along the Southside Bypass to the Southern Pacific Right-of-Way in Section 9, T39S, R9E; thence southerly approximately 1/2 mile along the Southern Pacific

Right-of-Way; thence southwesterly approximately 1/4 mile along the Midland Highway; thence southeasterly approximately 1/4 mile to the old railroad spur; thence easterly 1/4 mile along the old railroad spur; thence southerly approximately 1/4 mile in Section 16, T39S, R9E; thence westerly approximately 1/3 mile; thence southerly approximately 1/4 mile; thence easterly approximately 1/16 mile in Section 21, T39S, R9E; thence southerly approximately 1/8 mile to the Lost River Diversion Channel; thence southeasterly approximately 1/4 mile along the northern boundary of the Lost River Diversion Channel; thence easterly approximately 3/4 mile along Joe Wright Road into Section 22, T39S, R9E; thence southeasterly approximately 1/8 mile on the eastern boundary of the Southern Pacific Right-of-Way; thence southeasterly approximately 1 mile along the western boundary of the Southern Pacific Right-of-Way across Section 22, T39S, R9E and Section 27, T39S, R9E to a point 440 yards south of the northern boundary of Section 27, T39S, R9E; thence easterly to Kingsley Field; thence southeasterly approximately 3/4 mile to the southern boundary of Section 26, T39S, R9E; thence east approximately 1/2 mile along the southern boundary of Section 26, T39S, R9E to a pond; thence north-northwesterly for 1/2 mile following the Klamath Falls City Limits; thence north 840 feet; thence east 1155 feet to Homedale Road; thence north along Homedale Road to a point 1/4 mile north of the southern boundary of Section 23, T39S, R9E; thence west 1/4 mile; thence north 1 mile to the Southside Bypass in Section 14, T39S, R9E; thence east 1/2 mile along the Southside Bypass to the eastern boundary of Section 14, T39S, R9E; thence north 1/2 mile; thence east 900 feet into Section 13, T39S, R9E; thence north 1320 feet along the USBR 1-C 1-A to the southern boundary of Section 12, T39S, R9E; thence north 500 feet to the USBR A Canal; thence southeasterly 700 feet along the southern border of the USBR A Canal back into Section 13, T39S, R9E; thence southeast 1600 feet to the northwest parcel corner of an easement for the Enterprise Irrigation District; thence east-northeast 2200 feet to the eastern boundary of Section 13, T39S, R9E; thence north to the southeast corner of Section 12, T39S, R9E; thence along the Enterprise Irrigation Canal approximately 1/2 mile to Booth Road; thence east 1/2 mile to Vale Road; thence north 1 mile to a point in Section 6, T39S, R10E that is approximately 1700 feet north of the southern boundary of Section 6, T39S, R10E; thence west approximately 500 feet; thence south approximately 850 feet; thence west approximately 200 feet; thence north approximately 900 feet; thence west approximately 1600 feet to the western boundary of Section 6, T39S, R10E; thence north approximately 1/2 mile to the southeast corner of Section 36, T38S, R9E, the point of beginning.

(11) "LaGrande UGB" means the area within the bounds beginning at the point where U.S. Interstate 84 (I-84) intersects Section 31, Township 2 South, Range 38 East; thence east along I-84 to the Union County Fairgrounds; thence north and then east on a line encompassing the Union County Fairgrounds to the intersection with Cedar Street; thence further east approximately 500 feet, encompassing two (2) residential properties; thence on a line south to the intersection with the northern bank of the Grande Ronde River; thence westerly along the northern bank of the Grande Ronde River to the intersection with the western edge of Mount Glenn Road and Riverside Park; thence north along the western edge of Mount Glenn Road and Riverside Park to the intersection with Fruitdale Road; thence east along Fruitdale Road and the northern boundary of Riverside Park to the eastern boundary of Riverside Park; thence south along the eastern boundary of Riverside Park to the north bank of the Grande Ronde River; thence on a line southeast to the intersection with the northern edge of I-84; thence easterly along the northern edge of I-84 to May Street; thence easterly along May Street to the intersection with State Highway 82; thence northeasterly along State Highway 82 to the a point approximately 1/4 mile from the eastern edge of Section 4, T3S, R38E; thence south to the intersection with Section 9, T3S, R38E, and the southern edge of Buchanan Avenue; thence west along the southern edge of Buchanan Avenue to the intersection with the northern edge of I-84; thence on a line south to the southern edge of I-84; thence southeasterly along the southern edge of I-84 approximately 2500 feet; thence on a line due west approximately 1400 feet; thence on a line due south to the intersection with the Union Pacific Railroad Line; thence southeasterly along the Union Pacific Railroad Line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with U.S. Highway 30; thence southeast along U.S. Highway 30 to the intersection with the western boundary of Section 15, T3S, R38E; thence on a line west following existing property boundaries approximately 2900 feet; thence on a line north following existing property boundaries approximately 250 feet; thence on a line east following existing property boundaries approximately 650 feet; thence north on a line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with 20th Avenue; thence south along 20th Avenue to the intersection with Foothill Road; thence southeasterly along Foothill Road approximately 2900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line south following existing property boundaries approximately 1250 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north following existing property boundaries approximately 450 feet to the

intersection with the southernmost part of the La Grande City Limits; thence westerly and northwesterly along the southernmost part of the La Grande City Limits approximately 1100 feet to the intersection with the 3000 foot elevation contour line; thence westerly following the 3000 foot elevation contour line and existing property boundaries approximately 2200 feet; thence on a line north following existing property boundaries approximately 1900 feet; thence on a line west following existing property boundaries approximately 500 feet; thence on a line north to the LaGrande City Limits; thence west along the LaGrande City Limits and following existing property boundaries approximately 650 feet; thence on a line south following existing property boundaries approximately 900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north to the intersection with the La Grande City Limits; thence west along the southern boundary of the La Grande City Limits to the intersection with the western boundary of the La Grande City Limits; thence north along the western boundary of the La Grande City Limits and following existing property lines approximately 500 feet; thence on a line west following existing property boundaries approximately 200 feet; thence on a line north following existing property boundaries approximately 700 feet; thence east to the first 3000 foot elevation contour line west of the La Grande City Limits; thence northerly following that 3000 foot elevation contour line to the intersection with Deal Canyon Road; thence easterly along Deal Canyon Road to the intersection with the western boundary of the LaGrande City Limits; thence northerly along the western boundary of the LaGrande City Limits to the intersection with U.S. Highway 30; thence northwesterly along U.S. Highway 30 and following existing property boundaries approximately 1400 feet; thence on a line west to the intersection with the western boundary of Section 6, T3S, R38E; thence north along the western boundaries of Section 6, T3S, R38E and Section 31, T2S, R38E to the point of beginning.

- (12) "Lakeview UGB" means the area beginning at the corner common to sections 21, 22, 27, and 28, T39S, R20E; thence north on the section line between section 21 and 22 to the section corner common to section 15, 16; 21, and 22; thence west along the section line between section 21 and 16 to the section corner common to sections 16, 17, 20, and 21; thence north along the section line between section 16 and 17 approximately 3550 feet to the east branch of Thomas Creek; thence northwesterly along the east branch of Thomas Creek to the center line of Highway 140; thence east along the center line of Highway 140 to the section corner common to sections 8, 9, 16, and 17, T39S, R20E; thence north along the section line between sections 8 and 9 to the section corner common to sections 4, 5, 8, and 9, T39S, R20E; thence

north along the section line between section 4 and 5 to the section corner common to section 4 and 5, T39S, R20E and sections 32 and 33, T38S, R20E; thence east along the section line between sections 4 and 33 to the section corner common to sections 3 and 4, T39S, R20E and sections 33 and 34, T38S, R20E; thence south along the eastern boundary of section 4 approximately 4,1318.6 feet; thence S 89 degrees, 11 minutes W 288.28 feet to the east right of way line of the old Paisley/Lakeview Highway; thence S 21 degrees, 53 minutes E along the eastern right of way of the old Paisley/Lakeview Highway 288.4 feet; thence S 78 degrees, 45 minutes W 1375 feet; thence S 3 degrees, 6 minutes, and 30 seconds W 200 feet; thence S 77 degrees, 45 minutes W 136 feet to the east right of way line of U.S. Highway 395; thence southeasterly along the east right of way line of U.S. Highway 395 53.5 feet; thence N 77 degrees, 45 minutes E 195.6 feet; thence S 38 degrees, 45 minutes E 56.8 feet; thence S 51 degrees, 15 minutes W 186.1 feet to the east right of way of U.S. Highway 395; thence southeast along the eastern right of way line of U.S. Highway 395 2310 feet; thence N 76 degrees, 19 minutes 544.7 feet; thence S 13 degrees, 23 minutes, 21 seconds E 400 feet; thence N 63 degrees, 13 minutes E 243.6 feet to the western line of the old American Forest Products Logging Road; thence southeast along the old American Forest Products Logging Road to the western line of the northeast quadrant of the northwest quadrant of section 10, T39S, R20E; thence southeast to a point on the south line of the northeast quadrant of the northwest quadrant of Section 10, T39S, R20E (this point also bears N 89 degrees, 33 minutes E 230 feet from the center line of U.S. Highway 395); thence south on a line parallel to the east right of way line of U.S. Highway 395 to the south line of the northwest quadrant of section 10, T39S, R20E; thence south 491 feet to the east right of way of U.S. Highway 395; thence southeasterly following the east right of way of U.S. Highway 395 255 feet to the south line of the northeast quadrant of the northeast quadrant of the southwest quadrant of section 10, T39S, R20E; thence east along that south line to the center line of section 10, T39S, R20E; thence continuing east along the same south line to the eastern boundary of section 10, T39S, R20E; thence south along the eastern boundary of section 10 to the section corner common to sections 10, 11, 14, and 15, T39S, R20E; thence south along the section line between section 14 and 15 to the section corner common to sections 14, 15, 22, and 23, T39S, R20E; thence west along the section line between sections 15 and 22 to the northwest corner of the northeast quadrant of the northeast quadrant of section 22, T39S, R20E; thence south along the eastern line of the western half of the eastern half of section 22 to the southern boundary of section 22, T39S, R20E; thence west along the southern boundary of section 22 to the point of

beginning.

- (12) "Lakeview UGB" means the area within the bounds beginning at the northeast corner of Section 4, R20, T39S; thence west to the northwest corner of Section 4, R20E, T39S; thence south to the southwest corner of Section 9, R20E, T39S and the intersection with State Highway 66; thence west along State Highway 66 to the intersection with the western fork of the East Branch of Thomas Creek; thence southerly along the western fork of the East Branch of Thomas Creek to the intersection with the western boundary of Section 16, R20E, T39S; thence south along the western boundary of Section 16, R20E, T39S to the southwest corner of Section 16, R20E, T39S; thence east to the southeast corner of Section 16, R20E, T39S; thence south to the southwest corner of Section 22, R20E, T39S; thence east approximately 1/2 mile along the southern boundary of Section 22, R20E, T39S; thence on a line north to the intersection with the southern boundary of Section 15, R20E, T39S; thence east to the southeast corner of Section 15, R20E, T39S; thence north to the northeast corner of Section 15, R20E, T39S; thence further north approximately 1/4 mile along the eastern boundary of Section 10, R20E, T39S; thence west on a line to the intersection to the intersection with State Highway 395; thence north on a line approximately 1/4 mile; thence on a northwesterly line running parallel to State Highway 66 to the intersection with the southern boundary of Section 3, R20E, T39S and the private road in the same location; thence northwesterly along that private road approximately 1000 feet; thence due west approximately 300 feet; thence due north approximately 500 feet; thence on a line due west to the intersection with State Highway 395; thence northwesterly along State Highway 395 for approximately 1/3 mile; thence north on a line approximately 500 feet; thence northeasterly on a line of 12 degrees for approximately 1/5 mile; thence northwesterly on a line of 108 degrees for approximately 500 feet; thence due east on a line to the intersection with the eastern boundary of Section 4, R20E, T39S; thence north to the northeast corner of Section 4, R20E, T39S (the point of beginning).
- (13) "Maintenance Area" means any area that was formerly nonattainment for a criteria pollutant but has since met EPA promulgated standards and has had a maintenance plan to stay within the standards approved by the EPA pursuant to 40 CFR 51.110 (July, 1993).
- (14) "Medford-Ashland AQMA" means the area defined as beginning at a point approximately one mile northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West; thence southeast along the Willamette Meridian to the southeast corner of Section 25, Township 37 South, Range 1 West; thence southeast along a line to the southeast corner of Section 9, Township 39 South, Range 2 East; thence south-southeast to the corner of Section 27, Township 39 South,

Range 2 East; thence southwest to the southeast corner of Section 33, Township 39 South, Range 2 East; thence west to the southwest corner of Section 31, Township 39 South, Range 2 East; thence northwest to the northwest corner of Section 36, Township 39 South, Range 1 East; thence west to the southwest corner of Section 26, Township 39 South, Range 1 East; thence northwest along a line to the southeast corner of Section 7, Township 39 South, Range 1 East; thence west to the southwest corner of Section 12, Township 39 South, Range 1 West; thence northwest along a line to the southwest corner of Section 20, Township 38 South, Range 1 West; thence west to the southwest corner of Section 24, Township 38 South, Range 2 West; thence northwest along a line to the southwest corner of Section 4, Township 38 South, Range 2 West; thence west to the southwest corner of Section 5, Township 38 South, Range 2 West; thence northwest along a line to the southwest corner of Section 31, Township 37 South, Range 2 West; thence north along a line to the Rouge River, thence north and east along the Rouge River to the north boundary of Section 32, Township 35 South, Range 1 West; thence east along a line to the point of beginning.

- (15) "Medford-Ashland CBD" means the area beginning at the intersection of Crater Lake Highway (Highway 62) south on Biddle Road to the intersection of Fourth Street, west on Fourth Street to the intersection with Riverside Avenue (Highway 99), south on Riverside Avenue to the intersection with Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to the intersection with Central Avenue, north on Central Avenue to the intersection with Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning, with extensions along McAndrews Road east from Biddle Road to Crater Lake Avenue, and along Jackson Street east from Biddle Road to Crater Lake Avenue.

NOTE: This definition also marks the area where indirect sources are required to have indirect source construction permits in the Medford area. See OAR 340-20-115.

- (16) "Medford UGB" means the area beginning at the line separating Range 1 West and Range 2 West at a point approximately 1/4 mile south of the northwest corner of Section 31, T36S, R1W; thence west approximately 1/2 mile; thence south to the north bank of Bear Creek; thence west to the south bank of Bear Creek; thence south to the intersection with the Medford Corporate Boundary; thence following the Medford Corporate Boundary west and southwesterly to the intersection with Merriman Road; thence northwesterly along Merriman Road to the intersection with the eastern boundary of Section 10, T36S, R2W; thence south along said boundary line approximately 3/4 mile; thence west approximately 1/3 mile; thence south to the intersection

with the Hopkins Canal; thence east along the Hopkins Canal approximately 200 feet; thence south to Rossanely Drive; thence east along Rossanley Drive approximately 200 feet; thence south approximately 1200 feet; thence west approximately 700 feet; thence south approximately 1400 feet; thence east approximately 1400 feet; thence north approximately 100 feet; thence east approximately 700 feet; thence south to Finley Lane; thence west to the end of Finley Lane; thence approximately 1200 feet; thence west approximately 1300 feet; thence north approximately 150 feet; thence west approximately 500 feet; thence south to Highway 238; thence west along Highway 238 approximately 250 feet; thence south approximately 1250 feet to a point even with the end of Renault Avenue to the east; thence east approximately 2200 feet; thence south approximately 1100 feet to a point even with Sunset Court to the east; thence east to and along Sunset Court to the first (nameless) road to the south; thence approximately 850 feet; thence west approximately 600 feet; thence south to Stewart Avenue; thence west along Stewart Avenue approximately 750 feet; thence south approximately 1100 feet; thence west approximately 100 feet; thence south approximately 800 feet; thence east approximately 800 feet; thence south approximately 1000 feet; thence west approximately 350 feet to a point even with the north-south connector street between Sunset Drive and South Stage Road; thence south to and along said connecting road and continuing along South Stage Road to Fairlane Road; thence south to the end of Fairlane Road and extending beyond it approximately 250 feet; thence east approximately 250 feet; thence south approximately 250 feet to the intersection with Judy Way; thence east on Judy Way to Griffin Creek Road; thence north on Griffin Creek Road to South Stage Road; thence east on South Stage Road to Orchard Home Drive; thence north on Orchard Home Drive approximately 800 feet; thence east to Columbus Avenue; thence south along Columbus Avenue to South Stage Road; thence east along South Stage Road to the first road to the north after Sunnyview Lane; thence north approximately 300 feet; thence east approximately 300 feet; thence north approximately 700 feet; thence east to King's Highway; thence north along King's Highway to Experiment Station Road; thence east along Experiment Station Road to Marsh Lane; thence east along Marsh Lane to the northern boundary of Section 6, T38S, R1W; thence east along said boundary approximately 1100 feet; thence north approximately 1200 feet; thence east approximately 1/3 mile; thence north approximately 400 feet; thence east approximately 1000 feet to a drainage ditch; thence following the drainage ditch southeasterly approximately 500 feet; thence east to the eastern boundary of Section 31, T37S, R1W; thence south along said boundary approximately 1900 feet; thence east to and along the loop off of Rogue Valley Boulevard, following

that loop to the Southern Pacific Railroad Line (SPRR); thence following SPRR approximately 500 feet; thence south to South Stage Road; thence east along South Stage Road to SPRR; thence southeasterly along SPRR to the intersection with the west fork of Bear Creek; thence northeasterly along the west fork of Bear Creek to the intersection with U.S. Highway 99; thence southeasterly along U.S. Highway 99 approximately 250 feet; thence east approximately 1600 feet; thence south to East Glenwood Road; thence east along East Glenwood Road approximately 1250 feet; thence north approximately 1/2 mile; thence west approximately 250 feet; thence north approximately 1/2 mile to the Medford City Limits; thence east along the city limits to Phoenix Road; thence south along Phoenix Road to Coal Mine Road; thence east along Coal Mine Road approximately 9/10 mile to the western boundary of Section 35, T37S, R1W; thence north to the midpoint of the western boundary of Section 35, T37S, R1W; thence west approximately 800 feet; thence north approximately 1700 feet to the intersection with Barnett Road; thence easterly along Barnett Road to the southeast corner of Section 27, T37S, R1W; thence north along the eastern boundary line of said section approximately 1/2 mile to the intersection with the 1800 foot contour line; thence east to the intersection with Cherry Lane; thence following Cherry Lane southeasterly and then northerly to the intersection with Hillcrest Road; thence east along Hillcrest Road to the southeast corner of Section 23, T37S, R1W; thence north to the northeast corner of Section 23, T37S, R1W; thence west to the midpoint of the northern boundary of Section 22; T37S, R1W; thence north to the midpoint of Section 15, T37S, R1W; thence west to the midpoint of the western boundary of Section 15, T37S, R1W; thence south along said boundary approximately 600 feet; thence west approximately 1200 feet; thence north approximately 600 feet; thence west to Foothill Road; thence north along Foothill Road to a point approximately 500 feet north of Butte Road; thence west approximately 300 feet; thence south approximately 250 feet; thence west on a line parallel to and approximately 250 feet north of Butte Road to the eastern boundary of Section 8, T37S, R1W; thence north approximately 2200 feet; thence west approximately 1800 feet; thence north approximately 2000 feet; thence west approximately 500 feet; thence north to Coker Butte Road; thence east along Coker Butte Road approximately 550 feet; thence north approximately 1250 feet; thence west to U.S. Highway 62; thence north approximately 3000 feet; thence east approximately 400 feet to the 1340 foot contour line; thence north approximately 800 feet; thence west approximately 200 feet; thence north approximately 250 feet to East Vilas Road; thence east along East Vilas Road approximately 450 feet; thence north approximately 2000 feet to a point approximately 150 feet north of Swanson Creek;

thence east approximately 600 feet; thence north approximately 850 feet; thence west approximately 750 feet; thence north approximately 650 feet; thence west approximately 2100 feet; thence on a line southeast approximately 600 feet; thence east approximately 450 feet; thence south approximately 1600 feet; thence west approximately 2000 feet to the continuance of the private logging road north of East Vilas Road; thence south along said logging road approximately 850 feet; thence west approximately 750 feet; thence south approximately 150 feet; thence west approximately 550 feet to Peace Lane; thence north along Peace Lane approximately 100 feet; thence west approximately 350 feet; thence north approximately 950 feet; thence west approximately 1000 feet to the western boundary of Section 31, T36S, R1W; thence north approximately 1300 feet along said boundary to the point of beginning.

- (17) "Nonattainment Area" means any area that has been designated as not meeting the standards established by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR 51.52 (July, 1993) for any criteria pollutant.
- (18) "O₃" means Ozone.
- (19) "Oakridge UGB" means the area enclosed by the following: Beginning at the northwest corner of Section 17, T21S, R3E and the city limits; thence south along the western boundary of Section 17, T21S, R3E along the city limits approximately 800 feet; thence southwesterly following the city limits approximately 750 feet; thence west along the city limits approximately 450 feet; thence northwesterly along the city limits approximately 450 feet; thence on a line south along the city limits approximately 250 feet; thence on a line east along the city limits approximately 100 feet; thence southwesterly along the city limits approximately 200 feet; thence on a line east along the city limits approximately 400 feet; thence on a line south along the city limits to the channel of the Willamette River Middle Fork; thence southeasterly up the Willamette River Middle Fork along the city limits approximately 7200 feet; thence exiting the Willamette River Middle Fork with the city limits in a northerly manner and forming a rough semicircle with a diameter of approximately one-half mile before rejoining the Willamette River Middle Fork; thence diverging from the city limits upon rejoining the Willamette River Middle Fork and moving southeasterly approximately 5600 feet up the Willamette River Middle Fork to a point on the river even with the point where Salmon Creek Road intersects with U.S. Highway 58; thence on a line east from the channel of the Willamette River Middle Fork across the intersection of Salmon Creek Road and U.S. Highway 58 to the intersection with the Southern Pacific Railroad Line; thence northerly along the Southern Pacific Railroad Line to the intersection with the northern boundary of Section 22, T21S, R3E; thence

west along the northern boundary of Section 22, T21S, R3E to the intersection with Salmon Creek Road; thence on a line north to the intersection with the Southern Pacific Railroad Line; thence east along the Southern Pacific Railroad Line approximately 600 feet; thence on a line north to the intersection with High Prairie Road; thence on a line west approximately 400 feet; thence on a line north to the intersection with the northern boundary of Section 15, T21S, R3E; thence west along the northern boundary of Section 15, T21S, R3E to the intersection with the southeastern corner of Section 9, T21S, R3E; thence north along the eastern boundary of Section 9, T21S, R3E approximately 1300 feet; thence on a line west approximately 1100 feet; thence on a line south to the intersection with West Oak Road; thence northwesterly along West Oak Road approximately 2000 feet; thence on a line south to the intersection with the northern boundary line of the city limits; thence westerly and northwesterly approximately 8000 feet along the city limits to the point of beginning.

(20) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method with the Department's Source Sampling Manual, (January, 1992).

(21) PM_{10}

(a) when used in the context of emissions, means finely divided solid or liquid material, including condensable water, other than combined water, with an aerodynamic diameter less than or equal to a nominal 10 microns, emitted to the ambient air as measured by as applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);

(b) when used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 microns as measured in accordance with 40 CFR Part 50, Appendix J (July, 1993).

(22) "Portland Metropolitan Area Nonattainment Area for Total Suspended Particulate" are the areas not in attainment for the **Secondary 24 Hour TSP Standard** or not in attainment for the **Secondary Annual TSP Standard**.

(a) The nonattainment area within the Oregon portion of the Portland-Vancouver AQMA for the **Secondary 24 Hour TSP Standard** is legally defined as the areas within the bounds of the Universal Transverse Mercator (UTM) mapping and coordinate system, Zone 10 as follows:

(A) The square area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 515,000 meters and the UTM northing coordinates 5,038,000 meters, extending thence east along the last referenced coordinate to the

- intersection with the UTM easting coordinate 517,000 meters, thence south along the last coordinate referenced to the intersection with the UTM northing coordinate 5,036,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 515,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (B) The rectangular area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 515,000 meters and the UTM northing coordinate 5,050,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 519,000 meters, thence south along the last coordinate referenced to the intersection of UTM northing coordinate 5,048,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 515,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (C) The square area bounded as follows: beginning at the point of intersection of UTM easting coordinate 521,000 meters and the UTM northing coordinate 5,044,000 meters, extending thence east along the last referenced coordinate to the intersection with UTM easting coordinate 523,000 meters, thence south along the last referenced coordinate to the intersection with UTM northing coordinate 5,042,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 521,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (D) The area is bounded as follows: beginning at the point of intersection of the UTM easting coordinate 525,000 meters and the UTM northing coordinate 5,042,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 531,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,040,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 527,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,038,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 529,000 meters, then south along the last referenced coordinate to the intersection with the

UTM northing coordinate 5,036,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 533,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,038,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 535,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,036,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 533,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,030,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 535,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,028,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 533,000 meters, thence south along the last referenced coordinate to the intersection with UTM northing coordinate 5,022,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 531,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,026,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 529,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,029,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 525,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,030,000 meters, thence east along the last referenced coordinate to the intersection with UTM easting coordinate 527,000, thence north along the last referenced coordinate to the intersection with the UTM northing coordinate 5,034,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 525,000 meters, thence north along the last referenced coordinate to the point of beginning.

(b) The nonattainment area within the Oregon portion of the Portland-Vancouver AQMA for the **Secondary Annual TSP**

Standard is legally defined as the areas within the bounds of the Universal Transverse Mercator (UTM) mapping and coordinate system, Zone 10 as follows:

- (A) The square area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 515,000 meters, and the UTM northing coordinate 5,052,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 517,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,050,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 515,000 meters, thence north along the last referenced coordinate to the point of the beginning.
- (B) The square area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 517,000 meters and the UTM northing coordinate 5,050,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 519,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,048,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 517,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (C) The square area bounded as follows: beginning at the point of intersection of the easting coordinate 523,000 meters and the UTM northing coordinate 5,050,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 525,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,048,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 523,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (D) The rectangular area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 521,000 meters and the UTM northing coordinate 5,046,000 meters, extending then east along the last referenced coordinate to the intersection with the UTM easting coordinate 523,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,042,000 meters, thence

- west along the last referenced coordinate to the intersection with the UTM easting coordinate 521,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (E) The area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 525,000 meters and the UTM northing coordinate 5,044,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 527,000, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,042,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 531,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,040,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 527,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,038,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 529,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,036,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 525,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (F) The square area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 535,000 meters and the UTM northing coordinate 5,042,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 537,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,040,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 535,000 meters, thence north along the last referenced coordinate to the point of beginning.
- (G) The square area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 531,000 meters and the UTM northing coordinate 5,036,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 533,000 meters, thence south along the last

referenced coordinate to the intersection with the UTM northing coordinate 5,034,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 531,000 meters, thence north along the last referenced coordinate to the point of beginning.

(H) The square area bounded as follows: beginning at the point of intersection of the UTM easting coordinate 529,000 meters and the UTM northing coordinate 5,034,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 531,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,032,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 529,000 meters, thence north along the last referenced coordinate to the point of beginning.

(23) "Portland AQMA" means the area within the bounds beginning at the point starting on the Oregon-Washington state line in the Columbia River at the confluence with the Willamette River, thence east up the Columbia River to the confluence with the Sandy River, thence southerly and easterly up the Sandy River to the point where the Sandy River intersects the Clackamas County-Multnomah County line, thence west along the Clackamas County-Multnomah County line to the point where the Clackamas County-Multnomah County line is intersected by H. Johnson Road (242nd), thence south along H. Johnson Road to the intersection with Kelso Road (Boring Highway), thence west along Kelso Road to the intersection with Deep Creek Road (232nd), thence south along Deep Creek Road to the point of intersection with Deep Creek, thence southeasterly along Deep Creek to the confluence with Clackamas River, thence easterly along the Clackamas River to the confluence with Clear Creek, thence southerly along Clear Creek to the point where Clear Creek intersects Springwater Road then to Forsythe Road, thence easterly along Forsythe Road to the intersection with Bradley Road, thence south along Bradley Road to the intersection with Redland Road, thence west along Redland Road to the intersection with Ferguson Road, thence south along Ferguson Road to the intersection with Thayler Road, thence west along Thayler Road to the intersection with Beaver Creek Road, thence southeast along Beaver Creek Road to the intersection with Henrici Road, thence west along Henrici Road to the intersection with State Highway 213 (Mollala Avenue), thence southeast along State Highway 213 to the point of intersection with Beaver Creek, thence westerly down Beaver Creek to the confluence with the Willamette River, thence southerly and westerly up the Willamette River to the point where the Willamette River intersects the

Clackamas County-Yamhill County line, thence north along the Clackamas County-Yamhill County line to the point where it intersects the Washington County-Yamhill County line, thence west and north along the Washington County-Yamhill County line to the point where it is intersected by Mount Richmond Road, thence northeast along Mount Richmond Road to the intersection with Patton Valley Road, thence easterly and northerly along Patton Valley Road to the intersection with Tualatin Valley State Highway, thence northerly along Tualatin Valley State Highway to the intersection with State Highway 47, thence northerly along State Highway 47 to the intersection with Dilley Road, thence northwesterly and northerly along Dilley Road to the intersection with Stringtown Road, thence westerly and northwesterly along Stringtown Road to the intersection with Gales Creek Road, thence northwesterly along Gales Creek Road to the intersection with Timmerman Road, thence northerly along Timmerman Road to the intersection with Wilson River Highway, thence west and southwesterly along Wilson River Highway to the intersection with Narup Road, thence north along Narup Road to the intersection with Cedar Canyon Road, thence westerly and northerly along Cedar Canyon Road to the intersection with Banks Road, thence west along Banks Road to the intersection with Hahn Road, thence northerly and westerly along Hahn Road to the intersection with Mountaindale Road, thence southeasterly along Mountaindale Road to the intersection with Glencoe Road, thence east-southeasterly along Glencoe Road to the intersection with Jackson Quarry Road, thence north-northeasterly along Jackson Quarry Road to the intersection with Helvetia Road, thence easterly and southerly along Helvetia Road to the intersection with Bishop Road, thence southerly along Bishop Road to the intersection with Phillips Road, thence easterly along Phillips Road to the intersection with the Burlington Northern Railroad Track, thence northeasterly along the Burlington Northern Railroad Line to the intersection with Rock Creek Road, thence east-southeasterly along Rock Creek Road to the intersection with Old Cornelius Pass Road, thence northeasterly along Old Cornelius Pass Road to the intersection with Skyline Boulevard, thence easterly and southerly along Skyline Boulevard to the intersection with Newberry Road, thence northeasterly along Newberry Road to the intersection with State Highway 30 (St. Helens Road), thence northeast on a line over land across State Highway 30 to the Multnomah Channel, thence east-southeasterly up the Multnomah Channel to the difffluence with the Willamette River, thence north-northeasterly down the Willamette River to the confluence with the Columbia River and the Oregon-Washington state line (the point of beginning).

- (24) "Portland Metropolitan Service District Boundary" or "Portland METRO" means the boundary surrounding the urban growth boundaries of the cities within the Greater Portland

Metropolitan Area. It is defined in the Oregon Revised Statutes (ORS) 268.125 (1989).

- (25) "Salem Area Transportation Study" or "SATS" means the area within the bounds beginning at the intersection of U.S. Interstate Highway 5 (I-5) and Battle Creek Road SE, south along I-5 to the intersection with Delaney Road; thence easterly along Delaney Road to the intersection with Sunnyside Road; thence north along Sunnyside Road to the intersection with Hylo Road SE; thence west along Hylo Road SE to the intersection with Liberty Road; thence north along Liberty Road to the intersection with Cole Road; thence west along Cole Road to the intersection with Bates Road; thence northerly and easterly along Bates Road to the intersection with Jory Hill Road; thence west along Jory Hill Road to the intersection with Stone Hill Avenue; thence north along Stone Hill Avenue to the intersection with Vita Springs Road; thence westerly along Vita Springs Road to the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Doaks Ferry Road and Dallas Highway intersect; thence west along Dallas Highway to the intersection with Oak Grove Road; thence north along Oak Grove Road to the intersection with Orchard Heights Road; thence east and north along Orchard Heights Road to the intersection with Eagle Crest Drive; thence northerly along Eagle Crest Drive to the intersection with Hunt Road; thence north along Hunt Road to the intersection with Fourth Road; thence east along Fourth Road to the intersection with Spring Valley Road; thence north along Spring Valley to the intersection with Oak Knoll Road; thence east along Oak Knoll Road to the intersection with Wallace Road; thence south along Wallace Road to the intersection with Lincoln Road; thence east along Lincoln Road on a line to the intersection with the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Simon Street starts on the East Bank; thence east and south along Simon Street to the intersection with Salmon; thence east along Salmon to the intersection with Ravena Drive; thence southerly and easterly along Ravena Drive to the intersection with Wheatland Road; thence northerly along Wheatland Road to the intersection with Brooklake Road; thence southeast along Brooklake Road to the intersection with 65th Avenue; thence south along 65th Avenue to the intersection with Labish Road; thence east along Labish Road to the intersection with the West Branch of the Little Pudding River; thence southerly along the West Branch of the Little Pudding River to the intersection with Sunnyview Road; thence east along Sunnyview Road to the intersection with 63rd Avenue; thence south along 63rd Avenue to the intersection with State Street; thence east along State Street to the intersection with 62nd Avenue; thence south along 62nd Avenue to the intersection with Deer Park Drive; thence southwest along

Deer Park Drive to the intersection with Santiam Highway 22; thence southeast along Santiam Highway 22 to the point where it intersects the Salem-Keizer Urban Growth Boundary (SKUGB); thence following the southeast boundary of the SKUGB to the intersection with Markham Street; thence northwest along Markham Street to the intersection with Wiltsey Loop; thence southwest along Wiltsey Loop to the intersection with Coates Drive; thence northeast along Coates Drive to the intersection with Wiltsey Road; thence west along Wiltsey Road to the intersection with I-5 (the point of beginning).

- (26) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B (July, 1993).
- (27) "UGA" means Urban Growth Area.
- (28) "UGB" means Urban Growth Boundary.

Air Quality Control Regions

340-31-510 Oregon's thirty-six (36) counties are divided into five (5) AQCRs. The AQCR boundaries follow county lines, and there are no counties that belong to more than one (1) AQCR.

The five (5) AQCRs are as follows:

- (1) **Portland Interstate AQCR**, containing ten (10) counties:
 - (a) Benton County
 - (b) Clackamas County
 - (c) Columbia County
 - (d) Lane County
 - (e) Linn County
 - (f) Marion County
 - (g) Multnomah County
 - (h) Polk County
 - (i) Washington County
 - (j) Yamhill County
- (2) **Northwest Oregon AQCR**, containing three (3) counties:
 - (a) Clatsop County
 - (b) Lincoln County
 - (c) Tillamook County
- (3) **Southwest Oregon AQCR**, containing five (5) counties:
 - (a) Coos County
 - (b) Curry County
 - (c) Douglas County
 - (d) Jackson County
 - (e) Josephine County
- (4) **Central Oregon AQCR**, containing eight (8) counties:
 - (a) Crook County
 - (b) Deschutes County
 - (c) Hood River County
 - (d) Jefferson County
 - (e) Klamath County
 - (f) Lake County
 - (g) Sherman County

- (h) Wasco County
- (5) Eastern Oregon AQCR, containing ten (10) counties:
 - (a) Baker County
 - (b) Gilliam County
 - (c) Grant County
 - (d) Harney County
 - (e) Malheur County
 - (f) Morrow County
 - (g) Umatilla County
 - (h) Union County
 - (i) Wallowa County
 - (j) Wheel County

Note: The AQCRs should not be confused with the recent DEQ reorganization that split the state into three DEQ regions: Northwest, West, and East.

Nonattainment Areas

340-31-520 The following areas are designated as Nonattainment Areas:

- (1) Carbon Monoxide Nonattainment Areas:
 - (a) The Grants Pass Nonattainment Area for Carbon Monoxide is the Grants Pass CBD as defined in OAR 340-31-500.
 - (b) The Klamath Falls Nonattainment Area for Carbon Monoxide is the Klamath Falls UGB as defined in OAR 340-31-500.
 - (c) The Medford Nonattainment Area for Carbon Monoxide is the Medford-Ashland UGB as defined in OAR 340-31-500.
 - (d) The Portland Nonattainment Area for Carbon Monoxide is the Portland Metropolitan Service District as referenced in OAR 340-31-500.
 - (e) The Salem Nonattainment Area for Carbon Monoxide is the Salem Area Transportation Study as defined in OAR 340-31-500.
- (2) Ozone Nonattainment Areas:
 - (a) The Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone is the Portland AQMA as defined in OAR 340-31-500.
 - (b) The Salem Nonattainment Area for Ozone is the Salem Area Transportation Study as defined in OAR 340-31-500.
- (3) PM₁₀ Nonattainment Areas:
 - (a) The Eugene Nonattainment Area for PM₁₀ is the Eugene UGA as defined in OAR 340-31-500.
 - (b) The Grants Pass Nonattainment Area for PM₁₀ is the Grants Pass UGB as defined in OAR 340-31-500.
 - (c) The Klamath Falls Nonattainment Area for PM₁₀ is the Klamath Falls UGB as defined in OAR 340-31-500.
 - (d) The LaGrande Nonattainment Area for PM₁₀ is the LaGrande UGB as defined in OAR 340-31-500.
 - (e) The Lakeview Nonattainment Area for PM₁₀ is the Lakeview UGB as defined in OAR 340-31-500.
 - (f) The Medford Nonattainment Area for PM₁₀ is the Medford

AQMA as defined in OAR 340-31-500.

- (g) The Oakridge Nonattainment Area for PM_{10} is the Oakridge UGB as defined in OAR 340-31-500.
- (4) Total Suspended Particulate (TSP) Nonattainment Areas:
 - (a) The Eugene Nonattainment Area for TSP is the Eugene-Springfield AQMA as defined in OAR 340-31-500.
 - (b) The Medford Nonattainment Area for TSP is the Medford-Ashland AQMA as defined in OAR 340-31-500.
 - (c) The Portland Nonattainment Area for TSP includes areas within the Portland AQMA as set out and defined in OAR 340-31-500.

NOTE: Total Suspended Particulate is now a state-enforceable standard only. The US EPA now enforces PM_{10} in the place of TSP. The Department has decided to retain TSP as an enforceable standard.

Maintenance Areas

340-31-530 The following areas are designated as maintenance areas:

- (1) Carbon Monoxide Maintenance Areas:
 - (a) The Eugene Maintenance Area for Carbon Monoxide is the Eugene-Springfield AQMA as defined in OAR 340-31-500.
- (2) Ozone Maintenance Areas:
 - (a) The Medford Maintenance Area for Ozone is the Medford-Ashland AQMA as defined in OAR 340-31-500.
- (3) PM_{10} Maintenance Areas:

There are no areas in the state that have been designated by the EQC as PM_{10} Maintenance Areas.
- (4) Total Suspended Particulates (TSP) Maintenance Areas:

There are no areas in the state that have been designated by the EQC as TSP Maintenance Areas.

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality

Air Quality Division

OAD Chapter 340

DATE: 03-22-95 **TIME:** 7:00 **LOCATION:** Portland Building, Meeting Room C
1120 S.W. Fifth Avenue
Portland, Oregon 97204-1972

HEARINGS OFFICER(s): to be announced

STATUTORY AUTHORITY: ORS 468.020, ORS 468A.035

ADOPT: OAR 340-31-500 through OAR 340-31-530

AMEND: OAR 340-23-065, OAR 340-23-070, OAR 340-23-075, and OAR 340-31-120

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 is an administrative clarification of existing boundaries of various air quality regions throughout the state. These regulations would provide a clear, legal definition to many areas that are not clearly defined.

LAST DATE FOR COMMENT: March 23, 1995, 5:00 p.m.

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

AGENCY RULES COORDINATOR: Chris Rich, (503) 229-6775
AGENCY CONTACT FOR THIS PROPOSAL: Jeff Armstrong
ADDRESS: Air Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: (503) 229-6446
or Toll Free 1-800-452-4011

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

Signature

Date

02-15-95

Revision to the State Implementation Plan: Clarification of Boundary Descriptions of Air Quality Regions and Nonattainment and Maintenance Areas of Oregon

This rulemaking is an administrative clarification of existing boundaries intended to provide greater clarity as to actual boundaries through the use of legal descriptions.

Date Issued:	02-15-95
Public Hearings:	03-22-95
Comments Due:	03-23-95

WHO IS AFFECTED: Sources who are located or are wishing to locate near Air Quality Region Boundaries.

WHAT IS PROPOSED: This rulemaking will make the actual boundaries of existing Air Quality Areas easier to determine.

WHAT ARE THE HIGHLIGHTS: This proposal adopts new regulations in OAR Division 31 concerning the legal descriptions of nonattainment and maintenance areas throughout the state. In addition, Class I Wilderness Areas are defined by their most recent federal definition under OAR 340-31-120 and the Portland Metropolitan Open Burning District as contained in OAR 340-23-065, -070, and -075 is clarified.

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

Portland Building, Meeting Room C
1120 S.W. Fifth Avenue
Portland, Oregon 97204-1972
7:00 p.m., Room 3A

Written comments must be received by 5:00 p.m. on 03-23-95 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 229-6446 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

Rulemaking Proposal

for

Clarification of Boundary Descriptions of Air Quality Regions and Nonattainment and
Maintenance Areas of Oregon

Rulemaking Statements

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

1. Legal Authority

ORS 468.020, ORS 468A.035

2. Need for the Rule

In the past, maps have been used to delineate some boundaries of Air Quality Regions in the state. However, maps do not clearly identify boundaries and create uncertainty concerning whether sources are located within or outside of the boundaries. Source location affects a source's regulatory requirements.

3. Principal Documents Relied Upon in this Rulemaking

Maps included in nonattainment and maintenance plans for nonattainment and maintenance areas in the state.

OAR 340-31-120

OAR 340-23-065, -070, and -075 and maps of the Portland Metropolitan Area Open Burning Districts.

Documents referenced are available at the Department of Environmental Quality, Air Quality Division, 811 SW Sixth Avenue, Portland, Oregon 97204.

4. Advisory Committee Involvement

It is our belief that this proposal requires no Advisory Committee involvement because it is an administrative clarification of existing boundaries.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Clarification of Boundary Descriptions of Air Quality Regions and Nonattainment and
Maintenance Areas of Oregon

Fiscal and Economic Impact Statement

Introduction

This proposed rulemaking is not expected to have a significant fiscal and economic impact. The rules proposed for adoption simply clarify existing boundaries. There are no changes to existing boundaries.

Legal Descriptions of Nonattainment and Maintenance Areas -- This rule adoption will allow the Department and sources to determine with greater certainty whether a particular source lies within a nonattainment or maintenance area.

Portland Metropolitan Open Burning Boundary -- This rule adoption will allow both the Department and sources to determine whether a person who wishes to open burn lies with the total or seasonal ban area without reference to outdated Fire Protection District boundaries.

Class One Wilderness Area Boundaries -- This rule adoption will update the reference to the federal definition of each particular area.

Air Quality Control Region Boundaries -- This rule adoption will list the counties contained within each Air Quality Control Region.

General Public

There would be no economic impact to the general public as a result of these proposed rules.

Small Business

There would be no economic impact to small business as a result of these proposed rules.

Large Business

There would be no economic impact to large business as a result of these proposed rules.

Local Governments

This rulemaking will have no economic effect on local governments.

State Agencies

DEQ -- This proposed rulemaking will make it easier for the Department for determine whether a source lies within a particular Air Quality Area. There will be no effect on revenues or expenditures and no additional workload will result from this rulemaking.

Other Agencies -- LRAPA is the administering agency for Air Quality Areas in Lane County. There will be no additional workload resulting from this rulemaking and no effect on revenues or expenditures.

Assumptions

This analysis assumes that DEQ and LRAPA are enforcing the correct boundaries for the various Air Quality Areas throughout the state.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Clarification of Boundary Descriptions of Air Quality Regions and Nonattainment and
Maintenance Areas of Oregon

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The clarification of the boundary descriptions for Air Quality Regions and Nonattainment and Maintenance Areas will allow the Department and sources to determine with greater ease and certainty whether a source lies within a particular Air Quality Area. Source location affects a source's regulatory obligations.

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

Yes No

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

Air Quality Federal Operating Permit Program

Air Quality Air Contaminant Discharge Permit Program

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

Yes No (if no, explain):

The proposed rules are clarifications of existing boundaries. A land use compatibility statement must be approved by the affected local government before a permit can be issued.

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

Not applicable.

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

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.

Gregory A. Gre
Division

Robert Gray
Intergovernmental Coord.

2/15/95
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?*

Federal requirements dictate that areas with special air quality needs be identified and adequately defined.

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

This rulemaking does not pertain to performance based or technology based requirements or standards.

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?*

The federal requirement of designation addresses the need to achieve and maintain good air quality in areas that are susceptible to air quality problems. This designation of areas allows the state to pinpoint air pollution problems and choose the best remedies for the problems in each designated area.

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?*

This rulemaking will allow the regulated community to determine with greater certainty and greater ease whether a source lies within an area identified as

having special air quality needs. Source location affects a source's regulatory obligations.

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 because there are no requirements contained in this rulemaking.

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

Not applicable because this rulemaking does not alter the requirements of any source.

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 rulemaking addresses the potential problem of a source not being able to determine with certainty whether it lies within an area with special air quality needs and would thus be subject to different regulations.

State of Oregon
Department of Environmental Quality

Memorandum

Date: 03-23-95

To: Environmental Quality Commission

From: Dave Nordberg *DN*

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: 03-22-95, beginning at 7:00 pm
Hearing Location: Portland Building, Room C

Title of Proposal: Boundary Descriptions: Air Quality Control Regions
and Nonattainment and Maintenance Areas of Oregon

The rulemaking hearing on the above titled proposal was convened at 7:00 pm. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Twelve people were in attendance, no people signed up to give testimony.

Prior to receiving testimony, Dave Nordberg 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.

No testimony was given for this rulemaking proposal.

The following people handed in written comments but did not present oral testimony:

No one presented written testimony at the public hearing for this rulemaking.

There was no further testimony and the hearing was closed at 8:00 pm.

Attachments:

Written Testimony Submitted for the Record.

**Written Comment Received and
The Department's Evaluation of the Comment**

One comment was received during the comment period for Boundary Descriptions: Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon. It was received from Joseph Riker III, Community Development Director, City of Klamath Falls on March 16, 1995.

The comment: *Local government involvement is needed to ensure adequate conversion from the maps to a legal description. This will place an economic burden on local governments and the Department has not provided any funding for that in this rulemaking.*

Department's
Evaluation: There is no burden being placed on local government. Local government involvement has been solicited in every instance. Wherever possible, existing definitions were used in this rulemaking. For Klamath Falls, the definition used came from the Klamath County Planning Department's definition of the Urban Growth Boundary.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Boundary Descriptions: Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon

Rule Implementation Plan

Summary of the Proposed Rule

The proposal is an administrative clarification that supplies legal descriptions to air quality areas that were formerly denoted only by lines on maps. It will provide sources near air quality areas greater certainty in the determination of whether they lie within the air quality control area.

Proposed Effective Date of the Rule

05-23-95

Proposal for Notification of Affected Persons

This rulemaking has introduces no requirements. This rulemaking will become a part of OAR Chapter 340, Division 31 upon adoption and will be distributed throughout the state.

Proposed Implementing Actions

This proposal will become part of OAR Chapter 340, Division 31 upon adoption and distributed throughout the state. It will be available upon request.

Proposed Training/Assistance Actions

No training or technical instruction is necessary.

Environmental Quality Commission

- Rule Adoption Item
 Action Item
 Information Item

Agenda Item G
May 18, 1995 Meeting

Title:

Adoption by Reference of Federal Hazardous Air Pollutant (HAP) program rules and HAP emission standards.

Summary:

The Department is proposing to adopt by reference specific federal National Emission Standards for Hazardous Air Pollutants (NESHAPs). In addition to the general provisions common to all NESHAP standards, this proposed rule will set Maximum Available Control Technology (MACT) for seven industrial source categories.

Department Recommendation:

It is recommended that the Commission adopt the federal National Emission Standards for Hazardous Air Pollutants presented in Attachment A of the Department Staff Report.

Report Author

John M. Finney

Gregory A. Green
Division Administrator

Director

Lydia Taylor

May 1, 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: May 3, 1995

To: Environmental Quality Commission
From: Lydia Taylor, Interim Director *Lydia Taylor*
Subject: Agenda Item G , May 18, 1995 EQC Meeting

Adoption by reference of Federal Hazardous Air Pollutant (HAP) program rules and HAP emission standards

Background

On January 5, 1995, the Interim Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would adopt by reference, newly promulgated federal hazardous air pollutant emission standards and general provisions pursuant to Section 112 of the Clean Air Act.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on February 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 January 20, 1995.

Public Hearings were held:

March 1, 1995 in Portland, Oregon
March 2, 1995 in Bend, Oregon
March 6, 1995 in Medford, Oregon

with Maria Behlke serving as Presiding Officer. The Presiding Officer's Report, Attachment C, summarizes these public hearings.

Written comments were accepted through March 10, 1995. However, no written comments were received, and therefore no changes to the originally proposed rulemaking is proposed.

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

Issue this Proposed Rulemaking Action is Intended to Address

This rulemaking will allow the delegation of specific federal National Emission Standards for Hazardous Air Pollutants (NESHAPs) from the USEPA to the State of Oregon. The Oregon Department of Environmental Quality (ODEQ) will implement these delegated standards through the Title V permit program.

Relationship to Federal and Adjacent State Rules

These proposed rules are **identical** to the federal rules, as this is an adoption by reference.

Authority to Address the Issue

Legal Authority - ORS 468.020, ORS 468(a).310

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

The NESHAP standards considered by this rulemaking have been subject to a national public and industrial participation, comment, and revision process. Following development of the draft NESHAP standard and publication in the federal register notices referenced in Attachment C, EPA received public comment and revised the proposed rule where appropriate. ODEQ then followed the administrative procedures in ORS 468, affording Oregon industry and the public additional opportunity for participation.

ODEQ presented this proposed NESHAP adoption by reference to the Industrial Source Advisory Committee (ISAC), September 29, 1994, which endorsed ODEQ's approach.

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

The proposed rulemaking adopts :

40 CFR Part 63 General Provisions which are common to all NESHAP standards and source specific regulations, setting Maximum Available Control Technology (MACT) for the following industrial source categories:

Synthetic Organic Chemical Manufacturing
Perchloroethylene Dry Cleaning

Halogenated Solvent Cleaning/Degreasing
Magnetic Tape Production
Industrial Process Cooling Tower
Gasoline Distribution
Commercial Ethylene Oxide Sterilization

Summary of Significant Public Comment and Changes Proposed in Response

No public comments were received, and therefore no changes are proposed in this rulemaking.

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

These proposed rules will be applicable to Title V major sources subject to the Oregon Operating Permit Program. These sources will be required to comply with the provisions of these rules if applicable, and certify compliance at regularly defined intervals in the permit term. The Department will implement revisions to existing Operating Permit application and training materials in response to these new requirements, and will conduct training sessions for AQ regional staff in June, 1995. Complementing this internal effort, the AQ Division will conduct informational mailings to all sources known to be affected by these rules.

Recommendation for Commission Action

It is recommended that the Commission adopt the federal National Emission Standards for Hazardous Air Pollutants presented in Attachment A of the Department Staff Report.

Attachments

- A. Rules Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice of Hearing (Chance to Comment)
 - 3. Rulemaking Statements (Statement of Need)
 - 4. Fiscal and Economic Impact Statement
 - 5. Land Use Evaluation Statement
- C. Presiding Officer's Report on Public Hearing
- D. Advisory Committee Membership and Report
- E. Rule Implementation Plan
- F. Supplemental Attachments

Reference Documents (available upon request)

- EPA communications on estimated source universes for each NESHAP
- EPA background and summary documents for each NESHAP

Approved:

Section:

Greg E. Faudt

Division:

Gregory A. Green

Report Prepared By: John Kinney, DEQ

Phone: (503)-229-6819

Date Prepared: 4/13/95

JK:jk

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April 13, 1995

The following entirely new rules are proposed for adoption:

DIVISION 32

HAZARDOUS AIR POLLUTANTS

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR SOURCE CATEGORIES

Federal Regulations Adopted by Reference

340-32-510

(1) Except as provided in section (2) of this rule, 40 CFR Part 63, Subpart A, F, G, H, I, M, N, O, Q, R, T and EE are by reference adopted and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 63 Subpart A, F, G, H, I, M, N, O, Q, R, T and EE, "Department" shall be substituted, except in any section of 40 CFR Part 63 Subpart A, F, G, H, I, M, N, O, Q, R, T and EE for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

National Emission Standards for Hazardous Air Pollutants
for Source Categories: General Provisions

340-32-520

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart A.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart A as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart A under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air
Pollutants from the Synthetic Organic Chemical
Manufacturing Industry

340-32-530

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart F.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart F as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart F under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater

340-32-540

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart G.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart G as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart G under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

340-32-550

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart H.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart H as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart H under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

340-32-560

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart I.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart I as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart I under authority retained by EPA.]

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

340-32-570

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart M.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart M as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart M under authority retained by EPA.]

National Emission Standards for Ethylene Oxide Commercial Sterilization and Fumigation Operations

340-32-580

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart O.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart O as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart O under authority retained by EPA.]

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

340-32-590

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new

source subject to 40 CFR Part 63 Subpart Q.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart Q as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart Q under authority retained by EPA.]

**National Emission Standards for Hazardous Air Pollutants
for Source Categories: Gasoline Distribution (Stage 1)**

340-32-600

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart R.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart R as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart R under authority retained by EPA.]

**National Emission Standards for Hazardous Air Pollutants:
Halogenated Solvent Cleaning**

340-32-610

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart T.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart T as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart T under authority retained by EPA.]

**National Emission Standards for Hazardous Air
Pollutants: from Magnetic Tape Manufacturing Operations**

340-32-620

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is a new source subject to 40 CFR Part 63 Subpart EE.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart EE as adopted under OAR 340-32-510.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart EE under authority retained by EPA.]

The following entirely new rules are proposed for adoption:

DIVISION 32

HAZARDOUS AIR POLLUTANTS

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR SOURCE CATEGORIES

Federal Regulations Adopted by Reference

340-32-2600

(1) Except as provided in section (2) of this rule, **40 CFR Part 63, Subpart A, F, G, H, I, M, N, O, Q, R, T and EE** are by reference adopted and incorporated herein.

(2) Where "Administrator" or "EPA" appears in **40 CFR Part 63 Subpart A, F, G, H, I, M, N, O, Q, R, T and EE**, "Department" shall be substituted, except in any section of **40 CFR Part 63 Subpart A, F, G, H, I, M, N, O, Q, R, T and EE** for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

National Emission Standards for Hazardous Air Pollutants
for Source Categories: General Provisions

340-32-2610

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in **OAR 340-28-110** that is an existing source subject to **40 CFR Part 63 Subpart A**.

(2) Requirements. Sources subject to this rule shall comply with **40 CFR Part 63 Subpart A** as adopted under **OAR 340-32-2600**.

[Note: Other sources which are not major sources may be subject to **40 CFR Part 63, Subpart A** under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air
Pollutants from the Synthetic Organic Chemical
Manufacturing Industry

340-32-2620

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart F.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart F as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart F under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater

340-32-2630

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart G.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart G as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart G under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

340-32-2640

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart H.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart H as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart H under authority retained by EPA.]

National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

340-32-2650

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart I.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart I as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart I under authority retained by EPA.]

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

340-32-2660

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart M.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart M as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart M under authority retained by EPA.]

National Emission Standards for Ethylene Oxide Commercial Sterilization and Fumigation Operations

340-32-2680

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart O.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart O as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart O under authority retained by EPA.]

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

340-32-2690

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an

existing source subject to 40 CFR Part 63 Subpart Q.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart Q as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart Q under authority retained by EPA.]

**National Emission Standards for Hazardous Air Pollutants
for Source Categories: Gasoline Distribution (Stage 1)**

340-32-3000

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart R.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart R as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart R under authority retained by EPA.]

**National Emission Standards for Hazardous Air Pollutants:
Halogenated Solvent Cleaning**

340-32-3010

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart T.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart T as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart T under authority retained by EPA.]

**National Emission Standards for Hazardous Air
Pollutants: from Magnetic Tape Manufacturing Operations**

340-32-3020

(1) Applicability.

(a) This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-110 that is an existing source subject to 40 CFR Part 63 Subpart EE.

(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart EE as adopted under OAR 340-32-2600.

[Note: Other sources which are not major sources may be subject to 40 CFR Part 63 , Subpart EE under authority retained 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:
3/1/95	5:30 pm	Rm 3A, 811 SW Sixth Ave, Portland, OR
3/2/95	5:30 pm	City of Bend Public Works Training Room, Bend, OR
3/6/95	5:30 pm	County Courthouse Auditorium, 411 W. 8th Street, Medford, OR

HEARINGS OFFICER(s): Ms. Maria Behlke

STATUTORY AUTHORITY: ORS 468.020, ORS 468A.310(2)

ADOPT: OAR 340-32-2600, OAR 340-32-2610,
OAR 340-32-2620, OAR 340-32-2630,
OAR 340-32-2640, OAR 340-32-2650,
OAR 340-32-2650, OAR 340-32-2660,
OAR 340-32-2680, OAR 340-32-2690,
OAR 340-32-3000, OAR 340-32-3010,
OAR 340-32-3020.

AMEND:

REPEAL:

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

SUMMARY:

Hazardous Air Pollutants. Adoption by reference of federal general provisions and emission standards for major stationary sources.

LAST DATE FOR COMMENT: 3/10/95

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: John Kinney (503) 229-6819

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

**ADOPTION BY REFERENCE OF FEDERAL HAZARDOUS AIR POLLUTANT (HAP)
PROGRAM RULES AND HAP EMISSION STANDARDS**

Date Issued: 01/25/95
Public Hearings: 03/01/95, Portland
03/02/95, Bend
03/06/95, Medford
Comments Due: 03/10/95,

**WHO IS
AFFECTED:**

Major stationary HAP industrial sources

**WHAT IS
PROPOSED:**

An adoption by reference of the Part 63 General Provisions
and source specific emission standard

**WHAT ARE THE
HIGHLIGHTS:**

This is the first in a continuing series of NESHAP rule adoptions.
The Part 63 general Provisions, together with the NESHAP standards for
the following source categories are proposed for adoption:

- (1) hazardous Organic NESHAP (HON)
- (2) Perchloroethylene Dry Cleaning NESHAP
- (3) Halogenated Solvent Cleaning/Degreasing NESHAP
- (4) Magnetic Tape Production NESHAP
- (5) Industrial Process Cooling Tower NESHAP
- (6) Gasoline Distribution NESHAP
- (7) Commercial Ethylene Oxide Sterilization NESHAP

This proposed rulemaking is an adoption by reference for major stationary
industrial sources only.

**HOW TO
COMMENT:**

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

March 1, 1995 in Portland, Oregon
March 2, 1995 in Bend, Oregon
March 6, 1995 in Medford, Oregon

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

Department of Environmental Quality
811 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 229-5359 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

Rulemaking Proposal
for

Adoption by reference of Federal Hazardous air pollutant (HAP) program rules and emission standards.

Rulemaking Statements

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

1. Legal Authority

ORS 468.020, ORS 468A.310(2)

2. Need for the Rule

This rulemaking proposes an adoption by reference of federal regulations concerning general provisions and emission standards for major stationary industrial sources. This rulemaking allows DEQ to place applicable hazardous air pollutant emission standards in federal operating permits for affected sources.

3. Principal Documents Relied Upon in this Rulemaking
EPA Federal Register notices:

General Provisions- 59 FR 12407
Perchloroethene Dry Cleaning - 59 FR 49353
Industrial Process Cooling Tower - 59 FR 46339
Halogenated Solvent Cleaning/ Degreasing - 59 FR 61801
Commercial Ethylene Oxide Sterilizers - 59 FR 62585
Hazardous Organic NESHAP- 59 FR 19402

These documents are available at:

DEQ Air Quality Division
811 SW Sixth Avenue
Portland, Oregon, 97204

4. Advisory Committee Involvement

Presented to the ISAC advisory committee, which supported this proposed adoption by reference for major sources.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Adoption by reference of federal hazardous air pollutant (HAP) program rules and emission standards. This rulemaking particularizes the Title V Operating Permit Program, that was approved by the Environmental Quality Commission (September, 1993), and granted final interim approval by the EPA on December 2, 1994. These regulations are programmatic and source specific National Emission Standards for Hazardous Air Pollutant (NESHAP) promulgated under 40 CFR Part 63. Included in this rulemaking are:

- (1) The hazardous air pollutant general provisions
- (2) Hazardous Organic NESHAP
- (3) Perchloroethylene Dry Cleaning NESHAP
- (4) Halogenated Solvent Cleaning-Degreasing NESHAP
- (5) Magnetic Tape Production NESHAP
- (6) Industrial Process Cooling Tower NESHAP
- (7) Gasoline Distribution NESHAP
- (8) Commercial Ethylene Oxide Sterilization NESHAP

Fiscal and Economic Impact Statement

Introduction

This rulemaking is advanced pursuant to the requirements of Section 112 of the Clean Air Act; specifically Section 112(d) "Emission Standards", in which the Administrator of the EPA is required to establish emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to EPA's promulgated schedules. This rulemaking is an adoption by reference of emission standards, and general provisions for all hazardous air pollutant sources, that have been promulgated up to this time. This adoption proposes to regulate only major HAP sources.

General Public

There would be no known economic impact to the general public as a result of these proposed rules. The only costs to the general public would be possible pass-through costs to customers, but the cost is assessed to be negligible.

This analysis assumes that sources are in compliance with existing state and federal rules. Sources which are not in compliance may be subject to additional costs due to an expected increase in compliance assurance activities under the federal operating permit program.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Adoption by reference of federal hazardous air pollutant (HAP) program rules and emission standards.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Department proposes to adopt new rules regarding National Emission Standards for Hazardous Air Pollutants (NESHAP). These rules propose to adopt EPA's rules for NESHAP by reference limited to only major Hazardous Air Pollutant (HAP) sources as defined in OAR 340-32-120. The rules will be implemented through the Department's Federal Operating Permit Program.

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

Yes X No

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

The issuance of air permits has been determined a DEQ Land Use program. The proposed standards will be implemented through the Operating Permit Program.

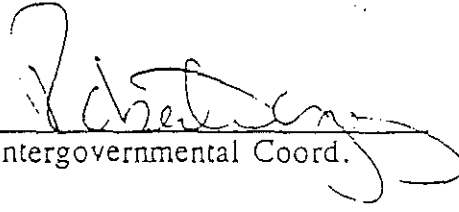
b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes No (if no, explain):

Current procedures require local government to provide a land use compatibility determination before an air permit is issued or before approval of a Notice of Construction.

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

Division _____


Intergovernmental Coord.

1/5/95
Date

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 9, 1995

To: Environmental Quality Commission
From: Maria Behlke
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 1, 1995, beginning at 5:30
Hearing Location: 811 S.W. Sixth Avenue, Room 3A
Portland, Oregon

Hearing Date and Time: March 2, 1995, beginning at 5:30
Hearing Location: 1375 N.E. Forbes, Department of Public
Works Training Room
Bend, Oregon

Hearing Date and Time: March 6, 1995, beginning at 5:30
Hearing Location: Oakdale & 8th Ave, Jackson County
Courthouse Auditorium
Medford, Oregon

Title of Proposal: Federal Operating Permit Fee Increase Rule Revision
Hazardous Air Pollutant Program Rules Adoption
Hazardous Air Pollutant Emission Standards Rule Adoption

The rulemaking hearings on the above titled proposals were convened at 5:30 p.m.

There was no attendance at any of the hearings.

The hearings were closed at 6:30, 6:15 and 6:15 respectively.

**Oregon Department of Environmental Quality
Air Quality Industrial Source Advisory Committee III
Members**

Chair

Judge Jacob Tanzer
Ball, Janik & Novack
One Main Place
101 SW Main Street
Portland, OR 97204
228-2525
FAX 2958-1058

Ex Officio

Don Arkell
LRAPA
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Public-at-Large

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Portland, OR 97229-5022
520-8671
FAX 520-8671

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Jim Spear
Williams Air Controls
14100 SW 72nd Avenue
Tigard, OR 97226
684-8600
FAX 684-8610

Public-at-Large

Nancy Spieler
3530 16th Place
Forest Grove, OR 97116
359-5760

Environmental

Lisa Brenner (interim)
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Sherwood, OR 97140-9164
625-6891
FAX 625-6369

Business

Jim Whitty
Associated Oregon Industries
317 SW Alder #450
Portland, OR 97204
227-3730 X 103
FAX 227-0115

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Adoption by reference of Federal Hazardous Air Pollutant (HAP) program rules and hazardous air pollutant (HAP) emission standards into OAR Chapter 340 Division 32.

Rule Implementation Plan

Summary of the Proposed Rule

These proposed rules adopt by reference, newly promulgated federal hazardous air pollutant emission standards and general provisions pursuant to Section 112 of the Clean Air Act. This adoption establishes ODEQ's authority to directly implement and assure compliance with these standards in the Oregon Operating Permit Program for major Title V sources.

Proposed Effective Date of the Rule

JULY 3, 1995

Proposal for Notification of Affected Persons

1. Publication in ODEQ's periodic newsletter 'Airtime', Spring 1995 Edition, to be mailed in May. Subscribers to 'Airtime' include industrial sources, interested public, other state agencies, and environmental groups. This edition will contain an article summarizing these newly adopted NESHAP standards, and will identify Agency points of contact for additional information.
2. Direct informational mailing, May 19, 1995, to all known Oregon Title V major sources, and 'interested persons' on the Division's mailing list. This mailing will include a summary of both the initial notification requirements together with the particular technical permitting and reporting requirements contained in these rules.

Proposed Implementing Actions

ODEQ

1. Develop guidance for each of the newly adopted NESHAP standards.

2. Develop new permit application forms for each of the newly adopted NESHAP standards to supplement the existing Title V permit application package.
3. Implement these newly adopted standards through the Title V permit process.
4. Develop formal coordination procedures between the Air Quality Division's Headquarter's and Regional permitting, inspection, and enforcement efforts.

Regulated Community

1. Must determine the applicability/non-applicability of the newly promulgated standards
2. Must determine the source's potential annual emission of hazardous air pollutant (HAP).
3. Must evaluate competing control technologies, and select preferred choice.
4. Must submit a complete Title V permit application ; or secure a 'synthetic minor' permit through the ACDP permit program; or demonstrate 'true minor' status before the scheduled call-in date. The Title V application must address every air quality requirement applicable to the source, of which these newly adopted NESHAP standards are now a fully contained subset.
5. Must implement and assure continuing compliance with the terms of the Title V permit when issued.

Proposed Training/Assistance Actions

Training for DEQ Staff

1. Written guidance provided by HQ staff on each newly adopted NESHAP.
2. Half-day training sessions held at DEQ's regional AQ office locations according to the following schedule:

Bend: June 16, 1995

Medford: June 22, 1995

Salem: June 23, 1995

Portland: June 30, 1995
(including both NWR and HQ AQ Staff)

3. Continuing maintenance and promotion of existing AQ Bulletin Board system as the Division's most effective, ongoing, mechanism of training/technical assistance.

Training for the Regulated Community

No specific training for the regulated community is planned by the Department for these NESHAP regulations. These regulations are a small subset of the overall Title V permit program scope. Significant training has already been conducted for the regulated community on the Title V permit process. The Air Quality Division continues to maintain a current inventory of regulations, guidance documents, training materials, and example permits for interested parties.

ATTACHMENT F

SUPPLEMENTAL SCOPE, COST, AND BENEFIT ANALYSIS

To supplement the analysis of this proposed rulemaking, an analysis of the number of sources in each source category, the approximate cost of compliance for affected sources, and the resulting improvement in air quality through hazardous air pollutant emission reduction was completed. The following information summarizes the results of this analysis, and describes the methodology and assumptions employed in the effort.

Sources of Information

National information on Hazardous Air Pollutant (HAP) reductions and costs were taken from proposed or final rule documents from USEPA. Single unit or multiple source data was derived from the national data using the number of units or sources expected to be subject to the regulations. (See Notes sections of each individual NESHAP for additional information of the number of sources.) Statewide data was derived from these estimates though linear extrapolation.

The number of Hazardous Organic NESHAP (HON) sources and existing Gasoline Distribution sources were extracted from data received from USEPA Region X. Two of the seven originally identified Oregon HON sources have received synthetic minor permits, and are now no longer subject to the Title V permit program or the HON itself.

There are no known magnetic tape, nor major perchloroethylene dry cleaning facilities in Oregon.

Assumptions

The number of halogenated solvent cleaning machines, industrial process cooling towers, and ethylene oxide sterilization operations subject to these NESHAP standards was estimated by using a ratio of state population to national population in 1992. Better population data was not available. In the case of halogenated solvent cleaning machines, the number of units statewide is believed to be overestimated. This belief has arisen as a sample of (30) thirty DEQ permit files examined after the estimates were formed. Results indicate that a significant number of these sources have completely phased out halogenated solvent cleaning/degreasing.

	Estimated # of Sources	Costs		Environmental Benefits	
		Annual Costs Each Source (\$/yr)	Annual Costs Statewide (\$/yr)	Statewide HAP Reductions (tons/yr)	Statewide VOC Reductions (tons/yr)
NESHAP	Statewide				
Halogenated Solvent Cleaning	284			1,028	
W/ Solvent Recovery		(\$831)	(\$236,004)		
W/out Solvent Recovery		\$3,684	\$1,046,256		
HON - SOCM1					
New Sources	0	\$1,979,234	\$0	0	0
Existing Sources	4	\$462,434	\$1,849,736	4,577	9,300
EO Sterilization					
Area Sources	1	\$65,706	\$65,706	3	
Major Sources	1	\$46,426	\$46,426	20	
Cooling Towers					
New Sources	1	\$13,793	\$13,793	0.02	
Existing Sources	5	\$15,625	\$78,125	0.15	
Magnetic Tape Production					
New Sources	0				
Carbon Adsorption		\$58,227	\$0	0	
Incineration		\$45,061	\$0	0	
Existing Sources	0	\$63,231	\$0	0	
Drycleaners					
New Sources	50	\$3,361	\$168,056	1,225	
Existing Sources	404	\$3,174	\$1,282,139	3,257	
Gasoline Distribution					
New Sources					
Breakout Stations	0	\$2,000	\$0	0	
Bulk Terminals	1	\$31,075	\$31,075	0.9	
Existing Sources					
Breakout Stations	4	\$122,811	\$491,244	110	
Bulk Terminals	9	\$96,319	\$866,871	139	

Notes:

- 1) For HSC, each source refers to each degreasing device. Some sources may have multiple units. HSCs using VOCs in Portland AQMA, Medford AQMA and the Salem SATS are subject to a DEQ rule and most likely will not incur the full cost of compliance.
- 2) For HON, two sources have become area since promulgation reducing number of possible sources statewide to 4.
- 3) Drycleaners in Portland AQMA, Medford AQMA and the Salem SATS are subject to a DEQ rule and most likely will not incur the full cost of compliance.
- 4) For bulk terminals, it was assumed that all A1 and A2 terminals would be subject to NESHAPS, but all B terminals would not.
- 5) In some cases, used a ratio of state/national population to estimate number of sources statewide from national estimates.

This was done for halogenated solvent cleaning, EO sterilization, cooling towers, and new bulk terminals using the following ratio:

National population in 1992:	256,653,000
State population in 1992:	2,979,000

State/national population ratio: 0.012

The number of HSCs is believed to be an overestimate based on the observation that many sources have phased out HSC operations statewide.

The value generated for existing cooling towers (9) is thought to be an overestimate and was changed to 5.

- 6) There are no known major HAP source perchloroethylene drycleaning operations in the state.

The majority of the HSC sources are estimated to be either area sources, or HSC operations operated at major sources.

Cost Summary of HON - SOCMI NESHAPS

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Single Source	Nationally	Single Source	Nationally	Single Source	Nationally
Existing Sources							
Process Vents	289,189	779	\$84,000,000	\$226,415	\$62,000,000	\$167,116	\$236
Storage Tanks							
10,000-20,000 gals.	0	0			0	\$0	0
20,000-40,000 gals.	364	1			\$2,400,000	\$6,469	\$6,713
> 40,000 gals.	5,291	14			\$10,000,000	\$26,954	\$1,905
Total Storage	5,655	15	\$62,160,000	\$167,547	\$12,400,000	\$33,423	
Transfer Operations	397	1	\$10,080,000	\$27,170	\$3,100,000	\$8,356	\$7,893
Wastewater Systems	76,169	205	\$117,600,000	\$316,981	\$32,100,000	\$86,523	\$426
Equipment Leaks	53,074	143	\$100,800,000	\$271,698	(\$218,400)	(\$589)	(\$4)
Annual Record Keeping					\$62,181,560	\$167,605	N/A
Totals	424,483	1,144	\$374,640,000	\$1,009,811	\$171,563,160	\$462,434	\$404
New Sources							
Process Vents	50,706	2,817	\$16,000,000	\$888,889	\$14,000,000	\$777,778	\$300
Storage Tanks							
10,000-20,000 gals.	67	4			\$1,600,000	\$88,889	\$24,313
20,000-40,000 gals.	68	4			395,000	\$21,944	\$5,779
> 40,000 gals.	1,808	100			\$2,900,000	\$161,111	\$1,633
Total Storage	1,943	108	\$11,840,000	\$657,778	\$4,895,000	\$271,944	\$31,725
Transfer Operations	75	4	\$1,920,000	\$106,667	\$590,000	\$32,778	\$7,893
Wastewater Systems	11,354	631	\$22,400,000	\$1,244,444	\$10,000,000	\$555,556	\$885
Equipment Leaks	10,109	562	\$19,200,000	\$1,066,667	(\$41,600)	(\$2,311)	(\$4)
Annual Record Keeping					\$6,182,810	\$343,489	N/A
Totals	74,187	4,122	\$71,360,000	\$3,964,444	\$35,626,210	\$1,979,234	\$480
Grand Totals	498,671		\$446,000,000		\$207,189,370		

Notes:

- 1) The numbers for single sources are averages determined by using the number of sources expected to be regulated nationwide.
- 2) # of existing sources to be regulated is estimated at 317 nationally by EPA.
- 3) # of new sources expected to be regulated is estimated at 18 nationally by EPA.

Cost Summary of EO Sterilization NESHAPS

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Single Source	Nationally	Single Source	Nationally	Single Source	Nationally
Sterilizer Vents	1,050	12.65	\$25,730,000	\$310,000	\$3,800,000	\$100,000	\$3,619
Chamber Exhaust	37	0.79			\$250,000		\$6,757
Aeration Room	53	0.55	\$28,130,000	\$290,000	\$2,600,000	\$80,000	\$49,057
<u>Total</u>	<u>1,140</u>	<u>13.98</u>	<u>\$53,860,000</u>	<u>\$600,000</u>	<u>\$6,650,000</u>	<u>\$180,000</u>	<u>\$5,833</u>
<u>Area Sources</u>	<u>216</u>	<u>3.18</u>	<u>\$31,847,652</u>	<u>\$468,348</u>	<u>\$4,467,997</u>	<u>\$65,706</u>	<u>\$9,900</u>
<u>Major Sources</u>	<u>924</u>	<u>19.65</u>	<u>\$22,012,348</u>	<u>\$468,348</u>	<u>\$2,182,045</u>	<u>\$46,426</u>	<u>\$4,900</u>

Notes:

- 1) Capital and annual costs listed for the aeration rooms is actually the sum of the cost to control both the chamber exhaust and the aeration room.
- 2) The numbers for single sources are averages determined by using the number of sources expected to be regulated nationwide.
- 3) A number of these facilities are already controlled, therefore these average values have been adjusted according to EPA's estimates of the # of sources already controlled.
 83 of 115 sterilizer vents subject to the standards are already sufficiently controlled.
 97 of 115 aeration rooms subject to the standards are already sufficiently controlled.
- 4) # of major sources nationally is estimated at 47 nationally.
- 5) # of area sources nationally is estimated at 68 nationally.

Cost Summary of Cooling Tower NESHAPS

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Per Tower	Nationally	Per Tower	Nationally	Per Tower	Nationally
Existing Sources	24.75	0.03			\$12,500,000	\$15,625	\$505,051
						Max. - \$144,000	
						Min. - \$4,270	
<u>New Sources</u>	<u>1.8</u>	<u>0.02</u>			<u>\$1,200,000</u>	<u>\$13,793</u>	<u>\$666,667</u>
<u>Totals</u>	<u>26.55</u>	<u>0.03</u>			<u>\$13,700,000</u>	<u>\$15,445</u>	<u>\$516,008</u>

Notes:

- 1) The number of existing towers that will be subject to the standards is 800 (as estimated by EPA).
- 2) The number of new towers that will be subject to the standards is 87 (as estimated by EPA).

Cost Summary of Drycleaner - Perc. NESHAPS

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Single Source	Nationally	Single Source	Nationally	Single Source	Nationally
New Facilities	9,800	24.50	\$3,000,000	\$7,500	\$1,344,444	\$3,361	\$137
Existing Facilities	25,800	8.06	\$32,000,000	\$10,000	\$10,155,556	\$3,174	\$394
Totals	35,600		\$35,000,000		\$11,500,000		\$323

Notes:

- 1) National annual costs include a solvent savings of \$7,500,000/yr.
- 2) The numbers for single sources are averages determined by taking the number of new and existing sources as estimated by the EPA.
- 3) # of new sources nationally by 1996 is estimated at 400 nationally.
- 4) # of existing sources nationally is estimated at 3200 nationally.

Cost Summary of Magnetic Tape Production NESHAPS

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Single Source	Nationally	Single Source	Nationally	Single Source	Nationally
Existing Sources	2,300	176.92	\$2,263,600	\$174,123	\$821,998	\$63,231	\$357
New Sources							
Carbon adsorption	155	25.83	\$3,000,000	\$500,000	\$349,360	\$58,227	\$2,254
Incineration	155	25.83	\$3,000,000	\$500,000	\$270,367	\$45,061	\$1,744
Totals	2,455		\$5,263,600		\$1,171,358		\$477

Notes:

- 1) The numbers for single sources are averages determined by taking the number of new and existing sources as estimated by the EPA.
- 2) # of new facilities nationally is estimated at 6 nationally.
- 3) # of existing facilities to be covered nationally is estimated at 13 nationally.

Cost-of-Gas Distribution NESHAPS

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton Nationally	Notes
	Nationally	Single Source	Nationally	Single Source	Nationally	Single Source		
New Facilities								
Breakout Stations								
Storage Tanks	0	0	0	0	0	0	0	
Equipment Leaks								
Monthly Visual	UD	UD	0	0	<\$1,000		0	
Quarterly Visual	UD	UD	0	0	<\$1,000		0	
Recordkeeping & Reporting	NA	NA	0	0	\$4,000	\$2,000	NA	1
Totals	0	0	0	0	\$4,000	\$2,000		
Bulk Terminals								
Loading Racks	61	1	\$7,700,000	\$96,250	\$1,800,000	\$22,500	\$29,665	2
Storage Tanks	0	0	0		0		0	
T.T. Leakage	11	0	0	\$0	0	\$0	0	2
Equipment Leaks								
Monthly Visual	UD	UD	0		\$11,000	\$138	0	2
Quarterly Visual	UD	UD	0		\$3,000	\$38	0	2
Recordkeeping & Reporting	NA	NA	0		\$672,000	\$8,400	NA	2
Totals	72	1	\$7,700,000	\$96,250	\$2,490,000	\$31,075	\$34,753	
Existing Facilities								
Breakout Stations								
Storage Tanks								
Floor								
EFRT			\$7,684,550	\$80,890	\$1,337,980	\$14,084		4
IFRT			\$1,081,500	\$72,100	\$228,525	\$15,235		4
Fixed Roof			\$2,953,440	\$105,480	(\$3,799,404)	(\$135,693)		4
Floor Totals	474	26	\$11,719,490	\$651,083	(\$2,232,899)	(\$124,050)	(\$4,711)	3
Fittings								
EFRT Fittings								
w/sec			\$151,200	\$2,800	(\$3,078)	(\$57)		4
w/pri			\$266,000	\$2,800	(\$39,805)	(\$419)		4
IFRT Fittings								
w/vap-mount			\$42,000	\$2,800	\$5,040	\$336		4
w/liq-mount			\$81,200	\$2,800	\$9,773	\$337		4
Fixed Roof Fittings			\$78,400	\$2,800	\$9,380	\$335		4
Fittings Totals	21	1	\$618,800	\$34,378	(\$18,690)	(\$1,038)	(\$892)	3
Storage Tank Totals	495	27	\$12,338,290	\$685,461	(\$2,251,589)	(\$125,088)	(\$4,549)	3
Equipment Leaks								
Monthly Visual	UD	UD	0		\$4,000	\$222	\$0	3
Quarterly Visual	UD	UD	0		<\$1,000		\$0	
Recordkeeping & Reporting	NA	NA	0		\$37,000	\$2,056	NA	3
Totals	495	27	\$12,338,290	\$685,461	(\$2,210,589)	(\$122,811)	(\$4,466)	3

Bulk Terminals								
Loading Racks	783	6	\$55,200,000	\$411,940	\$8,150,000	\$60,821	\$10,433	5
Storage Tanks								
Floor								
EFRT			\$22,742,720	\$54,670	\$3,648,320	\$8,770		4
IFRT			\$3,666,740	\$23,810	\$764,302	\$4,963		4
Fixed Roof			\$7,291,920	\$39,630	(\$947,048)	(\$5,147)		4
Floor Totals	661	3	\$33,701,380	\$168,507	\$3,465,574	\$17,328	\$5,240	6
Fittings								
EFRT Fittings								
w/sec			\$672,075	\$2,175	(\$65,199)	(\$211)		4
w/pri			\$904,800	\$2,175	(\$93,600)	(\$225)		4
IFRT Fittings								
w/vap-mount			\$188,650	\$1,225	\$22,022	\$143		4
w/liq-mount			\$384,650	\$1,225	\$44,588	\$142		4
Fixed Roof Fittings			\$225,400	\$1,225	\$31,280	\$170		4
Fittings Totals	64	0	\$2,375,575	\$11,878	(\$60,909)	(\$305)	(\$953)	6
Storage Tank Totals	725	8	\$36,076,955	\$180,385	\$3,404,665	\$17,023	\$4,694	6
T.T. Leakage								
Single Truck	265	0	\$7,600,000	\$826	\$2,000,000	\$217	\$9,526	4
Single Facility		1		\$38,000		\$10,000		6
Equipment Leaks								
Monthly Visual	UD	UD	0		\$28,000	\$140	0	6
Quarterly Visual	UD	UD	0		\$7,000	\$35	0	6
Recordkeeping & Reporting	NA	NA	0		\$1,660,000	\$8,300	NA	6
Totals	1,772	15	\$98,876,955	\$630,325	\$13,554,665	\$96,319	\$7,647	7
Grand Totals	2,339		\$118,915,245		\$13,838,076		\$5,916	

Notes:

- 1) EPA estimates that there will be 2 sources classified as new major source pipeline breakout stations.
A single source in this case refers to an entire facility.
- 2) EPA estimates that there will be 80 sources classified as new major source bulk gasoline terminals.
A single source in this case refers to an entire facility.
- 3) EPA estimates that there will be 18 sources classified as existing major source pipeline breakout stations.
A single source in this case refers to an entire facility.
- 4) Single source in this column refers to a single tank or tank truck.
- 5) EPA estimates that there will be 200 sources classified as existing major source bulk gasoline terminals.
A single source in this case refers to an entire facility. EPA further estimates that approximately 900 of the 1600 tanks at existing major bulk terminals already comply with the standards. An assumption was made that the remaining tanks are evenly distributed between the 200 existing major bulk terminals.
- 6) EPA estimates that 33 percent of the facilities have loading racks that already comply.
A single source in this column refers to an average of the remaining 134 facilities that need to meet the standards.
- 7) A single source in this column refers to the average cost of the standard on an existing major bulk terminal.

Cost Summary of Halogenated Solvent Cleaning-Degreasing NESHAP - With Solvent Recovery Credits

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Single Machine	Nationally	Single Machine	Nationally	Single Machine	Nationally
<u>Existing</u>							
Small	2,756				\$5,202,000		\$2,547
Medium	5,401				\$3,238,000		\$599
Large	11,795				(\$4,560,000)		(\$390)
V. Large	15,653				(\$10,623,000)		(\$680)
In-Line	32,077				(\$23,218,000)		(\$726)
Totals	67,681	3.45			(\$29,961,000)	(\$1,529)	(\$443)
<u>New</u>							
Small	661				\$1,119,000		\$1,696
Medium	1,102				\$663,000		\$599
Large	2,646				(\$1,010,000)		(\$381)
V. Large	4,189				(\$2,900,000)		(\$689)
In-Line	12,346				\$123,000		\$9
Totals	20,944	4.27			(\$2,005,000)	(\$409)	(\$96)
Grand Totals	88,625	3.62			(\$31,966,000)	(\$1,305)	(\$361)
Cost of Record Keeping, Monitoring, and Reporting					\$11,600,000	\$473	
Overall costs					(\$20,366,000)	(\$831)	(\$230)

Cost Summary of Halogenated Solvent Cleaning-Degreasing NESHAP - Without Solvent Recovery Credits

	HAP Reductions (tons/yr)		Capital Costs		Annual Costs		Average \$/ton
	Nationally	Single Machine	Nationally	Single Machine	Nationally	Single Machine	Nationally
<u>Existing</u>							
Small	2,756				\$8,668,000		\$3,148
Medium	5,401				\$9,979,000		\$1,851
Large	11,795				\$10,294,000		\$871
V. Large	15,653				\$9,154,000		\$581
In-Line	32,077				\$16,485,000		\$514
Totals	67,681	3.45			\$54,580,000	\$2,785	\$806
<u>New</u>							
Small	661				\$1,927,000		\$2,912
Medium	1,102				\$2,029,000		\$1,842
Large	2,646				\$2,377,000		\$898
V. Large	4,189				\$2,329,000		\$553
In-Line	12,346				\$15,409,000		\$1,252
Totals	20,944	4.27			\$24,071,000	\$4,912	\$1,149
Grand Totals	88,625	3.62			\$78,651,000	\$3,210	\$887
Cost of Record Keeping, Monitoring, and Reporting					\$11,600,000	\$473	
Overall costs					\$90,251,000	\$3,684	\$1,018

Notes:

- 1) Values in parenthesis are negative values representing a benefit.
- 2) The numbers for single sources are averages determined by taking the number of new and existing sources - as estimated by the EPA.
- 3) # of new machines nationally is estimated at 4900 nationally.
- 4) # of existing machines nationally is estimated at 19600 nationally

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item H
May 18, 1995 Meeting

Title:

Amendments to Division 32 Hazardous Air Pollutants and
Division 33 Licensing and Certification Asbestos Requirements

Summary:

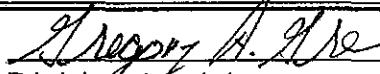
Amendments proposed in Division 32 and 33 are required to maintain EPA approval of the Department's asbestos certification program under the revised Model Accreditation Program (MAP) specified by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA).

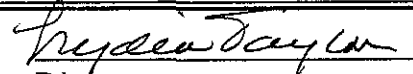
Amendments proposed in Division 32 would create an annual notification fee option for non-friable asbestos abatement projects. Schools, colleges and other regulated facilities would benefit by paying annually and reducing administrative costs.

Department Recommendation:

Adopt the rules regarding amendments to Division 32 Hazardous Air Pollutants and Division 33 Licensing and Certification Asbestos Requirements as presented in Attachment A of the staff report.


Report Author


Division Administrator


Director

May 5, 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: April 18, 1995

To: Environmental Quality Commission
From: Lydia Taylor, Interim Director *Lydia Taylor*
Subject: Agenda Item H, May 18, 1995, EQC Meeting

Amendments to Division 32 Hazardous Air Pollutants and
Division 33 Licensing and Certification Asbestos Requirements

Background

On February 15, 1995, the Interim Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would make Oregon's asbestos program regulations consistent with EPA's Model Accreditation Plan. Also, in order to provide more flexibility in non-friable project notifications, the Department proposed to make an annual fee option of \$350 available for non-friable projects done at schools, colleges and facilities.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on March 1, 1995. The Hearing Notice and informational materials were mailed on February 21, 1995 to the mailing list of those persons who have asked to be notified of rule-making 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 February 21, 1995.

A Public Hearing was held March 22, 1995 at 5:30 p.m. at DEQ Headquarters, 811 S.W. 6th Avenue, Portland in Room 3A, with Gregg Lande serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the public hearing.

Written comment was received through 5:00 p.m. on March 23, 1995. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

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

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

The following sections summarize the issue that this proposed rule making 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, 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

Amendments proposed to Divisions 32 and 33 are primarily required to maintain EPA approval of the Department's asbestos certification program under the revised Model Accreditation Program (MAP) specified by the Asbestos School Hazard Abatement Reauthorization Act (November 28, 1990).

In 1986 Congress enacted the Asbestos Hazard Emergency Response Act (AHERA or TSCA Title II) which addressed asbestos hazards in schools and required mandatory training and accreditation of persons conducting asbestos related work in schools. A Model Accreditation Plan (MAP) was established to ensure that asbestos workers were trained to acceptable levels. The Department's asbestos certification program was approved by the EPA under the MAP on October 21, 1988. In November, 1990 the Asbestos School Hazard Abatement Reauthorization Act (ASHARA) required changes in the MAP. The EPA promulgated the new MAP requirements in 40 CFR Part 763 on February 3, 1994.

The Department is also proposing to offer a new fee payment option, in Division 32, for non-friable asbestos abatement projects. Schools, colleges and other regulated facilities will benefit by paying annually and would be allowed an unlimited number of non-friable projects within the year.

During rulemaking for recent amendments to Division 32, asbestos contractors requested an asbestos abatement project notification fee for non-friable asbestos abatement projects. Since creating the fee the Department has determined that certain facilities were paying too much for non-friable asbestos abatement project notifications and now proposes an annual notification option for non-friable asbestos abatement projects which will result in administrative savings for schools, colleges, facilities and the Department.

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Relationship to Federal and Adjacent State Rules

EPA approval of State asbestos accreditation and certification programs is intended to insure consistency and quality of asbestos training throughout the country. EPA strongly recommends that all states seek formal approval of their certification programs. The Department initially received approval of its program in 1988. The proposed rules would change existing Oregon rules so that they are equivalent to the Model Accreditation Plan. There are 39 states accredited by EPA MAP including Washington state, but not California. One of the compelling reasons for complying with the MAP is consistency for worker certification throughout the states approved by the EPA.

Changes proposed in Division 32 are compatible with pre-existing notification fees.

Authority to Address the Issue

ORS 468.020, ORS 468A.745
40 CFR Part 763 Asbestos Model Accreditation Plan, final interim rule

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

The Asbestos Model Accreditation Plan 40 CFR Part 763 as specified in ASHARA was promulgated February 3, 1994 and became effective April 4, 1994. Department staff initiated informal meetings with regulated parties: training providers, asbestos workers, contractors, schools and facility operators. Staff worked with this input and information from EPA on both the MAP and non-friable issues to formulate the proposed rules. On January 23, 1995 the ad hoc Asbestos Advisory Committee met to discuss the proposed amendments. Comments from that meeting resulted in further changes. The Department's rulemaking procedures have been observed throughout the rule adoption process.

During rulemaking for recent amendments to Division 32, asbestos contractors requested an asbestos abatement project notification fee for non-friable asbestos abatement projects. In the process of discussing the MAP changes with the advisory committee, the idea for an annual notification option was discussed and this proposed change was carried through the same rulemaking process.

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

The Environmental Quality Commission is asked to adopt amendments to Division 32, Asbestos Hazardous Air Pollutants and Division 33, Licensing and Certification Asbestos Requirements, recommended by the U.S. Environmental Protection Agency, in order to implement the EPA Model Accreditation Plan (MAP) in Oregon.

The EQC is also asked to adopt an annual notification fee, within Division 32, for non-friable asbestos abatement projects as an option for schools, colleges and facilities when the work is done by certified workers.

Summary of Significant Public Comment and Changes Proposed in Response

The public hearing was held on March 22, 1995 and only Department staff were present. There were no public comments during the hearing. The one written comment received required only clarification for the commenter and no changes to the proposed rules are recommended.

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

Generally, the adoption of these amendments should result in better trained and safer asbestos workers in the asbestos construction industry. Users of asbestos abatement services such as schools, commercial and residential property owners should benefit from improved asbestos abatement work practices. The asbestos abatement industry itself will be only slightly effected; asbestos workers and supervisors will be required to take one additional day of training with no change in certification fees. A significant advantage for workers and supervisors will be their inclusion in the 39 state system of asbestos certification programs approved and overseen by the EPA.

The proposed annual non-friable asbestos abatement notification fee will reduce administrative procedures for schools, colleges and facilities and the Department. For the timely implementation of the MAP in Oregon, with minimum disruption of established courses and individual re-certification plans, for direct and unencumbered EPA approval of state asbestos certification programs the MAP specifies that necessary legal changes be in place within 180 days after the commencement of the state legislature's first regular session after the adoption of the MAP (April 4, 1994). In Oregon that deadline is July 7, 1995. If the Department fails to be re-approved by this

deadline, it must re-apply under Unit V of the MAP and it loses any status formerly awarded by the MAP. If this were to happen, all Oregon training providers approved by the Department would lose accreditation to conduct training and the Department could not conduct training for certification, approve training providers, or issue certificates that satisfy the requirements for TSCA.

To prevent the loss of the Department's current EPA approval, the time schedule for rule adoption in this document must be followed closely. Staff must concurrently develop guidelines and criteria to implement the requirements of the proposed rules. Special attention must be given to the initiation of the newly required worker recordkeeping system and approval of new course completion certificates.

Changes in the Division 32 fee schedule will be implemented upon filing with the Secretary of State so benefits of this rule may be secured immediately. There are no time constraints on changes in Division 32.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding Division 32 Hazardous Air Pollutants and Division 33 Licensing and Certification Asbestos Requirements 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. Advisory Committee Membership and Report
- G. Rule Implementation Plan

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Reference Documents (available upon request)

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

Approved:

Section:

Gregg E. Jandt

Division:

Gregory A. Dree

Report Prepared By: Alice Dehner

Phone: 503-229-6353

Date Prepared: April 5, 1995

apd:apd
e:map\staff2
4/12/95

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DIVISION 32

HAZARDOUS AIR POLLUTANTS

Definitions for Asbestos Emission Standards and Procedural Requirements

- 340-32-5590 As used in OAR 340-32-5600 through 340-32-5650:
- (1) "Adequately wet" means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. The absence of visible emissions is not sufficient evidence of being adequately wet.
 - (2) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.
 - (3) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos-containing material into the air. Emergency fire fighting is not an asbestos abatement project.
 - (4) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in OAR 340-32-5590(3).
 - (5) "Asbestos-containing material" means asbestos or any material containing more than one percent (1%) asbestos by weight, including particulate asbestos material.
 - (6) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.
 - ~~(7) "Asbestos Survey" means an inspection using the procedures contained in 40 CFR 763.86, Subpart E (July 1, 1993) to determine whether materials or structures to be worked on, removed, or demolished, contain asbestos.~~
 - ~~(8) "Asbestos tailings" mean any solid waste product of asbestos mining or milling operations which contains asbestos.~~
 - ~~(9) "Asbestos Waste generator" means any person performing an asbestos abatement project or any owner or operator of a source subject to OAR 340-32-5590 through 340-32-5650 whose act or process generates asbestos-containing waste material.~~
 - ~~(10) "Asbestos-containing waste material" means any waste which contains asbestos tailings or any commercial asbestos, and is generated by a source subject to OAR 340-32-5500 through 340-32-5520 and OAR 340-32-5590 through 340-32-5650. This term includes, but not limited to, filters from control devices, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.~~
 - ~~(11) "Asbestos waste shipment record" means the shipment document, required to be originated and signed by the asbestos waste generator; used~~

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- to track and substantiate the disposition of asbestos-containing waste material.
- (#2)11 "Commercial asbestos" means asbestos which is produced by extracting asbestos from asbestos ore.
- (#3)12 "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
- (#4)13 "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- (#5)14 "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.
- ~~{(16) "Full scale asbestos abatement project" means any removal, renovation, encapsulation, repair or maintenance of any asbestos containing material which could potentially release asbestos fibers into the air, and which is not classified as a small scale asbestos abatement project.}~~
- (#7)15 "HEPA filter" means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.
- (#8)16 "Inactive asbestos-containing waste disposal site" means any disposal site for asbestos-containing waste where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.
- (#9)17 "Interim storage of asbestos-containing material" means the storage of asbestos-containing waste material which has been placed in a container outside a regulated area until transported to an authorized landfill.
- (#20)18 "Nonfriable asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined by weight that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.
- (#21)19 "Particulate asbestos material" means any finely divided particles of asbestos material.
- (#22)20 "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.
- ~~{(23) "Small scale asbestos abatement project" means any small scale, short duration renovating and maintenance activity or removal, renovation, encapsulation, repair, or maintenance procedures intended to prevent asbestos containing~~

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~~material from releasing fibers into the air and which:~~

- ~~(a) Removes, encapsulates, repairs or maintains less than 40 linear feet or 80 square feet of asbestos-containing material;~~
- ~~(b) Does not subdivide an otherwise full scale asbestos abatement project into smaller sized units in order to avoid the requirements of this Division;~~
- ~~(c) Utilizes all practical worker isolation techniques and other control measures; and~~
- ~~(d) Does not result in worker exposure to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air calculated as an eight (8) hour time weighted average.~~

{24}21

"Small-scale, short duration ~~renovating and maintenance activity~~ abatement activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:

- ~~{a} Removal of quantities of asbestos containing insulation on pipes;~~
- {b}a Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
- {e}b Replacement of an asbestos-containing gasket on a valve;
- {d}c Installation or removal of a small section of ~~drywall~~ wallboard;
- {e}d Removal of asbestos-containing thermal system insulation not to exceed amounts greater than

those which can be contained in a single glove bag;

- ~~(e) Minor repairs to damaged thermal system which do require removal;~~
- ~~(f) Repairs to asbestos-containing wallboard;~~
- ~~(g) Repairs involving encapsulation, enclosure or removal, to small amounts of friable asbestos-containing material in performance of emergencies or routine maintenance activity and not solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricate mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.~~

~~{f} No such activity described above shall result in airborne asbestos concentrations above 0.1 fibers per cubic centimeter of air (calculated as an eight (8) hour time weighted average).~~

{25}22

"Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

Stat. Auth. ORS Ch. 468 & 468A
Hist.: Renumbered from OAR 340-25-455, DEQ 18-1993, f. & ef. 11-4-93; DEQ 20-1993(T), f. & ef. 11-4-93

Emission Standards and Procedural

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Requirements for Asbestos

340-32-5600

- (1) Emission standard for asbestos mills. No person shall cause to be discharged into the atmosphere any visible emissions from any asbestos milling operation, including fugitive emissions, except as provided under OAR 340-32-5640(14) Air Cleaning. For purposes of this rule, the presence of uncombined water in the emission plume shall not be cause for failure to meet the visible emission requirement. Outside storage of asbestos materials is not considered a part of an asbestos mill. Each owner or operator of an asbestos mill shall meet the following requirements:
- (a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operations. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
 - (b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than as necessary, and implement a written maintenance plan to include, at a minimum, the following:
 - (A) Maintenance schedule.
 - (B) Recordkeeping plan.
- (c) Maintain records of the results of visible emissions monitoring and air cleaning device opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the Department, revise inspections using a format approved by the Department which includes the following:
- (A) Date and time of each inspection.
 - (B) Presence or absence of visible emissions.
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions.
 - (D) Presence of dust deposits on clean side of fabric filters.
 - (E) Brief description of corrective actions taken, including date and time.
 - (F) Daily hours of operation for each air cleaning device.
- (d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.
- (e) Retain a copy of all monitoring and inspection records for at least two years.
- (f) Submit a copy of visible emission monitoring records to the Department quarterly. The

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- quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.
- (g) Asbestos-containing waste material produced by any asbestos milling operation will be disposed of according to OAR 340-32-5650.
- (2) Roadways and Parking Lots. No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless (for asbestos tailings):
- (a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or
- (b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of once per year to prevent dust emissions; or
- (c) It is encapsulated in asphalt concrete meeting the specifications contained in section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985, or their equivalent.
- (3) Manufacturing. No person shall cause to be discharged into the atmosphere any visible emissions, except as provided in OAR 340-32-5640(14), from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures, or from any other fugitive emissions. All asbestos-containing waste material produced by any manufacturing operation shall be disposed of according to OAR 340-32-5650. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation; and having no possible asbestos material in the exhaust gases, shall not be considered for purposes of this rule. The presence of uncombined water in the exhaust plume shall not be cause for failure to meet the visible emission requirements.
- (a) Applicability. Manufacturing operations considered for purposes of this rule are as follows:
- (A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.
- (B) The manufacture of cement products.
- (C) The manufacture of fire proofing and insulating materials.
- (D) The manufacture of friction products.
- (E) The manufacture of paper, millboard, and felt.
- (F) The manufacture of floor tile.
- (G) The manufacture of paints, coatings, caulks, adhesives, or sealants.
- (H) The manufacture of plastics and rubber materials.
- (I) The manufacture of chlorine, using asbestos diaphragm technology.

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- (J) The manufacture of shotgun shell wads.
 - (K) The manufacture of asphalt concrete.
 - (L) Any other manufacturing operation which results or may result in the release of asbestos material to the ambient air.
- (b) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be visual observation of at least 15 seconds.
 - (c) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:
 - (A) Maintenance schedule.
 - (B) Recordkeeping plan.
- (d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department which includes the following:
 - (A) Date and time of each inspection.
 - (B) Presence or absence of visible emissions.
 - (C) Condition of fabric filters, including presence of any tears, holes and abrasions.
 - (D) Presence of dust deposits on clean side of fabric filters.
 - (E) Brief description of corrective actions taken, including date and time.
 - (F) Daily hours of operation for each air cleaning device.
 - (e) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.
 - (f) Retain a copy of all monitoring and inspection records for at least two years.
 - (g) Submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.
 - (h) Asbestos-containing waste material produced by any

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asbestos milling operation shall be disposed of according to OAR 340-32-5650.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-465, DEQ 18-1993, f. & ef. 11-4-93

Asbestos Inspection Requirements for Federal Operating Permit Program Sources.

340-32-5610 This rule applies to renovation and demolition activities at major sources subject to the federal operating permit program as defined in OAR 340-28-110.

- (1) To determine applicability of the Department's asbestos regulations, the owner or operator of a renovation or demolition project shall thoroughly inspect the affected area for the presence of asbestos.
- (2) For demolition projects where no asbestos-containing material is present, written notification shall be submitted to the Department on an approved form. The notification shall be submitted by the owner or operator or by the demolition contractor as follows:
 - (a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.
 - (b) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification of demolition will be void.
- (3) The following information shall be provided for each notification of

demolition:

- (a) Name, address, and telephone number of the person conducting the demolition.
- (b) Contractor's Oregon demolition license number, if applicable.
- (c) Certification that no asbestos was found during the pre-demolition asbestos inspection and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-32-5620 through OAR 340-32-5650 will be followed.
- (d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:
 - (A) The age, present and prior use of the facility;
 - (B) Address or location where the demolition project is to be accomplished.
- (e) Major source owner's or operator's name, address and phone number.
- (f) Scheduled starting and completion dates of demolition work.
- (g) Any other information requested on the Department form.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94

Asbestos Abatement Projects
340-32-5620

- (1) Any person who conducts an asbestos abatement project shall comply with OAR 340-32-5630 and 340-32-5640(1)

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through (11). The following asbestos abatement projects are exempt from OAR 340-32-5630, ~~and~~ 340-32-5640(1) through (11), and Division 33:

- (a) Asbestos abatement conducted in a single private residence which is occupied by the owner and the owner-occupant performs the asbestos abatement.
 - (b) Mastics and roofing products that are fully encapsulated with a petroleum-based binder that are not hard, dry, and brittle. This exemption shall end whenever these materials are burned, shattered, crumbled, pulverized, or reduced to dust.
 - (c) Removal of less than three square feet or three linear feet of asbestos-containing material provided that the removal of asbestos is not the primary objective and methods of removal are in compliance with OAR 437 Division 3 "Construction" (29 CFR 1926. ~~58 Appendix G~~) 1101(g). An asbestos abatement project shall not be subdivided into smaller sized units in order to qualify for this exemption.
 - (d) Removal of asbestos-containing materials which are sealed from the atmosphere by a rigid casing, provided that the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.
- (2) Open storage of friable asbestos-containing material or asbestos-

containing waste material is prohibited.

- (3) Open accumulation of friable asbestos-containing material or asbestos-containing waste material is prohibited.
- (4) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-32-5620(1) shall comply with the following:
 - (a) Submit notification and fee to the Department Business Office on a Department form in accordance with OAR 340-32-5630.
 - (b) Removal of nonfriable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempt from OAR 340-32-5640(10) and OAR 340-33-030. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.

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

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-466, DEQ 18-1993, f. & ef. 11-4-93; DEQ 19-1994, f. 9-2-94 & ef. 10-1-94

Asbestos Abatement Notifications Requirements
340-32-5630 Written notification of any asbestos abatement project shall be provided to the Department on a Department form. The notification must be submitted by the facility

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owner or operator or by the contractor in accordance with one of the procedures specified in section (1) or (2) of this rule except as provided in sections (4), (5) and (6).

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

(a) The project notification fee shall be:

(A) \$35 for each ~~{small-scale,}~~ project less than 40 linear feet or 80 square feet, residential building, or non-friable asbestos abatement project.

(B) \$70 for each project greater than ~~{a small-scale}~~ or equal to 40 linear feet or 80 square feet ~~{asbestos-abatement project}~~ but less than 260 linear feet or 160 square feet of asbestos-containing material.

(C) \$275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos -containing material.

(D) \$375 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or

1600 square feet of asbestos-containing material.

(E) \$650 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.

(F) \$750 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

(G) \$1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.

(H) \$2,000 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(I) \$2,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(J) \$260 for annual notifications for friable asbestos abatement projects involving 40

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- linear feet or 80 square feet or less of asbestos removal.
- (K) \$350 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.
- (b) Project notification fees shall be payable with the completed project notification form. No notification will be considered to have occurred until the notification fee is submitted.
- (c) The ten day notification requirement in section (1) of this rule may be temporarily waived in emergencies which directly affect human life, health, and property. This includes:
- (A) Emergencies where there is an imminent threat of loss of life or severe injury; or
- (B) Emergencies where the public is exposed to airborne asbestos fibers; or
- (C) Emergencies where significant property damage will occur if repairs are not made.
- (d) The ten day notification requirement in section (1) of this rule may be temporarily waived for asbestos abatement projects which were not planned, resulted from unexpected events, and which if not immediately performed will cause damage to equipment or impose unreasonable financial burden. This includes the non-
- routine failure of equipment.
- (e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects shall notify the Department by telephone prior to commencing work, or by 9 am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in section (3) of this rule and the appropriate fee shall be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.
- (f) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification will be void.
- (g) If an asbestos project, equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year, a new notification and fee shall be submitted annually thereafter until the project is complete.
- (h) Residential buildings shall include: site built homes, modular homes constructed off site, mobile homes, and duplexes or other multi unit residential buildings consisting of four units or less.
- (2) ~~*For small scale asbestos abatement projects conducted at one or more facilities by a single contractor or single facility owner with centrally controlled asbestos operation and maintenance the*~~

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~~notification may be submitted as follows:~~ Annual notification for friable asbestos abatement projects. This notification shall only be used for projects where no more than 40 linear or 80 square feet of asbestos-containing material is removed. These projects shall only be conducted at one or more facilities by a single contractor or a single facility owner with a centrally controlled asbestos operation.

- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
- (b) Maintain on file with the Department a general asbestos abatement plan. The plan shall contain the information specified in subsections ~~(3)4~~(a) through ~~(3)4~~(i) of this rule to the extent possible;
- (c) Provide to the Department a summary report of all ~~small-scale~~ asbestos abatement projects conducted using the annual notification procedure, in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report shall include the information specified in subsections ~~(3)4~~(i) through ~~(3)4~~(~~m~~) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter;
- (d) Provide to the Department, upon request, a list of asbestos abatement projects which are scheduled or are being

conducted at the time of the request;

- (e) Submit ~~a~~ project notification and fee ~~of \$200 per year~~ prior to use of this annual notification procedure ~~and annually thereafter while this procedure is in use~~;
- (f) Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan and each subsequent abatement project shall be individually assessed a project notification fee.

(3) Annual non-friable asbestos abatement projects shall only be performed at schools, colleges, and facilities where the removal work is done by certified asbestos abatement workers. Submit the notification as follows:

- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
- (b) Maintain on file with the Department a general non-friable asbestos abatement plan. The plan shall contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible;
- (c) Provide to the Department a summary report of all non-friable asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report shall include the information specified in subsections (4)(i) through

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- (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan, and a list describing the non-friable asbestos abatement projects anticipated for the next quarter, where possible;
- (d) Submit project notification and fee prior to use of this notification procedure;
- (e) Failure to provide payment for use of this notification procedure shall void the general non-friable asbestos abatement plan and each subsequent non-friable abatement project shall be individually assessed a project notification fee.
- ~~(3)4~~ The following information shall be provided for each notification:
- (a) Name and address of person conducting asbestos abatement.
 - (b) Contractor's Oregon asbestos abatement license number, if applicable, and certification number of the supervisor for ~~[full scale]~~ asbestos abatement or
 - (c) Method of asbestos abatement to be employed.
 - (d) Procedures to be employed to insure compliance with OAR 340-32-5640 and 340-32-5650.
 - (e) Names, addresses, and phone numbers of waste transporters.
 - (f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.
 - (g) Description of asbestos disposal procedure.
 - (h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:
 - (A) The age, present and prior use of the facility;
 - (B) Address or location where the asbestos abatement project is to be accomplished.
 - (i) Facility owner's or operator's name, address and phone number.
 - (j) Scheduled starting and completion dates of asbestos abatement work.
 - (k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.
 - (l) Amount of asbestos to be abated: linear feet, square feet, thickness.
 - (m) For facilities described in OAR 340-32-5640(5) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.
 - (n) Any other information requested on the Department form.
- ~~(4)5~~ The project notification fees specified in this section shall be increased by 50% when an asbestos abatement project is commenced without filing of a project notification and/or submittal of a notification fee or when notification of less than ten days is provided under subsection (1)(c) of this rule.
- ~~(5)6~~ The Director may waive part or all of a project notification fee. Requests for

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waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.

- ~~(6)~~ Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees shall be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-467, DEQ 18-1993, f. & ef. 11-4-93; DEQ 19-1994, f. 9-2-94 & ef. 10-1-94

Asbestos Abatement Work Practices and Procedures

340-32-5640 The following procedures shall be employed during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

- (1) Remove asbestos-containing materials before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal. However, asbestos-containing materials need not be removed before demolition if:
 - (a) They are on a facility component that is encased in concrete or other similar material and are adequately wetted whenever exposed during demolition;
 - (b) They were not discovered

before demolition and cannot be removed because of unsafe conditions as a result of the demolition. Upon discovery the owner or operator performing the demolition shall:

- (A) Stop demolition work immediately.
- (B) Notify the Department immediately of the occurrence.
- (C) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all times until a licensed asbestos abatement contractor begins removal activities.
- (D) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.

~~[(c) — These materials are adequately wetted whenever exposed during demolition.]~~

- (2) Asbestos-containing materials shall be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:
 - (a) Obtains prior written approval from the Department for dry removal of asbestos-containing

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- (b) material;
Keeps a copy of the Department's written approval available for inspection at the work site;
 - (c) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers;
 - (d) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.
- (3) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:
- (a) Adequately wet any asbestos-containing materials exposed during cutting or disjuncting operation;
 - (b) Carefully lower the units or sections to ground level, not dropping them or throwing them;
 - (c) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:
 - (A) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and
 - (B) The component is encased in leak-tight wrapping; and
- (C) The leak-tight wrapping is labeled according to OAR 340-32-5650(2)(b) during all loading and unloading operations and during storage.
- (4) For friable asbestos-containing materials being removed or stripped:
- (a) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-32-5650;
 - (b) Carefully lower the materials to the floor, not dropping or throwing them;
 - (c) Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.
- (5) If a facility is being demolished under an order of the State or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of sections (1), (2), (3), (4), and (6) of this rule shall not apply, provided that the portion of the facility that contains asbestos-containing materials is adequately wetted during the wrecking operation.
- (6) Before a facility is demolished by intentional burning, all asbestos-containing material shall be removed and disposed of in accordance with OAR 340-32-5610 through 340-32-5650.
- (7) None of the operations in sections (1) through (4) of this rule shall cause any visible emissions. Any local exhaust ventilation and collection system or other vacuuming equipment used during an asbestos abatement project, shall be

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- equipped with a HEPA filter or other filter of equal or greater collection efficiency.
- ~~{(8)}~~ ~~*Contractors licensed and workers certified to conduct only small scale asbestos abatement projects under OAR 340-33-040 and 340-33-050 respectively may use only those work practices and engineering controls specified by OAR 437 Division 3 "Construction" (29 CFR 1926.58 Appendix G).*~~
- {(9)8} The Director may approve, on a case-by-case basis, requests to use an alternative to a public health protection requirement as provided by this rule for an asbestos abatement project. The contractor or facility owner or operator must submit in advance a written description of the alternative procedure which demonstrates to the Director's satisfaction that the proposed alternative procedure provides public health protection equivalent to the protection that would be provided by the specific provision, or that such level of protection cannot be obtained for the asbestos abatement project.
- {(10)9} Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-containing material. Before a containment around such an area is removed, the person(s), contractor or facility owner/operator performing the abatement shall document that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected shall not exceed 0.01 fibers per cubic centimeter of air. The Department may grant a waiver to this section or exceptions to the following requirements upon written request.
- (a) The air clearance samples shall be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project.
 - (b) Before final air clearance sampling is performed the following shall be completed:
 - (A) All visible asbestos-containing debris shall be removed according to the requirements of this section;
 - (B) The air and surfaces within the containment shall be sprayed with an encapsulant;
 - (C) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant;
 - (D) Air filtration units shall remain on during the air monitoring period.
 - (c) Air clearance sampling inside containment areas shall be aggressive and comply with the following procedures:
 - (A) Immediately prior to starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment.

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- (B) Then place stationary fans in locations which will not interfere with air monitoring equipment and directed toward the ceiling. Use one fan per 10,000 cubic feet of room space.
- (C) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to NIOSH 7400 method.
- (D) When sampling is completed turn off the pump and then the fan(s).
- (E) As an alternative to meeting the requirements of paragraphs (A) through (D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by 40 CFR 763.99, Appendix A to Subpart E.
- (d) The person performing asbestos abatement projects requiring air clearance sampling shall submit the clearance results to the Department on a Department form. The clearance results must be received by the Department within 30 days after the completion date of the asbestos abatement project.
- ~~(H1)10~~ Related Work Practices and Controls. Work practices and engineering controls employed for asbestos abatement projects by contractors and/or workers who are not otherwise subject to the requirements of the Oregon Department of Insurance and Finance, Oregon Occupational Safety and Health Division shall comply with the subsections of OAR 437 Division 3 "Construction" (29 CFR 1926.~~58 Appendix G~~1101(g) which limit the release of asbestos-containing material or exposure of other persons. As used in this subsection the term employer shall mean the operator of the asbestos abatement project and the term employee shall mean any other person.
- ~~(H2)11~~ (a) Spraying:
No person shall cause to be discharged into the atmosphere any visible emissions from any spray-on application of materials containing more than one (1%) percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in section (14) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits shall contain less than one (1%) percent asbestos on a dry weight basis. In the case of any city or area of local jurisdiction having ordinances or regulations for

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- spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply.
- (b) Twenty days before any person sprays asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery, that person shall notify the Department in writing before the spraying operation begins. The notification shall contain the following:
- (A) Name and address of person intending to conduct the spraying operation.
- (B) Address or location of the spraying operation.
- (C) The name and address of the owner of the facility being sprayed.
- (c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections (8)(a) and (b) of this rule.
- ~~(13)~~12) Options for air cleaning. Rather than meet the no visible emissions requirements of OAR 340-32-5600(1) and (3), owners and operators may elect to use methods specified in section (14) of this rule.
- ~~(14)~~13) Air cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements shall meet one of the provisions of subsections (a) through (d) and all of the requirements specified subsections (e), (f) and (g) of this section:
- (a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTI Method D737-75, must not exceed 30 ft.³/min./ft.² (9 m³/min./m²) for woven fabrics or 35 ft.³/min./ft.² (11 m³/min./m²) for felted fabrics with the exception that airflow permeability of 40 ft.³/min./ft.² (12 m³/min./m²) for woven and 45 ft.³/min./ft.² (14 m³/min./m²) for felted fabrics shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard of felted fabric must weigh at least 14 ounces (475 grams per square meter) and be at least one-sixteenth (1/16) inch (1.6mm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun.
- (b) If the use of fabric filters creates a fire or explosion hazard, the Department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least 40 inches

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- (101.6 cm) of water gauge pressure.
- (c) If High Efficiency Particulate Air (HEPA) filters are used to control emissions the certified efficiency shall be at least 99.97 percent for particles 0.3 microns or greater.
- (d) The Department may authorize the use of filtering equipment other than that described in subsections (a), (b) , or (c) of this section if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment.
- (e) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material.
- (f) For fabric filters collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.
- ~~(15)~~14) Fabricating. No person shall cause to be discharged into the atmosphere any visible emissions including fugitive emissions, except as provided in section (14) of this rule, from any fabricating operations including the following:
- (a) Applicability. This section applies to the following fabricating operations using commercial asbestos:
- (A) The fabrication of cement building products.
- (B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.
- (C) The fabrication of cement or silicate board for ventilation hoods;ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.
- (b) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
- (c) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including to the maximum extent possible without dismantling other than opening the device, the presence

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- of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:
- (A) Maintenance schedule.
 - (B) Recordkeeping plan.
- (d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department which includes the following:
- (A) Date and time of each inspection
 - (B) Presence or absence of visible emissions.
 - (C) Condition of fabric filters, including presence of any tears, holes, and abrasions.
 - (D) Presence of dust deposits on clean side of fabric filters.
 - (E) Brief description of corrective actions taken, including date and time.
 - (F) Daily hours of operation for each air cleaning device.
- (e) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.
- (f) Retain a copy of all monitoring and inspection records for at

- least two years.
- (g) Submit a copy of the visible emission monitoring records to the Department quarterly. The quarterly report shall be postmarked by the 30th day following the end of the calendar quarter.

~~(16)~~(15) Insulation: Molded insulating materials which are friable and wet-applied insulating materials which are friable after drying, installed after October 21, 1982, shall contain no commercial asbestos. The provisions of this section do not apply to insulating materials which are spray applied pursuant to section (12) of this rule.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-468, DEQ 18-1993, f. & ef. 11-4-93

Asbestos Disposal Requirements

340-32-5650 Work practices and procedures for packaging, storage, transport, and disposal of asbestos-containing waste material: The owner or operator of any source covered under the provisions of OAR 340-32-5600(3), 340-32-5620(1), or 340-32-5640(12) and section (15) of this rule or any other source of friable asbestos-containing waste material shall meet the following standards:

- (1) There shall be no visible emissions to the atmosphere, except as provided in section (12) of this rule, during the collection; processing, including incineration; packaging; transporting; or

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deposition of any asbestos-containing waste material which is generated by such source.

- (2) All asbestos-containing waste materials shall be adequately wetted to ensure that they remain wet until disposed of, ~~then~~ and:

- (a) Processed into nonfriable pellets or other shapes; or
- (b) Packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil~~l~~, or fiber or metal drum. Containers are to be labeled as follows:
 - (A) The name of the asbestos waste generator and the location at which the waste was generated; and
 - (B) A warning label that states:

DANGER
Contains Asbestos Fibers
Avoid Creating Dust
Cancer and Lung Disease Hazard
Avoid Breathing Airborne
Asbestos Fibers

Alternatively, warning labels specified by 29 CFR 19~~10.1001-~~
~~(7/1/88)~~ 26.1101(k)(7)
(8/10/94) may be used.

- (c) Where the asbestos-containing materials are not removed from a facility prior to demolition as described in OAR 340-32-5640(15), adequately wet asbestos-containing waste material at all times after demolition and keep wet during

handling and loading for transport to a disposal site. Such asbestos-containing waste materials, shall be transported in lined and covered containers for bulk disposal.

- (4) The interim storage of asbestos-containing waste material shall protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim storage of asbestos-containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.
- (5) All asbestos-containing waste material shall be deposited as soon as possible by the asbestos waste generator at:
 - (a) A waste disposal site authorized by the Department and operated in accordance with this rule; or
 - (b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of 40 CFR 61.155 Standard for Operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.
- (6) Persons disposing of asbestos-containing waste material shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.
- (7) For each waste shipment the following information shall be recorded on a Department form:
 - (a) Waste Generation
 - (A) The name, address, and telephone number of the

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- asbestos waste generator.
- (B) The number and type of asbestos-containing waste material containers and volume in cubic yards.
- (C) A certification that the contents of this consignment are carefully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highways according to applicable regulations.
- (b) Waste Transportation
- (A) The date transported.
- (B) The name, address, and telephone number of the transporter(s).
- (c) Waste Disposal
- (A) The name and telephone number of the disposal site operator.
- (B) The name and address or location of the waste disposal site.
- (C) The quantity of the asbestos-containing waste material in cubic yards.
- (D) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.
- (E) The date asbestos-containing waste is received at disposal site.
- (8) For the transportation of asbestos-containing waste material:
- (a) The asbestos waste generator shall:
- (A) Maintain the asbestos waste shipment records and ensure that all the information requested on the Department form regarding waste generation and transportation has been supplied.
- (B) Limit access into loading and unloading area to authorized personnel.
- (C) Mark vehicles, while loading and unloading asbestos-containing waste, with signs (20 in. x 14 in.) that state:
- DANGER**
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only
- Alternatively, language that conforms to the requirements of 29 CFR 19~~[10.1001—(7/1/88)]~~ 26.1101(k)(6) (8/10/94) may be used.
- (b) The waste transporter shall:
- (A) Immediately notify the landfill operator upon arrival of the waste at the disposal site.
- (B) Provide a copy of the asbestos waste shipment

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- record to the disposal site owners or operators when the asbestos-containing waste material is delivered to the disposal site.
- (9) After initial transport of asbestos-containing waste material the asbestos waste generator shall:
- (a) Receive a copy of the completed asbestos waste shipment record within 35 days, or determine the status of the waste shipment. A completed asbestos waste shipment record will include the signature of the owner or operator of the designated disposal site.
 - (b) Have a copy of the completed asbestos waste shipment record within 45 days, or submit to the Department a written report including:
 - (A) A copy of the asbestos waste shipment record for which a confirmation of delivery was not received; and
 - (B) A cover letter signed by the asbestos waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.
 - (c) Keep asbestos waste shipment records, including a copy signed by the owner or operator of the designated waste disposal site, for at least three years. Make all disposal records available upon request to the Department. For an asbestos abatement project conducted by a
- contractor licensed under OAR 340-33-040, the records shall be retained by the licensed contractor. For any other asbestos abatement project, the records shall be retained by the facility owner.
- (10) Each owner or operator of an active asbestos-containing waste disposal site shall meet the following standards:
- (a) For all asbestos-containing waste material received:
 - (A) Ensure that off-loading of asbestos-containing waste material is done under the direction and supervision of the landfill operator or their authorized agent and accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.
 - (B) Ensure that off-loading of asbestos-containing waste material occurs at the immediate location where the waste is to be buried and restrict public access to off-loading area until waste is covered in accordance with paragraph (I), of this subsection.
 - (C) Maintain asbestos waste shipment records and ensure that all information requested on the Department form regarding waste disposal has been supplied.

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- (D) Retain a copy of asbestos waste shipment records for at least three years.
- (E) Immediately notify the Department by telephone, followed by a written report to the Department the following working day, of the presence of improperly enclosed or uncovered waste. Submit a copy of the asbestos waste shipment record along with the report.
- (F) As soon as possible and no longer than 30 days after receipt of the waste send a copy of the signed asbestos waste shipment record to the asbestos waste generator.
- (G) Upon discovering a discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the asbestos waste generator. Report in writing to the Department within the 15th day after receiving the waste any discrepancy between the quantity of waste designated on the asbestos waste shipment records and the quantity actually received which cannot be reconciled between the asbestos waste generator and the waste disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the asbestos waste shipment record along with the report. Identify the Department assigned asbestos project number in the discrepancy report.
- (H) Select the waste burial site in an area of minimal work activity that is not subject to future excavation.
- (I) Cover all asbestos-containing waste material deposited at the disposal site with at least 12 inches of soil or six inches of soil plus 12 inches of other waste before compacting equipment runs over it but not later than the end of the operating day.
- (b) Maintain, until closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
- (c) Excavation or disturbance of asbestos-containing waste material, that has been deposited at a waste disposal site and is

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covered, shall be considered an asbestos abatement project. The notification for any such project shall be submitted as specified in OAR 340-32-5630 but modified as follows:

- (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
 - (B) Reason for disturbing the waste.
 - (C) Procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Department may require changes in the emission control procedures to be used.
 - (D) Location of any temporary storage site and the final disposal site.
- (d) Upon closure of an active asbestos-containing waste disposal site each owner or operator shall:
- (A) Comply with all the provisions for inactive asbestos-containing waste disposal sites.
 - (B) Submit to the department a copy of

records of asbestos waste disposal locations and quantities.

- (C) Furnish upon request, and make available during normal business hours for inspection by the Department, all records required under this section.
- (11) The owner or operator of an inactive asbestos-containing waste disposal site shall meet the following standards:
- (a) Insure that a cover of at least two feet of soil or one foot of soil plus one foot of other waste be maintained.
 - (b) Grow and maintain a cover of vegetation on the area to prevent erosion of the non asbestos-containing cover of soil or other waste materials or in desert areas where vegetation would be difficult to maintain, a layer of at least three inches of well-graded, nonasbestos crushed rock may be placed and maintained on top of the final cover instead of vegetation.
 - (c) For inactive asbestos waste disposal sites for asbestos-containing tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used and maintained to achieve the requirements of subsections (a) and (b) of this section, provided prior written approval of the Department is obtained.
 - (d) Excavation or disturbance at any inactive asbestos-containing waste disposal site shall be

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considered an asbestos abatement project. The notification for any such project shall be submitted as specified in OAR 340-32-5630, but modified as follows:

- (A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.
- (B) Reason for disturbing the waste.
- (C) Procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Department may require changes in the emission control procedures to be used.
- (D) Location of any temporary storage site and the final disposal site.
- (e) Within 60 days of a site becoming inactive, request in writing that the Commission issue an environmental hazard notice for the site. This environmental hazard notice will in perpetuity notify any potential purchaser of the property that:
 - (A) The land has been used for the disposal of

- asbestos-containing waste material; and
- (B) That the survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required for active asbestos disposal sites have been filed with the Department; and
- (C) The site is subject to OAR 340-32-5590 through 340-32-5650.

- (12) Any waste which contains nonfriable asbestos-containing material not subject to this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.
- (13) Rather than meet the requirements of this rule, an owner or operator may elect to use an alternative storage, transport, or disposal method which has received prior written approval by the Department.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-469, DEQ 18-1993, f. & ef. 11-4-93

340-32-5660 through 340-32-6000

[Reserved]

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DIVISION 33

LICENSING AND CERTIFICATION
ASBESTOS REQUIREMENTS

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DIVISION 33

**LICENSING AND CERTIFICATION
ASBESTOS REQUIREMENTS**

Hist.: DEQ 10-1988, f. 5-19-88, cert. ef. 5-19-88 (and corrected 6-3-88);
DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93;
AQ 11-1993, f. & ef. 11-4-93; DEQ 19-1994, f. 9-2-94 & ef. 10-1-94

Authority, Purpose, and Scope

340-33-010

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

Definitions

340-33-020 As used in this Division:

- (1) "Accredited" means a provider of asbestos abatement training courses ~~[is]~~ authorized by the Department to offer training courses that satisfy requirements for ~~[contractor licensing and]~~ worker training.
- (2) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.
- (3) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.
- (4) "Asbestos abatement project" means ~~[any]~~ a demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos containing material into the air.
NOTE: Emergency fire fighting is not an asbestos abatement project.
- (5) "Asbestos-containing material" means any material containing more than one percent asbestos by weight, including particulate asbestos material.
- (6) "Certified supervisor" means a person who ~~[worker] [has met the Department's training, experience, and/or quality control requirements and]~~ has a current Oregon supervisor certification card.
- (7) "Certified worker" means a person who has a current Oregon worker certification card.
- ~~[(7)](8)~~ "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person.
- ~~[(8)](9)~~ "Commission" means the Environmental Quality Commission.
- ~~[(9)](10)~~ "Department" means the Department of Environmental Quality.
- ~~[(10)](11)~~ "Director" means the Director of the Department of Environmental Quality.
- ~~[(11)](12)~~ "EPA" means the United States Environmental Protection Agency.
- ~~[(12)](13)~~ "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- ~~[(13)](14)~~ "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

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

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~~[(14) "Full scale asbestos abatement project" means any removal, renovation, encapsulation, repair or maintenance of any asbestos containing material which could potentially release asbestos fibers into the air, and which is not classified as a small scale project as defined by section (17) of this rule.]~~

(15) "Licensed" means a contracting entity has met the Department's training ~~and~~ experience ~~and/or quality control~~ requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license. For purposes of this definition, a license is not a permit subject to Chapter 340 Division 14.

(16) "Person~~s~~" means ~~an~~ individuals, ~~public or private~~ corporations, ~~nonprofit corporation,~~ associations, firms, partnerships, ~~joint venture, business trust,~~ joint stock compan~~y~~ies, municipal corporations, political subdivisions, the state and any agency~~y~~ies thereof, ~~of the state or any other entity, public or private, however organized~~ and the Federal Government and any agencies thereof.

~~[(17) "Small scale asbestos abatement project" means small scale, short duration projects as defined by section (18) of this rule, and/or removal, renovation, encapsulation, repair, or maintenance procedures intended to prevent asbestos containing material from releasing fibers into the air and which meets the following requirement:~~

- ~~(a) Remove, encapsulate, repair or maintain less than 40 linear feet or 80 square feet of asbestos containing material;~~
- ~~(b) Do not subdivide an otherwise full scale asbestos abatement project into smaller sized units in order to avoid the requirements of this Division;~~
- ~~(c) Utilize all practical worker isolation techniques and other control measures; and~~
- ~~(d) Do not result in worker exposure to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air calculated as an eight (8) hour time weighted average.]~~

~~[(18)](17) "Small-scale, short-duration ~~renovating and maintenance activity~~ activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:~~

- ~~[(a) Removal of quantities of asbestos containing insulation on pipes;]~~
- ~~[(b)a] Removal of small quantities of asbestos-containing insulation on beams or above ceilings;~~
- ~~[(c)b] Replacement of an asbestos-containing gasket on a valve;~~
- ~~[(d)c] Installation or removal of a small section of drywall;~~
- (d) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than

those which can be contained in a single glove bag.

(e) Minor repairs to damaged thermal system insulation which does not require removal.

(f) Repairs to asbestos-containing wallboard.

(g) Repairs, involving encapsulation, enclosure, or removal, to small amounts of friable asbestos-containing material in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

~~[(e) Installation of electrical conduits through or proximate to asbestos containing materials. Small-scale, activities shall be limited to no more than 40 linear feet or 80 square feet of asbestos containing material. An asbestos abatement activity that would otherwise qualify as a full scale abatement project shall not be subdivided into smaller units in order to avoid the requirements of this Division; or]~~

~~[(f) No such activity described above shall result in airborne asbestos concentrations above 0.1 fibers per cubic centimeter of air (calculated as an eight (8) hour time weighted average).]~~

(18) "Training Day" means a day of classroom instruction that consists of at least seven hours of actual classroom instruction and hands-on practice.

~~[(19) "Trained-Certified worker" means a person who has successfully completed specified training and can demonstrate knowledge of the health and safety aspects of working with asbestos. an accredited asbestos training course and holds a current worker certification card.~~

~~[(20) "Worker" means an employee or agent of a contractor or facility owner or operator.]~~

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

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

General Provisions 340-33-030

(1) Persons engaged in ~~the removal, encapsulation, repair, or enclosure of any asbestos containing material which has the potential of releasing asbestos fibers into the air~~ an asbestos abatement project must be ~~licensed or~~ certified, unless exempted by OAR 340-33-010(3).

(2) An owner or operator of a facility shall not allow any persons other than those employees of the facility

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owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility. Facility owners and operators are not required to be licensed to perform asbestos abatement projects in or on their own facilities.

- (3) ~~{Any}~~ Each contractor engaged in an ~~{full-scale}~~ asbestos abatement project must be licensed by the Department under the provisions of OAR 340-33-040.
- (4) ~~{Any}~~ Each person acting as the supervisor ~~{of}~~ for any ~~{full-scale}~~ asbestos abatement project must be certified by the Department as a ~~{Asbestos Abatement}~~ ~~{S}~~supervisor ~~{for Full Scale Asbestos Abatement}~~ under the provisions of OAR 340-33-050.
- (5) ~~{Any worker}~~ Each person engaged in or working on any ~~{full-scale}~~ asbestos abatement project must be certified by the Department as a ~~{W}~~worker ~~{for Full Scale Asbestos Abatement}~~ ~~{under the provisions of OAR 340-33-050,}~~ or as a ~~{Asbestos Abatement}~~ ~~{S}~~supervisor under the provisions of OAR 340-33-050 ~~{for Full Scale Asbestos Abatement}~~.
- (6) A certified supervisor is required to be present on each asbestos abatement project other than small-scale short-duration activity. ~~{Any contractor or worker engaged in any small scale asbestos abatement project but not licensed or certified to perform full scale asbestos abatement projects, must be licensed or certified by the Department as a Small Scale Asbestos Abatement Contractor or a Worker for Small Scale Asbestos Abatement, respectively under the provisions of OAR 340-33-040 and 340-33-050.}~~
- (7) ~~{Any provider of training which is intended to satisfy the licensing and certification training requirements of this Division}~~ Each training provider for asbestos abatement certification must be accredited by the Department under the provisions of OAR 340-33-060.
- (8) ~~{Any}~~ Each person licensed, certified, or accredited by the Department under the provisions of this Division shall comply with ~~{the appropriate provisions of}~~ OAR 340-32-5590 through 340-32-5650 and this Division, ~~{and}~~ Such persons shall maintain a current address on file with the Department, or be subject to suspension or revocation of license, ~~{or}~~ certification, or accreditation.
- (9) The Department may accept evidence of violations of this Division from representatives of ~~{other}~~ federal, state, or local agencies.
- (10) A regional air pollution authority which has been delegated authority under OAR 340-32-110(2) may inspect for and enforce against violations of licensing and certification regulations. A regional air pollution authority may not approve, deny, suspend or revoke a training provider accreditation, contractor license, or worker certification, but may refer violations to

the Department and recommend denials, suspensions, or revocations.

- (11) Any person who conducts an asbestos abatement project shall insure accessibility for the Department to perform inspections.

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

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; AQ 11-1993, f. & ef. 11-4-93

Contractor Licensing 340-33-040

- (1) Contractors ~~{may}~~ shall be licensed to perform ~~{either of the following categories of asbestos abatement projects:}~~ asbestos abatement.
 - ~~{(a)}~~ ~~Full Scale Asbestos Abatement Contractors: All asbestos abatement projects, regardless of project size or duration; or}~~
 - ~~{(b)}~~ ~~Small Scale Asbestos Abatement Contractor: Small scale asbestos abatement projects.}~~
- (2) Application for licenses shall be submitted on forms prescribed by the Department and shall be accompanied by:
 - (a) Documentation that the contractor, or contractor's employee representative, is a certified ~~{at the appropriate level by the Department:}~~ supervisor;
 - ~~{(A)}~~ ~~Full scale Asbestos Abatement Contractor license: Certified Supervisor for Full Scale Asbestos Abatement;~~
 - ~~{(B)}~~ ~~Small Scale Asbestos Abatement Contractor: Certified Worker for Small Scale Asbestos Abatement.}~~
 - (b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations;
 - (c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past ~~{one}~~ ~~{1}~~ year, and a list of any asbestos-related enforcement actions taken against the contractor during the past ~~{one}~~ ~~{1}~~ year;
 - (d) A ~~{L}~~list ~~{any}~~ of additional project supervisors for ~~{full-scale}~~ asbestos abatement projects and their certification numbers ~~{as Supervisors for Full Scale Asbestos Abatement};~~
 - (e) A ~~{S}~~summary of all asbestos abatement projects conducted by the contractor during the past 12 months;
 - (f) A license application fee.

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- (3) The Department will review the application for completeness. If the application is incomplete, the Department shall notify the applicant in writing of the deficiencies.
Incomplete applications shall not be processed.
- (4) The Department shall deny, in writing, a license to a contractor who has not satisfied the license application requirements.
- (5) The Department shall issue a license to the applicant after the license is approved.
- (6) The Department shall grant a license for a period of 12 months. Licenses may be extended during Department review of a renewal application.
- (7) Renewals:
- (a) License renewals must be applied for in the same manner as ~~is~~ required for ~~an~~ the initial license;
- (b) For renewal, the contractor or employee representative must have ~~completed at least the appropriate annual refresher course;~~ a valid certified supervisor card;
- (c) The complete renewal application shall be submitted no later than 60 days prior to the expiration date.
- (8) The Department may deny, suspend or revoke a license if the licensee:
- (a) Fraudulently obtains or attempts to obtain a license;
- (b) Fails at any time to satisfy the qualifications for a license ~~for comply with these rules adopted by the Commission;~~
- (c) Fails to meet any applicable state or federal standard relating to asbestos abatement;
- (d) Permits an untrained or uncertified worker to work on an asbestos abatement project;
- (e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement.
- (f) Fails to make current certification cards readily available at worksites for inspection by the Department.
- (g) Fails to pay delinquent application fees, notification fees, and civil penalty assessments.
- (9) A contractor whose ~~has a~~ license has been revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.
- (a) Certified ~~is~~supervisor ~~for Full Scale Asbestos Abatement~~~~;~~. A certified supervisor may work as a certified worker without having separate certification as a worker.
- (b) Certified worker ~~for Full Scale Asbestos Abatement;~~
- ~~(c) Certified Worker for Small Scale Asbestos Abatement;~~
- (2) Application for Certification-General Requirements:
- (a) ~~Applications shall be submitted to the provider of the accredited training course within thirty (30) days of completion of the course;~~Persons applying to become certified supervisors or persons relying on prior training as described in OAR 340-33-080 shall submit applications to the Department;
- (b) ~~Applications shall be submitted on forms prescribed by the Department and shall be accompanied by the certification fee.~~ Persons applying for worker certification without prior training and certified workers taking refresher courses shall apply directly to the accredited training provider using Department approved forms;
- (3) Application to be a certified ~~Certified~~ ~~is~~supervisor ~~for Full Scale Asbestos Abatement~~ shall include:
- (a) Documentation that the applicant has successfully completed the ~~is~~supervisor ~~for Full Scale Asbestos Abatement~~ level training and examination as specified in OAR 340-33-070 and the Department Asbestos Training Guidance Document; and
- (b) Documentation that the applicant has ~~been~~:
- (A) Been certified as a ~~worker~~ ~~for Full Scale Asbestos Abatement~~ and has at least three ~~(3)~~ months of ~~full-scale~~ asbestos abatement experience, including time on powered air purifying respirators and experience on at least five ~~(5)~~ separate asbestos abatement projects; or
- (B) ~~for~~ ~~certified~~ Has successfully completed certified worker training ~~worker for Full Scale asbestos abatement~~ and six ~~(6)~~ months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department shall have the authority to determine if any applicant's experience satisfies those requirements.
- (4) Application to be a certified worker shall include~~;~~ documentation that the applicant applying to be a certified worker has successfully completed the level of training and examination as specified in OAR 340-33-070 and the Department Asbestos Training Guidance Document.

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

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88)

Certification

340-33-050

- (1) ~~Workers~~ Persons on asbestos abatement projects shall be certified at one or more of the following levels:

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- ~~[(a) Documentation that the applicant to be a Certified Worker for Full Scale Asbestos Abatement has successfully completed the Worker for Full Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document.]~~
- ~~[(b) Documentation that the applicant to be a Certified Worker for Small Scale Asbestos Abatement has successfully completed the Worker for Small Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document.]~~
- (5) ~~[Training course providers shall issue certification]~~ A certification card and a certificate of course completion shall be issued by the training course provider to an applicant who has fulfilled the requirements of certification.
- (6) Certification at all levels is valid for a period of ~~twenty four (24) months~~ one year after the date of issue.
- (7) ~~[Renewals]~~ Annual Recertification:
- (a) ~~[Certification renewals must be applied for in the same manner as application for original certification.]~~ Certified workers and supervisors must be approved by a training provider before taking a recertification refresher course;
- (b) Training providers must ensure applicants possess valid certification before granting refresher course admission;
- ~~[(b) To gain renewal of certification, a Worker for Full Scale Asbestos Abatement and a Supervisor for Full Scale Asbestos Abatement must complete the appropriate annual refresher course no sooner than nine (9) months and no later than twelve (12) months after the issuance date of the certificate, and again no sooner than three (3) months prior to the expiration date of the certificate. A worker may apply in writing to the Department for taking refresher training at some other time than as specified by this paragraph for reasons of work requirements or hardship. The Department shall accept or reject the application in writing.]~~
- (c) Certified supervisors and workers must complete their annual recertification course during the three months prior to the expiration date of their certification card. Certified supervisors and workers may reinstate certification by taking the appropriate refresher course up to one year after the expiration date. After that time, such persons must take the initial course to be recertified.
- ~~[(c) To gain renewal of certification, a Worker for Small Scale Asbestos Abatement must comply with the regulations on refresher training which are in effect at the time of renewal. Completion of an accredited asbestos abatement review class may be required if the Environmental Quality Commission determines that there is a need to update the workers' training in order to meet new or changed conditions.]~~
- (8) ~~[The Department may suspend or revoke a worker's certificate for failure to comply with any state or federal asbestos abatement rule or regulation.]~~ A current worker certification card shall be readily available for inspection by the Department at each asbestos abatement project for each worker or supervisor engaged in asbestos abatement activities.
- (9) ~~[If a certification is revoked, the worker may reapply for another initial certification only after 12 months from the revocation date.]~~ Suspensions and Revocations: The Department may suspend or revoke a person's certification for:
- (a) Failure to comply with state or federal asbestos abatement regulations;
- (b) Performing asbestos removal without having physical possession of a current certification card;
- (c) Permitting the use or duplication of one's certification card or certificate by another;
- (d) Fraudulently obtaining certification from a training provider that does not have approval to offer training for the particular discipline from the Department or EPA;
- (e) Failure to pay delinquent application fees, and civil penalties.
- (10) ~~[A current worker certification card shall be readily available for inspection by the Department at each asbestos abatement project site for each worker conducting asbestos abatement activities on the site.]~~ A person whose certification has been revoked may apply for recertification 12 months after the revocation date.

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

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 9-1989(Temp), f. & cert. ef. 6-7-89; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Training Provider Accreditation
340-33-060

- (1) General:
- (a) Asbestos training courses ~~[required for licensing]~~ or certification requiring accreditation under this Division may be provided by any person;

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- (b) ~~Any~~ Training providers offering training in Oregon to satisfy these certification ~~and licensing~~ requirements must be accredited by the Department;
- (c) Each ~~of the different~~ training course~~s which are to be used to fulfill training requirements shall be individually accredited~~ shall be individually accredited by the Department;
- ~~[(d)] The training provider must satisfactorily demonstrate through application and submission of course agenda, faculty resumes, training manuals, examination materials, equipment inventory, and performance during on-site course audits by Department representatives that the provider meets the minimum requirements established by the Department;~~
- ~~[(e)] The training course sponsor shall limit each class to a maximum of thirty participants unless granted an exception in writing by the Department. The student to instructor ratio for hands-on training shall be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 30, the course sponsor must submit the following information in writing to the Department for evaluation and approval prior to expanding the class size:~~
- ~~[(A)] The new class size limit;~~
- ~~[(B)] The teaching methods and techniques for training the proposed larger class;~~
- ~~[(C)] The protocol for conducting the written examination; and~~
- ~~[(D)] Justification for a larger class size.~~
- ~~[(f)]~~ Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles;
- ~~[(g)]~~ The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider;
- (f) Training course providers shall permit representatives of the Department or its designee to attend, evaluate and monitor any training course without charge. The Department is not required to give advance notice of its inspection. The Department may suspend or withdraw approval or a training course based upon the criteria specified in OAR 340-33-060(4).
- ~~[(h)]~~ The Department may require accredited training providers to pay a fee equivalent to reasonable travel expenses for one Department representative to audit any accredited course which is not offered in the State of Oregon for compliance with this Division. This condition shall be an addition to the standard accreditation application fee.
- (2) Application for Accreditation:
- (a) Application for accreditation shall be submitted to the Department in writing on forms provided by the Department and attachments as stated in OAR 340-33-060(2)(A) through 340-33-060(2)(b). Such applications shall, ~~as~~ at a minimum, contain the following information:
- (A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training;
- (B) The type of course(s) for which approval is requested;
- (C) A detailed course outline showing topics covered and the amount of time given to each topic, including the hands-on skill training;
- (D) A copy of the course manual, instructor notebooks ~~including~~ and all printed material to be distributed in the course;
- (E) A description of teaching methods to be employed, including description of audio-visual materials to be used. The Department may, at its discretion, request that copies of the materials be provided for review. Any audio-visual materials provided to the Department will be returned to the applicant;
- (F) A description of the hands-on facility to be utilized including protocol for instruction which includes working with asbestos-substitute materials, fitting and using respirators, use of glove-bag, donning protective clothing and constructing a decontamination unit, the number of students to be accommodated, ~~the number of instructors~~; and the amount of time for hands-on skill training;
- (G) A description of the equipment that will be used during both classroom lectures and hands-on training;
- (H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each;

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- (I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination;
 - (J) A list of the tuition or other fees required;
 - (K) A sample of the certificate of completion; ~~{and certification card label;}~~
 - (L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination;
 - (M) A list of any states or accrediting systems that approve the training course;
 - (N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training, as applicable;
 - (O) A description of course evaluation methods used by students;
 - (P) Any restriction on attendance such as class size, language, affiliation, and/or target audience of class;
 - (Q) A description of the procedure for issuing replacement certification cards to workers who were issued a certification card or certification card label by the training provider within the previous 12 months and whose cards have been lost or destroyed;
 - (R) Any additional information or documentation as may be required by the Department to evaluate the adequacy of the application;
 - (S) Accreditation application fee.
- (b) The training provider shall retain a copy of the application materials listed above for at least three years. Such applications shall be made available for inspection by the Department or its designees upon request.
- ~~{b}~~c) Application for initial training course accreditation and course materials shall be submitted to the Department at least 45 days prior to the requested approval date;
- ~~{c}~~d) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of accreditation. The certificate is valid for one ~~{(1)}~~ year from the date of issuance;
- ~~{d}~~e) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional

specialty and adult training methods during the 12 months prior to renewal.

- ~~{(3)} Denial, Suspension or Revocation of Certificate of Accreditation. The Director may deny, revoke or suspend an application or current accreditation upon finding of sufficient cause. Applicants and certificate holders shall also be advised of the duration of suspension or revocation and any conditions that must be met before certificate reinstatement. Applicants shall have the right to appeal the Director's determination through an administrative hearing in accordance with the provisions of OAR Chapter 340 Division 11. The following may be considered grounds for denial, revocation or suspension:~~
- ~~(a) False statements in the application, omission of required documentation or the omission of information;~~
 - ~~(b) Failure to provide or maintain the standards of training required by this Division;~~
 - ~~(c) Failure to provide minimum instruction required by this Division;~~
 - ~~(d) Failure to report to the Department any change in staff or program which substantially deviates from the information contained in the application;~~
 - ~~(e) Failure to comply with the administrative tasks and any other requirement of this Division.~~

~~{(4)}~~ (3) Training Provider Administrative Tasks. Accredited training providers shall perform the following as a condition of accreditation:

- (a) Administer the training course ~~{examination}~~ only to those ~~{students who successfully}~~ persons who have been approved by the Department, and/or have surrendered their expired certification cards to the trainer and others who are otherwise qualified according to these rules. Such persons are allowed to take the examination to complete the training course;
- (b) Issue a numbered certificate and a photo certification card to each student~~{s}~~ who successfully passes the training course examination and meets all other requirements for certification. Each certificate and photo certification card shall include: ~~{the name of the student, name of the course completed, the dates of the course and the examination, name of the training provider, a unique certificate number, and a statement that the student passed the examination;}~~
 - (A) A unique certificate number;
 - (B) Name of certified person;
 - (C) Training course completed;
 - (D) Dates of the training course;
 - (E) Date of the examination;

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 33 - DEPARTMENT OF ENVIRONMENTAL QUALITY

- (F) An expiration date of one year after the date upon which the person successfully completed the course and examination;
- (G) The name, address, and telephone number of the training provider that issued the certificate;
- (H) A statement that the person receiving the certificate has completed the requisite training for asbestos certification OAR-340-33-050.
- ~~[(c) Issue a photo identification card to each student seeking initial or renewal certification who successfully completes the training course examination and meets all other requirements for certification. The photo identification card shall meet the Department specifications;]~~
- ~~[(d) Place a label on the back of the photo identification card of each student who successfully completes a refresher training course and examination as required to maintain certification. The label shall meet Department specifications;]~~
- ~~[(e)d] Provide to the Department within ten (10) calendar days of the conclusion of each course offering the name, address, telephone number, Social Security Number, course title and dates given, attendance record, exam scores, and course evaluation form of each student attending the course and the certification number, certification fee, and a photograph for each student certified. Record of the information shall be retained by the training provider for a period of three (3) years.] Provide the Department with advance payment for each certificate to be issued;~~
- ~~[(f) Obtain advance approval from the Department for any changes in the course instructional staff, content, training aids used, facility utilized or other matters which would alter the instruction from that described in the approval application;]~~
- ~~[(g)e] Utilize and distribute as part of the course information or training aides furnished by the Department;~~
- ~~[(h)f] Provide the Department with a monthly class schedule at least one [(1)] week before the schedule begins. Notification shall include time and location of each course. Training providers shall notify the Department within three days whenever any unscheduled class is given;~~
- ~~[(i) Establish and maintain course records and documents relating to course accreditation application. Accredited training providers shall make records and documents available to the~~
- ~~Department upon request. Training providers whose principle place of business is outside of the State of Oregon shall provide a copy of such records or documents within ten (10) business days of receipt of such a written request from the Department;]~~
- (g) Recordkeeping Requirements for Training Providers:
- (A) Training providers must retain copies of all instructional materials used during classroom course.
- (B) Training providers must retain copies of all instructor resumes and instructor approvals issued by either the Department or US EPA. Trainers must also record the instructors that taught each part of the course every date that an accredited course is offered;
- (C) Training providers must document various information for each accredited course:
- (1) The date the exam was given;
 - (2) Training course for which the exam was given;
 - (3) The name of the exam proctor;
 - (4) The name and score of each person taking the exam and a single copy of the exam;
 - (5) Attendance record;
 - (6) Course evaluation form;
- (D) Training providers shall maintain records of certificates issued to students. Such records shall contain:
- (1) Name, address, telephone number, social security number of person receiving the certificate;
 - (2) Certificate numbers given to each person;
 - (3) Photographs of persons
 - (4) Discipline for which certificate was given;
 - (5) Dates of training and certificate expiration;
- (E) Training providers shall maintain training records, as specified above, for a minimum of three years. Such records shall readily be available for inspection by the Department or its designee. If a training provider is not accredited, or ceases to give asbestos worker certification training, the training provider must notify and allow the Department to take possession of the records for lawful disposition.
- (F) Training providers must submit information as required by the Department within 10 days or as directed by the Department.

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CHAPTER 340, DIVISION 33 - DEPARTMENT OF ENVIRONMENTAL QUALITY

- (f)h) Notify the Department prior to issuing a replacement certification card;
- (f)j) Accredited training providers must have their current accreditation certificates at the location where they are conducting training.
- (4) Denial, Suspension or Revocation of Accreditation. The Director may deny, suspend or revoke an application or current accreditation upon finding of sufficient cause. Applicants and certificate holders shall also be advised of the duration of suspension or revocation and any conditions that must be met before certificate reinstatement. Applicants shall have the right to appeal the Director's determination through an administrative hearing in accordance with the provisions of OAR Chapter 340 Division 11. The following may be considered grounds for denial, revocation or suspension:
- (a) Misrepresentation of the extent of a training course's approval by a State or the EPA;
 - (b) Failure to submit required information or notifications in a timely manner;
 - (c) Failure to report to the Department any change in staff or program which substantially deviates from the information contained in the application;
 - (d) Failure to maintain requisite records;
 - (e) Falsification of accreditation records, instructor qualifications, or other accreditation information;
 - (f) Failure to adhere to the training standards and requirements of this Division;
 - (g) Failure to comply with the administrative tasks and any other requirement of this Division;
 - (h) Providing concurrent training for either initial or refresher courses in combination for supervisors and asbestos workers.
 - (i) Obtaining certification from a training provider that does not have approval to offer training for the particular discipline from either EPA or the Department.
 - (j) Failure to pay delinquent application fees, notification fees, and civil penalties.
 - (k) In addition to the criteria listed above, the Department may also suspend or withdraw a training course's approval where an approved training course instructor, or other person with supervisory authority over the delivery of training has been found in violation of other asbestos regulations administered by the Department or other agencies.

General Training Standards
340-33-070

- (1) The training provider shall limit each class to a maximum of 25 participants unless granted an exception in writing by the Department. The student to instructor ratio for hands-on training shall be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 25, the course sponsor must submit the following information in writing to the Department for evaluation and approval prior to expanding the class size:
- (A) The new class size limit;
 - (B) The teaching methods and techniques for training the proposed larger class;
 - (C) The protocol for conducting the written examination; and
 - (D) Justification for a larger class size.
- (2) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles;
- (3) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider;
- (4) The Department may require accredited training providers to pay a fee equivalent to reasonable travel expenses for one Department representative to audit any accredited course which is not offered in the State of Oregon for compliance with this Division. This condition shall be an addition to the standard accreditation application fee.
- ~~(4)~~(5) Courses of instruction required for certification shall be specific for each of the certificate categories and shall be in accordance with Department guidelines. The topics or subjects of instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and hands-on practice.
- ~~(2)~~(6) Courses requiring hands-on training ~~must~~ shall be presented in an environment suitable to permit participants to have actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation shall not substitute for hands-on training.
- ~~(3)~~(7) Any ~~person~~ seeking certification as a ~~supervisor for Full Scale Asbestos Abatement~~ shall successfully complete an accredited training course of at least ~~four~~ five training days as outlined in the ~~DEQ~~ Department Asbestos Training Guidance Document. The training course shall include lectures, demonstrations, at least ~~six~~ ~~(6)~~ 14

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 4-1993, f. & cert. ef. 3-10-93

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hours of hands-on training, individual respirator fit testing, course review, and a written examination consisting of multiple choice questions. Successful completion of the training shall be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in the hands-on training.

~~{(4)}~~(8) Any person seeking certification as a ~~{W}~~worker ~~{for Full Scale Asbestos Abatement}~~ shall successfully complete an accredited training course of at least ~~{three}~~ four training days ~~{duration}~~ as outlined in the ~~{DEQ}~~ Department of Environmental Quality Asbestos Training Guidance Document. The training course shall include lectures, demonstrations, at least ~~{six}~~ 14 hours of actual hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. Successful completion of the course shall be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in the hands-on training.

~~{(5)}~~ Any person seeking certification as a Worker for Small Scale Asbestos Abatement shall complete at least a two-day approved training course as outlined in the ~~DEQ Asbestos Training Guidance Document~~. The small scale asbestos abatement worker course shall include lectures, demonstrations, at least six (6) hours of hands on training, individual respirator fit testing, course review, and an examination of multiple choice questions. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands on training.

~~{(6)}~~(9) Refresher training shall be ~~{at least}~~ one training day ~~{duration}~~ for ~~{C}~~certified ~~{S}~~supervisors and ~~{W}~~workers ~~{for Full Scale Asbestos Abatement and at least three (3) hours duration for Certified Workers for Small Scale Asbestos Abatement}~~. The refresher courses shall include a review of key areas of initial training, updates, and an examination of multiple choice questions as outlined in the ~~{DEQ}~~ Department of Environmental Quality Asbestos Training Guidance Document. Successful completion of the course shall be demonstrated by achieving a passing score on the closed book examination, course attendance, and full participation in any hands-on training.

~~{(7)}~~ One training day shall consist of at least (7) seven hours, of actual classroom instruction and hands on practice.

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

Prior Training

340-33-080 Successful completion of ~~{an initial}~~ a prior training course accredited by a governmental agency other than the Department may be used to satisfy the training and examination requirements of OAR 340-33-050 and 340-33-060 provided that all of the following conditions are met.

- (1) The Department determines that the course and examination requirements are equivalent to or exceed the requirements of OAR 340-33-050 and 340-33-060 and the Department ~~{a}~~Asbestos ~~{T}~~Training ~~{G}~~Guidance ~~{D}~~Document, for the level of certification sought. State and local requirements may vary.
- (2) For an applicant to qualify for a refresher course and certification, prior training must have occurred within two years of the application to the Department. Applicants must be ~~{in good standing in all states where they are certified.}~~ currently EPA or equivalently certified in at least one state when applying for consideration under this section.
- (3) The applicant who has received recognition from the Department for alternate initial training successfully completes an Oregon accredited refresher course and refresher course examination for the level of certification sought.

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

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

Reciprocity

340-33-090 The Department may develop reciprocity agreements with other jurisdictions ~~{for the purposes of establishing reciprocity in training, licensing, or certification if the Department finds that such standards of the other jurisdiction are at least as stringent as those required by this Division.}~~ regarding all activities under this Division.

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

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

Fees

340-33-100

- (1) Fees shall be assessed to provide revenues to operate the asbestos control program. Fees are assessed for the following:
 - (a) Contractor Licenses;
 - (b) Worker and Supervisor Certifications;
 - (c) Training Provider Accreditations;
 - (d) Asbestos Abatement Project Notifications.

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

OREGON ADMINISTRATIVE RULES
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- (2) Contractors shall pay a non-refundable license application fee of:
- ~~[(a)]~~ \$1000 for a one year ~~[Full Scale]~~ Asbestos Abatement Contractor license~~[-]~~.
 - ~~[(b)]~~ ~~\$200 for a one year Small Scale Asbestos Abatement Contractor license.~~
- (3) Workers shall pay a non-refundable certification fee of:
- (a) ~~[\$130]~~65 for a ~~[two]~~one year certification as a certified ~~[S]~~supervisor ~~[for Full Scale Asbestos Abatement]~~;
 - (b) ~~[\$90]~~45 for a ~~[two]~~one year certification as a ~~[C]~~certified ~~[W]~~worker ~~[for Full Scale Asbestos Abatement]~~;
 - ~~[(c)]~~ ~~\$80 for a two year certification as a Certified Worker for Small Scale Asbestos Abatement.~~
- (4) Training Providers shall pay a non-refundable accreditation application fee of:
- (a) \$320 for a one year accreditation to provide a course for training supervisors ~~[on Full Scale projects]~~;
 - (b) \$320 for a one year accreditation to provide a course for training workers ~~[on Full Scale projects]~~;
 - ~~[(c)]~~ ~~\$320 for a one year accreditation to provide a course for training workers on Small Scale projects.~~
 - ~~[(d)]~~(c) \$320 for a one year accreditation to provide a course for refresher training for any level of certification.
- (5) Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

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

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

Hist.: DEQ 10-1988, f. & cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1994, f. 9-2-94 & ef. 10-1-94

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality

Air Quality

OAD Chapter 340

DATE: TIME: LOCATION:

March 22, 1995 5:30 p.m. DEQ
811 S.W. 6th Avenue, Room 3A
Portland

HEARINGS OFFICER(s): Gregg Lande

STATUTORY AUTHORITY: ORS 468.020 and ORS 468A.745

AMEND: OAR 340-32-5590, OAR 340-32-5620, 32-5630, OAR 340-32-5640,
OAR 340-32-5650
OAR 340-33-010 through OAR 340-33-100

Amendments or additions to other sections of Division 32 and 33 listed above (or related administrative rules) may be made in response to information or public comment received by the Department.

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

SUMMARY:

The purpose of these amendments to Division 32 and 33 is to make Oregon's asbestos program regulations consistent with EPA's Model Accreditation Plan.

Also, in order to provide more flexibility in non-friable notifications, the Department is proposing to make an annual fee option of \$350 available for non-friable projects done at schools, colleges and facilities.

LAST DATE FOR COMMENT: March 23, 1995

DATE PROPOSED TO BE EFFECTIVE: July 1, 1995 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:

Alice Dehner, (503) 229-6353

ADDRESS:

Air Quality

811 S. W. 6th Avenue

Portland, Oregon 97204

TELEPHONE:

(503) 229-6353

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.

Alice Dehner

2/15/95

Signature

Date

**Amendments to Division 32 Hazardous Air Pollutants and
Division 33 Licensing and Certification Asbestos Requirements**

Date Issued:	February 21, 1995
Public Hearings:	March 22, 1995
Comments Due:	March 23, 1995

**WHO IS
AFFECTED:**

Asbestos abatement industry, including certified asbestos abatement workers and asbestos training providers

**WHAT IS
PROPOSED:**

Amendments proposed to Divisions 32 and 33 are primarily required to maintain EPA approval of the Department's asbestos certification program under the revised Model Accreditation Program (MAP) specified by the Asbestos School Hazard Abatement Reauthorization Act (November 28, 1990).

The Department is also proposing to create, in Division 32, an annual notification fee for non-friable asbestos abatement projects. Schools, colleges and other regulated facilities will benefit by paying annually and qualifying for unlimited non-friable projects.

**WHAT ARE THE
HIGHLIGHTS:**

This proposal would change Oregon's asbestos worker and supervisor classes from three to four days and four to five days respectively; change training curriculum; and require training providers to modify student recordkeeping systems. These changes would ensure the Oregon asbestos certification program would continue as an approved training program under the US EPA Model Accreditation Program (MAP).

Changes made in Division 32 are driven by and coordinated with changes in Division 33. The proposed annual non-friable asbestos abatement notification will reduce administrative costs for schools, colleges, facilities, and the Department.

**HOW TO
COMMENT:**

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

March 22, 1995 at 5:30pm
Department of Environmental Quality
811 S.W. 6th Avenue Room 3A
Portland

Written comments must be received by 5:00 p.m. at the following address:

March 23, 1995

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 229-5359 or calling Oregon toll free 1-800-452-4011.

**ASSISTING
PERSONS WITH
DISABILITIES:**

People wishing to attend the hearing(s) and who need accommodations for physical disabilities may contact DEQ Public Affair at (503) 229-5317 or toll free in Oregon 1-800-452-4011. People with hearing impairments may contact DEQ's TTY at (503) 229-6993.

**WHAT IS THE
NEXT STEP:**

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

**ACCESSIBILITY
INFORMATION**

This publication is available in alternate format (e.g., large print, braille) upon request. To request an alternate format, please contact DEQ Public Affair at (503) 229-5317 or toll free in Oregon 1-800-452-4011. People with hearing impairments may contact DEQ's TTY at (503) 229-6993.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Amendments to Division 32 Hazardous Air Pollutants and Division 33 Licensing
and Certification Asbestos Requirements

Rulemaking Statements

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

1. Legal Authority

ORS 468.020, and ORS 468A.745

2. Need for the Rule

In 1986 Congress enacted the Asbestos Hazard Emergency Response Act (AHERA or TSCA Title II) which addressed asbestos hazards in schools and required mandatory training and accreditation of persons conducting asbestos related work in schools. A Model Accreditation Plan (MAP) was established to ensure that asbestos workers were trained to acceptable levels. The Department's asbestos certification program was approved by the EPA on October 21, 1988. In November, 1990 the Asbestos School Hazard Abatement Reauthorization Act (ASHARA) made changes in the MAP. Amendments proposed here for Divisions 32 and 33 are necessary for the Department's asbestos certification program to be re-approved by the EPA.

During rulemaking for recent amendments to Division 32, asbestos contractors requested an asbestos abatement project notification fee for non-friable asbestos abatement projects. Since creating the fee the Department has determined that certain facilities were paying too much for non-friable asbestos abatement project notification. The proposed changes will provide savings for facilities conducting more than ten non-friable asbestos abatement projects annually.

3. Principal Documents Relied Upon in this Rulemaking

ORS 468.020, ORS 468A.745;

OAR 340-32-5590 thru 5650, OAR 340-33-010 thru 100;

40 CFR Part 763 Asbestos Model Accreditation Plan, final interim rule

These documents are available for review at DEQ, Air Quality Division,
811 S.W. 6th Avenue, Portland, OR 97204.

4. Advisory Committee Involvement

On January 23, 1995 the ad hoc Asbestos Advisory Committee composed of asbestos abatement contractors, training providers and public schools met to discuss the proposed amendments. Their comments were considered in making final revisions to the proposed rules.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Amendments to Division 32, Hazardous Air Pollutants and Division 33, Licensing and Certification Asbestos Requirements

Fiscal and Economic Impact Statement

Introduction

DEQ's asbestos regulations, Division 32 and 33, must be revised in order to comply with EPA's Model Accreditation Plan (MAP) revision. The economic impact of these changes has already occurred as a result of the Federal changes. On April 4, 1994, asbestos training providers were required to add one additional day to their asbestos worker and supervisor training programs and begin additional recordkeeping requirements. In addition, small scale contractors and workers were eliminated, requiring some worker retraining.

Also, in order to give schools, colleges and facilities more flexibility in non-friable projects, the Department is proposing an annual fee option of \$350 for non-friable projects. This rule would establish qualifications for the use of the annual notification for non-friable asbestos abatement and is intended to expedite administrative procedures in affected facilities and result in savings. Currently, the Department requires a separate \$35 notification fee for each non-friable project.

General Public

There would be no direct or indirect economic impact to the general public as a result of these proposed rule amendments.

Small Business

MAP required that as of April 4, 1994, training requirements of workers and supervisors be expanded from three days to four days and four days to five days, respectively. Accordingly, training providers raised their training fees as of that date to reflect that extra training day. This cost is passed along to the individual worker and supervisor taking the course required for asbestos abatement certification. The Department's proposed rules reflect these changes so there will be no fee increases now.

MAP also makes additional recordkeeping requirements. Training providers contacted stated they would not need to raise fees to meet these additional recordkeeping requirements, which went in to effect April 4, 1994.

Large Business

Possibly five large companies would use the non-friable annual notification. If a company were to have 30 non-friable asbestos abatement projects in a year's time, by using the annual notification option, they would have savings of \$700 over using the individual non-friable notification.

Local Governments

Those local and state government agencies and school districts that remove asbestos would be marginally affected because their asbestos workers would pay a slightly higher training fee. The proposed annual fee option for non-friables would offer more flexibility and should result in savings. For example, for approximately 25 school districts and colleges doing 40 individual non-friable projects in a year, each district could save \$1050 over the individual non-friable notification option.

State Agencies

No additional positions, revenue or expenses are anticipated at any state agencies including DEQ.

Assumptions

Training providers raised their fees when they conformed to the MAP requirements on April 4, 1994. Small-scale workers and contractors have already adjusted their fees.

The availability of the annual non-friable notification could result in savings to schools, colleges and facilities.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Amendments to Division 32, Hazardous Air Pollutants and Division 33, Licensing and Certification Asbestos Requirements

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purpose of these amendments to Division 32 and 33 is to make the asbestos program regulations consistent with EPA's Model Accreditation Plan.

Also, in order to provide more flexibility in non-friable notifications, the Department is proposing to make an annual fee option of \$350 available to facilities doing multiple non-friable 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.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic

Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

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

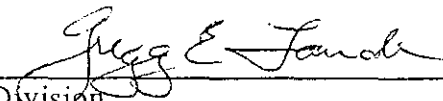
In applying criterion 2. above, two guidelines should be applied to assess land use significance:

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


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

In its State Agency Coordination Agreement with the DLCD, the DEQ has determined that the Asbestos Program is not a DEQ program with significant effects on land use. These proposed rules do not alter that determination.

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



Division



Intergovernmental Coord.

4/18/15
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?*

In April 1994 the EPA promulgated its revised Model Accreditation Plan (MAP) for asbestos abatement worker training and certification in order to implement elements of the Asbestos School Hazard Abatement Reauthorization Act (ASHARA) of 1990. The Department is proposing to revise its current rules to make them equivalent to these new federal rules.

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

The federal rules are performance based.

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

Yes, the federal rules address concerns, shared by Oregonians, about asbestos contamination during abatement projects. No Oregon-specific information was presented in the federal process.

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 revisions will clarify requirements, make Oregon rules equivalent to federal rules, and provide for certification reciprocity between states for asbestos abatement workers and training providers.

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

No time frames are proposed to be changed from the federal requirements.

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

Training requirements are on-going and are updated periodically.

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

The primary purpose of this proposed rule is to establish equity between Oregon and other states' programs.

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

No increased costs are anticipated.

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 more stringent requirements are proposed.

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

Training providers are already meeting the federal requirements.

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 changes address a problem and are more cost-effective than the current rules.

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 23, 1995

To: Environmental Quality Commission
From: Gregg Lande, Air Quality Division
Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: March 22, 1995, beginning at 5:30 p.m.
Hearing Location: DEQ Headquarters
811 S. W. Sixth Ave., Room 3A
Portland

Title of Proposal: Amendments to Division 32, Hazardous Air
Pollutants, and Division 33, Licensing and
Certification Asbestos Requirements

The rulemaking hearing on the above titled proposal was convened at 5:30 p.m.

Other than Department staff, no one attended.

The hearing was closed at 6:00 p.m.

Attachments:

Written Testimony Submitted for the Record.

Index of Written Comments

Written comments were received from the following:

Donald R. Stephani
P.O. Box 257
Kenilworth, IL 60043

Department Response to Comments

Comment: One comment was that the terms, licensing and certification tended to be used interchangeably in the asbestos vocabulary but instead they have separate meanings.

Response: The Department uses the term certification for workers and supervisors who have successfully completed the training and examination required by the State for those positions in asbestos abatement work. The Department uses the term licensing for contractors who have been licensed by the State to perform asbestos abatement work. In Division 32 and Division 33 the term certification is used only when applying to asbestos abatement workers and supervisors and the term licensing is used only when applying to asbestos abatement contractors.

AIR QUALITY
AD HOC ASBESTOS ADVISORY COMMITTEE
MEETING

DATE: January 23, 1995

SIGN-IN SHEET

<u>Keith Tong</u>	<u>DEQ-Medford</u>	<u>776-6010</u>
<u>Larry Porter</u>	<u>Laborers AGC Training</u>	<u>745-5513</u>
<u>Ann McLaughlin</u>	<u>Hazcon, Inc.</u>	<u>968-2112</u>
<u>Harvey McGill</u>	<u>Hazcon, Inc.</u>	<u>968-2112</u>
<u>John Mayer</u>	<u>Lake Oswego Insul.</u>	<u>245-6460</u>
<u>Dave Wall</u>	<u>DEQ</u>	<u>229-5364</u>
<u>Ric Cowlshan</u>	<u>Georgia Pacific West Inc</u>	<u>336-8316</u>
<u>Steve Dilling</u>	<u>PSI</u>	<u>254-8418</u>
<u>Ed Edinger</u>	<u>ATP</u>	<u>233-7707</u>
<u>Gary Richter</u>	<u>North Clackamas SD</u>	<u>653-3843</u>
<u>Mary Lewis</u>	<u>PSI</u>	<u>775-7808</u>
<u>Dave Stover</u>	<u>PBS Envir.</u>	<u>248-1939</u>
<u>Pamela Brown</u>	<u>Portland Public Schools</u>	<u>331-3449</u>
<u>Andrew Fridley</u>	<u>Portland Public Schools</u>	<u>249-2000</u>
<u>Donald Johnson</u>	<u>Northwest Environcom Inc</u>	<u>206-699-4015</u>
<u>Charles Ragan</u>	<u>Global Inc</u>	<u>206-737-1794</u>
<u>Michael Moloney</u>	<u>Lincoln Cristi</u>	<u>282-6013</u>
<u>Alice Dehner</u>	<u>DEQ</u>	<u>229-6353</u>
<u>Gregg Lande</u>	<u>DEQ</u>	<u>229-6411</u>
<u>Scott Winslow</u>	<u>Asbestos Control Group</u>	<u>692-5174</u>

<u>Bruce Arnold</u>	<u>DEQ</u>	<u>229-5506</u>
<u>John Mathews</u>	<u>DEQ</u>	<u>229-5656</u>

Asbestos Ad Hoc Advisory Committee Meeting Minutes

On Monday, January 23, 1995, the Asbestos Ad Hoc Advisory Committee met to discuss amendments to Divisions 32 and 33. The amendments proposed regarding worker certification and trainer accreditation are required to maintain EPA approval of the Department's asbestos certification program under the revised Model Accreditation Program (MAP).

In addition, the Department is proposing to create an annual notification fee option of \$350 for non-friable asbestos abatement projects.

Gregg Lande opened the meeting at 9:35am and gave a brief synopsis of the rulemaking process and proposed changes to be made.

Dave Wall reviewed in detail and answered questions concerning the proposed changes in Division 32.

Alice Dehner went over the proposed changes in Division 33.

A general group discussion followed. Trainers were in agreement that requiring courses to be taught by an instructor fluent in the particular foreign language as opposed to using a translator was not a workable choice for them. Those who work on non-friable projects which occur in schools, colleges and facilities approved of the annual non-friable fee option given the large amount of non-friable projects they have annually. Trainers raised the possibility of coordinating DEQ rule requirements with OR-OSHA as OR-OSHA regulations change. DEQ staff responded that these issues would have to be addressed in a subsequent advisory board meeting, not during this rulemaking process.

The meeting was adjourned at 11:10am.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Amendments to Division 32 Hazardous Air Pollutants and Division 33 Licensing and Certification Asbestos Requirements

Rule Implementation Plan

Summary of the Proposed Rule

Amendments proposed to Division 32 and 33 are primarily required to maintain EPA approval of the Department's asbestos certification program under the revised Model Accreditation Program (MAP) specified by the Asbestos School Hazard Abatement Reauthorization Act (November 28, 1990).

The Department also proposes to create, in Division 32, an annual notification fee option for non-friable asbestos abatement projects. Schools, colleges and other regulated facilities will benefit by paying annually and qualifying for unlimited non-friable projects.

Affected parties will be the asbestos abatement industry, including certified asbestos abatement workers, asbestos training providers, schools, colleges and facilities.

Proposed Effective Date of the Rule

July 1, 1995

Proposal for Notification of Affected Persons

After promulgation of the final rules, the Department will make direct mailings explaining the changes to the affected groups, namely: asbestos trainers, certified workers and supervisors, asbestos contractors and schools, colleges and facilities.

Proposed Implementing Actions

Fee

The Department's asbestos abatement non-friable notification form will be changed to list the new annual asbestos notification form for schools, colleges and facilities. The new

applications will be mailed to all affected persons including schools, colleges, facilities and asbestos contractors.

MAP

The Department will also develop criteria and guidelines for the implementation of new rules in Division 33. The Department staff will meet with trainers regarding the recordkeeping systems and new certification forms. The physical examination of trainers' examinations, new recordkeeping systems and certificates of completion will be necessary to ensure compliance with the new rules. Asbestos workers will be informed of the certification changes via a mailing.

Proposed Training/Assistance Actions

Training will be provided for asbestos staff regarding the new MAP regulations. Department staff will meet with all accredited trainers to provide information on new requirements contained in these rules. Based on feedback from the regulated parties, further mailings may be prepared. Consultation is always available to those who need additional assistance.