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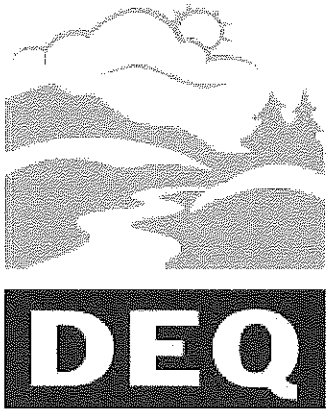
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 09/28/1995



State of Oregon
Department of Environmental Quality

A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

September 28-29, 1995
DEQ Conference Room 3A
811 S. W. 6th Avenue
Portland, Oregon

Thursday, September 28, 1995: Work Session beginning at 1:00 p.m.

1. Triennial Water Quality Standards Review

Friday, September 29, 1995: Regular Meeting beginning at 8:30 a.m.

Notes:

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

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

A. Approval of Minutes

B. Approval of Tax Credits

C. †**Rule Adoption:** Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

D. †**Rule Adoption:** Permanent Rules: Changing Effective Date for Provision of Financial Assurance for Solid Waste Landfills

E. **Information Item:** Oregon Coastal Nonpoint Pollution Control Program -- Status Report

F. **Information Item:** Continuation of Willamette River Basin Water Quality Study Phase II

G. Commissioners' Report (Oral)

H. 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 November 16-17, 1995, for their next meeting. The location has not been established.

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

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

September 14, 1995

State of Oregon
Department of Environmental Quality Memorandum†

Date: August 28, 1995

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Work Session Item 1, September 28, 1995, EQC Meeting

Statement of Purpose

The Commission will be asked to revise five water quality standards at the November, 1995 meeting. Because of the complexity and far-reaching implications of some of the proposed standards, staff believe that a short presentation, followed by a question and answer period is needed prior to rule adoption. Additionally, input received from Commissioners will help staff in preparing the final rules, staff report, and implementation plan.

Background

In fulfillment of requirements in Section 303 of the Clean Water Act to perform a triennial water quality standards review, the Department evaluated five standards between 1992-1994. The standards selected for review included: temperature, dissolved oxygen, bacteria, pH, and groundwater nitrate. These water quality standards were selected because of several problems inherent in the existing rules:

- The dissolved oxygen standard may be either too stringent or not protective enough, depending on the circumstances and the use to be protected.
- The temperature standard is extremely difficult to implement.
- The permanent bacteria standard does not accommodate local conditions and requires use of a suboptimal indicator species.
- The pH standard fails to efficiently account for naturally occuring local conditions.
- The groundwater nitrate standard was adopted on a interim basis only.

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

Through extensive consultation with Technical and Policy Advisory Committees representing the best science and a broad range of policy interests, revised standards have been proposed that are designed to solve the above problems in the following ways:

- The proposed modifications of the temperature and dissolved oxygen standards link the numeric criteria to presence of specific life stages of sensitive beneficial uses.
- The proposed dissolved oxygen standard adds numeric criteria for intergravel dissolved oxygen, which provides more direct protection to early life stages of salmonids than the existing water-column standard.
- The proposed pH standard recognizes that natural conditions vary more than was formerly acknowledged.
- The proposed bacteria standard mandates use of an indicator species that provides adequate protection, while requiring less disinfection than the indicator species that was adopted during the previous Review. The proposed bacteria rule also provides deadlines and design criteria for sewage treatment facilities to minimize risk to swimmers.
- The proposed nitrate standard provides the final step (for that pollutant) in fulfilling the statutory requirement to adopt maximum measurable levels for groundwater contaminants.

Authority of the Commission with Respect to the Issue

In November, 1995, the Commission will be asked to adopt revised standards. ORS 468B.020, ORS 468B.035, and ORS 468B.048 provide authority for implementation of the Clean Water Act and the setting of water quality standards. ORS 183.310 to 183.550 provide authority to adopt, modify or repeal rules for the administration of water quality standards. ORS 468B.165 mandates adoption of groundwater maximum measurable levels.

Alternatives and Evaluation

No decision is requested at this time. The alternatives to be considered in November will include adoption of the proposed revisions (which will reflect further public comment); modification and adoption of the modified, proposed revisions; or no change to the existing rules.

Summary of Public Input Opportunity

The development of revised water quality standards has included a number of opportunities for public input:

- The Technical and Policy Advisory Committees included representatives drawn from diverse interests.
- A public comment period was provided during each Policy Advisory Committee meeting.
- Information on the conceptual basis for the proposed rules was mailed to about 900 interested persons.
- Public workshops were held in six locations around the state to discuss the proposed standards and hear public responses.
- Public notice materials, including the proposed rule amendments, were mailed to about 900 interested persons.
- Public hearings are scheduled to be held in four locations statewide in early September.

Conclusion

The proposed surface water standards would generally provide greater flexibility to accommodate local conditions than is allowed by the current rules. Staff believe that the proposed changes are needed in order to maximize protection of beneficial uses, while minimizing constraints on human activities.

Intended Future Actions

The Commission will receive a staff report reflecting both further public input and additional internal discussions regarding rule implementation. A decision regarding adoption of the proposed revisions will be requested at the November, 1995 Commission meeting.

Department Recommendation

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

Attachments

- Public notice materials, including the proposed rule revisions.
- Final Issue Papers providing documentation of the technical and policy discussions, and input from public workshops that led to the development of the proposed standards.

Approved:

Section: _____

Division: _____

Report Prepared By: Lynne Kennedy

Phone: 229-5371

Date Prepared: August 28, 1995

LSK:crw

Approved_____
Approved with Corrections_____

Minutes are not final until approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Jackson County Roads and Parks Auditorium
900 Antelope Road
White City, Oregon

July 6-7, 1995

WORK SESSION

Gary Arnold and Dennis Belsky of the Department's Western Regional Office presented this item to the Commission.

1. Update on the status of Bear Creek (Rogue River Basin) Subbasin point source discharge conditions and nonpoint source management implementation compliance schedule.

Mr. Arnold gave a short history of the TMDLs. Additionally, Al Cook and Bruce Sund of the Oregon Department of Water Resources, spoke about artificial nature of Bear Creek and water rights. Jim Hill co-presented the Bear Creek reclamation plan with Eric Dittmer, Rogue Valley Council of Governments. The reclamation plan deals with trading Medford regional plant wastewater for instream water.

2. Update on the progress of the Ashland sewage treatment plant.

Ken Hagen, Ashland City Council, Brian Almquist, Ashland City Administrator, and Paula Brown, special consultant to the City of Ashland, talked about developing a plan to meet point source TMDLs. Jon Gasik, Western Regional Office, DEQ, provided an update on the long pond discharges to Bear Creek.

3. Nonpoint sources: progress on the Total Maximum Daily Load (TMDL).

Mike Wolf, Oregon Department of Agriculture, spoke about Senate Bill 1010 and Confined Animal Feedlot Operation (CAFO) inspections. Jim Hill, City of Medford, provided information about stormwater issues and an urban perspective of the issues. Dave Degenhardt, Oregon Department of Forestry, talked about Forestry's surface water monitoring in 1993 and 1995 and also told the Commission about Forestry's water quality protection rules. Concluding the program, Marc Prevost, Rogue Valley

Council of Governments, gave an update on basin monitoring, public awareness, their educational plan and stream inventories.

Minutes of the Two Hundred and Forty-Fifth Meeting
Regular Meeting

The Environmental Quality Commission regular meeting was convened at 10 o'clock on Friday, July 7, 1995, at the Jackson County Roads and Parks Auditorium, 900 Antelope Road, White City, Oregon. The following commission members were present:

William Wessinger, Chair
Emery Castle, Vice Chair
Carol Whipple, Member
Henry Lorenzen, Member

(Commissioner McMahan was unable to attend this meeting.)

Also present was Michael Huston, Assistant Attorney General, Oregon Department of Justice, Langdon Marsh, 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, 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 in the minutes of the meeting by reference.

Chair Wessinger called the meeting to order.

A. Approval of minutes.

Commissioner Castle moved approved of the Special Meeting Conference Call meeting of March 15, 1995; Commissioner Whipple seconded the motion. The motion was approved with three yes votes (Commissioner Lorenzen had left the room and did not vote.)

B. Approval of tax credits.

The Department recommended issuance of the following tax credit applications.

Application Number	Applicant	Description
TC 4321	Lowell and Elizabeth Kuenzi ($10,325)	A plastic product reclamation facility consisting of an Inger-Teco Corporation Model FC-60-B mobile compaction unit to collect, store and transport plastic containers.
TC 4367	Gary Keen ($66,208)	An air quality field burning facility consisting of a steel truss 22'x110'x120' straw storage building.
TC 4372	Wacker Siltronic Corp. ($308,378)	A water pollution control facility consisting of a concrete trench system and storage tanks to prevent leakage of acid contaminated water into the environment.
TC 4375	Portland General Electric Company ($24,950)	A water pollution control facility consisting of a sand filtration system to prevent water contamination in the event of an oil spill.
TC 4376	Portland General Electric Company ($193,215)	A water pollution control facility consisting of an internal storm drainage and oil spill collection system.
TC 4381	Robert Schmidt ($10,450)	An air quality field burning facility consisting of a Rear's 20' Pul-Flail chopper.
TC 4383	Smith Bros. Farm ($157,612)	An air quality field burning facility consisting of a 22'x80'x300' clear span, steel construction, metal clad grass seed straw storage building.
TC 4388	McKee Farms ($26,500/90%)	An air quality field burning facility consisting of a used 1075 New Holland stackwagon.

Application Number	Applicant	Description
TC 4389	Intel Corporation ($198,615)	A water pollution control facility consisting of improvements to the applicant's Aloha, Oregon plant's wastewater pretreatment facility.
TC 4390	International Paper ($173,239)	An industrial solid waste landfill facility consisting of a leachate collection system, which ensures that all of the mill's leachate is processed through their effluent treatment system.
TC 4392	Anodizing, Inc. ($175,789)	A water pollution control facility consisting of an inclined plate settler including a Parkson (Model 200/55) lamella gravity settler with tanks (2), a filter press and an equipment storage building for reducing the concentration of suspended solids in the applicant's wastewater discharge.
TC 4395	Portland General Electric Company ($61,276)	A water pollution control facility consisting of an internal storm drainage and oil spill collection system.
TC 4397	Portland General Electric Company ($10,423)	A water pollution control facility consisting of a liner membrane to prevent oil spill emissions into the Portland storm drain system.
TC 4401	Richard D. Baker ($66,500/96%)	An air quality field burning facility consisting of a 200hp John Deere 4955 tractor.
TC 4403	Portland General Electric Company ($28,030)	A water pollution control facility consisting of a sand filter system to prevent oil spill contamination of waterways.

Tax credit application review reports with facility costs over $250,000.

Application Number	Applicant	Description
TC 4154	Boise Cascade Corp. ($32,800,000)	A water pollution control facility consisting of significant modifications to the bleach plant of a bleached kraft pulp and paper mill at St. Helens, Oregon, to achieve compliance with dioxin limitations.

The Department also recommended approval of transferring the remaining value of tax credit certificate 2404 from Edwin J. Rohner to Steven J. Rohner, the current owner and operator of the facility; approval of transferring the remaining value of tax credit certificates 3190, 3191, 3192, 3193 and 3194 from the Temp-Control Mechanical Corporation to the Temp-Control Mechanical Service Corporation, the current owner and operator of the pollution control facilities.

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

C. Revisions to OAR Chapter 340, Division 50, land application of domestic wastewater treatment biosolids, biosolids derived products and domestic septage.

The Department requested the Commission adopt the proposed division 50 rule amendments as presented in Attachment A of the staff report. The division 50 revisions update biosolids and domestic septage rules to make them consistent with new and recently amended federal technical and administrative regulations.

More specifically, the proposed rule amendments revise and expand definitions to reflect federal biosolids regulations; incorporate minimum federal standards required for biosolids land application; and modify requirements for monitoring, recordkeeping and reporting to make these requirements consistent with federal regulations in 40 CFR Part 50. In addition, several housekeeping changes are proposed which make the rule more comprehensive, clear and enforceable.

In July 1998, the Department formed the Domestic Biosolids Technical Advisory Committee to review the biosolids management program, including making recommendations for rule revisions. The 12-member committee represented local government, sewage district and private industry. The committee worked closely with Department staff and the Oregon Association of Clean Water Agencies (ACWA) Biosolids Subcommittee to develop the rule amendments.

Concurrent with the request for rulemaking, the Department asked that the Commission grant permission to seek primacy for the land application portion of the federal biosolids programs.

The Department recommended the Commission adopt the rule amendments regarding land application of domestic wastewater treatment facility biosolids, biosolids derived products and domestic septage as presented in Attachment A of the staff report. Further, the Department recommended the Commission grant the Department's request for authorization to seek primacy from the U. S. Environmental Protection Agency (EPA) for administration of the land application portion of the federal sewage sludge (biosolids) program.

Mike Downs, Water Quality Administrator, and Jan Renfroe of the Department's Water Quality Division, presented this item to the Commission. Ms. Renfroe told the Commission that Steve Wilson, chair of the policy advisory committee, could not make the meeting. She said, however, that Mr. Wilson did support the Department's recommendation. Mark Ronayne, formerly of the Department, provided the Commission will additional information since he was involved with this committee before his departure.

Commissioner Whipple moved approval to the revisions of OAR chapter 340, division 50, land application of domestic wastewater treatment biosolids, biosolids derived products and domestic septage; Commissioner Castle seconded the motion. The motion was unanimously approved.

D. Proposed revision of the Bear Creek Basin nonpoint source management implementation and compliance schedule.

In 1989, the Commission adopted by rule TMDLs for phosphorus, ammonia and biochemical oxygen demand (BOD) for Bear Creek in the Medford-Ashland area. Load allocations for nonpoint sources of pollutants were assigned to designated management agencies (DMA) for Bear Creek. The DMAs are the cities of Ashland, Medford, Central Point, Phoenix, Talent and Jacksonville, Jackson County, Oregon Department of Forestry and Oregon Department of Agriculture (DOA).

In 1993, the Commission adopted the Bear Creek nonpoint source implementation and compliance schedule for the DMAs. Although progress has been made, deadlines have been missed and a modification to the schedule is proposed. While progress has been made on several tasks, many are not completed even though the deadlines have passed. The revised schedule provides additional time for task completion. In addition, the new schedule adds a task to reflect the responsibilities of the DOA to develop an Agricultural Water Quality Management Plan for the basin.

The Department recommended the Commission adopt the revised nonpoint source management implementation and compliance schedule as shown in Attachment A of the staff report.

Mr. Downs, Kevin Downing and Debra Sturdevant from the Department's Water Quality Division and Mr. Arnold presented this item to the Commission.

Chair Wessinger observed that the completed tasks tended to be the "softer" tasks, such as education. He requested that the Commission receive periodic reports on the progress of the DMAs toward meeting the new schedule over the next two years.

Commissioner Lorenzen moved approval of the proposed revision of the Bear Creek Basin nonpoint source management implementation and compliance schedule; Commissioner Whipple seconded the motion. The motion was unanimously approved.

D-1. Proposed authorization for continued point source discharges into waters of the Bear Creek Subbasin (Rogue Basin) with specified conditions.

The Commission adopted two orders allowing continued discharges by the City of Ashland and by Boise-Cascade into the waters of the Bear Creek basin with specified conditions. This action is necessary in order to comply with the Bear Creek TMDL rule (OAR 340-41-385), which states that no discharges or activities may occur after December 31, 1994, that cause the TMDLs to be exceeded unless so authorized by the Commission.

The City of Ashland is under a Mutual Agreement and Order (MAO) with the Department, and they testified to the Commission that they are committed to meeting the requirements of the MAO and solving their pollution problem.

The Department is currently reviewing Boise Cascade's proposed program plan and request for increased wasteload allocation. The Boise permit will then be renewed according to the Department's decision.

The Department recommended the Commission adopt the orders for the City of Ashland and Boise Cascade as shown in Attachments A and B of the staff report. Mr. Downing and Jon Gasik, Western Regional Office, DEQ, presented this item. After discussion of this item, the Commission requested an informational work session with the Water Quality Division on the TMDL program and the changes the program is undergoing.

Commissioner Lorenzen moved approval of the proposed authorization for continued point source discharges into waters of the Bear Creek Subbasin (Rogue Basin) with specified conditions; Commissioner Whipple seconded the motion. The motion was approved with three yes votes (Commissioner Castle had left the room and did not vote).

E. There was no agenda item E.

F. Proposed adoption of a temporary rule to continue the existing fecal coliform water quality bacterial standard.

The Department proposed that the Commission adopt a temporary rule for continuing the use of fecal coliform as the indicator species for the state's bacteria standard. OAR 340-41-(basin)(2)(e) provides for the use of fecal coliform through June 30, 1995. At that time the bacteria standard changes to a standard that uses *Enterococcus* as the indicator species.

An interim rule was adopted by the Commission in July 1992 to provide the Department more time to identify an appropriate indicator species for detecting human pathogens in sewage. When the interim rule was adopted, the Department and Commission anticipated that the current Triennial Water Quality Standards Review, which includes analysis of the bacteria standard, would have been completed.

Technical and policy advisory committees have formulated recommendations for a bacteria standard, but these will not be available for rulemaking until November 1995. The Department believes that allowing the interim rule to expire and the *Enterococcus* bacteria standard to take effect for a short period would impose undue burdens on dischargers of domestic waste effluent with no human health benefits. This proposal continues the existing bacteria standard and does allow relaxation of the standard.

The Department recommended the Commission adopt the temporary rule regarding the water quality bacteria standard as presented in Attachment A of the staff report and findings justifying adoption of the temporary rule contained in Attachment B of the staff report.

Mr. Downs and Russell Harding of the Department's Water Quality Division presented this item.

Commissioner Whipple moved approval of the proposed adoption of a temporary rule to continue the existing fecal coliform water quality bacterial standard; Commissioner Castle seconded the motion. The motion was unanimously approved.

G. Progress on review of the Tualatin Basin total maximum daily loads.

The Department has begun the process of reviewing the Tualatin Basin TMDLs. This process includes the formation of technical and policy advisory committees. There is the potential the TMDL review process will not be complete prior to the December 31, 1995, expiration date of the EQC Subbasin Nonpoint Source Management Implementation/Compliance Order (EQC order). The Department may need to request that the EQC extend the order until such time as the Department completes the TMDL review.

The Department recommended the Commission accept the report and provide advice and guidance to the Department.

Bob Baumgartner and Mike Wiltsey of the Department's Northwest Regional Office presented this item to the Commission. Chair Wessinger asked staff to prepare a staff report about the Department's TMDL program. He asked that the report contain information about why the process of listing TMDLs is so difficult, why it takes so much time to create and what elements could be revised to speed up the process. Director Marsh indicated that there is growing recognition of the TMDLs. He said the EPA may be able to assist with the listings since state and federal relationships have been changing. He said he will ask the EPA, Region X, for some assistance and that he will also attempt to streamline the listing process.

H. Commissioner reports.

Commissioner Lorenzen talked about Director Marsh's recent visit to eastern Oregon.

I. Director's report.

DEQ Budget and Legislative Outcomes

The DEQ budget for the 1995-97 biennium was approved much as reported in May. There were not cuts to the base budget. Of 84 new positions requested, 50 were approved, and the Department has the authority to go to the Emergency Board for 12

more if workload demands them. In addition, 8 positions were approved as part of specific legislation.

The final lottery allocation (Christmas Tree bill) included $87,000 for Phase III of the Willamette River Study. Senator Yih is seeking additional funding from the affected counties.

Important substantive outcomes, described more fully in the Legislative Report, included:

HB 2255, Pollution and Pollution Prevention Tax Credits, continues several tax credits (pollution control, plastics and recycling) and creates a new pollution prevention tax credit for reduction of hazardous air pollutants.

SB 333, Fees, state agency fee increases will not be effective unless approved by the Governor of Department of Administrative Services and will automatically expire unless approved by the legislature in the following session.

SJR 12, Legislative Review of Administrative Rules, referral to the voters.

HB 3448, Portland Air Quality Maintenance Plan, the Governor has not yet decided to sign; would eliminate Yamhill, Columbia and Marion Counties from the expanded boundary; makes the parking ratio program voluntary and adjusts other strategies.

HB 3044, Field Burning Program to the Department of Agriculture.

HB 3353, Environmental Cleanup, major revisions will require rulemaking.

SB 502, Strategic Water Manage Group Abolished, all SWMG groundwater functions are transferred to the DEQ.

SB 819, Chemical Process Mining, consolidated application must be processed under statutes and rules in effect at the time the application was filed. The Governor signed the bill on July 5.

Columbia River Voluntary Spill Program

Spill for salmon on the Columbia River continues at all hydroelectric projects. Two major concerns have arisen since the Commission's last review of the program:

- The U. S. Army Corps of Engineers (Corps) physical monitoring has been unreliable;

- Routine violation of the Commission's TDG standard, resulting in a Notice of Noncompliance (NON).

The DEQ vigorously and regularly expressed its concerns about the physical monitoring problems to the Corps and fishery agencies; until at this time only minor equipment problems appear to remain. Hourly data upon which 12-hour averages are calculated are more complete.

Because of standard violations, the DEQ issued an NON to the Corps and the National Marine Fisheries Service (NMFS) on May 26, 1995. At a meeting with the Corps, the NMFS and Washington Department of Ecology on June 2, the DEQ underlined the importance of remaining within the TDG waiver standards. Since that time, with occasional small overages, the Corps has managed to remain within the standard at the Oregon dams.

In discussions with the Corps, the Department has emphasized interest in working toward a long-term solution. The DEQ will attend a presentation on the Corps' gas abatement study later this month and will continue meeting with the Corps and other agencies. Early indications are that the Corps supports establishing a timetable for modifying the dams to achieve the required spills and remains within the state's normal TDG criteria.

Hyundai Plant in Eugene

Announcement of a $1.3 billion Hyundai computer chip factory to be located in Eugene has led to two community meetings about possible effects (including environmental) to the community. There is significant concern about the types of chemicals to be used in the process, their handling and storage and possible releases to the environment. The site is located in a wetland area and will require a fill permit. The Eugene Office was represented at both community forums and has been active in responding to questions.

Clean Air Action Day Program

The DEQ's advisory day program to reduce summer ozone pollution has been given a boost by a name change and free transit this year. The program was launched in 1991 as *Clean Air Weather Watch*. The name switch to *Clean Air Action Day* puts less emphasis on the weather and underscores that people can take voluntary action to help keep the air from becoming unhealthy to breathe. For the first time, Tri-Met will

offer free rides on all buses and AMX trains on a Clean Air Action Day. The Department expects C-Tran in Clark County to follow suit, pending approval by its board on July 11.

Another initiative this season is to urge CEOs of the region's largest employers to encourage and support employees driving less on advisory days. The DEQ is designing kits with information and suggestions that companies can implement.

The EPA, Region X, is impressed with our revitalized program and will encourage other states to implement similar programs.

AFSCME Negotiations

The current contract is extended through July 31. The State and AFSCME continue to mediate. With reversal of Measure 8, budgeted funds for salary increase will not even cover the reinstatement of the 6 percent PERS state pickup.

Hearing Authorizations

Air Quality. Deferral of Title V Operation Permit Requirements for Certain Sources. This rule would defer permitting requirements for sources with low actual emissions. Under Title V all sources with potential to emit at major source levels must be permitted or have other enforceable limits on that potential. Deferring permit requirements will allow the Department time to develop less costly non-permit means to comply for those sources with low actual emissions.

Solid Waste. Conform DEQ Deadline for Solid Waste Landfills to Meet Financial Assurance Requirements with Federal Deadline. This proposes permanent adoption of a temporary rule adopted by the Commission in April.

Public Forum

Gary Stevenson, Environmental Health Services, Jackson County, talked about the County's efforts to implement clean air quality measures. He provided a historical display board that illustrated those efforts. He said that December 31, 1994, marked three consecutive years of meeting federal clean air standards for particulate matter, thereby removing the County from the list of the country's most polluted regions. He said that citizens, industry, government and groups all participated to help clean the Rogue Valley's air.

Paula Brown, Rogue Valley Council of Governments, provided a brief update on transportation and air quality issues.

Dan Kellogg, Sierra Club, told the Commission that he was concerned about the water quality in Bear Creek. He said he has been active in the air quality improvement in southern Oregon. Mr. Kellogg indicated he was pleased with the results and will continue to be involved in both issues.

Michele and Terry Klinker, Neighbors Opposed to Aggregate Growth, spoke to the Commission about the noise and dust problems caused by trucks traveling on a gravel road to a gravel pit near their home in Jacksonville. Ms. Klinker indicated that the road is within 1,000 feet of their home. She asked whether the dust created by the trucks affected the air quality maintenance area and asked about noise regulations. Gary Grimes, Western Regional Office, DEQ, said the Department was frustrated about the situation but lacked enforcement capabilities. He indicated that this operation also has affected Walker Creek.

Steve Greenwood, Western Regional Administrator, DEQ, told the Klinkers that he would work with Jackson County about enforcing noise regulations and about changing how noise issues are handled.

There was no further business, and the meeting was adjourned at approximately noon.

Environmental Quality Commission

☐ Rule Adoption Item
X Action Item
☐ Information Item

Agenda Item B
September 29, 1995 Meeting

Title:
Approval of Tax Credit Applications

Summary:
New Applications - Twenty eight (28) tax credit applications with a total facility cost of $2,674,309 are recommended for approval as follows:

- 7 Air Quality facilities with a total facility cost of:	$1,017,862
- 5 CFC facilities costing:	$10,130
- 5 Field Burning related facilities recommended by the Department of Agriculture with a total facility cost of:	$774,989
- 1 Hazardous Waste (Oil) facility costing:	$77,083
- 1 Noise pollution facility costing:	$223,850
- 1 Solid Waste Recycling facility with a facility cost of:	$31,503
- 7 Water Quality facilities costing:	$366,576
- 1 Water Quality UST facility with a cost of:	$172,316

One application with claimed facility cost exceeding $250,000 was reviewed by an independent accounting firm contractor. The review statement is attached to the application report.

Department Recommendation:
Approve issuance of tax credit certificates for 28 applications as presented in Attachment A of the staff report.

The Department also recommends that the Commission approve a request by Willamette Industries to amend their original letter (a request for an extension of 180 days until June 29, 1995 to file for tax credit relief for their Dalles plywood facility) to allow for an additional extension to file until October 25, 1995.

In addition, the Department recommends that the Commission revoke the remaining value of Tax Credit Certificate 2552, Pacific Petroleum Company, because the Department has been advised by the firm that the facility is no longer operating to control pollution.

Additional issues related to tax credits 4382, Anodizing, Inc. and 4265, Johnson Controls Battery Group, Inc. are discussed in the Background section of this report.

Report Author | Division Administrator | Director

August 28, 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: September 29, 1995

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item B, September 29, 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 No.	Applicant	Description
TC 4265	Johnson Controls Battery Group, Inc. $223,850/93%	A noise pollution control facility consisting of a 4.11 acre land buffer between an industrial plant and a neighboring residential area.
TC 4267	Johnson Controls Battery Group, Inc. $69,849	An air and noise pollution control facility consisting of two Micropole baghouses, an Auburn International particle sensor and support equipment for a Cycloblower Power Unit.
TC 4328	Owens-Corning Fiberglass Corporation $239,790	An air pollution control facility consisting of a fume afterburner for the incineration of light hydrocarbons (VOC) and combustible particulate matter, generated in the production of asphalt.

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

Application No.	Applicant	Description
TC 4333	Z West, Inc. $1,995	An air pollution control CFC facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4336	Willamette Industries, Inc. $50,951	An air pollution control facility consisting of an Elgin Crosswind recirculating air sweeper for reducing fugitive particulate emissions at a particleboard manufacturing plant.
TC 4344	The Heating Specialist, Inc. $1,395/50%	An air pollution control CFC facility consisting of a machine that removes and cleans air conditioner and commercial refrigerant coolant.
TC 4349	Silbert Auto Body $1,995/65%	An air pollution control CFC facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4350	Willamette Industries, Inc. $19,812	An air pollution control facility consisting of two Carter Day baghouses to control particulate emissions from a particleboard manufacturing plant.
TC 4380	Doug Cousins Auto Repair $2,500	An air pollution control CFC facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4385	Ernst Hardware d.b.a. Cascade Tractor Co. $2,245/69%	An air pollution control CFC facility consisting of a machine that removes and cleans automobile air conditioner coolant.

Application No.	Applicant	Description
TC 4400	Columbia Steel Casting Company, Inc. $96,873	An air pollution control facility consisting of a backward inclined, airfoil blade Chicago blower fan, a baghouse and support equipment to control bentonite clay dust emissions at a steel casting foundry.
TC 4402	Portland General Electric Company $78,217	A water pollution control facility consisting of a water cooling recirculation reservoir to prevent the discharge of heated water to the public water system
TC 4404	Portland General Electric Company $62,615	A water pollution control facility consisting of a mobile washdown/oil spill collection system and a liner for an existing vehicle washdown collection basin to reduce the potential for groundwater contamination.
TC 4425	Portland General Electric Company $23,416	A water pollution control facility consisting of an impermeable membrane liner system to prevent oil contamination of the groundwater in case of a spill.
TC 4426	Portland General Electric Company $34,006	A water pollution control facility consisting of a double walled aboveground storage tank with a 6-inch concrete liner, an overfill sump, an alarm system, valves, vents and support equipment.
TC 4429	Portland General Electric Company $77,083	A hazardous waste (oil) pollution control facility consisting of an oil mist eliminator to prevent oil mist emissions from contaminating the biosphere.

Application No.	Applicant	Description
TC 4431	Pacific Petroleum Corporation $172,316/88%	A water quality underground storage tank (UST) facility consisting of three doublewall fiberglass/steel tanks and doublewall fiberglass piping, spill containment basins, a tank gauge system with overfill alarm, line/turbine leak detectors and Stage II vapor recovery equipment.
TC 4438	Portland General Electric Company $21,284	A water pollution control facility consisting of an impermeable membrane liner and barricade to prevent oil contamination of the groundwater in case of a spill.
TC 4440	Portland General Electric Company $47,029	A water pollution control facility consisting of an oil/water separator and an oil containment vault to prevent contamination of the groundwater in case of a spill.
TC 4448	Stimson Lumber Company $100,009	A water pollution control facility consisting of wastewater treatment system.
TC 4479	Sabroso Company $31,503	A solid waste recycling pollution control facility consisting of a trailer to collect and transport fruit pulp waste.
TC 4486	Flanagan Farms, Inc. $192,544	An air pollution control field burning facility consisting of a 22' x 124' x 192' pole construction straw storage shed and a 1992 Freeman Big-baler.

Application No.	Applicant	Description
TC 4488	Hopton Technologies, Inc. $37,667	An air pollution control facility consisting of two fume and dust wet scrubbers to control dust and vapors from a paper coating plant.
TC 4497	Golden Valley Farms $236,155	An air pollution control field burning facility consisting of a 20'x100'x200' grass seed straw storage building and a straw press
TC 4508	JSG, Inc. $191,284/90%	An air pollution control field burning facility consisting of a Rear's 12' Grass Vacuum, a John Deere 8870 350hp tractor and a John Deere 2810 Moldboard Plow.
TC 4510	JSG, Inc. $97,006	An air pollution control field burning facility consisting of two grass seed cleaning gravity tables to reduce contamination of grass seed acreage by weeds and fungal blight, thereby supporting a transition from the field burning method of clearing and cleaning grass seed fields.
TC 4512	Golden Valley Farms $58,000	An air pollution control field burning facility consisting of two 370T Freeman balers.

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

Application No.	Applicant	Description
TC 4382	Anodizing, Inc. $502,920	An air pollution control facility consisting of a regenerative thermal oxidizer, recirculation equipment and controls, two vertical spray booth recirculation filters, fans, system controls, spray booth enclosures and support equipment and a steel building to enclose the oxidizer. The facility controls emissions from an aluminum rod painting plant.

Background and Discussion of Issues

At the March 3, 1995 meeting of the Environmental Quality Commission, Willamette Industries, Inc. requested and was granted an extension of 180 days (until June 29, 1995) to file for tax credit relief for their Dalles Plywood Project Dry Waste System facility. The facility was completed and placed in service on December 31, 1992. The applicant requests that their initial letter be amended to allow for an extension for an additional 120 days, until October 25, 1995, to apply for tax credit relief for the facility.

Anodizing, Inc.

This report presents a request for tax credit relief (TC 4382) from Anodizing, Inc. for a facility that controls volatile organic compound (VOC) emissions from painting operations at the applicant's plant in Portland. In calculating the return on investment of the facility the applicant claimed as cash flow the estimated net income related to the additional manufacturing capacity gained by the introduction of the air pollution control facility. Installation of the new facility allows the applicant to produce a higher volume of product while still meeting air emission standards. The applicant erred in calculating the percent of the facility that is allocable to pollution control, identifying this factor as 100% instead of the correct factor which was 0%. Nevertheless, it is the Department's understanding that cash flow that results solely and exclusively from improved pollution control is not a return on investment for the facility, per se, under the Rules. Therefore,

in as much as the claimed facility does not, itself, produce any income or reduce or avoid expense, the appropriate percent of the facility that is allocable to the control of pollution is recommended to be 100%.

Johnson Controls Battery Group, Inc.

Johnson Controls claims tax credit relief for a noise pollution control facility consisting of a 4.11 acre parcel of land that was purchased for use as a buffer between its industrial facilities located in Canby, OR and the neighboring residential area. The Department has determined that the facility does abate the effects of noise pollution and is eligible for tax credit relief. However, the Department in consultation with the Oregon Department of Justice, further finds that the facility has the potential to produce a return on investment and has developed a methodology to calculate that return and the resulting percent of the investment in the facility that is allocable to pollution control.

The methodology uses the assessed value of the property provided by the county assessor's office in the county where the land is located for each of the five years prior to the purchase of the land to the date when the application was considered to have been filed with the Department to determine the rate of appreciation of the investment. This approach combines the ROI estimation periods used for normal applications and for facilities that are integral to the operation of a business and allows for a more rational estimation period than simply projecting the assessed values of the very recent past into the future. In this case the estimation period extends from tax assessment years 1987-88 to and including the 1994-95 tax assessment year. The annualized appreciation rate is then used to estimate the cash flow for the years for which data is not yet available for the five-year period required by the return on investment calculation provided for under the rules governing the Program. This appreciation factor is also used to estimate property tax expenses for the same period.

In addition, because unlike typical pollution control facilities, relatively high transaction costs are associated with the sale of property, the Department proposes to allow the allocation of such future costs in determining the return on investment of the facility.

Following the formula that is used in calculating the return on investment for any pollution control facility, actual and estimated expenses pertaining to the "operation" of the facility are subtracted from the actual and estimated income of the facility to determine the average five year return, which is divided into the eligible facility cost to calculate the investment factor. The return on investment of the facility is then determined by cross referencing the investment factor with the expected useful life of the

facility in Table 1 of the Rules. The Department proposes a 30 year useful life for all land facilities. The rate of return on the investment in the facility is compared to the Reference Rate of Return for the year in which the facility became operational, found in Table 2, to determine the percent of the facility's cost that is allocable to pollution control. If the facility's rate of return equals or exceeds the Reference Rate of Return the facility will not be eligible for tax credit relief. In the present case, the percent of the investment in the facility that was found to be allocable to the control of pollution control is 93% under this methodology.

A worksheet presenting the calculations for the methodology that is being recommended is included as Exhibit A of this report.

Authority to Address the Issue

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

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

Alternatives and Evaluation

None.

Summary of Any Prior Public Input Opportunity

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

Conclusions

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

o Proposed September 29, 1995 Pollution Control Tax Credit Totals:

Certificates	Certified Costs*	Certified Allocable Costs**	No.
Air Quality	$ 1,017,862	$ 1,017,862	7
CFC	10,130	8,039	5
Field Burning	774,989	755,861	5
Noise	223,850	208,181	1
Hazardous Waste	77,083	77,083	1
Plastics	0	0	0
SW - Recycling	31,503	31,503	1
SW - Landfill	0	0	0
Water Quality	366,576	366,576	7
UST	172,316	151,638	1
	$ 2,674,309	$ 2,616,743	28

Certificates	Certified Costs*	Certified Allocable Costs**	No.
Air Quality	$ 976,367	$ 976,367	5
CFC	0	0	0
Field Burning	1,637,849	1,385,024	24
Noise	164,384	164,384	1
Hazardous Waste	0	0	0
Plastics	111,525	111,525	5
SW - Recycling	40,759	40,759	1
SW - Landfill	290,496	290,496	2
Water Quality	51,249,971	51,071,910	25
UST	188,988	149,301	1
	$54,660,339	$54,189,766	64

*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

A) The Department recommends that the Commission approve certification for the tax credit applications as presented in Attachment A of the Department Staff Report.

B) The Department recommends approval of the Willamette Industries, Inc. request to amend their December 27, 1994 request for an extension to file for their Dalles facility.

C) The Department recommends approval of the methodology that is proposed in this report for calculating the estimated return on investment (and percent allocable) for land facility investments.

D) The Department recommends the revocation of the remaining value of the tax credit for the facility identified under Tax Credit Certificate 2552 because the facility is no longer functioning to control pollution.

Intended Followup Actions

Notify applicants of Environmental Quality Commission actions.

Attachments

A. Pollution Control Tax Credit Application Review Reports.

Reference Documents (available upon request)

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

Approved:

Section: _____

Division: _____

Report Prepared By: Charles Bianchi

Phone: 229-6149

Date Prepared: September 11, 1995

Charles Bianchi
SEPT/EQC
Sept. 11, 1995

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2552
Date of Issue 6/14/91
Application No. T-3435

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Pacific Petroleum Corp. ATTN: Mike Armstrong P.O. Box 2803 Eugene, OR 97402	1690 W. 18th Eugene, OR

As: ( )Lessee (x)Owner

Description of Pollution Control Facility:

Installation of epoxy lining in four steel tanks, spill containment basins and underground preparation for a tank monitor system.

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

Date Facility was Completed: 6/89 Placed into Operation: 6/89

Actual Cost of Pollution Control Facility: $32,380.00

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

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

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

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

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

Signed: _____

Title: William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 14th day of June, 1991.

MY101556.B

Exhibit A.

Methodology for Calculating the Return on Investment
for Land Facilities

Tax Credit 4265, Johnson Controls Battery Group, Inc.

Description: The facility is a 4.11 acre section of land consisting of three separate parcels that was purchased as a buffer between the applicant's industrial facility in Canby, OR and a neighboring residential area. The buffer abates the effects of noise pollution on the nearby neighborhood.

The appreciation rate of the facility is calculated using the assessed value of the land for the five years before the facility was purchased (October 1992) until the time the application was considered complete (August 1995).

The assessed value of the land facility according to the Clackamas County Assessor is presented in the following table. The tax year is from June 30 to July 1 for all years.

Tax Year	Assessed Value
94-95	$ 252,790
93-94	175,160
92-93	162,460
91-92	150,870
90-91	135,510
89-90	129,760
88-89	129,760
87-88	129,760

Based upon this data, the appreciation rate for the period based upon the assessed value of the land is calculated to be 10% per annum.

This explanation follows the instructions for calculating the percentage of the investment in a pollution control facility that is allocable to pollution as required in the Application for Final Certification of a Pollution Control facility, beginning with Section V of the Instructions.

Section V, Allocation of Costs, Application for Final Certification of a Pollution control Facility.

Actual Cost of Facility: $223,850
Salvage Value : 0
Claimed Facility Cost : 223,850

Calculation of cash flows:

	Year	Gross Annual Income	Annual Operating Expense	Annual Cash Flow
1	92-93	0	10,103.18	(10,103.18)
2	93-94	0	7,355.25	(7,355.25)
3	94-95	28,940.00	7,789.49	21,150.51
4	95-96	25,279.00	8,267.15	17,011.85
5	96-97	27,806.90	8,792.58	19,014.32
	Totals:	82,025.90	42,307.65	39,718.25

Explanation:

Gross Annual Income

In years 92-93 and 93-94, the assessed value of the property was less than the purchase price resulting in no potential gross income, given the assumption that the assessed value approximated the market value of the land for these periods.

In 1994-5 the assessed value of the land exceeded the purchase price of the property by $ 28,940, which results in the potential for gross income of that amount were the property to have been sold during that timeframe. For the 95-96 period the property appreciation factor (10%) calculated earlier is applied to the assessed value for the 94-95 period resulting in a potential gross income appreciation of $25,279 from the previous year. For the 96-97 period the annualized 10% return when applied to the previous year's estimated assessed value of $278,069 results in a potential gross income amount of $27,806.90.

Annual Operating Expenses

For the period 1992-93 actual expenses to survey and fence the land were $3,509 and property taxes amounted to $3,581.31. Property taxes for the 1993-94 period were $4,342.38. An amount reflecting the present value of future costs to sell the property, which is calculated to be $3,012.87, is added to the actual costs to arrive at the Annual Operating Expense figure of $ 10,103.18. This transaction cost amount is calculated by determining the value of the land at the end of the 30 year estimated useful life as a pollution control facility using the 10% annualized property appreciation rate and discounting for the effects of inflation at a rate of 5% for the period.*

Calculated in this way the sales price of the land at the end of the 30 year holding period would be $3,906,048.19, which amounts to a present value of $ 903,859.55 when discounted at 5% for the effects of inflation. Land transferral and transaction costs are estimated to be 10-12% on average and a 10% factor is used in this methodology. Ten percent of $903,859.55 is $90,385.96, which is amortized for the 30 year period at $3,012.87 per year. This amount is included as an expense for each of the five years of the cost allocation formula to account for the reductive effects of future transaction costs on the potential for net income to be derived from the sale of the facility.

As indicated, for the 1993-94 period the actual costs for property taxation were $4,342.38, which when added to the transaction cost expense results in total operating expenses of $7,355.24 for the period.

For years beyond 1993-94, the previous year's property taxes are increased by 10% in accord with the estimated increase in property values and the transaction cost factor is added to reflect the total estimated annual expense for each year.

Annual Cash Flow

The annual cash flow is derived by subtracting the annual operating expenses for each of the five consecutive years (since the facility began operating to control pollution) from the gross annual income. The table above presents the results of these calculations.

d. Average annual cash flow

The average annual cash flow is calculated by dividing the total positive cash flow for the five-year period by 5. In this example the total of the annual cash flows amounts to $39,718.25, which when divided by five produces the result of $7,943.65.

e. Useful life of claimed facility

Thirty (30) years is proposed for the useful life of land facilities. Actually, of course, the potential useful life for land is infinite. However, 30 years is a representative figure for the estimated useful life of any given land facility

for the purpose of controlling pollution.

f. Return on Investment factor

This is calculated by dividing the claimed facility cost by the annual average cash flow as calculated in step d, above. And, in this example is $223,850 divided by $7,943.65 or 28.2.

Using this factor and a thirty year useful life, Table 1 of the Rules indicates that the return on investment for the facility is .50%.

The Reference Rate of Return

The Reference Rate of Return is the rate of return for a given facility's useful life that cannot be earned or exceeded and still qualify the facility for tax credit relief. The Reference Rate of Return that is used in the cost allocation formula is the rate for the year in which the facility is placed into operation (see Table 2 of the Rules). In this case the Reference Rate of Return (for 1992) is 6.8%.

i. Portion of actual costs properly allocable to pollution control.

This is calculated using the formula provided in the Rules. The formula is:

$$\frac{\text{RROI-ROI} \times 100}{\text{RROI}} = \text{Percent allocable.}$$ In this example $\frac{6.8 - .50 \times 100}{6.8} = 93\%$.

Therefore in this instance the eligible cost of the facility is $223,850 of which 93% would be allocable to pollution control due to the potential for the facility to produce a significant return on investment.

Notes

1. The price (inflation) deflator that is used to calculate the present value of future transaction costs associated with the sale of land is 5%. This represents the inflation rate, rounded to the nearest whole percent, for the past 30 years. Source: Chase Investment Performance Digest, 1994 Edition.

2 The transaction cost percentage associated with the sale of land that is used to calculate expenses related to the requirement to sell land in order to achieve a return on investment was determined by surveying a random selection of Oregon real estate firms involved in land transactions. The survey identified these costs to be in the range of 10-12 percent of the sales price.

3. The future value factor for a thirty year period for an asset that appreciates at the compound rate of return of 10% annually is approximately 17.4494; the factor for calculating the present value of an investment to be realized thirty years hence using a discount rate of 5% to account for the effects of inflation is approximately .2314.

Willamette Industries, Inc.
Executive Offices

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

August 28, 1995

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

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

Gentlemen:

Willamette Industries, Inc. seeks to amend its original extension request filed with the Department of Environmental Quality on December 27, 1994, which extended the due date for the Dallas Plywood Dry Waste System application through June 28, 1995. Willamette requests to amend this extension an additional 120 days until October 25, 1995, pursuant to OAR 340-16-020(1)(e), to complete the above-referenced Application for Final Certification of Pollution Control Facility for Tax Relief Purposes. Willamette sent in a request for an additional extension of time on June 28, 1995, but we were informed that a second extension could not technically be granted. We instead need to amend our original extension and request additional time to apply for certification, and that is what we are hereby doing with this letter.

Per our books and records, Willamette's Dallas Plywood Project #237 - Dry Waste System (NC 2822) was completed and placed in service on December 31, 1992. We then asked for and received an extension of time until June 28, 1995 to complete the application process. Since the completion of this project, Willamette has been trying to gather and document data which breaks down the project between components eligible for the pollution control credit and those not eligible. Of the approximately $500 thousand project, only a portion appears eligible for the credit. We have experienced difficulty in documenting the eligible portion of this project in a manner which will satisfy the Certified Public Accountants who certify to the eligible costs of the project. Our environmental engineering staff, who complete these applications, have also had tremendous time pressures placed upon them recently with work involving Title V Federal Air Permits, the EPA Section 114 Questionnaires, and measuring and maintaining compliance with the various DEQ requirements. Because of this difficulty and time constraints, we are unable to meet the original extended deadline for filing the DEQ's Application for Final Certification of June 28, 1995.

We therefore request to amend the original extension from 180 days to 300 days, an additional 120 days, until October 25, 1995, pursuant to OAR 340-16-020(1)(e), to complete and receive approval for the above-reference Application for Final Certification of Pollution Control Facility for Tax Relief Purposes. Please note that we filed the application on July 28, 1995, but we are requesting the additional 120 days in case the DEQ requests additional information regarding the application.

Cordially,

WILLAMETTE INDUSTRIES, INC.

Jim Aden
Assistant Tax Manager

Application No. TC-4265

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Johnson Controls, Inc.
Battery Group
5757 N. Green Bay Ave
Milwaukee, Wisconsin

The applicant owns a lead acid battery manufacturing facility in Canby.

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

2. Description of Facility

The claimed facility consists of 4.11 acres of land purchased to maintain a noise buffer between the manufacturing operations and residential properties.

Claimed Facility Cost: $223,850

Accountant's Certification was provided.

The Department proposes using 30 years as the useful life of the facility for the purposes of return on investment calculations. The applicant did not estimate a useful life.

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:

Purchase of the facility was substantially completed on October 19, 1992 and placed into operation on October 19, 1992. The application for final certification was received by the Department on August 17, 1994. The application was found to be complete on August 17,1994, within two years of substantial completion of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent noise pollution. This is in accordance with OAR Chapter 340, Division 35, rule 35. The emission reduction is accomplished by preventing the emission of noise in excess of prescribed levels as required by ORS 467.020.

The claimed facility is a 4.11 acre strip of land located between an existing residential development and the north side of the plant site. It is the determination of the Department the land is eligible for certification as a noise pollution control facility because it prevents an exceedance of the noise levels specified in Table 7 of OAR Chapter 340, Division 35 (Existing Industrial and Commercial Noise Source Standards). The Department considered the following in arriving at this conclusion: noise measurements conducted at the border of the purchased land adjacent to the applicants plant; the potential for residential development of the land if the applicant did not purchase it; documented noise violations with residential property adjacent to the east side of the applicants manufacturing operations.

Rule 35 of Division 35 requires that for noise sensitive property noise levels from existing commercial or industrial sources not exceed 50 dBA more than 50 percent of the time in an hour. Noise measurements on the south side of the purchased land ranged from 53 dBA to 57 dBA. If this lot were developed residentially this would have been considered a noise violation. Measurements on the north side of this lot, adjacent to residential property, range between 49 dBA and 50 dBA. Purchase of the lot maintained it's use as a noise buffer.

In September of 1991 the applicant was notified by the attorney representing the owners of the strip of land of their intent to file for a zone change which would allow the construction of multi family dwellings. The Planning Commission denied the application for zone change but the land owners did appeal the decision to the city council. The

applicant submitted a copy of the appeal to the city council to the Department and the arguments for the zone change have merit. The applicant decided that since the final outcome of the appeal process could result in a zone change they would purchase the land. This eliminated the possibility of future noise violations resulting from the land's status being changed to a noise sensitive property. It is the determination of the Department that the potential for residential development was real and outside the control of the applicant.

The applicant has a documented noise problem which serves as an example of the potential for noise exceedances if the north lot were developed residentially. The plant site is bordered by residential property on the east. On December 6, 1989 the applicant was issued a Notice of Noncompliance by the Department for exceedance of noise standards at the residential properties on the east side of the plant. Remediation of that violation required the applicant to install silencers on ventilation equipment and to modify a truck unloading area. Additional noise remediation would be required to alleviate noise levels on the purchased land if it had been developed residentially.

b. Eligible Cost Findings

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

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

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

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

The average annual cash flow is $7,943.65 which results from the estimated value of the land appreciation less operating costs. Dividing the average annual cash flow into the cost of the facility gives a return on investment factor of 28.2. Using Table 1 of OAR 340-16-30 for a useful life of 30 years gives an annual return on investment of .50%. As a result, the percent allocable is 93%.

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

If the land were developed residentially the applicant would have had to adopt remediation efforts. Such efforts could have consisted of silencers, sound barriers, process modifications, or relocation of equipment.

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

There is no savings from the facility. The estimated property tax and 30 year amortized transaction costs for the facility is $8,461.53 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 pollution.

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 principal purpose of the facility is to prevent noise pollution.

The actual cost of the facility properly allocable to pollution control as determined by using this factor or these factors is 93%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal sole purpose of the facility is to comply with a requirement imposed by the Department to prevent noise pollution.

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

d. The portion of the facility cost that is properly allocable to pollution control is 93%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $223,850 with 93% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4265.

BKF:AQ

September 7, 1995

Application No. TC-4267

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Johnson Controls Battery Group, Inc.
5757 N. Green Bay Avenue
Milwaukee, WI 53209

The applicant owns and operates a lead-acid battery manufacturing plant in Canby, Oregon. They process lead alloy ingots, sulfuric acid, lead oxide, polypropylene, and other materials to produce automotive batteries.

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

2. Description of Facility

The claimed facility controls the emission of lead-oxide dust to the atmosphere. The facility consists of two Micropole baghouses, an Auburn International particle sensor, and support equipment. A portion of the eligible claimed facility cost is noise control related for support equipment of a Cycloblower Power Unit.

Claimed Facility Cost:	$411,626

A distinct portion of the claimed facility does not have a principal purpose of air pollution control. The applicant claimed the replacement cost of two lead oxide storage tanks, weigh hoppers, conveyance equipment used to deliver lead oxide dust to the production process, and support equipment. The ineligible costs related to this equipment amounted to $341,776.61.

Eligible Costs:

Micropole baghouses:	$41,803.94
Cycloblower Power Unit support equipment:	$28,045.45
Adjusted Facility Cost:	$69,849.39

Accountant's certification was provided.

The applicant indicated that the useful life of the facility is 20 years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Erection of the facility was substantially completed on June 15, 1994 and the facility was placed into operation on June 15, 1994. The application for final certification was received by the Department on August 17, 1994. The application was considered to be complete on July 11, 1995, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter 340, Division 25, Rule 650. The Air Contaminant Discharge Permit for this source, 03-2634, requires the permittee to meet the Federal Standards of Performance for Lead-Acid battery Manufacturing Plants in accordance with the Code of Federal Regulations, Title 40, Part 60, Subpart KK. This is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility prevents lead oxide dust emission to the atmosphere from storage tanks used in the production system. The facility consists of two high efficiency baghouses, a particle sensor and support equipment. The baghouses replaced canvas filters which filtered the lead oxide storage tank exhaust air flow. The exhaust air stream from the lead oxide storage tanks vent to a baghouse, which is shared with other plant processes, prior to entering the atmosphere. Lead oxide dust is pneumatically conveyed to the two storage tanks from trucks. The contents of the storage tanks are then blown to weigh hoppers which measure quantities of the lead oxide to produce paste for the battery production process. The exhaust stream from the weigh hoppers returns to the storage tanks.

The combination of the canvas filters and the shared baghouse were not sufficient to meet the emission limit of 0.00044 gr/dscf required by Federal Code. The new filters are fine pored enough to capture small particulate such as lead oxide dust. The two baghouses utilize a micropulse air system that automatically cleans the filters to prevent clogging. The lead oxide dust collected in the filters settles back into the storage tank. The filters are composed of durable, high efficiency particulate air (HEPA) filter material that prevents leaking. The exhaust air from the filters passes through a particle sensor which can detect particulate. This insures the filter material will get replaced immediately if a leak occurs. The exhaust air then passes through ducting to the shared baghouse.

The applicant claimed costs for process equipment installed concurrently with the HEPA filter system. The applicant indicated that this production equipment replaced pre-existing production equipment. This application was submitted as an application for certification of an air pollution control facility for the control of lead oxide dust emissions. During a review of the expenditures related to the facility it became apparent a significant portion of the costs were unrelated to the filter system. The applicant indicated that relocation of the lead storage tanks and weigh hopper were related to noise control efforts and to improvement of indoor air contamination problems.

The applicant has documented a noise problem existed in the past and remediation efforts were undertaken to lower ambient sound levels upon noise sensitive properties. The applicant submitted application TC-4268 for noise abatement equipment. The Department recommended approval of that application. Included in the claimed facility costs for this application, TC-4267, are costs for support equipment related to a model 7CDL11 Cycloblower Power Unit with a 75 HP motor drive. This blower system is used to unload lead oxide from trucks to the lead oxide storage tanks and was claimed in application TC-4268. The Cycloblower Power Unit eliminated the need for the trucks to use their blowers. The original unloading process was located adjacent to noise sensitive property and generated excessive noise when unloading the lead oxide. The support equipment which has been demonstrated to be directly related to the installation of the Cycloblower Power Unit is a portion of a power station, labor and materials for installing the Cycloblower Power Unit, noise insulation, and a rain cover for the control panel of the Cycloblower Power Unit. These costs have been confirmed to not have been claimed in application TC-4268.

The applicant has not demonstrated how the original process equipment, which was located indoors, was related to noise violations at nearby noise sensitive properties. The applicant has also not addressed what portion of these costs should be allocated to improving indoor air quality. In light of these unresolved questions the applicant has chosen to withdraw at this time claimed facility costs which are unrelated to the control of atmospheric pollution or to the Cyclowblower Power Unit. The Department recognizes the applicant may submit a noise pollution control application at such time as the applicant is able to clearly demonstrate all, or a portion of, the process equipment was installed as result of complying with a requirement by the Department to reduce the noise levels on adjacent residential properties.

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 lead oxide dust that is captured by the filters is returned to the storage tanks for use in the manufacturing process.

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

The annual operating expenses exceed income from the facility, so there is no return on investment.

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

Baghouses utilizing HEPA filter medium are recognized as an appropriate method for controlling lead oxide emissions to the atmosphere from battery paste manufacturing processes.

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

The annual operating cost of the facility is $13,744 for electricity use and maintenance.

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

Other than the adjustment to the claimed facility cost referenced in Section 2, the cost allocation review of this application has identified no issues to be resolved and confirms the cost allocation as submitted in the application. The principal purpose of the facility is to prevent a substantial quantity of air pollution

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.

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

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $69,849 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4267.

Tonia C. Garbowsky : PRC Environmental Management, Inc. / July 13, 1995
BKF:AQ

Application No. TC-4328

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Owens-Corning Fiberglas Corporation
Trumbull Asphalt Division
Fiberglas Tower - T/2
Toledo, Ohio 43659

The applicant owns and operates an asphalt manufacturing facility in Portland, Oregon.

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

2. Description of Facility

The claimed facility consists of a fume afterburner for the incineration of the light hydrocarbons (VOC) and combustible particulates that are generated during the production of asphalt.

Claimed Facility Cost: $363,815

A distinct portion of the claimed facility makes an insignificant contribution to the principal purpose of pollution control. The applicant claimed $35,753 for ducting that is related to their production process. Also, the applicant included $88,272 of claimed facility costs that could not be verified. The applicant agreed to reduce the claimed facility cost by a total of $124,025.

Ineligible Costs: $124,025

Adjusted Facility Cost: $239,790

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is 7 years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed during March of 1993 and placed into operation during June of 1993. The application for final certification was received by the Department on November 28, 1994. The application was found to be complete on June 5, 1995, within two years of the substantial completion and operation of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with Code of Federal Regulations Subpart UU. The Air Contaminant Discharge Permit for this source, 26-3067, items 3 and 10 require the permittee to not exceed 710 ppm particulate at the discharge of the converter at any point in time or 6.4 tons per year and the annual VOC emission cannot exceed 0.3 tons. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility controls the particulate and VOC emissions generated from the process of asphalt oxidation which removes the light hydrocarbons from the asphalt flux. The fumes are directed into a Nueces Fabricating Fume Afterburner, Model 6000-2400, Serial Number 9038. The unit has a 6000 standard cubic foot per minute fume capacity. It is fired with natural gas and has a combustion chamber temperature of 1400° F. A source test was conducted to confirm that fact that the permit conditions have been met.

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 useable commodity.

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

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

Fume afterburners are a technically recognized as an appropriate method for controlling the emissions from asphalt blowing plants to the atmosphere.

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

There is no savings from the facility. The annual cost of operating the facility is $310,000 which is for natural gas.

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

The adjusted eligible facility cost has been determined to be $239,272. A total of $124,025 was not eligible because it did not directly reduce pollution or the applicant could not verify the costs reduced pollution. See Section 2 for additional details.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the

principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.

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

d. The portion of the facility cost that is properly allocated 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 $239,790 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4328.

Dennis E. Cartier
SJO Consulting Engineers, Inc.

August 9, 1995

Application No. TC-4333

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Z West, Inc.
16800 SW Shaw
Aloha, OR 97007

The applicant owns and operates an automobile repair shop in Aloha, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 7 years.

Claimed Facility Cost: $1,995
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on June 20, 1994. The facility was placed into operation on June 20, 1994. The application for final certification was submitted to the Department on December 12, 1994. The application was found to be complete on July 14, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air

pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the income to applicant from the sale of recycled coolant at $8.00/pound. The applicant estimated an annual coolant recovery rate of 6 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine

o Machine maintenance costs

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal

purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.

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 $1,995 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4333.

Dennis E. Cartier
SJO Consulting Engineers

July 14, 1995

Application No. TC-4336

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamette Industries, Inc.
KorPine Division
1300 S.W. Fifth Ave 3800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a particleboard manufacturing plant in Bend, Oregon.

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

2. Description of Facility

The pollution control device is an Elgin Crosswind recirculating air parking lot sweeper. The unit was purchased to reduce the amount of fugitive particulate emissions leaving the site.

Claimed Facility Cost: $120,951

The claimed facility replaced a facility for which a pollution control facility certificate has previously been issued. On November 16, 1979 the Comission issued Certificate No. 1013 to the applicant. The cost of the facility is greater than the like-for-like replacement cost of the original facility. The like-for-like cost has been determined to be $70,000.

Ineligible Costs: $70,000

Adjusted Facility Cost: $50,951

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is 5 years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Purchase of the facility was substantially completed on October 14, 1992, and placed into operation on December 31, 1992. The application for final certification was received by the Department on December 23, 1994, within two years of substantial completion of the facility. The application was found to be complete on June 5, 1995.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Oregon Department of Environmental Quality to reduce air pollution. This is in accordance with OAR Chapter 340, Division 21, Rule 060 (2)(g). This states that the prompt removal of particulate material from paved roadways that can become airborne must be accomplished. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

A letter to Willamette Industries dated September 25, 1989, from John Hector, DEQ Regional Manager, refers specifically to complaints from particulate fallout. The letter also requires Willamette Industries to initiate better controls of plant-site fugitives plant-wide. An inspection made on May 13, 1991 noted that additional attention was needed to reduce the accumulation of sanderdust on the paved surfaces.

The site contains approximately 12 acres of paving. Even though the dumping and storage of wood chips takes place inside two buildings, the pneumatic conveying of wood chips, the sanding and trimming of finished product creates fugitive wood particulate that ends up on the outside paved surfaces. Since the site is located close to a residential area fugitive particulate emissions leaving the site must kept to a minimum. The Crosswind Series GE sweeper was purchased to replace an old TerraVac sweeper. Approximately 20 cubic yards of debris are swept from the paved area every month.

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 collected debris is sent to a landfill.

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

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

The sweeper claimed in this application is more effective at removing accumulated particulate than the previous sweeper.

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

There is no savings from the facility. The cost of maintaining and operating the facility is $7,200 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 pollution.

Other than the adjustment to the claimed facility cost referenced in Section 2, the cost allocation review of this application has identified no issues to be resolved and confirms the cost allocation as submitted in the application. The principal purpose of the facility is to prevent a substantial quantity of air pollution.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.

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

d. The portion of the facility cost that is properly allocated 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 $50,951 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4336.

Dennis E. Cartier
SJO Consulting Engineers, Inc.

July 17, 1995

Application No. TC-4344

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

The Heating Specialist, Inc.
9300 NE Halsey
Portland, OR 97220

The applicant owns and operates a install and service heating, air conditioning and ventilation equipment in Portland, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

Facility is a machine which removes and cleans air conditioner or commercial refrigerant coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $1,395
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on December 15, 1994. The facility was placed into operation on December 15, 1994. The application for final certification was submitted to the Department on January 6, 1995, within two years of substantial completion of the facility. The application was found to be complete on July 14, 1995.

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 Environmental Protection Agency to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with Section 608 of the

1990 Clean Air Act Amendments. Section 608 prohibits the venting of a Class I or Class II ozone depleting substance in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration.

The EPA has specified standards equipment manufactured before January 1, 1993 would have to meet to be grandfathered under the EPA's planned regulations. The standards require the equipment be capable of achieving a vacuum able to sustain either four or twenty-five inches of Mercury. High pressure equipment will need to sustain a four inch vacuum. Low pressure equipment will need to sustain a twenty-five inch vacuum. The claimed facility meets these standards.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent refrigerant to the environment, thereby meeting EPA regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the income to applicant from the sale of recycled coolant at $2.00/pound. The applicant estimated an annual coolant recovery rate of 400 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs

Based on these considerations, the estimated return on investment was found to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and/or reuse coolant. The applicant may use the recycled coolant in customer equipment. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to an industrial coolant purification center. In this case the savings to the applicant are tied to the sales price of recovered coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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.

A distinct portion of this air conditioning and refrigerant coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. Recharge capabilities in coolant recovery and recycling equipment is not required by state or federal law. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution

control. The Department estimates the additional expense incurred is $700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 50%.

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 EPA to reduce air pollution.

c. The facility complies with Department standards and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 50%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,395 with 50% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4344.

Dennis E. Cartier
SJO Consulting Engineers

July 14, 1995

Application No.- 4349

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Sibert Auto Body
13842 SE Powell
Portland, OR 97236

The applicant owns and operates an automobile repair and body shop in Portland, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $1,995
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on August 10,1994. The facility was placed into operation on August 25, 1994. The application for final certification was submitted to the Department on January 26, 1995. The application was found to be complete on July 13, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to

comply with a requirement imposed by the Department, to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the income to applicant from the sale of recycled coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 30 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine

- Additional labor to operate machine
- Machine maintenance costs

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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.

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. Recharge capabilities in coolant recovery and recycling equipment is not required by state or federal law. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution control. The Department estimates the additional expense incurred is $700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 65%.

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air pollution.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 65%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,995 with 65% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4349.

Dennis E. Cartier
SJO Consulting Engineers

July 13, 1995

Application No. TC-4350

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamette Industries, Inc.
KorPine Division
1300 S.W. Fifth Ave 3800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a particleboard manufacturing plant in Bend, Oregon.

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

2. Description of Facility

The claimed facility consists of two Carter Day baghouses that control the emissions from two sanderdust surge bins.

Claimed Facility Cost: $19,812

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is 10 years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed on September 15, 1992 and placed into operation on April 15, 1993. The application for final certification was received by the Department on January 31, 1995, within two years of substantial completion of the facility. The application was found to be complete on July 17, 1995.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter 340, Division 21, Rule 030. The Air Contaminant Discharge Permit for this source, number 09-0002, requires the permittee to control particulate matter. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility consists of two identical systems to control the particulate emissions from the sanderdust from the surge bin. Sanderdust that is generated by the process is used as fuel for Boiler #2. At times more sanderdust is generated than the boiler can use. The sanderdust surge bins were installed to collected and store the excess sanderdust. The claimed facility controls the particulate emissions from the storage bins that discharge to atmosphere. Production Line 1 and Production Line 2 each have one of these systems. The baghouse is a Carter Day Model 16 PJD8 with a rotary airlock discharge valve. Each baghouse has a 4.5:1 air to cloth ratio and operates at 1375 CFM.

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.

All of the waste sanderdust that is collected is reused back in the manufacture of the particleboard. The amount of sanderdust collected is less than one ton per year with a value of $50.

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

The operating expenses of the facility exceed the income, so there is no return on the investment.

3) The alternative methods, equipment and costs for achieving the same

pollution control objective.

Baghouses are technically recognized as an appropriate method for controlling particulate emissions to the atmosphere.

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

There is no savings from the facility. The cost of maintaining and operating the facility is $1,237 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 pollution.

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 principal purpose of the facility is to control a substantial quantity of air pollution.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.

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

d. The portion of the facility cost that is properly allocated 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 $19,812 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4350.

Dennis E. Cartier
SJO Consulting Engineers, Inc.

July 17, 1995

Application No. TC-4380

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Doug Cousins Auto Repair
9255 Gaston St.
Sheridan, OR 97378

The applicant owns and operates an automotive repair shop in Sheridan, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 10 years.

Claimed Facility Cost: $2500
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on February, 1994. The facility was placed into operation on February, 1994. The application for final certification was submitted to the Department on April 4, 1995. The application was found to be complete on July 14, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the income to applicant from the sale of recycled coolant at $5.80/pound. The applicant estimated an annual coolant recovery rate of 30 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.

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 $2,500 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4380.

Dennis E. Cartier
SJO Consulting Engineers

July 14, 1995

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Ernst Hardware, d.b.a. Cascade Tractor Co.
495 N. Highway 99
McMinnville, OR 97128

The applicant owns and operates a farm equipment sales and service business in McMinnville, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $2,245
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on September 1, 1994. The facility was placed into operation on September 1, 1994. The application for final certification was submitted to the Department on April 24, 1995. The application was found to be complete on July 13, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to

comply with a requirement imposed by the Department, to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the income to applicant from the sale of recycled coolant at $10.83/pound. The applicant estimated an annual coolant recovery rate of 75 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine

- Additional labor to operate machine
- Machine maintenance costs

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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.

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. Recharge capabilities in coolant recovery and recycling equipment is not required by state or federal law. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution control. The Department estimates the additional expense incurred is $700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 69%.

5. Summation

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

   b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air pollution.

   c. The facility complies with DEQ statutes and rules.

   d. The portion of the facility cost that is properly allocable to pollution control is 69%.

6. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $2,245 with 69% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4385.

Dennis E. Cartier
SJO Consulting Engineers

July 13, 1995

Application No. TC-4400

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Columbia Steel Casting Company, Inc.
10425 North Bloss Avenue
Portland, OR 97283-0095

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

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

2. Description of Facility

The claimed facility controls the emission of bentonite clay dust from the steel casting process. The facility consists of a backward inclined, airfoil blade Chicago blower fan, a baghouse, and support equipment.

Claimed Facility Cost: $96,873.00

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is seven years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed on July 15, 1994 and placed into operation on September 15, 1994. The application for final certification was received by the Department on May 11, 1995. The application was found to be complete on July 26, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter 340, Division 21, Rule 015 through 030. The Air Contaminant Discharge Permit for this source, 26-1869, requires the permittee to control the emission of particulate to the atmosphere. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility consists of a backward inclined, airfoil blade Chicago Blower Corporation fan, a Fabric Filters Air Systems, Inc., Model 289-8 baghouse, a foundation, and support equipment. The claimed facility reduces emissions to the atmosphere of particulate generated by the steel casting process. Molten steel is formed into a shape by being molded around a bentonite clay binder. The high temperature casting causes the binder to disintegrate into a dust which is collected by the applicants dust control system. Prior to installation of the claimed facility, dust from the casting process was directed by an exhaust fan through single a baghouse.

Exhaust from the applicants dust control system is now separated into two air streams. One air stream vents to the original baghouse and the other vents to the Fabric Filters baghouse. The additional baghouse increases the capture efficiency of the applicants emission control system by avoiding overloading the original baghouse. The Chicago Blower is a more powerful fan necessary to pull air through both baghouses. A minimal amount of new ducting was installed since the dust collection system was already in place. As the exhaust stream passes through the baghouses the bentonite dust collects on the surface of the bagfilters. Dust recovered from the baghouses is mixed with water in an old cement mixer to form pellets and is disposed of on-site.

The applicant performs periodic spot checks of the amount of dust being removed from the system. Prior to installation of the new fan and baghouse the applicants reports approximately 2 tons of dust per day was collected by the air pollution control system. After installation approximately 4 tons of dust per day is being collected.

b. Eligible Cost Findings

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

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

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

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

The annual operating expenses exceed income from the facility, so there is no return on investment.

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

Baghouse control systems are technically recognized as an acceptable method for controlling the emissions of particulate from a steel foundry.

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

The increase in annual operating cost of the facility is $26,781 per year from the increased electricity use, materials, and maintenance labor.

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to reduction of pollution. The principal purpose of the facility is to prevent a substantial quantity of air pollution.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal

purpose of the facility is to comply with a requirement imposed by Department to control air pollution.

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

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $96,873.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4400.

Tonia C. Garbowsky : PRC Environmental Management, Inc.
July 25, 1995

Application No.T-4402

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric
Boardman Coal Plant
121 SW Salmon Street
Portland, Oregon 97204

The applicant owns and operates a coal fired power plant near Boardman, Oregon.

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

2. Description of Facility

In this project the Company has replaced their gaseous chlorine system with a sodium hypochlorite system. Sodium hypochlorite is a liquid form of chlorine which is not as hazardous to handle as is gaseous chlorine. The facility consists of pumps, piping and an electronic control system.

Claimed Facility Cost:	$78,319.50
Ineligible costs:	$ 103.00
Eligible Facility Costs:	$78,216.50

The accountant's Certification was provided by Arthur Anderson LLP.

3. Procedural Requirements

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

The facility met the statutory deadline in that construction of the facility was substantially completed on June 30, 1993, and the application for certification was found to be complete on June 5, 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 Department to prevent water

pollution. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

The facility operates under Water Pollution Control Facilities (WPCF) Permit #100189 which prohibits direct or indirect discharge of wastewater to state waters.

Portland General Electric (PGE) operates a cooling water recirculation reservoir for dissipation of waste heat from the boiler without discharging to public waters. In order to be able to recirculate the cooling water from the reservoir, the company needs to treat the algae and slime in the recirculation water. The treatment method used is the addition of chlorine.

Based on a review of the Department files, the facility is in compliance with the requirements of the WPCF 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.

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

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

There is no cost savings as a result of this facility. The operating cost is estimated at $3,700 annually.

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

The alternative to the use of sodium hypochlorite is the use of gaseous chlorine. This alternative was found to be unacceptable because of the hazards associated with the handling and storage of the gaseous chlorine.

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

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

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

In addition to the direct costs to complete the pollution control facility project, the applicant claims indirect costs associated with PGE employee labor, material storage expenses and construction overhead in addition to expenses for capitalized property taxes and PGE employee business expenses. Although reasonable, substantiable indirect costs are allowed to be claimed under the statutes and rules that govern the Pollution Control Facilities Tax Credit Program, the Department recommends disallowing material "loading" expenses because they are in the nature of start-up costs, having been incurred, in general, prior to and not necessarily in anticipation of the construction of the pollution control facility. The amount claimed for material storage related indirect costs for this application is $103.00, which has been deducted from the eligible costs of this application.

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent water pollution.

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

d. The portion of the eligible 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 $ 78,217 with 100% allocated to pollution control, be

issued for the facility claimed in Tax Credit Application No. T-4402.

John R. Straughan:
TC 4402/WQ
(503) 278-4608
June 13, 1995

WQTCSR-1/95

Application No.T-4404

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric
Boardman Coal Plant
121 SW Salmon Street
Portland, Oregon 97204

The applicant owns and operates a coal fired power plant near Boardman, Oregon.

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

2. Description of Facility

Portland General Electric (PGE) constructed a new mobile equipment washdown/oil spill collection system at the vehicle maintenance facility. Additionally, they installed a new liner in the existing basin used to collect the washdown/oil spill wastewater. The new collection system and the liner reduces the potential for groundwater contamination.

Claimed Facility Cost:	$62,699.00
Ineligible Costs:	$ 84.00
Eligible Facility Costs:	$62,615.00

The accountant's Certification was provided by Arthur Anderson LLP.

3. Procedural Requirements

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

The facility met the statutory deadline in that construction of the facility was substantially completed on January 15, 1995, and the application for certification was found to be complete on June 12, 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 Department, to prevent and reduce water pollution. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

The facility operates under Water Pollution Control Facilities (WPCF) Permit #100189 which prohibits direct or indirect discharge of wastewater to state waters.

Wastewater from the vehicle maintenance facility is collected and drained into an evaporation pond. The evaporation pond is relined with 45 mil reinforced polypropylene sheet. Wastewater is disposed of by evaporation. Based on a review of the Department files, the facility is in compliance with the requirements of the WPCF 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.

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

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

There is no revenue generated from this facility and therefore, no return on investment.

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

PGE considered two other options for disposal of the wastewater. The first option was to collect the wastewater is an existing underground storage tank. This option was not chosen because the integrity of the tank was suspect and PGE desires to keep the number of underground tanks at this site to a minimum. The second option was to dispose of the wastewater in the existing large lined evaporative lagoon on site. This

option was determined to be less economical because the piping costs were higher than the option used.

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

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

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

In addition to the direct costs to complete the pollution control facility project, the applicant claims indirect costs associated with PGE employee labor, material storage expenses and construction overhead costs. Although reasonable, substantiable indirect costs are allowed to be claimed under the statutes and rules that govern the Pollution Control Facilities Tax Credit Program, the Department recommends disallowing material "loading" costs because they are in the nature of start-up costs, having been incurred, in general, prior to and not necessarily in anticipation of the construction of the pollution control facility. The amount claimed for material storage related indirect costs for this application is $84.00, which has been deducted from the eligible costs of this application.

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent and control water pollution.

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

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $62,615 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4404.

John R. Straughan:
TC 4404/WQ
(503) 278-4608
June 13, 1995

WQTCSR-1/95

Application No.T-4425

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
Tabor East Substation
121 SW Salmon Street 1-WTC-04-02
Portland OR 97204

The applicant owns and operates an electrical substation in Portland, Oregon.

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

2. Description of Facility

Claimed facility consists of a membrane liner buried 18 inches and extends above the yard grade eight to ten inches. The membrane liner is attached to the existing fence. The driveway areas are fitted with impermeable membrane liners which are bermed with compacted crushed rock.

Claimed Facility Cost: $23,416.
Accountant's Certification was provided.

3. Procedural Requirements

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

The facility met statutory deadlines in that installation of the facility was substantially completed on November 15, 1994, and the application for certification was found to be complete on May 25, 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 federal Environmental Protection Agency to prevent water pollution. The requirement is to comply with Title 40 Code of Federal Regulations, Part 112, Oil Pollution Prevention.

A liner system was installed which prevents the passage

of oil beyond the fenced area of the substation in the event of an oil spill. The liner system design allows adequate time for a cleanup crew to be dispatched to the site before oil enters the City of Portland's storm drain.

This facility does not have any permits issued by DEQ. The claimed facility is required by EPA. There have been no spills at this site. There is no record of past noncompliance.

b. Eligible Cost Findings

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

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

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

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

   There is no return on investment.

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

   Three other alternatives were considered. They were (a) using transformer/oil circuit breaker pits at a cost of $42,000 to $56,000 plus operational costs; (b) using an oil stop valve, piping, and a storage container at a cost of $28,000 to $42,000, and (c) using a sand berm with liner at a cost of $28,000. All three alternatives were rejected due to cost and operational maintenance considerations.

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

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

5) Any other factors which are relevant in

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with Title 40 Code of Federal Regulations, Part 112, Oil Pollution Prevention.

c. The facility complies with federal Environmental Protection Agency regulations.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $23,416 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4425.

Elliot J. Zais
(503) 229-5292
9/11/95

WQTCSR-1/95

Application No.T-4426

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
Town Center Substation
121 SW Salmon Street, 1WTC-0402
Portland, OR 97204-2901

The applicant owns and operates a hydroelectric project in Clackamas County, Oregon.

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

2. Description of Facility

The facility is a fueling station for mobile equipment consisting of one double walled aboveground storage tank with a 6-inch concrete liner, overfill sump and alarm, valves, vents and support equipment.

Claimed Facility Cost: $34,005.69
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadline in that construction and installation of the facility was substantially completed on November 15, 1993, and the application for certification was found to be complete on May 25, 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 federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with Title 40 Code of Federal Regulations, Part 112, Oil Pollution Prevention.

This site does not have any permits issued by DEQ. A tank decommissioning notice was issued by the DEQ UST Compliance Section on 2 June 1993. The claimed facility is required by EPA. There is no record of past noncompliance.

b. Eligible Cost Findings

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

1) The extent to which the facility is used to recover and convert waste products into a 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 return on investment.

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

PGE considered upgrading the existing tanks as an alternative to replacement with an aboveground tank, the cost to upgrade exceeded the replacement option by more than 40%.

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

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

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution.

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 $34,006 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4426.

Elliot J. Zais:EJZ
T-4426
(503) 229-5292
WQTCSR-1/95

Application No. TC-4429

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
Boardman Coal-Fired Plant (PGE Job 16011)
121 SW Salmon St., 1WTC-0402
Portland, OR 97204-2901

The applicant owns and operates Carty Reservoir Power site, an electricity producing facility at Boardman, OR.

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

2. Description of Claimed Facility

The claimed pollution control facility described in this application is an oil mist eliminator used to catch oil mist generated during the operation of a turbine/generator lube oil system.

Claimed facility cost $77,083
(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 was substantially completed on October 10, 1994 and placed into operation on October 10, 1994. The application for certification was submitted to the Department on May 25, 1995, and was considered to be complete and filed on August 18, 1995, within two years of the completion date of the project.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent the pollution of soil and water. This is accomplished by preventing releases into soil and water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility had no effective system to prevent oil mist from washing into the soil and polluting the groundwater.

To solve this problem, the applicant installed an oil mist eliminator.

The Department concludes that the costs claimed by the applicant ($77,083) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered the method chosen to be the most cost effective. The method chosen is acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table:

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Oil mist eliminator equipment and parts	$20,856	100%	$20,856
Installation costs	56,227	100	56,227
Total	$77,083	100%	$77,083

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent the pollution of soil and water. This is accomplished by preventing releases into soil and water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $77,083 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4429.

Barbara J. Anderson
(503) 229-5870
August 18, 1995

Application No. TC-4431

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Pacific Petroleum Corp.
P O Box 2803
Eugene, OR 97402

The applicant owns and operates a retail gas station at 1690 West 18th Ave., Eugene, OR, Facility No. 3299.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are three doublewall fiberglass/steel tanks and doublewall fiberglass piping, spill containment basins, tank gauge system with overfill alarm, line/turbine leak detectors and Stage II vapor recovery equipment.

Claimed facility cost $172,316
(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 was substantially completed on April 2, 1995 and placed into operation on April 3, 1995. The application for certification was submitted to the Department on June 6, 1995, and was considered to be complete and filed on August 10, 1995, within two years of the completion date of the project.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases into soil, water or air. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of four epoxy lined steel tanks, piping with no corrosion protection, spill and overfill prevention but no leak detection equipment. The tank system and related equipment had to be replaced because the epoxy lined tanks failed to prevent leakage.

To respond to Underground Storage Tank requirements under OAR 340-Division 150, the applicant installed:

1) For corrosion protection - Doublewall fiberglass/steel tanks and doublewall fiberglass piping.

2) For spill and overfill prevention - Spill containment basins and an overfill alarm.

3) For leak detection - Tank gauge system and line/turbine leak detectors.

In addtion, the following equipment was installed to reduce air quality emissions:

1) For VOC reduction - Stage II vapor recovery equipment.

Based on information currently available, the applicant is in compliance with DEQ regulations in that these tanks are permitted and fee payments are current.

The Department concludes that the costs claimed by the applicant ($172,316) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant did not indicate that alternatives were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table:

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection:			
Fiberglass/steel tanks and fiberglass piping	$41,925	54% (1)	$22,640
Spill & Overfill Prevention:			
Spill containment basins	659	100	659
Leak Detection:			
Tank gauge system w/alarm	11,830	90 (2)	10,647
Line/turb. leak detectors	1,847	100	1,847
VOC Reduction:			
Stage II vapor recovery (incl. 12 hoses and nozzles on 2 dispensers)	3,600	100	3,600
Labor and materials	112,455	100	112,455
Total	$172,316	88%	$151,848

(1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is $41,925 and the bare steel system is $19,150, the resulting portion of the eligible tank and piping cost allocable to pollution control is 54%.

(2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 88%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $172,316 with 88% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4431.

Barbara J. Anderson
(503) 229-5870
August 10, 1995

Application No.T-4438

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
Sellwood Substation
121 SW Salmon Street, 1WTC-0402
Portland, OR 97204-2901

The applicant owns and operates an electrical substation in Portland, Oregon.

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

2. Description of Facility

The facility consists of a transformer oil resistant high density polyethylene (HDPE) impermeable membrane liner and rock berms.

Claimed Facility Cost: $21,284
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadline in that construction and installation of the facility was substantially completed on October 25, 1994, and the application for certification was found to be complete on June 14, 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 federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with Title 40 Code of Federal Regulations, Part 112, Oil Pollution Prevention.

The facility is an impermeable membrane liner/barricade which retards the passage of oil from the yard in the event of an oil spill. This system allows adequate time for a cleanup crew to be dispatched to the site

before oil can enter the City of Portland's storm drain.

This facility does not have any permit issued by DEQ.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment.

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

PGE considered the following three alternatives:

(a) Transformer/oil circuit breaker pits at a cost of $30,000 to $40,000 plus operational costs plus 43% loading.

(b) Sand berm with liner at $25,000 plus 43% loading.

(c) Oil stop valve, piping, and storage container at $24,000 to $30,000 plus 43% loading.

Alternatives were rejected due to capital cost and operational maintenance cost.

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

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

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

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution.

c. The facility complies with the federal Environmental Protection Agency regulations.

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 $21,284 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4438.

Elliot J. Zais:
(503) 229-5292
9/11/95

WQTCSR-1/95

Application No.T-4440

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
Harrison Substation
121 SW Salmon Street, 1WTC-0402
Portland, OR 97204-2901

The applicant owns and operates an electrical substation in Portland, Oregon.

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

2. Description of Facility

The facility is a 6,000 gallon oil/water separator (OWS), catch basin and associated piping system.

Claimed Facility Cost: $47,029
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadline in that construction and installation of the facility was substantially completed on February 1, 1995, and the application for certification was found to be complete on June 14, 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 federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with Title 40 Code of Federal Regulations, Part 112, Oil Pollution Prevention.

In the event of an oil spill, the oil will be diverted to the catch basin which discharges into the oil/water separator. The oil will be contained by the OWS vault which allows time for the cleanup crew to be dispatched to the area.

This facility does not have any permits issued by DEQ.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment.

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

PGE considered the following two alternatives:

(a) Transformer/oil circuit breaker pits at a cost of $52,000 to $77,000 plus operational costs.

(b) Oil stop valve, piping, and storage container at $48,000 to $56,000.

Alternatives were rejected due to cost and operational maintenance costs.

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

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

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

There are no other factors to consider in establishing the actual cost of the facility

properly allocable to prevention, control or reduction of pollution.

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution.

c. The facility complies with the federal Environmental Protection Agency regulations.

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 $47,029 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4440.

Elliot J. Zais:
(503) 229-5292
9/11/95

WQTCSR-1/95

Application No.T-4448

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Stimson Lumber Company
Forestex Company
PO Box 68
Forest Grove OR 97116-0068

The applicant owns and operates a sawmill and hardboard manufacturing facility in Forest Grove, Oregon.

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

2. Description of Facility

The facility is a 250 gallon per minute wastewater treatment plant. The major components of the facility are:

a. 12' x 12' polymer storage and pump building
b. Milton Roy polymer pump
c. Stranco flocculant mixing pump
d. 8' x 60' concrete mixing chamber
e. 3-acre settling pond
f. Concrete overflow weir
g. 250' concrete spillway
h. 12,000 gallon holding tank
i. 30 Hp pump with vfd drive
j. Kinney rotating screen strainer

Claimed Facility Cost: $100,009
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadlines in that installation of the facility was substantially completed on November 1, 1994 and the application for certification was found to be complete on June 22, 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 and reduce a substantial quantity of water pollution. This prevention and reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Water from the log pond is injected with a blend of polymer and flocculent using two pumps. The water is then mixed and the solids are allowed to settle out in a settling pond. The clean water from the top of the pond is transferred to a pumping station through a spillway between the settling pond and the log pond overflow pond. The water is then pumped through a strainer and then to the fresh water pond for process, boiler, and fire system use.

Two Notices of Noncompliance have been issued since 1992. The first was issued in February 1993 for having a low dilution ratio, 49 to 1, instead of the required 50 to 1. The second was issued in August 1993 for an accidental discharge of 40 to 80 gallons into Scoggins Creek in a month during which no discharge was allowed. However, the violations were corrected immediately.

The claimed facility was constructed not because of the above violations but principally for the purpose of reusing treated water for process water, boiler and fire system use. The claimed facility will reduce the need to discharge water during the allowable discharge months and will enable Forestex to reuse wastewater rather than hold it during months when discharge is not allowed.

The facility was inspected in November 1994 and was in compliance.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment.

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

There are no known alternatives.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $20,000 annually.

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

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

The actual cost of the facility properly allocable to pollution control 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 and reduce a substantial quantity of water pollution. This prevention and reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

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

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $100,009 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4448.

Elliot J. Zais
(503) 229-5292
9/7/95
WQTCSR-1/95

Application No. T-4479

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. **Applicant**

Sabroso Company
690 South Grape Street
Medford, Oregon 97501

The applicant owns and operates a regional manufacturing facility employing some 250 persons to process fresh fruits into juices and purees marketed worldwide.

2. **Description of Facility**

The facility is a trailer used to contain fruit pulp waste from the puree and juice process. The trailer is used as a storage and transport unit. This particular trailer is used to transport the waste, because all liquids can be contained and not released into the environment.

An independent accountant's certification of costs was provided.

Total cost claimed is $31,503.00.

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 April 27,1994.

b. The facility was placed into operation on May 16,1994.

c. The application for tax credit was filed with the Department on July 20, 1995 within two years of substantial completion of the facility.

4. **Evaluation of Application**

a. The principal purpose of the facility is to collect and transport solid waste from the site of generation to a DEQ permitted drying site.

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 Applicant has claimed a facility cost of $31,503.00. The Department has identified no ineligible costs relating to the purchase of the trailer for the transport of solid waste.

B) 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 fifteen year useful life. As a result of using Table 1, OAR 340-16-030, for a fifteen 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 did consider several different styles of trailers for this task, but concluded that the one with a seal was the only one available to contain the waste and associated liquids for transport.

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 trailer.

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 purchase of the trailor.

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 trailor to haul solid waste from the manufacturing facililty to the permitted site for drying the waste fruit pulp.

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 $31,503.00 with 100% allocable to pollution control be issued for the facility claimed in Tax Credit Application No. T-4479

Rick Paul:rap
wp51\tax\tc4479RR.STA
(503)229-5934
August 29, 1995

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Flanagan Farms, Inc.
PO Box 305
Junction City, Oregon 97448

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 92154 Greenhill Road, Junction City, Oregon. The equipment is owned by the applicant.

22' x 124' x 192' pole construction, straw storage shed	$155,044
1992 Freeman Big-baler	$ 37,500

Claimed equipment cost: $192,544
(Accountant's Certification was provided.)

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

The applicant has 1,100 acres of perennial grass seed and 1,100 acres of annual grass seed under cultivation. The applicant open field burned as many acres as the Smoke Management Program and weather permitted until the 1992 season.

The perennial grass seed fields have been baled off after seed harvest in recent years. Much of the baled straw was stack burned because the applicant did not have storage available to protect the straw from inclement weather.

The big baler is required to complete the baling in a timely manner to facilitate the early transport of the straw to storage to avoid damage.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on June 10, 1995. The application was submitted on July 10, 1995; and the application for final certification was found to be complete on July 13, 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 promotes the conversion of a waste product (straw) into a salable commodity by providing marketable packaging and protection from inclement weather.

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

   The actual cost of claimed equipment ($192,544) divided by the average annual cash flow ($8,958) equals a return on investment factor of 21.494. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 0. Using the annual percent return of 0% and the reference annual percent return of 4.7%, 100% is allocable to pollution control.

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

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

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

   There is an increase in operating costs of $30,735 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 $192,544, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4486.

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JB:bk4486
July 13, 1995

Application No. TC-4488

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Hopton Technologies, Inc.
140 SW Queen Ave
Albany, OR 97321

The applicant owns and operates a paper coatings plant in Albany, Oregon. Hopton Technologies, Inc. (HTI) produces paper coating solutions for the paper and paper pulp industry. The facility uses pressure reactors, and mixing tanks to produce wax emulsions, pressure reactions, sizing agents, and melamine formaldehyde resins.

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

2. Description of Facility

The claimed facility consists of two fume and dust scrubbers. These wet scrubbers are designed to control dust and vapors from processing areas, tank filling, and loading areas.

Claimed Facility Cost: $47,393

A distinct portion of the claimed facility makes an insignificant contribution to the principal purpose of air pollution control. The applicant originally claimed $9043 for interior ducting and reconditioning of an underground storage tank. These items are not directly involved in the reduction of air pollution. The cost of a blower capable of removing air from the building's interior was also deducted from the eligible costs.

Ineligible Costs: $9,726

Adjusted Facility Cost: $37,667

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is 5 years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed on April 28, 1995, and placed into operation on May 1, 1995. The application for final certification was received by the Department on July 18, 1995. The application was found to be complete on August 18, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter 340, Division 21, rule 060, requiring facilities to control or remove dust, fumes, and odorous matter before discharge to open air. The emission control is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility controls dust, VOC, and other gaseous emissions generated from the production of coating solutions and from vapors generated during raw material tank filling. The addition of powdered melamine and powdered styrene maleic anhydride to methanol and formaldehyde mixtures releases dust and organic vapors. Other process chemicals used in the facility include ammonia and glyoxal. Before installation of the scrubbers an estimated 900 pounds per year of these chemicals and an unspecified quantity of dust were released to the atmosphere through tank breathing and transfers.

These dusts and vapors are removed by an active scrubber (for the process tanks) and a passive scrubber (for the storage tanks). The active scrubber pumps air from the process areas with a capacity of 1500 cubic feet per minute. Scrubber liquid from the active scrubber is treated to a neutral pH for discharge to the local sanitary sewer system. The passive scrubber treats air displaced during filling of the formaldehyde, methanol, and ammonia raw material storage tanks. This scrubber liquid is also discharged to the local sewer for treatment. After installation of the claimed facility, site emissions are estimated at less than 50 pounds per

year, an 850 pound per year reduction.

b. Eligible Cost Findings

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

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

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

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

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

The applicant evaluated bag-house dust collectors and other types of scrubbers. The claimed facility was selected because of cost and its ability to treat both dust and organic vapors. The claimed facility is technically recognized for controlling the site's emissions.

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

There is no savings from the facility. The cost of maintaining and operating the facility is $2,600 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 pollution.

The adjusted eligible facility cost has been determined to be $37,667. A total of $9,726 was not eligible because it did not directly reduce pollution. See Section 2 for additional details.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocated 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 $37,667 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4488.

Michael T. Gordon
SJO Consulting Engineers, Inc.

August 29, 1995

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Golden Valley Farms
7385 Howell Prairie Road, NE
Silverton, Oregon 97381

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

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

2. Description of Claimed Facility

The facility described in this application is a 20' x 100' x 200' grass seed straw storage building and straw press, located at 7385 Howell Prairie Road NE, Silverton, Oregon. The land and the buildings are owned by the applicant.

Straw Storage Building	$123,599
Straw Press	$112,556

Claimed facility cost: $236,155.
(Accountant's Certification was provided.)

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

The applicant has 4,500 acres of perennial grass seed under cultivation. The applicant indicates that up to 1989 and the company's awareness of straw as a marketable by-product, it was customary to register and open field burn up to one-half of the total grass seed acreage produced annually. The remaining acreage was baled off, propane flamed, and the stacks were open burned.

With capital investment in storage sheds, straw compressors, straw rakes, balers, tractors, forklifts, hay squeezes, and trucks and trailers, the applicant is able to rake the grass straw in windrows, bale it, move it into storage sheds, compress and containerize the bales, and truck it to Port of Portland for export to Asian markets.

The applicant has been heavily investing in this alternative since 1987 and is able to remove the grass straw residue from all acreage without the necessity of open filed burning or propane flaming and occasional stack burning.

4. Procedural Requirements

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

Construction of the facility was substantially completed on July 15, 1995. The application for final certification was found to be complete on August 4, 1995. The application was filed within two years of substantial completion of the facility.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing all the necessary operations to move the residue from the fields to the marketplace.

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

The applicant established in previous, certified tax credit application #4271, that the annual cash flow for their baling and pressing operation was $39,738.00. The applicant listed the functions within the operation and represented the ratio of cash flow generated by each function as follows:

Useful Life	Function	Percent of Cash Flow
	Windrowing	5%
7 years	Baling	30%
	Stacking	5%
	Transporting	10%
20 years	Storing	10%
7 years	Pressing	30%
	Transporting	10%

The applicant has eleven straw storage facilities and three pressing facilities in operation.

Claimed Cost	Percent of Cash Flow	# Facilities In Function	Facility Cash Flow	Return on Investment Factor
Storage Bldg				
123,599	(10%) $ 3,973	(11)	$ 497	248.69
Straw Press				
112,556	(30%) $ 11,921	(3)	$3,974	28.323

Therefore, the actual cost of the straw storage facility ($123,599) divided by the assigned ratio of the average annual cash flow ($497) equals a return on investment factor of 248.69. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 0. Using the annual percent return of 0 and the reference annual percent return of 4.7, 100% is allocable to pollution control.

and

The actual cost of the straw press facility is ($112,556) divided by the assigned ratio of the average annual cash flow ($3,974) equals a return on investment factor of 28.323. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on ivestment is 0. Using the annual percent return of 0 and the reference annual percent return of 4.7%, 100% is allocable to pollution control.

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

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

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

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

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

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

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

6. Summation

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

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

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility 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 $236,155, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4497.

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JB:bk
August 4, 1995

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

JSG, Inc.
P.O. Box 257
Tangent, OR 97389

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 32660 Tangent Drive, Tangent, Oregon. The equipment is owned by the applicant.

Rear's 12ft Grass Vacuum	$ 48,100
John Deere 8870 350hp Tractor	122,640
John Deere 2810 Moldboard Plow	20,544

Claimed equipment cost: $191,284
(Accountant's Certification was provided.)

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

The applicant has 3,593 acres of perennial grass seed and 395 acres of annual grass seed under cultivation. Since the applicants last tax credit application (4085) submitted and certified in 1993 they have increased grass seed production by 488 acres and decreased open field burning by an additional 1,000 acres.

On perennial fields the applicant rakes, bales and removes the bulk straw from the fields. Following the baling process the applicant vacuums the remaining stubble, volunteer seed and weed seeds. The Rear's 12 ft grass vacuum is required to accommodate the increased perennial grass seed acreage.

On annual grass seed fields the applicant flail chops the bulk straw and plows it back into the soil. Increased plowing in perennial grass seed fields is also required as stand life has decreased from 4-7 years to 2-3 years. The John Deere 2810 moldboard plow is required to accommodate the increase in acreage being plowed.

The applicant states that the John Deere 8870 350hp tractor is necessary to pull and power the stakpak and plow to accomplish these functions in a timely manner.

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 October 15, 1993. The application was submitted on August 2, 1995; and the application for final certification was found to be complete on August 14, 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 $11,305 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:

Implement	Acres Worked	Acres/Hour	Annual Operating Hours
Rears Stak Vac	1300	5	260
Moldboard Plow	855	7	122
Total Annual Operating Hours			382

The total annual operating hours of 382 divided by the average annual operating hours of 450 produces a percent allocable of 85%.

Equipment	Claimed Cost	Percent Allocable	Cost Allocable
Rear's 12ft Grass Vacuum	$ 48,100	100%	48,100
John Deere 2810 plow	20,544	100%	20,544
John Deere 350hp tractor	122,640	85%	104,244
Totals	$191,284	90%	172,888

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 90%.

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 90%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $191,284, with 90% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC4508.

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JB:rkc\taxcredits\4508

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

JSG, Inc.
P.O. Box 257
Tangent, OR 97389

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 facility.

2. Description of Claimed Facility

The facility described in this application is two (2) gravity table installations, located at (L28) 34930 Oakville Road, Albany and (L122) 33156 Hinck Road, Tangent, Oregon. The land and the buildings are owned by the applicant.

Claimed facility cost: $97,006
(Accountant's Certification was provided.)

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

The applicant has 3,593 acres of perennial grass seed and 395 acres of annual grass seed under cultivation. Since the applicants last tax credit application (4085) submitted and certified in 1993 they have increased grass seed production by 488 acres and decreased open field burning by an additional 1,000 acres, to a total of approximately 3,400 acres.

On perennial fields the applicant rakes, bales and removes the bulk straw from the fields. Following the baling process the applicant vacuums the remaining stubble, volunteer seed and weed seeds. On annual grass seed fields the applicant flail chops the bulk straw and plows it back into the soil. Increased plowing in perennial grass seed fields is also required as stand life has decreased from 4-7 years to 2-3 years.

The applicant states that after reducing open field burning the standard herbicide treatment programs that had worked well in conjunction with open field burning frequently failed to control weeds in nonburned stands. Noxious weed seeds such as barnyard grass, henbit, common speedwell, wildberry, velvetgrass, sweetclover, water foxtail, poa prantensis mannagrass, brome species and poa annua have appeared for the first time or as a higher percentage of cleaned seed as reported in seed tests.

Seed size in contaminated crops is now very inconsistent. Existing seed cleaning equipment is unable to separate the various seed sizes or ergot infected seeds that are now being harvested due to the reductions in open field burning, whereas existing cleaning equipment sorts by size the gravity tables sort seed according to density making the selections using gravity.

In addition, the gravity tables select out the seeds supporting the fungus claviceps purpurea, or ergot sclerotia. Evidence of claviceps purpurea has been documented in the south Willamette Valley from degrees of 16 percent to 27 percent. A field treated with open field burning seldom exceeds infection above one-half of one percent.

The gravity table lines are separate and in addition to the existing cleaning equipment and are considered essential to distinguish between these different seed sizes and weight variances in the absence of open field burning.

4. Procedural Requirements

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

Construction of the facility was substantially completed on July 3, 1995. The application for final certification was found to be complete on August 24, 1995. The application was filed within two years of substantial completion of the facility.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

There is no annual 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 installation of the facility.

   There is an increase in operating costs of $4,771 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

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

   c. The facility complies with DEQ statutes and rules.

   d. The portion of the facility 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 $97,006, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4510.

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JB:rkc/wp/taxcredit/4510
August 24, 1995

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Golden Valley Farms
7385 Howell Prairie Road, NE
Silverton, Oregon 97381

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

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

2. Description of Claimed Facility

The equipment described in this application is two (2) 370T Freeman balers, located at 7385 Howell Prairie Road, NE, Silverton, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $58,000.00
(Accountant's Certification was provided.)

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

The applicant has 4,500 acres of perennial grass seed under cultivation. The applicant indicates that up to 1989 and the company's awareness of straw as a marketable by-product, it was customary to register and open field burn up to one-half of the total grass seed acreage produced annually. The remaining acreage was baled off, propane flamed, and the stacks were open burned.

With capital investment in storage sheds, straw compressors, straw rakes, balers, tractors, forklifts, hay squeezes, and trucks and trailers, the applicant is able to rake the grass straw in windrows, bale it, move it into storage sheds, compress and containerize the bales, and truck it to Port of Portland for export to Asian markets.

The applicant has been heavily investing in this alternative since 1987 and is able to remove the grass straw residue from all acreage without the necessity of open field burning or propane flaming and occasional stack burning.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 18, 1995. The application was submitted on August 16, 1995; and the application for final certification was found to be complete on August 22, 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 promotes the conversion of a waste product (straw) into a salable commodity by providing the packaging necessary to move residue from the field to storage.

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

The applicant established in previous, certified tax credit application #4271, that the annual cash flow for their baling and pressing operation was $39,738.00. The applicant listed the functions within the operation and represented the ratio of cash flow generated by each function as follows:

Useful Life	Function	Percent of Cash Flow
	Windrowing	5%
7 years	Baling	30%
	Stacking	5%
	Transporting	10%
20 years	Storing	10%
7 years	Pressing	30%
	Transporting	10%

The applicant has six balers in operation.

Claimed Cost	Percent of Cash Flow	# Facilities In Function	Facility Cash Flow	Return on Investment Factor
Balers				
58,000	(30%) $ 11,921	(6)	$3,974	14.594

Therefore, the actual cost of the balers ($58,000) divided by the assigned ratio of the average annual cash flow ($3,974) equals a return on investment factor of 14.594. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent on return on investment is 0. Using the annual percent return of 0 and the reference annual percent return of 4.7, 100% is allocable to pollution control.

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

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

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

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

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

   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 $58,000, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4512.

Jim Britton, Manager
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JB:rc
August 21, 1995

Application No. TC-4382

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Anodizing, Inc.
Coatings Division
7933 NE 21st Avenue; P.O. Box 11263
Portland, OR 97211-0263

The applicant operates a contract painting shop to paint long, rod-like aluminum extrusions. Uncoated extrusions are washed and etched in a multiple stage pretreatment washer before being coated with liquid paints and dried.

Application was made for tax credit for an air pollution control facility installed at the applicant's Portland facility, 5325 NE Skyport Way.

2. Description of Facility

The claimed facility controls the emission of volatile organic compounds (VOC) that are expelled by the paint process. The facility consists of: a regenerative thermal oxidizer, recirculation equipment and controls; an oxidizer prefilter, fan and manifold; two vertical spray booth recirculation filters, fans, and system control panel; spray booth enclosures, doors, and light fixtures; electric motor starters and disconnects; and a steel building to enclose the oxidizer.

Claimed Facility Cost: $502,920.00

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is seven years. It is the opinion of the Department that the useful life of the facility is ten years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed on July 15, 1994 and placed into operation on July 15, 1994. The application for final certification was received by the Department on April 13, 1995. The application was found to be complete on May 19, 1995, within two years of substantial completion of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter 340, Division 22, Rule 170. The Air Contaminant Discharge Permit for this source, 26-3241, requires the permittee to limit the emissions of VOCs to the atmosphere. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

Prior to installation of the new facility, VOCs from the painting process were released directly to the atmosphere. The air quality permit allowed for this release to an annual maximum of 39.9 tons of VOC. Since the plant became operational in September 1989, this permit level had not been reached. However, in 1993 it became obvious that the increased demand for painted products would cause the permit level to be reached. It was necessary to obtain pollution control equipment that would reduce the quantity of VOCs released to the atmosphere.

The claimed facility consists of: a regenerative thermal oxidizer, recirculation equipment and controls; an oxidizer prefilter, fan and manifold; two vertical spray booth recirculation filters, fans, and system control panel; spray booth enclosures, doors, and light fixtures; electric motor starters and disconnects; and a steel building to enclose the oxidizer.

The regenerative thermal oxidizer consists of two insulated heat exchanger beds filled with ceramic saddles. Between the heat exchange beds is a combustion chamber with a burner used for the start-up and idle modes of operation. The process gas flow is switched back and forth between the beds using a switching valve. When solvent laden process gas passes through a ceramic bed and approaches the combustion chamber, its temperature rapidly increases. Due to the abundant oxygen content of the process gas, complete combustion rapidly occurs when the auto-ignition point is reached near the top of the bed. With a sufficient concentration of solvents in the incoming process gas, the heat energy of the solvents will be enough so that the destruction of VOCs will be self-sustaining and no additional heat energy is required.

After the oxidation reaction occurs, the exit bed is heated by the clean, outgoing exhaust gas. Likewise, the entrance bed is cooled by incoming, cool process gas. In order to avoid an uneven temperature distribution in the beds, the gas flow is switched back and forth between the beds at regular intervals by the automatic switching valve. This maintains a uniform temperature distribution between the beds. Also, maximum heat recovery is obtained when incoming process gas is preheated through the exchange of exhaust gas heat energy using the ceramic beds.

A source test report indicated that the regenerative thermal oxidizer has a VOC capture efficiency of 86.6% with a destruction efficiency of 96.8%. A Department inspection conducted on August 4, 1994, concluded that as a direct result of the installation of the regenerative thermal oxidizer, the emission source could be downgraded from a "major" source, to a "natural minor" source.

b. Eligible Cost Findings

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

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

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

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

The annual operating expenses exceed income from the facility, so there is no return on investment.

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

Thermal oxidizing systems are technically recognized as an acceptable method for controlling the emissions of VOCs from surface coating operations.

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

The annual operating costs of the facility is about $62,000 per year from the increased natural gas use, materials, maintenance labor, and property taxes.

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

The Environmental Quality Commission has directed that tax credit applications at or above $250,000 go through an additional Departmental accounting review, to determine if costs were properly allocated. This review was performed under contract with the Department by the accounting firm of Merina McCoy Gerritz, P.C. (see attached report).

The cost allocation review of this application has identified no issues to be resolved and confirms the cost allocation as submitted in the application.

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by Department to control air pollution.

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

d. An independent accounting firm under contract with the Department has concluded that no further review procedures be performed on TC-4382 (see attached review report).

e. 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 $502,920.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4382.

Tonia C. Garbowsky : PRC Environmental Management, Inc.
July 26, 1995

MERINA McCOY GERRITZ, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

PARTNERS
John W. Merina, CPA
Michael E. McCoy, CPA
Gerald V. Gerritz, Jr., CPA

CERTIFIED IN
Oregon
Washington

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

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

At your request, we have performed the procedures enumerated below, which were agreed to by the Oregon Department of Environmental Quality (DEQ), solely to assist the DEQ in evaluating Anodizing, Inc.'s (the Company) Pollution Control Tax Credit Application No. 4382 (the Application) regarding the Regenerative Thermal Oxidizer (the Facility) in Portland, Oregon. The claimed facility costs on the Application are $502,920. The agreed-upon procedures and related findings are:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Sections 469.150 - 468.190 (the Statutes) and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-050 (OARs).

2. We reviewed and discussed the Application, supporting documents, and Statutes with Charles Bianchi of the Oregon Department of Environmental Quality (DEQ).

3. We reviewed and discussed the Application, supporting documents, Statutes and OARs with Guy Warren, Cost Manager and Michael Davis, Coating Division Manager.

4. We inquired as to whether there were any direct or indirect Company costs charged or allocated to the facility costs claimed in the Application.

   We were informed that direct labor costs were included in the Application and that no indirect Company costs were included in the Application. The direct labor costs, which included payroll taxes and fringe benefits, were found to be supported, reasonable as to amount and properly included in the application.

5. We reviewed the documents and workpapers of applicant's certified public accountants that related to the facility claim.

   The claimed facility cost in the Application was $502,920. The Accountant's Certificate was for costs totaling $502,920.

6. We reviewed all costs claimed in the Application for Pollution Control Tax Credit certification under the rules and statutes that govern the Program.

18670 WILLAMETTE DRIVE • WEST LINN, OR 97068-1707
(503) 636-4864 • FAX (503) 636-2318

We determined that the claimed facility costs are eligible for pollution control tax credit certification under the rules and statutes that govern the program.

7. In accordance with the Oregon Administrative Rules for Pollution Control Tax Credits (Section 340-16-030) 100% of the claimed Facility costs are properly allocable to pollution control as scheduled below.

	Application as Submitted	Application as Corrected	
Actual cost of facility	$ 502,920	$ 502,920	
Salvage value of facility removed	-0-	-0-	
Claimed facility cost	$ 502,920	$ 502,920	
Calculation of annual cash flows:			
Gross annual income:			
Increase in capacity	$ 5,860,896	$ -0-	(1)
Annual operating expenses:			
Variable production costs	4,395,672	-0-	(2)
Facility energy	97,494	104,460	(3)
Supplies	116,450	122,880	(3)
Labor	56,872	57,120	(3)
Real property taxes	39,600	39,600	
Lease expense	655,815	-0-	(4)
Annual cash flow - Total	$ 498,993	$ (324,060)	
Annual cash flow - Average	$ 99,798	$ (64,812)	
Useful life of claimed facility	7 years	10 years	(5)
Return on investment factor	5.03%	n/a	(6)
Annual percent return on investment (Table 1)	9.0%	n/a	(6)
Reference annual percent return on investment (Table 2)	5.5%	n/a	(6)
Portions of actual costs properly allocable to pollution control	100%	100%	(7)

(1) Gross annual income does not include an increase in capacity if the claimed facility is not integral to the operation of the business. Based on our tests and interpretation of the OAR the claimed facility does not appear to be integral to the operation of the business as defined in Oregon Administration Rule 340-16-030 (1)(g), although this may be open to a different interpretation by the Commission. There is no sale or reuse of recovered materials from the claimed facility nor is there any other savings from the claimed facility.

(2) Variable production costs would likewise not be included if the reasoning in (1) above is accepted.

(3) Annual operating expenses have been adjusted to reflect more accurate estimates based on recent actual operations of the claimed facility.

(4) Upon completion of the claimed facility the Company entered into a sale/leaseback transaction. The lease expense is deemed to be in lieu of depreciation and interest which are not includable in Annual Operating Expenses as defined in Oregon Administrative Rule 340-16-03 (1)(b).

The lease agreement designates the Company as the party to receive the tax credit in accordance with OAR 340-16-050(5).

(5) The Company used federal tax law to determine useful life. The Coatings Division Manager estimated the actual useful life to be 10 years.

(6) Since the facility does not generate a positive cash flow, if the reasoning in (1) above is accepted, the Return on Investment Factor, the Annual Percentage Return on Investment and the Reference Annual Percent Return on Investment are not applicable.

(7) Based on the assumptions and amounts on the Application as submitted, the Company should have computed the Percent of Actual Costs Properly Allocable to Pollution Control to be 0.0%. If the reasoning in (1) is accepted, the Portion of Actual Costs Properly Allocable to Pollution Control is 100.0%.

8. We visited the site and visually inspected the facility. During the tour we noted the facility did not have any of the items disallowed under OAR 340-16-025(3).

9. The Company's Cost Manager has confirmed to us that no billings from related parties or affiliates of the Company have been included in the claimed costs.

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the Application should be adjusted, except as detailed in procedure seven. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. The report relates only to the items specified above and does not extend to any financial statements of the Company taken as a whole.

This report is solely for the State of Oregon Department of Environmental Quality in evaluating the Association's Pollution Control Tax Credit Application and should not be used for any other purpose.

Merina McCoy & Gerritz, CPA's, P.C.
West Linn, Oregon
August 31, 1995

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item C
September 29, 1993 Meeting

Title:

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

Summary:

Title V of the federal Clean Air Act requires "major sources" (sources with potential emissions above certain levels) to apply for Title V permits or synthetic minor permits (state permits with federally enforceable limits) by January of 1996. EPA has issued guidance allowing a one year extension of that deadline for sources whose *actual* emissions do not exceed 50 percent of the major source levels. This rule would take advantage of EPA guidance to allow eligible Oregon sources the same extension. The Department would use the time to develop simpler Title V compliance options for these sources.

Department Recommendation: Adopt the rule regarding deferral of Title V requirements as presented in Attachment A of the staff report.

Report Author | Division Administrator | Director

August 30, 1995

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

State of Oregon

Department of Environmental Quality Memorandum†

Date: **September 12, 1995**

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item C, Sep. 29, 1995 EQC Meeting

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

Background

On June 14, 1995, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would allow sources to defer Title V permitting requirements if the sources keep actual emissions below 50% of Title V thresholds.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on June 30, 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 June 20, 1995.

A Public Hearing was held July 21, 1995 with Benjamin Allen serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through Juy 24, 1995. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment F.

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

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

Issue this Proposed Rulemaking Action is Intended to Address

The Clean Air Act Amendments of 1990 require all major sources subject to the Title V program to obtain Title V permits or other federally enforceable limits on a source's potential to emit (PTE). For purposes of Title V, Oregon rules define a 'major source' as a source with a potential to emit 100 tons per year of any regulated pollutant,[1] 10 tons per year of any single hazardous air pollutant or 25 tons per year of aggregated hazardous air pollutants. Within one year following EPA approval of Oregon's Title V program (effective Jan. 3, 1995), major sources must either file a complete Title V permit application or achieve synthetic minor status.[2]

In some cases, a strict interpretation could require that PTE be determined by assessing operation at maximum capacity for every hour of the year (8,760 hours per year). The Department believes that certain categories of sources will never operate 8,760 hours per year at maximum production, will therefore have a realistic PTE that is under major source thresholds, and thus should not have to go through the Title V or synthetic minor application process.

Relationship to Federal and Adjacent State Rules

As discussed in Attachment B-6, the proposed rule takes advantage of EPA guidance, and is therefore equivalent to federal requirements. The Department believes that adjacent states will also take advantage of the extension allowed by EPA.

Authority to Address the Issue

The Commission has authority to adopt this rule under ORS 468.020 and 468A.025.

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

The language of the rule was developed by Air Quality Division staff, based on guidance received from EPA. While the usual Advisory Committee (Industrial Sources Advisory Committee) was not

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[1] Other than those regulated only under §112(r) of the Clean Air Act.
[2] A synthetic minor source is a potential Title V source which has accepted a federally enforceable limit on their PTE by means of an Air Contaminant Discharge Permit with federally enforceable conditions.

operating at the time, the rule language was discussed with representative prior members of the committee. No changes were requested.

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

The rule as presented for public hearing allowed sources to defer Title V permitting for one year, if they had a potential to emit at major source levels but had actual emissions at less than 50 percent of those levels.

Summary of Significant Public Comment and Changes Proposed in Response

There was one public comment, which strongly supported the proposed rule.

While all accompanying public notice and other documentation discussed deferral of Title V *and* synthetic minor requirements for eligible sources, the language of the rule mentioned only Title V. The wording created a possible ambiguity with respect to synthetic minor requirements, and has been changed to conform to the public notice discussion. The new language makes clear that eligible sources may defer both Title V *and* synthetic minor requirements.

The new deadline has also been clarified. The prior language could have been read to require sources to *obtain* a Title V permit by January 25 of 1997. The language makes clear that sources must only *apply for* a Title V permit or *obtain* a synthetic minor permit by that date.

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

The proposed rule allows certain sources to defer Title V and synthetic minor requirements by an additional year (from Jan. 3, 1996 to Jan 25, 1997). To be eligible, sources must have a potential to emit at or above major source thresholds, and actual emissions at or below 50 percent of those thresholds. Sources that choose to take advantage of the rule must maintain on site records adequate to demonstrate that emissions remained below the 50 percent level. The records must be maintained for five years. Most affected sources already keep similar records. The Department will make use of the one year extension to develop simpler methods of compliance with Title V which minimize the burden on sources; the extension would help assure that the Department's solution is in line with EPA's continued guidance. Some alternatives being considered are: prohibitory rules, permit by rule, and general permits. Each option would require only a minimal commitment of resources by the eligible sources. A prohibitory rule, for example, might simply state that sources using less than a certain amount of raw materials need not apply for permits, because they do not have a high enough potential to emit. Other alternatives would be similarly easy for sources to comply with.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding deferral of Oregon Title V Operating Permit requirements for sources with actual emissions below 50 percent of major source levels 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. Evaluation of Written Comments Received
E. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
F. Advisory Committee Membership and Report
G. Rule Implementation Plan

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:
Section: John J. Russoniello
Division:

Report Prepared By: Benjamin M. Allen
Phone: (503) 229-6828
Date Prepared: Aug. 30, 1995

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Aug. 30, 1995

DIVISION 28

STATIONARY SOURCE AIR POLLUTION CONTROL AND PERMITTING PROCEDURES

Applicability

340-28-2110

(1) OAR 340-28-2100 through 340-28-2320 apply to the following sources:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the FCAA;

(c) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the FCAA;

(d) Any affected source under Title IV; and

(e) Any source in a source category designated by the Commission pursuant to OAR 340-28-2110.

(2) The owner or operator of a source with an Oregon Title V Operating Permit whose potential to emit later falls below the emission level that causes it to be a major source, and which is not otherwise required to have an Oregon Title V Operating Permit, may submit a request for revocation of the Oregon Title V Operating Permit. Granting of the request for revocation does not relieve the source from compliance with all applicable requirements or ACDP requirements.

(3) Synthetic minor sources.

(a) A source which would otherwise be a major source subject to OAR 340-28-2100 through 340-28-2320 may choose to become a synthetic minor source by limiting its emissions below the emission level that causes it to be a major source through production or operational limits contained in an ACDP issued by the Department under 340-28-1700 through 340-28-1790.

(b) The reporting and monitoring requirements of the emission limiting conditions contained in the ACDPs of synthetic minor sources issued by the Department under 340-28-1700 through 340-28-1790 shall meet the requirements of OAR 340-28-0 through 340-28-1140.

(c) Synthetic minor sources who request to increase their potential to emit above the major source emission rate thresholds shall become subject to OAR 340-28-2100 through 340-28-2320 and shall submit a permit application under OAR 340-28-2120 in accordance with OAR 340-28-1740.

(d) Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-28-2(1)(a).

(4) Source category exemptions.

(a) The following source categories are exempted from the obligation to obtain an Oregon Title V Operating Permit:

(A) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation

(b) Permit deferral. A source with the potential to emit at or above major source thresholds need not apply for an Oregon Title V Operating Permit or obtain a synthetic minor permit before January 25, 1997 if the source maintains actual emissions below 50 percent of those thresholds for every consecutive twelve month period between January 25, 1994 and January 25, 1997, and is not otherwise required to obtain an Oregon Title V Operating Permit or synthetic minor permit.

(A) The owner or operator of a source electing to defer permitting under this paragraph shall maintain on site records adequate to demonstrate that actual emissions for the entire source are below 50 percent of major source thresholds.

(B) Recorded information shall be summarized in a monthly log, maintained for five years, and be available to Department and EPA staff on request.

*[~~(b)~~]***(c)** All sources listed in OAR 340-28-2110(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(c) of the FCAA, are exempted by the Department from the obligation to obtain an Oregon Title V Operating Permit.

*[~~(c)~~]***(d)** Any source listed in OAR 340-28-2110(1) exempt from the requirement to obtain a permit under this rule may opt to apply for an Oregon Title V Operating Permit.

(5) Emissions units and Oregon Title V Operating Permit program sources.

(a) For major sources, the Department shall include in the permit all applicable requirements for all relevant emissions units in the major source, including any equipment used to support the major industrial group at the site.

(b) For any non-major source subject to the Oregon Title V Operating Permit program under OAR 340-28-2110(1) and not exempted under OAR 340-28-2110(4), the Department shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the Oregon Title V Operating Permit program.

(6) Fugitive emissions. Fugitive emissions from an Oregon Title V Operating Permit program source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(7) Insignificant activity emissions. All emissions from insignificant activities, including categorically insignificant activities and aggregate insignificant emissions, shall be included in the determination of the applicability of any requirement.

(8) Oregon Title V Operating Permit program sources that are required to obtain an ACDP, OAR 340-28-1700 through 340-28-1790, or a Notice of Approval, OAR 340-28-2270, because of a Title I modification, shall operate in compliance with the Oregon Title V Operating Permit until the federal operating permit is revised to incorporate the ACDP or the Notice of Approval for the Title I modification.

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality AQ

OAR Chapter 340

DATE:	TIME:	LOCATION:
July 21, 1995	11:00 AM	Room 10A, 811 SW 6th Ave., Portland, OR 97204

HEARINGS OFFICER(s): Ben Allen

STATUTORY AUTHORITY: ORS 468.020, 468A.025

ADOPT:

AMEND: OAR 340-28-2110

REPEAL:

Amendments or additions to other sections of Division 28 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 Clean Air Act Amendments of 1990 require all major sources subject to the Title V program to obtain Title V permits or other federally enforceable limits on a source's potential to emit (PTE). For purposes of Title V, Oregon rules define a 'major source' as a source with a potential to emit 100 tons per year of any regulated pollutant, 10 tons per year of any single hazardous air pollutant or 25 tons per year of aggregated hazardous air pollutants. Within one year following EPA approval of Oregon's Title V program (Jan. 3, 1995), major sources must either file a complete Title V permit application or achieve synthetic minor status.

In some cases, a strict interpretation could require that PTE be determined by assessing operation at maximum capacity for every hour of the year (8,760 hours per year). The Department believes that certain categories of sources will never operate 8,760 hours per year at maximum production, will

therefore have a realistic PTE that is under major source thresholds, and thus should not have to go through the Title V or synthetic minor application process.

The U.S. Environmental Protection Agency (EPA) recognizes that a strict interpretation of PTE would include many sources with low actual emissions, which would create a permitting burden for state agencies, and an unnecessary expense for sources.

The Department is exploring several non-permit options for dealing with these smaller sources. This rulemaking would allow some small sources an additional year to obtain a Title V or synthetic minor permit, and give the Department more time to determine which options to pursue.

At the end of the one year extension, the Department expects to have in place non-permit methods of compliance with Title V which minimize the burden on sources; the extension would help assure that the Department's solution is in line with EPA's continued guidance. Some alternatives being considered are: prohibitory rules, permit by rule, and general permits. Each option would require only a minimal commitment of resources by the eligible sources. A prohibitory rule, for example, might simply state that sources using less than a certain amount of raw materials need not apply for permits, because they do not have a high enough potential to emit. Other alternatives would be similarly easy for sources to comply with.

LAST DATE FOR COMMENT: July 24, 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: Benjamin Allen

ADDRESS: Air Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204

TELEPHONE: 229-6828 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.

Benjamin M. Allen June 14, 1995

Signature Date

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

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, 468A.025

2. Need for the Rule

The Clean Air Act Amendments of 1990 require all major sources subject to the Title V program to obtain Title V permits or other federally enforceable limits on a source's potential to emit (PTE). For purposes of Title V, Oregon rules define a 'major source' as a source with a potential to emit 100 tons per year of any regulated pollutant, 10 tons per year of any single hazardous air pollutant or 25 tons per year of aggregated hazardous air pollutants. Within one year following EPA approval of Oregon's Title V program (Jan. 3, 1995), major sources must either file a complete Title V permit application or achieve synthetic minor status.

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permits, because they do not have a high enough potential to emit. Other alternatives would be similarly easy for sources to comply with.

3. Principal Documents Relied Upon in this Rulemaking

Other Oregon Administrative Rules, EPA guidance memorandum "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" from John Seitz, Director of the Office of Air Quality Planning and Standards, dated January 25, 1995.

These documents are available for review at: DEQ Headquarters, Air Quality Division, 811 S.W. 6th Avenue, Portland, Oregon, 97204.

4. Advisory Committee Involvement

None. Affected sources should not object to this rule. If a source emits at less than 50 percent of major source levels, the rule does not limit its emissions. If a source emits or wishes to emit at more than 50 percent of major source levels, it may apply for a Title V permit.

Representatives of the environmental community and the public at large (prior advisory committee members) did not object to the rule. The rule is not expected to have an effect on actual emission levels.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

Fiscal and Economic Impact Statement

Introduction

If this rule is adopted, eligible businesses will have considerably lower compliance costs. The rule defers permitting requirements for certain small sources by one year. Not adopting the rule would result in expenses for affected sources, and a greatly increased workload for the Department of Environmental Quality. There are probably well over a thousand sources eligible for the proposed rule, compared to about 150 sources currently scheduled to undergo the Title V permitting process.

General Public

There should be no economic impact on the general public. Eligible businesses will not have to raise prices to cover permitting expenses, though they are also unlikely to pass on savings.

Small Business

The rulemaking extends Title V deadlines for sources with actual emissions below 50 percent of Title V major source thresholds. Because of the extension, the sources will not have to pay application fees and preparation costs during the one year extension. Depending on the Department's eventual resolution of the issue, these sources may not have to pay application and permit costs at all.

The following are estimates of permitting costs and one year's annual costs for specific sources:
A source with no current permit which elects synthetic minor status: $7,500.
A source with an Air Contaminant Discharge Permit which elects synthetic minor status: $3,000.
A source with no permit which elects a Title V permit: $10,500.

Large Business

Most businesses able to take advantage of this rule will likely be small businesses. However, for all eligible sources, the rulemaking extends Title V deadlines for sources with actual emissions below 50 percent of Title V major source thresholds. Because of the extension, the sources will not have to pay application fees and preparation costs during the one year extension. Depending on the Department's eventual resolution of the issue, these sources may not have to pay application and permit costs at all.

State Agencies

Without this rulemaking, the Department would have to process a large number of Title V applications for small sources. This amendment will allow the Department to work at its projected staffing and budget levels, rather than with a greatly increased workload.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.**

The Clean Air Act Amendments of 1990 require all major sources subject to the Title V program to obtain Title V permits or other federally enforceable limits on a source's potential to emit (PTE). For purposes of Title V, Oregon rules define a 'major source' as a source with a potential to emit 100 tons per year of any regulated pollutant, 10 tons per year of any single hazardous air pollutant or 25 tons per year of aggregated hazardous air pollutants. Within one year following EPA approval of Oregon's Title V program (Jan. 3, 1995), major sources must either file a complete Title V permit application or achieve synthetic minor status.

In some cases, a strict interpretation of PTE could require assessing operation at maximum capacity for every hour of the year (8,760 hours per year). The Department believes that certain categories of sources will never operate 8,760 hours per year at maximum production, will therefore have a realistic PTE that is under major source thresholds, and thus should not have to go through the Title V or synthetic minor application process.

The U.S. Environmental Protection Agency (EPA) recognizes that a strict interpretation of PTE would include many sources with low actual emissions, which would create a permitting burden for state agencies, and an unnecessary expense for sources. While EPA has not required a specific approach to dealing with these sources, the agency has suggested some possibilities, and has allowed states an extra year for research and rulemaking. This rulemaking takes advantage of EPA's permission to extend the deadline by allowing sources with low actual emissions an additional year to obtain a Title V or synthetic minor permit. The extra year would give the Department more time to determine which options to pursue, and help ensure that the Department's solution is in line with EPA's continued guidance.

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

   Yes_X_ No___

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

Air Contaminant Discharge Permit Program
Oregon Title V Operating Permit Program

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

   Yes_X_ No___(if no, explain):

   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.

No new procedures will be needed.

Gregory A. Green — Division
Robert Lyon — Intergovernmental Coord.
6/13/95 — 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?

The Clean Air Act Amendments of 1990 require all major sources subject to the Title V program to obtain Title V permits or other federally enforceable limits on a source's potential to emit (PTE). For purposes of Title V, Oregon rules define a 'major source' as a source with a potential to emit 100 tons per year of any regulated pollutant, 10 tons per year of any single hazardous air pollutant or 25 tons per year of aggregated hazardous air pollutants. Within one year following EPA approval of Oregon's Title V program (Jan. 3, 1995), major sources must either file a complete Title V permit application or achieve synthetic minor status.

The U.S. Environmental Protection Agency (EPA) recognizes that a strict interpretation of PTE would include many sources with low actual emissions, which would create a permitting burden for state agencies, and an unnecessary expense for sources. The Department is exploring several non-permit options for dealing with these smaller sources. This rulemaking would allow some small sources an additional year to obtain a Title V or synthetic minor permit, and give the Department more time to determine which options to pursue.

At the end of the one year extension, the Department expects to have in place non-permit methods of compliance with Title V which minimize the burden on sources; the extension would help assure that the Department's solution is in line with EPA's continued guidance. Some alternatives being considered are: prohibitory rules, permit by rule, and general permits. Each option would require only a minimal commitment of resources by the eligible sources. A prohibitory rule, for example, might simply state that sources using less than a certain amount of raw materials need not apply for permits, because they do not have a high enough potential to emit. Other alternatives would be similarly easy for sources to comply with.

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

Not applicable.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

Yes. Oregon needs more time to provide alternatives to the Title V permitting process for sources with high potential emissions but low actual emissions. Many states and sources commented vehemently about EPA's strict interpretation of potential to emit, arguing that under such an interpretation, the permitting burden on sources and state agencies would be overwhelming, multiplying the expected workload by orders of magnitude. EPA agreed and issued guidance discussing possible non-permit alternatives to compliance. In order to allow states time to develop and adopt those alternatives, EPA in January, 1995, issued a guidance document giving the states until January 25, 1997 to determine how to deal with small Title V sources whose actual emissions are under 50 percent of any major source thresholds. EPA intends to conduct rulemaking to formalize this deferral.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The rule will allow some small sources to defer permitting costs for one year. The Department's goal is to use that time to develop efficient and cost-effective ways of creating federally enforceable limits on source potentials to emit in order to permanently avoid the burden and expense of individual Title V permits.

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

Yes. Current Oregon rules require major sources to submit an application for a Title V permit or obtain an Air Contaminant Discharge Permit containing synthetic minor conditions by Jan. 3, 1996. The application for a synthetic minor permit would need to be submitted by approximately Sept. 1 in order for the source to be assured of obtaining a permit by Jan. 3, 1996.

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

Yes. By allowing an extra year to develop alternatives to permitting, the Department is able to take into account future EPA guidance which might otherwise conflict with Department rules allowing alternatives.

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

The amendment allows small sources extra time to apply for Title V permits. The Title V rules do not distinguish between sources which can and those which do produce high levels of emissions. The small sources eligible for the deferral are those which would probably not produce actual emissions at Title V levels. By focusing Department resources on only those sources with realistic potentials to emit at major source levels, this amendment will make the Title V program more equitable.

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?

EPA has issued guidance allowing the one year extension, and intends to complete a rulemaking on the issue. This rule closely follows language in the guidance document.

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

No technology is required. The rule only requires recordkeeping.

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

Because many small sources will not have to submit costly Title V applications, both sources and the Department will avoid significant expenses. The deferral reduces the short-term incentive for small sources to adopt pollution prevention practices. In the long run, the Department's Small

Business Assistance and Toxic Use Reduction programs provide a better mechanism than Title V permits for achieving cost effective environmental gains.

State of Oregon

Department of Environmental Quality Memorandum

Date: July 21, 1995

To: Environmental Quality Commission

From: Benjamin Allen

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: July 21, 1995, beginning at 11:00 AM

Hearing Location: Room 10 A
DEQ
811 SW 6th
Portland, OR

Title of Proposal: Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

The rulemaking hearing on the above titled proposal was convened at 11:00 AM.

No one attended.

Written comments were previously received from Mark Morford, of the law firm of Stoel Rives Boley Jones & Grey.

Attachments:

Written Testimony Submitted for the Record.

STOEL RIVES BOLEY
JONES & GREY

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June 22, 1995

Mr. Benjamin Allen
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Re: Rulemaking Proposal--Deferral of Oregon Title V Operating Permit Requirements for Certain Minor Sources

Dear Mr. Allen:

As legal counsel for numerous sources affected by the proposed rulemaking, we strongly support the Department's proposal to defer the Title V permitting requirements for sources that maintain emissions below 50 percent of the major source thresholds. We believe this rule will prevent the significant waste of resources (public and private) that would result if the affected sources were required to either secure synthetic minor permits or prepare Title V applications. The benefits of the proposed rule, however, will not be fully realized unless the Department and the Environmental Quality Commission develop rules during the deferral period that permanently exempt such sources from Title V permitting requirements.

We also urge the Department to develop a clear and reasonable policy for sources with plant site emissions limits ("PSEL") in existing air contaminant discharge permits ("ACDP") that require emissions to remain below major source thresholds. We have encountered conflicting positions within DEQ as to whether a PSEL in an ACDP can establish minor status. This is of particular concern for sources that will not meet the 50 percent criteria in the proposed rule, but whose PSELs nonetheless require emissions to remain below major source thresholds. Most of these sources believe that they are not major sources and are not subject to the Title V permitting requirement. Some DEQ personnel, however, have been taking the position that such sources are subject to Title V if they have

the physical capacity to exceed their PSELs. In essence, these DEQ personnel seem to believe that only a specially issued synthetic minor ACDP can make a source a synthetic minor--a position directly at odds with the regulatory definitions of major source and potential to emit.

Most of the sources in this category are not on DEQ's Title V permit application schedule and are not aware of any DEQ policy that would require them to file Title V applications. It would be most unfortunate if DEQ were to determine after January of 1996 that these sources require Title V permits when DEQ had not previously communicated such a requirement, particularly when DEQ's rules do not impose such a requirement.

We also note that DEQ has issued numerous synthetic minor permits that rely entirely upon PSELs to establish synthetic minor status under Title V and for purposes of major new source review. DEQ also has proposed Title V permits (with EPA concurrence) that will use PSELs to establish synthetic minor status under Title III. We are at a loss in trying to understand how these synthetic minor permits are different from existing ACDPs in their ability to establish synthetic minor status.

In sum, DEQ should regard PSELs as adequate to create minor status. If any existing ACDPs need revisions to improve PSEL compliance monitoring, DEQ should identify ACDPs with potential deficiencies in that area and fix them. DEQ should not slip into a position where it has required only some sources to obtain new synthetic minor permits when it does not require the same of similar sources.

Thank you for consideration of our comments.

Very truly yours,

J. Mark Morford

JMM:v-g

Evaluation of Written Comments Received

on

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

In support:

1. J. Mark Morford (Stoel, Rives, Boley, Jones, & Grey).

One comment was received, from the law firm of Stoel Rives Boley Jones & Grey. The comment strongly supported the proposed rule revision

In opposition:

None.

Detailed Changes to the Original Rulemaking Proposal

for

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

The proposed language allowed ambiguity as to whether the rule deferred only Title V permit requirements, or both Title V and synthetic minor permit requirements. The intent was the latter. All documents (including the public notice) accompanying the rule referred to Title V *and* synthetic minor permit deferral. The final language has been changed to clarify that synthetic minor permit requirements may also be deferred.

The added language is shown in bold below:

OAR 340-28-2110(4)

(b) Permit deferral. A source with the potential to emit at or above major source thresholds need not **apply for** ~~obtain~~ an Oregon Title V Operating Permit **or obtain a synthetic minor permit** before January 25, 1997 if the source maintains actual emissions below 50 percent of those thresholds for every consecutive twelve month period between January 25, 1994 and January 25, 1997, and is not otherwise required to obtain an Oregon Title V Operating Permit **or synthetic minor permit**.

Advisory Committee

for

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

The Industrial Sources Advisory Committee was being re-formed during this rulemaking, and was not available for formal meetings. However, the rule was discussed with representative prior members of the committee. No changes were requested.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Deferral of Oregon Title V Operating Permit Requirements for Sources with Actual Emissions Below 50 percent of Major Source Levels

Rule Implementation Plan

Summary of the Proposed Rule

The Clean Air Act Amendments of 1990 require all major sources subject to the Title V program to obtain Title V permits or other federally enforceable limits on a source's potential to emit (PTE). For purposes of Title V, Oregon rules define a 'major source' as a source with a potential to emit 100 tons per year of any regulated pollutant, 10 tons per year of any single hazardous air pollutant or 25 tons per year of aggregated hazardous air pollutants. Within one year following EPA approval of Oregon's Title V program (Jan. 3, 1995), major sources must either file a complete Title V permit application or achieve synthetic minor status.

In some cases, a strict interpretation could require that PTE be determined by assessing operation at maximum capacity for every hour of the year (8,760 hours per year). The Department believes that certain categories of sources will never operate 8,760 hours per year at maximum production, will therefore have a realistic PTE that is under major source thresholds, and thus should not have to go through the Title V or synthetic minor application process.

The U.S. Environmental Protection Agency (EPA) recognizes that a strict interpretation of PTE would include many sources with low actual emissions, which would create a permitting burden for state agencies, and an unnecessary expense for sources. While EPA has not required a specific approach to dealing with these sources, the agency has suggested some possibilities, and has allowed states an extra year for research and rulemaking. The extra year would give the Department more time to determine which options to pursue, and help ensure that the Department's solution is in line with EPA's continued guidance.

Proposed Effective Date of the Rule

The rule would go into effect on adoption.

Proposal for Notification of Affected Persons

Affected persons will be notified of the rule through notification of trade groups and through the Department's "Air Time" publication. Remaining sources will be notified when they approach the Department to get a Title V or synthetic minor permit.

Proposed Implementing Actions

Affected sources must maintain records adequate to show that emissions were below 50% of major source levels. The Department will provide guidance on the level of recordkeeping that is appropriate.

Proposed Training/Assistance Actions

Departmental staff will be informed of the rule provisions to be sure that they are aware of the new deferral possibility.

Environmental Quality Commission

■ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item D
September 29, 1995 Meeting

Title:

Permanent Rules: Changing Effective Date for Provision of Financial Assurance for Solid Waste Landfills

Summary:

On March 31, 1995, EPA amended the financial assurance rules for municipal solid waste landfills to grant a two-year delay in the financial assurance requirements for closure and post-closure care of landfills. Because the federal Subtitle D landfill requirements were adopted by reference in Oregon, the Department believes that the State should adopt the new federal date for consistency with federal requirements and to provide landfill permittees greater time to develop or acquire sufficient financial assurance. The proposed amendments will impact both municipal and non-municipal landfills equally and are identical to the amendments adopted as a temporary rule by the Environmental Quality Commission on April 14, 1995

Department Recommendation:

It is recommended that the Commission adopt the proposed amendments to OAR 340-94-140 and 340-95-090, delaying the effective date of financial assurance requirements to April 9, 1997. The complete text of the proposed rule modifications is presented in Attachment A.

Peter H. Spendelow — Report Author
Mary Wahl — Division Administrator
Director

September 8, 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: September 12, 1995

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item D, 9/29/1995, EQC Meeting

Permanent Rules: Changing Effective Date for Provision of Financial Assurance for Solid Waste Landfills

Background

The Environmental Quality Commission adopted temporary rules on April 14, 1995 that are identical to the permanent rules proposed here. These temporary rules extended from April 9, 1995 to April 9, 1997 the date for solid waste landfills to meet financial assurance requirements.

On June 14, 1995, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would make permanent the temporary rules adopted in April. Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on July 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 June 19 and June 20, 1995.

A Public Hearing was held July 25, 1995 at DEQ headquarters in Portland, Oregon with Peter Spendelow serving as Presiding Officer. However, only one member of the public was present at the hearing (Kent Mayer of Finley Buttes Landfill Company), and no oral testimony was presented.

Written testimony was received through July 28, 1995. The only written comment received was from Coos County Commission, and was in support of the changes. A copy of the comment is enclosed (Attachment C). Since no testimony was received which opposed or suggested changes in the proposed rules, the amendments now

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

proposed for adoption are the same as the amendments originally proposed, and the same as the amendments adopted as temporary rules by the Environmental Quality Commission on April 14, 1995.

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

To insure that adequate funds are available to properly close a municipal solid waste landfill and to maintain the landfill after closure, both federal and state rules require that landfill permittees be able to obtain or demonstrate the ability to pay the costs of closure. However, the federal government has not yet finalized rules for certain financial tests that could significantly reduce the cost of providing financial assurance for some landfill permittees. Because of this, the Environmental Protection Agency (EPA) recently delayed the effective date of financial assurance requirements from April 9, 1995 to April 9, 1997, to give more time for the financial test rules to be adopted and for landfill permittees to determine if they meet the requirements of the tests. This change in federal rules does not directly affect Oregon landfills, but it does allow Oregon to change its rules to match the new federal effective date.

Relationship to Federal and Adjacent State Rules

The proposed rules would make Oregon's effective date consistent with the newly adopted Federal effective date. See Attachment B-6.

Authority to Address the Issue

ORS 459.045, 459.209, 459.270, and 468.020. Oregon has also received "approved state" designation from EPA, and thus may implement the requirements of the Resource Conservation and Recovery Act Subtitle D for municipal solid waste landfills.

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

The proposed rule was based on changes in Federal rules as published in the Federal Register on April 7, 1995 (60 FR 17649). The Solid Waste Advisory Committee did not meet before September 1995, but all Solid Waste Advisory Committee members were mailed a memo on the subject and asked to comment on the proposal either in writing or by phone. No comments were received.

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

The proposed rule amendments would change the effective date of financial assurance requirements for all solid waste landfills in Oregon (both municipal and non-municipal) to match the new effective date in Federal rules for municipal solid waste landfills. If adopted, the new effective date will be April 9, 1997.

Summary of Significant Public Comment and Changes Proposed in Response

The only testimony received was written testimony from the Coos County Commission supporting the proposed amendments. No comments were received opposing or suggesting changes in the proposed rule amendments.

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

The effective date for financial assurance requirements for solid waste landfills will be delayed until April 9, 1997. If this rule amendment is adopted, landfill operators and permittees will be notified of the changed effective date.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding the effective date for financial assurance requirements for solid waste landfills 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. Written Comments Received

Reference Documents (available upon request)

Environmental Protection Agency rule amendment (60 FR 17649-17652

Approved:

Section: Patricia Vernon

Division: Mary Wahl

Report Prepared By: Peter Spendelow

Phone: (503) 229-5253

Date Prepared: September 8, 1995

PHS:phs
E:\FINA\FA-EQC.D59
September 8, 1995

ATTACHMENT A

Proposed Rule Modification

Note. The only changes proposed here are changes to the dates in 340-94-140 (3)(a)(B-D) (on page A-2) and 340 95-090 (3)(a)(B) (on page A-6). However, rule adoption requirements are that the entire text of a rule to be modified must be displayed.

Redlining indicates proposed additions.
[~~Strikeout and brackets~~] indicates proposed deletions.

PROPOSED AMENDMENT TO OAR 340-94-140

340-94-140 [Renumbered from 340-61-034]

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with financial assurance criteria in 40 CFR, Part 258, Subpart G. All municipal solid waste permittees shall also comply with this rule.

(1) Financial Assurance Required. The owner or operator of a municipal solid waste landfill shall maintain a financial assurance plan with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:

(a) Closure of the municipal solid waste landfill;

(b) Post-closure maintenance of the municipal solid waste landfill; and

(c) Any corrective action required by the Department to be taken at the municipal solid waste landfill, pursuant to OAR 340-94-080(3).

(2) Exemptions. The Department may exempt from the financial assurance requirements existing municipal solid waste landfills which stopped receiving waste before October 9, 1993 (or which stopped receiving waste before April 9, 1994, if a "small landfill" meeting criteria in 40 CFR, §258.1(e)(2)), and completed installation of final cover by October 9, 1994. The Department may also exempt from the financial assurance requirements an existing "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1), if such a landfill stops receiving waste before October 9, 1995 and completes installation of final cover by October 9, 1996.

(a) Exemption criteria. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(A) The landfill poses no significant threat of adverse impact on groundwater or surface water;

(B) The landfill poses no significant threat of adverse impact on public health or safety;

(C) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(D) The area of the landfill that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(b) In determining if the applicant has demonstrated that a site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(c) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the site continues to meet the exemption criteria in subsection (2)(a) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance. [Renumbered from 340-94-100 (3)-(5)]

(3) Schedule for provision of financial assurance.

(a) For costs associated with the "worst-case" closure plan and the "Subtitle D" post-closure plan prepared pursuant to 40 CFR Subparts F and G and OAR 340-94-110(1)(a)(A) and OAR 340-94-115(1)(a), respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the landfill shall be provided on the following schedule:

(A) For a new municipal solid waste landfill: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste;

(B) For a regional disposal site operating under a solid waste permit on November 4, 1993: by May 4, 1994; or

(C) For other municipal solid waste landfills operating under a solid waste permit on November 4, 1993: by April 9, ~~1995~~ 1997; ~~or~~

~~(D) For a "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1) and operating under a solid waste permit on November 4, 1993: by October 9, 1995.~~

(b) For costs associated with the Final Engineered Site Closure Plan and the Final Engineered Post-closure Plan prepared pursuant to OAR 340-94-110(1)(a)(B) and OAR 340-94-115(1)(b) respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the landfill shall be provided at the same time those two Plans are due to the Department.

(c) Evidence of financial assurance for corrective action shall be provided before beginning corrective action.

(d) Continuous financial assurance shall be maintained for the facility until the permittee or other person owning or controlling the site is no longer required to demonstrate financial responsibility for closure, post-closure care or corrective action (if required).

(4) Financial assurance plans. The financial assurance plan is a vehicle for determining the amount of financial assurance necessary and demonstrating that financial assurance is being provided. A financial assurance plan shall include but not be limited to the following, as applicable:

(a) Cost Estimates. A detailed written estimate of the third-party costs in current dollars (as calculated using a discount rate equal to the current yield of a 5-year U.S. Treasury Note as published in the Federal Reserve's H.15 (519) Selected Interest Rates for the week in which the calculation is done) of:

(A) Closing the municipal solid waste landfill;

(B) Providing post-closure care, including installing, operating and maintaining any environmental control system required on the landfill site;

(C) Performing required corrective action activities; and

(D) Complying with any other requirement the Department may impose as a condition of issuing a closure permit, closing the site, maintaining a closed facility, or implementing corrective action.

(b) The source of the cost estimates;

(c) A detailed description of the form of the financial assurance and a copy of the financial assurance mechanism;

(d) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(e) A proposal with provisions satisfactory to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance, if applicable.

(A) To the extent practicable and to the extent allowed by any franchise agreement, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(i) A reduction of the rates a person within the area served by the municipal solid waste landfill is charged for solid waste collection service as defined by ORS 459.005; or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

(B) If the municipal solid waste landfill is owned and operated by a private entity not regulated by a unit of local government, excess moneys and interest remaining in any financial assurance reserve shall be released to that

business entity after post-closure care has been completed and the permittee is released from permit requirements by the Department.

(f) Adequate accounting procedures to insure that the permittee does not collect or set aside funds in excess of the amount specified in the financial assurance plan or any updates thereto or use the funds for any purpose other than required by paragraph (8)(a) of this rule; [Renumbered from 340-94-140(6)(b)]

(g) The certification required by subsection (6)(c) of this rule; and

(h) The annual updates required by subsection (6)(d) of this rule.

(5) Amount of Financial Assurance Required. The amount of financial assurance required shall be established as follows:

(a) Closure. Detailed cost estimates for closure shall be based on the "worst-case" closure plan or the Final Engineered Site Closure Plan, as applicable. Cost estimates for the Final Engineered Site Closure Plan shall take into consideration at least the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) The portion of the site property closed before final closure of the entire site; and

(G) Any other conditions imposed on the permit relating to closure of the site.

(b) Post-closure care. Detailed cost estimates for post-closure care shall be based on the "Subtitle D" post-closure plan or the Final Engineered Post-closure Plan, as applicable. Cost estimates for the Final Engineered Post-closure Plan shall also take into consideration at least the following:

(A) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges; and

(B) Any other conditions imposed on the permit relating to post-closure care of the site.

(c) Corrective action. Estimated total costs of required corrective action activities for the entire corrective action period, as described in a corrective action report pursuant to requirements of OAR 340-94-080(3) and 40 CFR §258.73.

(d) If a permittee is responsible for providing financial assurance for closure, post-closure care and/or corrective action activities at more than one municipal solid waste landfill, the amount of financial assurance required is equal to the sum of all cost estimates for each activity at each facility.

(6) How Financial Assurance Is to Be Provided and Updated.

(a) The permittee shall submit to the Department a copy of the first financial assurance mechanism prepared in association with a "worst-case" closure plan, a Final Engineered Site Closure Plan, a "Subtitle D" post-closure plan, a Final Engineered Post-closure Plan, and a corrective action report.

(b) The permittee shall also place a copy of the applicable financial assurance plan(s) in the facility operating record on the schedule specified in section (3) of this rule.

(c) The permittee shall certify to the Director at the time a financial assurance mechanism is submitted to the Department and when a financial assurance plan is placed in the facility operating record that the financial assurance mechanism meets all state and federal requirements. This date becomes the "annual review date" of the provision of financial assurance, unless a corporate guarantee is used, in which case the annual review date is 90 days after the end of the corporation's fiscal year.

(d) Annual update. The permittee shall annually review and update the financial assurance during the operating life and post-closure care period, or until the corrective action is completed, as applicable.

(A) The annual review shall include:

(i) An adjustment to the cost estimate(s) for inflation and in the discount rate as specified in subsection (4)(a) of this rule;

(ii) A review of the closure, post-closure care and corrective action (if required) plans and facility conditions to assess whether any changes have occurred which would increase or decrease the estimated maximum costs of closure, post-closure care or corrective action since the previous review;

(iii) If a trust fund or other pay-in financial mechanism is being used, an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance.

(B) The financial assurance mechanism(s) shall be increased or may be reduced to take into consideration any adjustments in cost estimates identified in the annual review.

(C) The annual update shall consist of a certification from the permittee submitted to the Department and placed in the facility operating record. The certification shall state that the financial assurance plan(s) and financial assurance mechanism(s) have been reviewed, updated and found adequate, and that the updated documents have been placed in the facility operating record. The annual update shall be no later than:

(i) The facility's annual review date; or

(ii) For a facility operating under a closure permit, by the date specified in OAR 340-94-100(3).

(7) Department Review of Financial Assurance and Third-Party Certification.

(a) The Department may at any time select a permittee to submit financial assurance plan(s) and financial assurance mechanism(s) for Department review. Selection for review will not occur more frequently than once every five years, unless the Department has reasonable cause for more frequent selection. The Department may, however, review such plans and mechanisms in conjunction with a site inspection at any time.

(b) A permittee who wants to provide "alternative financial assurance" pursuant to OAR 340-94-145(5)(g) shall submit its financial assurance plan and proposed financial assurance mechanism for Department review and approval on the schedule specified in section (3) of this rule. The submittal shall include certification from a qualified third party that the financial assurance mechanism meets all state and federal requirements for financial assurance including criteria in OAR 340-94-145(5)(g), and is reasonably designed to provide the required amount of financial assurance. The third-party certification shall be submitted in a format acceptable to the Department.

(c) The Department will review the financial assurance and the third-party certification, if applicable, for compliance with applicable laws.

(8) Accumulation of any financial assurance funds:

(a) The financial assurance mechanisms for closure, post-closure care and corrective action shall ensure the funds will be available in a timely fashion when needed. The permittee shall pay moneys into a trust fund in the amount and at the frequency specified in the financial assurance plan or obtain other financial assurance mechanisms as specified in the financial assurance plan, on the schedule specified in section (3) of this rule.

(A) Closure. The total amount of financial assurance required for closure shall be available in the form specified in the financial assurance plan or any updates thereto, whenever final closure of a municipal solid waste landfill unit is scheduled to occur in the "worst case" closure plan or in the Final Engineered Site Closure Plan.

(B) Post-closure care. The total amount of financial assurance required for post-closure care shall be available in the form specified in the financial assurance plan or any updates thereto, whenever post-closure care is scheduled to begin for a municipal solid waste landfill unit in the "Subtitle D" post-closure plan or in the Final Engineered Post-closure Plan.

(C) Corrective action. The total amount of financial assurance required for corrective action shall be available in the form specified in the financial assurance plan or any updates thereto on the schedule specified in 40 CFR §258.74.

(b) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule and OAR 340-94-145;

(c) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the applicable financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in section (1) of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the applicable financial assurance plan along with an additional amount of financial assurance

equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use;

(d) If financial assurance is provided under OAR 340-94-145(5)(a), (b) or (g), upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with subsection (4)(e) of this rule. [Renumbered from OAR 340-94-150(7)]

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

PROPOSED AMENDMENT TO OAR 340-95-090

340-95-090

(1) Financial Assurance Required. The owner or operator of a non-municipal land disposal site shall maintain a financial assurance plan with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:

(a) Closure of the non-municipal land disposal site;

(b) Post-closure maintenance of the non-municipal land disposal site; and

(c) Any corrective action required by the Department to be taken at the non-municipal land disposal site, pursuant to OAR 340-95-040(3).

(2) Exemptions. The Department may exempt from the financial assurance requirements any non-municipal land disposal site including but not limited to demolition waste sites and industrial waste sites.

(a) Exemption criteria. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(A) The non-municipal land disposal site poses no significant threat of adverse impact on groundwater or surface water;

(B) The non-municipal land disposal site poses no significant threat of adverse impact on public health or safety;

(C) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(D) The area of the non-municipal land disposal site that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(b) In determining if the applicant has demonstrated that a non-municipal land disposal site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(c) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the non-municipal land disposal site continues to meet the exemption criteria in subsection (2)(a) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance. [Renumbered from 340-95-050(3)-(5)]

(3) Schedule for provision of financial assurance.

(a) For costs associated with the conceptual "worst-case" closure plan and the conceptual post-closure plan prepared pursuant to OAR 340-95-060(1)(a)(A) and OAR 340-95-065(1)(a), respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the non-municipal land disposal site shall be provided on the following schedule:

(A) For a new non-municipal land disposal site: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste; or

(B) For a non-municipal land disposal site operating under a solid waste permit on November 4, 1993: by April 9, ~~1995~~ 1997.

(b) For costs associated with the Final Engineered Site Closure Plan and the Final Engineered Post-closure Plan prepared pursuant to OAR 340-95-060(1)(a)(B) and OAR 340-95-065(1)(b) respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the land disposal site shall be provided at the same time those two Plans are due to the Department.

(c) Evidence of financial assurance for corrective action shall be provided before beginning corrective action.

(d) Continuous financial assurance shall be maintained for the facility until the permittee or other person owning or controlling the site is no longer required to demonstrate financial responsibility for closure, post-closure care or corrective action (if required).

(4) Financial assurance plans. The financial assurance plan is a vehicle for determining the amount of financial assurance necessary and demonstrating that financial assurance is being provided. A financial assurance plan shall include but not be limited to the following, as applicable:

(a) Cost Estimates. A detailed written estimate of the third-party costs in current dollars (as calculated using a discount rate equal to the current yield of a 5-year U.S. Treasury Note as published in the Federal Reserve's H.15 (519) Selected Interest Rates for the week in which the calculation is done) of:

(A) Closing the non-municipal land disposal site;

(B) Providing post-closure care, including installing, operating and maintaining any environmental control system required on the non-municipal land disposal site;

(C) Performing required corrective action activities; and

(D) Complying with any other requirement the Department may impose as a condition of issuing a closure permit, closing the site, maintaining a closed facility, or implementing corrective action.

(b) The source of the cost estimates;

(c) A detailed description of the form of the financial assurance and a copy of the financial assurance mechanism;

(d) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(e) A proposal with provisions satisfactory to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance, if applicable.

(A) To the extent practicable and to the extent allowed by any franchise agreement, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(i) A reduction of the rates a person within the area served by the non-municipal land disposal site is charged for solid waste collection service as defined by ORS 459.005; or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

(B) If the non-municipal land disposal site is owned and operated by a private entity not regulated by a unit of local government, excess moneys and interest remaining in any financial assurance reserve shall be released to that business entity after post-closure care has been completed and the permittee is released from permit requirements by the Department.

(f) The financial assurance plan shall contain adequate accounting procedures to insure that the permittee does not collect or set aside funds in excess of the amount specified in the financial assurance plan or any updates thereto or use the funds for any purpose other than required by paragraph (8)(a) of this rule; [Renumbered from 340-95-090(8)(b)]

(g) The certification required by subsection (6)(c) of this rule; and

(h) The annual updates required by subsection (6)(d) of this rule.

(5) Amount of Financial Assurance Required. The amount of financial assurance required shall be established as follows:

(a) Closure. Detailed cost estimates for closure shall be based on the conceptual "worst-case" closure plan or the final Engineered Site Closure Plan, as applicable. Cost estimates for the Final Engineered Site Closure plan shall take into consideration at least the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) The portion of the site property closed before final closure of the entire site; and

(G) Any other conditions imposed on the permit relating to closure of the site.

(b) Post-closure care. Detailed cost estimates for post-closure care shall be based on the conceptual post-closure plan or the Final Engineered Post-closure Plan, as applicable. Cost estimates for the Final Engineered Post-closure Plan shall also take into consideration at least the following:

(A) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges; and

(B) Any other conditions imposed on the permit relating to post-closure care of the site.

(c) Corrective action. Estimated total costs of required corrective action activities for the entire corrective action period, as described in a corrective action report pursuant to requirements of OAR 340-95-040(3).

(d) If a permittee is responsible for providing financial assurance for closure, post-closure care and/or corrective action activities at more than one non-municipal land disposal site, the amount of financial assurance required is equal to the sum of all cost estimates for each activity at each facility.

(6) How Financial Assurance Is to Be Provided and Updated.

(a) The permittee shall submit to the Department a copy of the first financial assurance mechanism prepared in association with a conceptual "worst-case" closure plan, a Final Engineered Site Closure Plan, a conceptual post-closure plan, a Final Engineered Post-closure Plan, and a corrective action report.

(b) The permittee shall also place a copy of the applicable financial assurance plan(s) in the facility operations office or another location approved by the Department on the schedule specified in Section (3) of this rule.

(c) The permittee shall certify to the Director at the time a financial assurance plan is placed in the facility operations office or other approved location that the financial assurance mechanism meets all state requirements. This date becomes the "annual review date" of the provision of financial assurance, unless a corporate guarantee is used, in which case the annual review date is 90 days after the end of the corporation's fiscal year.

(d) Annual update. The permittee shall annually review and update the financial assurance during the operating life and post-closure care period, or until the corrective action is completed, as applicable.

(A) The annual review shall include:

(i) An adjustment to the cost estimate(s) for inflation and in the discount rate as specified in subsection (4)(a) of this rule;

(ii) A review of the closure, post-closure and corrective action (if required) plans and facility conditions to assess whether any changes have occurred which would increase or decrease the estimated maximum costs of closure, post-closure care or corrective action since the previous review;

(iii) If a trust fund or other pay-in financial mechanism is being used, an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance.

(B) The financial assurance mechanism(s) shall be increased or may be reduced to take into consideration any adjustments in cost estimates identified in the annual review.

(C) The annual update shall consist of a certification from the permittee submitted to the Department and placed in the facility operations office or other approved location . The certification shall state that the financial

assurance plans(s) and financial assurance mechanism(s) have been reviewed, updated and found adequate, and that the updated documents have been placed at the facility operations office or other approved location. The annual update shall be no later than:

(i) The facility's annual review date; or

(ii) For a facility operating under a closure permit, by the date specified in OAR 340-95-050(3).

(7) Department Review of Financial Assurance and Third-Party Certification.

(a) The Department may at any time select a permittee to submit financial assurance plan(s) and financial assurance mechanism(s) for Department review. Selection for review will not occur more frequently than once every five years, unless the Department has reasonable cause for more frequent selection. The Department may, however, review such plans and mechanisms in conjunction with a site inspection at any time.

(b) A permittee who wants to provide "alternative financial assurance" pursuant to OAR 340-95-095(5)(g) shall submit its financial assurance plan and proposed financial assurance mechanism for Department review and approval on the schedule specified in section (3) of this rule. The submittal shall include certification from a qualified third party that the financial assurance mechanism meets all state requirements for financial assurance, and is reasonably designed to provide the required amount of financial assurance. The third-party certification shall be submitted in a format acceptable to the Department.

(c) The Department will review the financial assurance and the third-party certification, if applicable, for compliance with state laws.

(8) Accumulation of any financial assurance funds:

(a) The financial assurance mechanisms for closure, post-closure care and corrective action shall ensure the funds will be available in a timely fashion when needed. The permittee shall pay moneys into a trust fund in the amount and at the frequency specified in the financial assurance plan or obtain other financial assurance mechanisms as specified in the financial assurance plan, on the schedule specified in section (3) of this rule.

(A) Closure. The total amount of financial assurance required for closure shall be available in the form specified in the financial assurance plan or any updates thereto, whenever final closure of a non-municipal land disposal site unit is scheduled to occur in the conceptual "worst case" closure plan or in the Final Engineered Site Closure Plan.

(B) Post-closure care. The total amount of financial assurance required for post-closure care shall be available in the form specified in the financial assurance plan or any updates thereto, whenever post-closure care is scheduled to begin for a non-municipal land disposal site unit in the conceptual post-closure plan or in the Final Engineered Post-closure Plan.

(C) Corrective action. The total amount of financial assurance required for corrective action shall be available in the form specified in the financial assurance plan or any updates thereto on the schedule specified in the corrective action selected pursuant to OAR 340 Division 40.

(b) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule and OAR 340-95-095;

(c) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the applicable financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in section (1) of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the applicable financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use;

(d) If financial assurance is provided under OAR 340-95-095(5)(a), (b) or (g), upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with subsection (4)(e) of this rule. [Renumbered from OAR 340-94-150(7)]

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

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality — Waste Management and Cleanup Division

OAR Chapter 340

DATE:	**TIME:**	**LOCATION:**
July 25, 1995	3 pm	DEQ Headquarters Room 10A 811 SW 6th Avenue Portland, OR 97204

HEARINGS OFFICER(s): Peter Spendelow

STATUTORY AUTHORITY: ORS 459.045, 459.209, 459.270, 468.020

ADOPT:

AMEND: OAR 340-94-140
OAR 340-95-090

REPEAL:

Amendments or additions to other sections of Division 94 and 95 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 proposed amendments change the effective date of financial assurance requirements for Oregon solid waste landfills from April 9, 1995 to April 9, 1997.

LAST DATE FOR COMMENT: July 28, 1995 5 pm
DATE PROPOSED TO BE EFFECTIVE: Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

ACTING AGENCY RULES COORDINATOR: Roberta Young. (503) 229-6408
AGENCY CONTACT FOR THIS PROPOSAL: Peter Spendelow. (503) 229-5253
ADDRESS: DEQ Waste Management and Cleanup Division
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

TELEPHONE: (503) 229-5253
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.

Peter H. Spendelow — Signature
June 15, 1995 — Date

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Changing the Effective Date for Provision of Financial Assurance at Solid Waste Landfills

Date Issued:	June 20, 1995
Public Hearings:	July 25, 1995
Comments Due:	July 28, 1995

WHO IS AFFECTED: Solid Waste Landfill Permittees, Operators, and Owners

WHAT IS PROPOSED: Changing the effective date of financial assurance requirements from 1995 to April 9, 1997

WHAT ARE THE HIGHLIGHTS: The proposed April 1997 date matches the newly-adopted federal date for financial assurance requirements for municipal solid waste landfills. April 9, 1997 is also proposed as the effective date for financial assurance requirements for industrial and other non-municipal solid waste landfills.

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

Date:	July 25, 1995
Time:	3 pm
Place:	Room 10A, DEQ Headquarters 811 SW 6th Avenue Portland, OR 97204

Written comments must be received by 5:00 p.m. on July 28, 1995 at the following address:

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

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

11/1/86

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

A copy of the Proposed Rule may be reviewed at the above address. A copy may be obtained from the Department by calling the Waste management and Cleanup Division at 229-5913 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
Changing Effective Date for Provision of Financial Assurance for Solid Waste Landfills

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 459.045, 459.209, 459.270, and 468.020. Oregon has also received "approved state" designation from EPA, and thus may implement the requirements of the Resource Conservation and Recovery Act Subtitle D for municipal solid waste landfills.

2. Need for the Rule

The US Environmental Protection Agency (EPA) expects to adopt certain new financial assurance rules that will enable municipalities and corporations to demonstrate the ability to fund necessary closure and post-closure costs for solid waste landfills through "financial tests",at a lower cost than the cost of forming trust funds or purchasing insurance to demonstrate financial assurance. EPA recently extended their financial assurance deadline two years to allow more time for adoption and implementation of "financial tests". Oregon's landfill permittees may be able to reduce the cost of providing financial assurance if they can make use of EPA's proposed financial tests. Adopting these rules will allow EPA time to adopt financial test rules, and will also give local governments time to apply those financial tests.

3. Principal Documents Relied Upon in this Rulemaking

a. Oregon Revised Statutes Chapters 459, 468.
b. Oregon Administrative Rules Divisions 340-94, 340-95
c. Proposed Federal rule published in 59 FR 52498 to 52501

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 Solid Waste Advisory Committee members reviewed the proposed rules by mail.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Changing the Effective Date for Provision of
Financial Assurance for Solid Waste Landfills

Fiscal and Economic Impact Statement

Introduction

When solid waste landfills close, there are a number of actions that must be taken to make sure that wastes buried in the landfill do not damage the environment. Cover material may need to be placed on the landfill to reduce or eliminate water from percolating into the landfill and creating leachate that can pollute groundwater. The cover material would need to be protected from erosion so that it can continue to function properly as cover. Leachate that is produced in the landfill may need to be pumped and treated, and methane and other landfill gasses also may need to be recovered. If pollution has occurred in the past, steps may need to be taken to clean up the pollution.

However, when a landfill closes, the operator of the landfill would no longer have disposal fees from waste to cover the costs of properly closing and maintaining the landfill. Operators without sufficient financial backing may not be able to pay the costs of properly closing the landfill, meaning that the general public may end up either paying the costs of closing the landfill, or experiencing the damage created by the landfill.

Financial assurance requirements were previously adopted by DEQ to assure that landfill operators had sufficient monies available to properly close and maintain their landfills. Financial assurance could be provided through such mechanisms as a trust fund, a surety bond, and irrevocable letter of credit, or other approved methods. The requirements were originally scheduled to become effective on April 9, 1995 for most Oregon landfills, and October 9, 1995 for very small dry landfills with no other practicable waste management alternatives. Temporary rules adopted in April 1995 changed both these effective dates to April 9, 1997, and this rule proposal would make permanent the new 1997 effective dates.

The rule amendments being proposed would not change the previously adopted requirements for closing landfills. Instead, they would change the date when landfill operators would need to be able to demonstrate that they have sufficient financial assurance to properly close and maintain the landfills. Although this could result in small savings for landfill operators, the overall effect should be relatively small. Regardless of the financial assurance requirements, prudent landfill operators already are making sure that they have sufficient funds being raised in the disposal fees they charge in order to pay the expected costs of closing and maintaining their landfills. In addition, financial assurance requirements have already gone into effect for large regional landfills and for landfills that have obtained closure permits, and so these landfills will not be affected by these proposed amendments.

The expected effect on different parties is as follows.

General Public

The general public would not be directly affected by these proposals. Two indirect effects possibly cancel each other. On one hand, the general public might experience lower disposal fees, or at least a reduced rate of growth for disposal fees, to the extent that any cost savings to landfill operators are passed on to the public in the disposal fees charged. On the other hand, the general public might experience higher costs if it ends up that the public has to pay for cleanup and closing of a disposal site because a landfill continued to operate without building up sufficient financial backing to properly close the landfill.

Small Business

The direct effect would be on those small businesses that own, operate, or are permittees of solid waste landfills. The proposed rules would delay the requirement for preparing plans and cost estimates for landfill closure, providing some temporary cost savings. The cost savings for providing the financial assurance itself would vary depending on the type of financial assurance mechanism the landfill operator or permittee would use. If a landfill operator is already collecting funds in a trust fund to pay closure costs, the proposed rules would have little effect, whereas other mechanisms such as surety bonds do cost money, and so there may be some temporary savings. The Environmental Protection Agency, in its prologue to Subtitle D regulations, estimates that the financial assurance mechanisms could annually cost on the order of 1 to 2 percent of the entire cost needed to close the landfill. The Department has estimated the average cost of closing a landfill to be about $110,000 per acre, with a range of $85,000 to $175,000 per acre. In general, municipal landfills cover ten acres or more. Thus, closing a municipal landfill would be expected to cost more than $1,000,000, and so the direct savings from delaying the financial assurance requirements could be on the order of $10,000 to $20,000 per year. Closure costs for non-municipal landfills such as wood waste sites are generally much less, since usually little more than a soil cover is required. Such closure costs may be as little as $1,000 per acre, with the average size of sites being 5 acres. The cost of financial assurance at these sites would thus be small, and so the savings from delaying the financial assurance requirements would be minimal.

The effect on small businesses that do not own or operate landfills should be the same as discussed for the general public.

Large Business and Local Governments

These would be affected in the same manner as small businesses, as discussed above. Non-municipal solid waste disposal sites are usually owned and operated by large businesses.

State Agencies

DEQ does not expect to experience any fiscal impact from the proposed rulemaking. No other state agencies are directly affected.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Changing the Effective Date for Provision of
Financial Assurance for Solid Waste Landfills

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed amendments would change the effective date of financial assurance requirements for solid waste landfills from April 9, 1995 to April 9, 1997.

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: Not applicable

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? Not applicable

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or

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

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

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

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

The proposed amendments do not affect land use. They affect only the effective date when financial assurance requirements must be met for solid waste disposal sites.

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

Not applicable

Division | Intergovernmental Coord. | Date 6/6/95

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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?*

   40 CFR Parts 257 and 258, Solid Waste Disposal Facility Criteria ("Subtitle D") apply to municipal solid waste landfills.

   40 CFR Part 257 also applies to non-municipal land disposal facilities, but contains no regulations for financial assurance or for closure or post-closure plans.

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

   The federal rules for municipal solid waste landfills require a detailed written estimate be produced of the cost of closure, post-closure, and corrective action (if necessary), and a demonstration that financial assurance based on those costs is available. Several financial assurance mechanisms are listed and "performance based" alternative mechanisms are allowed if approved by the Director of an "approved state". Oregon is an "approved state". The federal financial assurance requirements do not apply to non-municipal landfills.

3. *Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Were data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?*

   The federal financial assurance requirements do address issues that are of concern in Oregon, and the proposed amendments make Oregon's effective date the same as the newly-adopted Federal effective date. However, the federal financial assurance requirements do not cover non-municipal landfills, which could potentially lead to having industrial landfills that are unable to properly close if the landfill permittee goes bankrupt or otherwise lacks the funds to properly close the site. Oregon law does not distinguish between municipal and non-municipal sites in this regard, and so financial assurance requirements should affect the non-municipal sites as well as the municipal ones.

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 amendments will change the state financial assurance effective date to match the newly-adopted federal effective date, potentially allowing landfill operators and permittees to make use of "financial tests" that the federal government is expected to adopt as a new financial assurance mechanism, potentially reducing the cost of complying with the requirements.

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

   DEQ agrees with the reasons given by the federal government for changing the effective date.

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

   not applicable

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

   The proposed amendments create the same new effective date for financial assurance requirements for both municipal and nonmunicipal disposal sites.

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

   If financial assurance was not required for non-municipal sites, the general public might end up having to pay the cost of properly closing an industrial site if the existing operator or permittee went bankrupt.

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?*

   Federal rules as of this time have failed to address the issue of financial assurance for non-municipal solid waste landfills. Non-municipal landfills can also create environmental problems if not properly closed, and Oregon law does not distinguish between municipal and non-municipal disposal sites as far as financial assurance is concerned.

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

    Yes. The financial assurance mechanisms are in common use.

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. Properly closing a non-industrial site by the operator or permittee should be less expensive than if a public agency has to close the site due to the financial failure of the landfill operator or permittee.

Coos County

BOARD OF COMMISSIONERS

BEV OWEN GORDON ROSS JIM WHITTY

COOS COUNTY COURTHOUSE / COQUILLE, OREGON 97423 / (503)396-3121 EXT. 224, 225, / FAX (503)396-4861 / TDD 1-800-735-2900

July 10, 1995

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

Re: Rulemaking Proposal - Financial Assurance Requirements

Dear Mr. Spendelow:

Coos County has reviewed DEQ's rulemaking proposal to change the effective date of the financial assurance requirements for landfills. Coos County strongly supports this proposal. It would be premature to implement the financial assurance requirements in Oregon before EPA takes final action to establish appropriate financial assurance mechanisms for local governments.

In addition to changing the effective date to match that of the EPA requirements, Coos County also believes that DEQ should adopt all the local government financial assurance mechanisms that are ultimately adopted by the EPA. Hopefully the final EPA rules will be adopted before the end of this year so DEQ and Coos County will have adequate time to review and implement the appropriate mechanism.

Please include Coos County on the appropriate mailing list for notice of this and related actions. Thank you very much for your consideration of Coos County's comments on this matter.

Sincerely,
BOARD OF COMMISSIONERS

Chairperson

Commissioner

Commissioner

cc: Solid Waste Department

Attachment C

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
X Information Item

Agenda Item E
September 28-29, 1995 Meeting

Title:

Coastal Nonpoint Pollution Control Program Status Report

Summary:

Oregon's Coastal Nonpoint Pollution Control Program is designed to address the growing threat to coastal waters from population growth and development. Oregon's program addresses a comprehensive array of nonpoint pollution sources from forestry, agriculture, marinas, urban development, and hydromodification (dams and channels), and protects wetlands and riparian areas.

The Department of Environmental Quality and the Department of Land Conservation and Development have made a timely submittal of Oregon's Coastal Nonpoint Pollution Control Program to the U.S. Environmental Protection Agency and the National Oceanic and Atmospheric Administration. Oregon's program submittal describes the state's implementation of many of the required management measures through a variety of state programs, including the Forest Practices Act, the Agricultural Water Quality Management Act, and the Department's storm water program and 401 certification process. Although much of the program is already in place, there remain several gaps in the program, primarily relating to urban development. Filling these gaps will not only meet federal program requirements but will address several longstanding problems with serious environmental consequences.

The report summarizes both the work that has been done and the work that remains in program development. Construction site erosion control, urban runoff, and inspections of onsite sewage disposal systems are the areas where additional work is needed, and the report outlines the Department's plans for that additional work.

Department Recommendation:

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

Report Author | Division Administrator | Director

September 12, 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: September 12, 1995

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item E, September 28-29, 1995, EQC Meeting

Statement of Purpose

This report is intended to update the Commission on the status of the Coastal Nonpoint Pollution Control Program in Oregon. The State recently submitted its program plan to the Environmental Protection Agency and the National Oceanic and Atmospheric Administration for approval. In addition, some important policy changes were announced by EPA and NOAA since the Commission last received a status report on the program. Finally, this report is intended to lay out the Department's proposed plan of action regarding the program, in order for the Commission to provide informal advice and feedback.

Background

In 1990, Congress adopted the Coastal Zone Act Reauthorization Amendments. Section 6217 of CZARA requires coastal states to develop and implement a program to address a wide variety of sources of nonpoint pollution affecting coastal waters. As required by the statute, EPA issued a guidance document setting forth management measures that states are required to implement. The management measures are in the nature of water quality goals and objectives, which states can implement through a variety of different management practices.

EPA and NOAA also published a program guidance document setting forth general policies relating to the program and establishing timetables for program development and implementation. Initially, states were required to complete all program development by July, 1995, and to fully implement all management measures within an additional three years. States which did not meet these timelines were to be penalized by reductions in funding pursuant to Section 319 of the Clean Water Act (nonpoint source control) and Section 306 of the Coastal Zone Management Act (coastal management).

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

In March, 1995, EPA and NOAA notified states that it was making a number of important policy changes, including changes in the timetable for program development and implementation.

Authority of the Commission with Respect to the Issue

ORS 468.020 provides the Commission with general authorization to adopt rules and standards. ORS 468B.020(2) provides general authority to the Commission to take action necessary to prevent and abate pollution.

ORS 454.615 requires the Commission to adopt rules establishing standards which prescribe minimum requirements for the operation and maintenance of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities. In addition ORS 454.625 gives the Commission authority to adopt rules as it considers necessary to regulate sewage treatment. According to a letter opinion from the Attorney General, these statutes also authorize the Commission to promulgate a rule requiring inspection of an onsite sewage disposal system at the time of any change of ownership of the property the system serves as a necessary minimum requirement for the operation and maintenance of such systems.

ORS 468B.020(2) provides the Commission with broad authority to take actions necessary for the prevention of new pollution and the abatement of existing pollution by "requiring the use of all available and reasonable methods necessary."

Changes in Federal Policy

On March 1, 1995, NOAA and EPA published draft guidance on "Flexibility for State Coastal Nonpoint Programs," setting out proposed changes to the program. On June 28, the federal agencies notified states that the proposed changes would be implemented. The changes provide flexibility in a number of ways:

A. Conditional Approval:

Previously, states were required to have all components of their Coastal Nonpoint Programs in place by July, 1995, with the possibility of a one-year extension under very limited circumstances. With this recent change, however, NOAA and EPA will grant conditional approval for up to five years to allow states the opportunity to complete their programs.

Statutory penalty provisions will not be applied during the period of conditional approval. The extra time is intended to allow states to: (1) address identified gaps, including obtaining new statutory or regulatory authority, if necessary; (2) demonstrate that existing authorities are adequate for ensuring implementation of the EPA management measures; and (3) develop other incomplete program elements.

B. Extended timelines.

In addition to extending the time for states to complete program development, NOAA and EPA have extended the time that states are allowed for full program implementation. States are now provided with nine years, until 2004, to implement the EPA management measures, and until 2009 to implement any additional measures needed to meet water quality standards in coastal waters. These schedules apply to all states, regardless of when the state obtains full program approval.

C. Geographic Scope

Pursuant to CZARA Section 63217(e), NOAA examined each coastal state's inland Coastal Zone boundary to determine whether it encompasses the land and water uses having a "significant" impact on the state's coastal waters, and to recommend boundary modifications if necessary. NOAA recommended that each state extend its boundary at least as far as the U.S.G.S. hydrologic unit containing the head of tide; this is referred to as the Coastal Watershed boundary. NOAA also made additional recommendations to individual states.

Before the recent policy changes, NOAA and EPA took the position that states were required to justify any deviation from NOAA's boundary recommendation. With the policy change, however, EPA and NOAA have indicated that they will generally defer to a state's determination of the appropriate geographic scope of the Coastal Nonpoint Program, unless they determine that the management area excludes "(a) existing land or water uses that reasonably can be expected to have a significant impact on coastal waters of the state, or (b) reasonably foreseeable threats to coastal waters from nearby activities landward of the state's management area." If the federal agencies determine that a state's management area is not adequate, they will work with the individual states to resolve issues related to the geographic scope.

D. Enforceability

One essential element of the Coastal Nonpoint Pollution Control Program is the federal requirement that the state have "enforceable" authorities in place regarding each of the EPA

management measures. This "enforceability" requirement distinguishes the Coastal Nonpoint Program from previous federal efforts to control nonpoint source pollution. It is important to emphasize that the requirement to have "enforceable" authorities is NOT a requirement to implement the measures through an enforcement program.

Prior to the policy changes, EPA and NOAA took the position that general water pollution control authorities were not adequate to meet the "enforceability" requirement. The recent guidance document, however, indicates that the combination of voluntary or incentive-based implementation programs and general water pollution control authorities may be considered to meet the enforceability requirement under certain conditions. States need to provide an explanation of how the state proposes to use its backup authority, and must provide measurable implementation goals. EPA and NOAA may give conditional approval for such an approach, and after three years will evaluate whether the program has resulted in widespread implementation of the applicable measures. If there is not widespread implementation at that time, the state will be required to obtain more specific enforceable authority by the end of the five-year conditional approval period.

Current Program Status

Oregon submitted its program to EPA and NOAA on the due date, July 19, 1995. The program submittal consists of both a description of existing programs which meet the federal requirements, and a plan for developing additional program components in the few remaining areas where program development is incomplete.

Implementation of the forestry management measures is accomplished by the Oregon Department of Forestry through its Forest Practices Act laws and regulations. These authorities provide a comprehensive set of management practices required of commercial forest operations.

Oregon's Agricultural Water Quality Management Act (known as Senate Bill 1010) is the vehicle which will be used for implementation of the agricultural management measures. The program has not yet been implemented in the coastal zone, but planning efforts for implementation are underway. The Oregon Department of Agriculture is responsible for implementation of Senate Bill 1010.

Urban development requirements of the Coastal Nonpoint Program are met by a variety of state laws, including the land use planning system and the Department's storm water program. Several measures addressing urban development are not yet implemented in Oregon; those measures needing further program development will be addressed later in this report.

The marinas, wetlands, and hydromodification (channels and dams) requirements of the Coastal Nonpoint Program are also met by a variety of state laws, including Oregon's Removal-Fill Program and the Department's Clean Water Act Section 401 certification program.

Further details about Oregon's submittal can be found in the document's Executive Summary, a copy of which is included as Attachment 1.

By law, NOAA and EPA have six months (until January, 1996) to review states' program submittals and issue their approval, conditional approval, or disapproval. Department staff anticipate that Oregon will receive a conditional approval.

In its program submittal, Oregon proposes to apply the Coastal Nonpoint Program within Oregon's present Coastal Zone pursuant to the CZMA. Oregon's Coastal Zone was initially established on a watershed basis, and includes most lands west of the crest of the Coast Range. However, in the Columbia, Umpqua, and Rogue basins, the Coastal Zone does not extend as far inland. In the Columbia the Coastal Zone extends inland to the western end of Puget Island, or approximately to the extent of saltwater intrusion in the Columbia River. In the Umpqua basin, the Coastal Zone extends westward from Scottsburg; and in the Rogue basin, the Coastal Zone extends inland as far as Agness.

NOAA recommended that all states, including Oregon, extend the management area for the Coastal Nonpoint Program to the Coastal Watershed boundary. In Oregon, the Coastal Watershed boundary extends beyond Oregon's Coastal Zone in three river basins: the Columbia, Umpqua, and Rogue. In the Columbia, the Coastal Watershed boundary extends to Bonneville Dam and also up the Willamette as far as Willamette Falls at Oregon City. In the Umpqua, the Coastal Watershed boundary extends to the junction of the North and South Umpqua west of Roseburg. In the Rogue, the Coastal Watershed boundary extends inland to the juncture of the Rogue and the Applegate.

In addition to the recommendation that Oregon extend implementation of the Coastal Nonpoint Program to the Coastal Watershed boundary, NOAA also recommended that the state consider including additional portions of the Columbia, Umpqua, and Rogue basins, based on data indicating the potential for nonpoint source pollution upstream of the Coastal Watershed boundary.

The issue of Oregon's management area for implementation of the Coastal Nonpoint Program was addressed during NOAA and EPA's threshold review of Oregon's program conducted in

August, 1994. In their threshold review response, the federal agencies continued to assert the importance of NOAA's boundary recommendation, and urged the state to convene a work group including other state agencies to "guide development of additional analysis to resolve the boundary issues. . .," and offered to provide technical support in these efforts. The threshold review was conducted before the federal policy changes noted above.

In its program submittal, Oregon elected to designate only its current Coastal Zone as the geographic scope of the Coastal Nonpoint Program. However, the federal agencies, EPA in particular, are continuing to develop data relating to the question of whether the management area should be expanded. Toward that end, EPA has provided a grant to the Department of $50,000 for watershed assessment in the Umpqua basin.

It is likely that there will be continuing negotiations with EPA and NOAA regarding the appropriate boundary for the Coastal Nonpoint Program.

Remaining Program Development

To obtain full approval of the Coastal Nonpoint Pollution Control Program, Oregon must develop enforceable authorities for the few remaining management measures which lack them. Urban runoff measures including construction site erosion control, periodic inspection of onsite sewage disposal systems, and local implementation of measures relating to roads and highways are the three areas where additional program development is needed. The Department intends to develop administrative rules and related technical assistance packages to fill the gaps in these areas.

CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL:

Construction site runoff is by far the largest source of sediment in developing areas. Erosion rates from natural areas, such as undisturbed forest lands, are typically less than one ton per acre annually; rates from construction sites range from 7.2 to more than 1,000 tons per acre per year.[1]

Impacts of this sediment on the environment include the clogging of salmonid spawning gravels, the accelerated filling in of waterways and estuaries, and the increase in algal growth associated with elevated nutrients such as phosphorus which are carried with sediment to the

[1] U.S. Environmental Protection Agency. 1993. *Guidance Specifying Management Measures For Sources of Nonpoint Pollution in Coastal Waters.* U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA 840-B-92-002.

water. The increased turbidity from sediment reduces light penetration and hinders the feeding of fish, like salmon fry, which capture their prey by sight. Sediment can impair respiration of fish and other aquatic life, and can smother or alter benthic (bottom) communities and kill submerged aquatic vegetation.

The Department plans to initiate rulemaking to address the management measure relating to construction site erosion and sediment control, which provides as follows:

Construction Site Erosion and Sediment Control Management Measure:

(1) Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction, and

(2) Prior to land disturbance, prepare and implement an approved erosion and sediment control plan or similar administrative document that contains erosion and sediment control provisions.

The Department and DLCD convened an Urban Technical Advisory Group to recommend ways to fill program gaps identified in an inventory of existing programs. The Urban Technical Advisory Group made a number of recommendations regarding the implementation of the erosion management measure:

1. The TAG recommended that this measure be implemented by the Commission and the Department, through a rule requiring local jurisdictions to incorporate erosion control plans and practices through existing permit processes.
2. The TAG strongly recommended that the Department provide technical assistance to local jurisdictions in the form of model ordinances and sample erosion control plans.
3. The TAG recommended that this measure be applied to all activities for which a building, excavation, tree removal, or like permit is required.
4. The EPA management measure exempts single-family homes on sites between one-half acre and five acres in size. The TAG noted that much of the construction occurring in coastal communities falls within this size limit, and recommended that Oregon NOT exempt such sites from the erosion control provisions.

The experience of DEQ field staff involved in the current stormwater program has led to the identification of several problems with the existing program:

- The five acre threshold provides a loophole for large developers, who do minimal site development before subdividing and selling individual parcels, which, if they are less than five acres, have not been required to obtain storm water construction permits.

- The Department's resources for enforcement are extremely limited, with staff responsible for coverage of large geographic areas. In addition to limiting the time staff can spend providing technical assistance, there are insufficient resources for adequate field inspections, especially considering the distances that staff may have to travel to conduct an inspection. Inspections are generally initiated by citizen complaint. Local governments are authorized to act as the Department's agent in issuing stormwater construction permits, but only the Department is authorized to take enforcement action.

The general permits used in the storm water program are due to expire September 30, 1996. Because the storm water construction permit and the Coastal Nonpoint Program requirements both focus on limiting erosion and sedimentation from construction projects, it makes sense to examine the issue of addressing the gap in the Coastal Nonpoint Program at the same time as the storm water program is reviewed for possible changes.

The Department plans to begin the advisory committee/rulemaking process to address these problems, and to present a proposal to the Commission within nine to 12 months.

OPERATING ONSITE DISPOSAL SYSTEMS:

About 40 percent of Oregon's population relies on onsite sewage disposal systems (OSDS). Many existing systems were constructed before the current permit system was in place. At the coast, retirees and others moving to the state may not have prior experience with septic systems and may not understand either their maintenance requirements or their operating limits. Overloading a system and failing to maintain it can lead to premature failure of the system, causing not only a major expense to the property owner but also threatening surface waters with runoff contaminated with pathogens, nutrients, and oxygen-demanding organic matter.

The Department's existing regulatory system for designing and siting new onsite disposal systems provides protection for surface and groundwater, and implements the EPA management measure for new systems, as well as some aspects of the measure for operating systems. However, other aspects of the measure for existing systems, in particular the requirement concerning periodic inspection, are not yet implemented in the state.

The EPA management measure provides, in part, as follows:

Operating Onsite Disposal Systems Management Measure:

(1) Establish and implement policies and systems to ensure that existing OSDS are operated and maintained. . . .

(2) Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing;

(3) Consider replace or upgrading OSDS to treat influent so that total nitrogen loadings in the effluent are reduced by 50 percent. . . .

The requirement that inspections be conducted "at a frequency adequate to ascertain whether [the systems] are failing" is the largest gap in Oregon's program relating to onsite disposal systems. Currently, the Department requires operating permits (with inspection requirements) for most large septic systems and for alternatives to standard systems, including sand and gravel filters. However, for small standard onsite systems, operating permits are not required, and inspections are not routinely conducted. Inspections are in most instances conducted in response to complaints.

The areas around commercial shellfish harvesting areas are inspected pursuant to federal Food and Drug Administration policies. These inspections include all potential sources of point and nonpoint pollution, including septic systems. The federal regulations require a physical inspection every 12 years. In Oregon, those inspections are coordinated by the Oregon Department of Agriculture, and involve local health departments and the Department of Environmental Quality.

Typical failure rates nationally range from one to five percent per year. Data from the shellfish program inspections indicate that failure rates of systems inspected in Oregon are sometimes significantly higher. See Attachment 2.

Many owners of onsite systems maintain those systems adequately through routine inspection and pumping. However, many new residents in the state's rural areas are unaware of the importance of regular maintenance, and are unfamiliar with the specifications of their own systems. Public education efforts need to be directed at these residents, and should emphasize that proper operation and maintenance of a system can save the thousands of dollars needed to install a new drainfield.

Currently, many banks and other mortgage lenders require some sort of inspection of an onsite system before the property is transferred. In other instances, inspections are not conducted

routinely. Even when an inspection is required, many institutions ask only that the inspector be a government employee, and there are no standard protocols for the inspection itself.

Department staff have been investigating the alternative of a requirement that all onsite systems be inspected whenever the property on which the system is located is transferred. This is the approach recommended by the Urban Technical Advisory Group. This has the potential for alerting buyers to the fact that septic systems need periodic upkeep and repair. Federal officials have indicated that this approach, combined with educational efforts, may suffice, but want information regarding how often property changes hands. NOAA and EPA also encouraged the state to develop standards for both inspections and inspectors, which was also recommended by the Technical Advisory Group.

The Department intends to develop a rulemaking proposal for the Commission's consideration. There is currently a Technical Advisory Committee that advises the Department on matters related to the onsite program. Department staff will ask the existing committee if they would also consider the inspection issue. If so, their expertise would be very beneficial in developing the inspection requirement.

The Department intends to present a rulemaking proposal to the Commission within nine to 12 months.

ROADS, HIGHWAYS, AND BRIDGES:

Construction of roads, highways, and bridges, like other construction, can cause significant erosion and sedimentation. Roads also accumulate oils, heavy metals, dirt, and debris, which can then be carried to surface waters in stormwater. The management practices which the Oregon Department of Transportation has developed for state and federal roads under its jurisdiction will help to ensure that these impacts are as limited as possible through proper siting, design, construction, maintenance, and operation of roads and highways. However, to meet the requirements of the Coastal Nonpoint Program, similar practices must be developed and implemented on the roads, highways, and bridges under the jurisdiction of city and county governments. The Department intends to initiate rulemaking to address this gap in the program.

The Oregon Department of Transportation, while willing to provide expertise regarding pollution prevention practices, lacks authority to require any such measures on local roads. In order to meet the requirements of the Coastal Nonpoint Program, a state-level enforceable authority must be in place.

The Urban Technical Advisory Group recommended that this measure be implemented on local roads through a requirement of the Commission, with ODOT providing technical assistance.

The Department intends to follow that recommendation. Since this aspect of the program concerns primarily local governments, Department staff must work closely with them in developing the requirements.

The Department intends to develop a rulemaking proposal for the Commission within six to nine months.

Summary of Public Input Opportunity

Since EPA published its guidance in January, 1993, there have been numerous opportunities for public input.

- A series of **public presentations** was conducted in 1993 and 1994 to introduce the program and its requirements to those interested in or affected by the program.

- In March, 1994, half-day **public workshops** were held to review program requirements in the fields of agriculture, marinas, and urban development. These workshops were open to the public, and paved the way for the formation of technical advisory groups in each of these three areas.

- Following the workshops, **technical advisory groups** were formed to advise on needed program development in the area of agriculture, marinas, and urban development. Each group met three or four times. All meetings were open to the public, and notice was provided to all known interested persons, as well as the general public.

- In August, 1994, NOAA and EPA conducted an informal **threshold review** of Oregon's progress in program development. Notice of the review was sent to the mailing lists for the technical groups, and an opportunity for public comment was provided during each day of the threshold review meetings.

- The Department and DLCD conducted three **public information meetings** in the coastal communities of Coos Bay, Garibaldi, and Florence in February and March, 1995, to provide an opportunity for public input regarding the program. A list of issues raised during the public meetings is attached as Attachment 3.

- Before the submittal was finalized, a draft was issued for public review. A **public comment period** ran from June 5, 1995, to July 5, 1995, to receive written comments about the program submittal.

- A **public comment meeting** was held in Lincoln City on June 27, 1995, to receive comments from the public regarding the draft program submittal.

- **Additional opportunities for public input** will be available as the Department and other state agencies develop programs and policies to fill the remaining gaps in the program, including participation on advisory committees and involvement in any required rulemaking processes.

Conclusions

1. The State of Oregon has completed much of the work required by CZARA Section 6217, and the Department and DLCD have made a timely submittal of the state's program to NOAA and EPA.

2. The Department, in conjunction with other state agencies, needs to move forward on development of programs to address nonpoint problems from on-site disposal systems and urban development in order to deal effectively with long-standing problems from cumulative impacts.

Intended Future Actions

CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL:

1. Convene a technical advisory committee, consisting of representatives from coastal local governments, the construction industry, experts in erosion and sediment control, fisheries biologists, and the public, to pursue in detail the recommendations of the Technical Advisory Group, and to examine and recommend options for the Commission.

2. Examine options for reducing erosion and sediment runoff from construction sites:
   a. Remove five acre threshold from storm water construction site erosion control program;

b. Require local governments to adopt erosion and sediment control measures for construction sites of less than five acres.

3. Develop technical assistance package for local governments, including:
   a. Sample local erosion and sediment control ordinance;
   b. Sample erosion control plans and permit processing forms;
   c. Workshops for construction contractors.

4. Develop rulemaking package for Commission review within six to nine months.

OPERATING ONSITE DISPOSAL SYSTEMS:

1. Present the matter to the existing onsite disposal systems Technical Advisory Committee and request them to pursue in detail the recommendations of the Technical Advisory Group for implementing the EPA management measure.

2. Examine options for implementing periodic inspection of onsite systems.

3. Develop a rulemaking package for Commission review within nine to 12 months.

ROADS, HIGHWAYS, AND BRIDGES:

1. Convene a Technical Advisory Committee consisting of representatives of city and county planning and public works departments and ODOT, to pursue in greater detail the recommendations of the Technical Advisory Group and to examine and recommend options for the Commission.

2. Examine options for implementing management measures for local roads, highways, and bridges.

3. Develop a technical assistance package for local governments, including:
   a. Recommended management practices;
   b. Specifications for recommended structural and bioengineering practices;
   c. Information about pollution prevention opportunities in all aspects of planning, designing, siting, constructing, operating, and maintaining roads, highways, and bridges.

4. Develop rulemaking package for Commission review within six to nine months.

Department Recommendation

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

Attachments

1. Executive Summary, from A Pollution Prevention and Control Program for Oregon's Coastal Waters: Oregon's Program Submittal for the Coastal Nonpoint Pollution Control Program.

2. Summary of Sanitary Surveys in Oregon, 1988-1992.

3. Issues Raised During Public Meetings, Coastal Nonpoint Program.

Reference Documents (available upon request)

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

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

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Approved:

Section: for Kevin Downing

Division: for MDams

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Date Prepared: September 12, 1995

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September 12, 1995

ATTACHMENT 1: EXECUTIVE SUMMARY

A. INTRODUCTION

1. Oregon and the CNPCP Management Area

The State of Oregon is submitting this program document to the U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce (NOAA) pursuant to Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The submittal has been coordinated by the Coastal Management Program of the Department of Land Conservation and Development (DLCD), and the Water Quality Division of the Department of Environmental Quality (DEQ).

Oregon will implement its Coastal Nonpoint Pollution Control Program (CNPCP) in the area designated as the Oregon Coastal Zone pursuant to the Coastal Zone Management Act (CZMA). The coastal zone is roughly all lands west of the crest of the Coast Range. At the north end, the coastal zone extends up the Columbia River to Puget Island. In the Umpqua Basin, the coastal zone extends to the head of tide at Scottsburg, and on the Rogue, the coastal zone extends to Agness.

2. Major Natural Resource Issues

Three major natural resource issues provide the context for nonpoint source pollution prevention and control in Oregon. *Salmon recovery* is a major policy goal of both the state and federal governments. Anadromous fish stocks in the Northwest have been impacted by a variety of factors, including nonpoint pollution. The central role of these fish in the region's economy and culture make the health of the stocks an issue of critical importance.

The status of salmon and other threatened and endangered species has led the federal land management agencies to adopt an *ecosystem management* approach to planning in which watersheds are the central geographic unit. This approach is consistent with the direction Oregon has been taking with its encouragement of local watershed councils and funding of watershed restoration efforts. Efforts to prevent and control nonpoint pollution will need to be integrated with the ecosystem management efforts currently underway.

Managing growth and sustainable development is the third major natural resource issue related to nonpoint source pollution. Population growth in Oregon has been above average for several decades, a trend that is expected to continue. The cumulative impacts of growth and development are among the most serious and difficult nonpoint source pollution problems. Managing growth and encouraging sustainable development will require enhanced protection of water quality, including better methods of addressing nonpoint source problems.

3. Water Quality Summary for the CNPCP Management Area

Oregon has established water quality standards to protect state waters. The standards for coastal regions are designed to protect public and private domestic water supplies, industrial water supply, irrigation, livestock watering, anadromous fish passage, salmonid fish rearing and spawning, resident fish and aquatic life, wildlife, hunting, fishing, boating, water contact recreation, and hydropower. In addition, water quality standards protect commercial navigation and transportation on the Columbia and lower portions of the Rogue, as well as estuaries and adjacent marine waters in the coastal zone.

Oregon's statewide assessment of nonpoint source problems in 1988 showed significant problems in more than half the assessed coastal waters. Landslides, surface erosion, elimination of thermal cover and vegetation removal were the most-cited causes of problems identified in the assessment.

4. Nonpoint Source Categories

Nonpoint source pollution can be caused by a variety of activities on land. Forestry is the land use on about 90 percent of Oregon's coastal lands. Forest road construction is the activity most likely to cause landslides and surface erosion, contributing sediment, turbidity, and changes in the structure of stream channels. Other activities, including harvesting through clearcutting, the removal of streamside vegetation, and the use of herbicides, have the potential for releasing pollutants, although proper management practices can considerably reduce the threat.

Agricultural inputs to nonpoint pollution include soil erosion and bacterial pollution from animal wastes. Riparian degradation can contribute to temperature problems as well as erosion, and improper use of agricultural chemicals can contaminate both groundwater and surface waters.

Urban development can overwhelm the capacity of natural systems to absorb polluted runoff and other development effects. Erosion during construction, as well as the changes in runoff volume and velocities associated with increases in impervious surfaces, present serious challenges. The destruction of aquatic and riparian habitat, increased water temperatures, and contributions of fertilizers, pesticides, and other toxics from households are additional water quality threats associated with urban development.

Activities at marinas can contribute nonpoint source pollutants to coastal waters, including fish waste from recreational fishing and spills of various substances used for boat operation and maintenance. Sewage and solid waste from boats are potential pollutants. Construction of new marinas and expansion of existing facilities also have the potential to impact coastal waters, including interference with circulation patterns.

The construction of dams and the channelization of waterways have caused major changes to the natural hydrology of the coastal zone. These activities can impose barriers to fish passage as well as changes to aquatic habitat. Agricultural ditching, diking, and tidegate placement have converted former wetlands to agricultural use, reducing their pollution-abatement functions.

B. PROGRAM COORDINATION

1. Coordination with Water Quality Programs

Oregon's program for prevention and control of nonpoint pollution in coastal waters is coordinated with the Department of Environmental Quality's water quality programs. Grants administered by DEQ and funded through Section 319 of the Clean Water Act have been and will continue to be used in the coastal zone to fund various nonpoint source projects, including riparian restoration, workshops for land managers, and development of improved road and timber harvest management on forest lands. Pursuant to CZARA Section 6217(a)(2), Oregon's program is closely coordinated with state and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Clean Water Act. Once approved, the program shall serve as an update and expansion of the state's nonpoint source management program pursuant to Section 319 of the Clean Water Act.

2. Coordination with Coastal Management Program

Pursuant to CZARA Section 6217(a)(2) Oregon's coastal nonpoint program is coordinated with the Oregon Coastal Management Program. Coastal Program staff have developed a network of state, county, and local planners to address issues of common concern. Coordination among the various levels of government is a hallmark of Oregon's Coastal Management Program. The CNPCP will be integrated into the Coastal Management Program, and will have the benefit of the coordination mechanisms already in place.

3. CNPCP Development

The development of Oregon's coastal nonpoint program has been coordinated by DLCD's Coastal Management Program and DEQ's Water Quality Division. Many other state, federal, and local agencies have been involved in the development of the program. The development process included work by technical advisory committees composed of state, federal, and local officials as well as landowners and others affected by the program.

C. IMPLEMENTATION OF MANAGEMENT MEASURES

1. Management Measures for Agriculture

Oregon's plan to implement the agricultural management measures of the Coastal Nonpoint Pollution Control Program (CNPCP) incorporates the existing Confined Animal Feeding Operation (CAFO) program as well as the Oregon Department of Agriculture's new Agricultural Water Quality Management Program authorized by Senate Bill 1010 adopted by the 1993 Oregon Legislature.

Senate Bill 1010 authorizes the Department of Agriculture to establish boundaries of "Agricultural Water Quality Management Areas" under certain circumstances. The ODA's authority arises when the

Environmental Quality Commission has made a determination to establish a Total Maximum Daily Load for a waterbody under provisions of the federal Clean Water Act; when a groundwater management area has been declared under state law (ORS 468B.180); and when agricultural water quality management plans are required by a provision of state or federal law. The federal requirements of the Coastal Nonpoint Pollution Control Program require a plan to manage agricultural water quality in the state's Coastal Zone, so ODA is authorized to develop and implement the necessary plans.

Other than the CAFO measures, most of the management measures are currently implemented in Oregon only on a voluntary basis and not by enforceable authorities. SB 1010 plans, when developed, will have the force of law but will use as their most important strategies education, technical assistance, and demonstration projects to implement practices to protect coastal water quality. The mandatory aspects of the program, according to the implementing rules adopted by ODA, will be employed "only when reasonable attempts at voluntary solutions have failed." (OAR 603-90-000(4)(e)). Additionally, the rules mandate that "measures required of individual farm operators under agricultural water quality management area plans provide as much flexibility to the operator as reasonably possible." (OAR 603-90-000(4)(f)).

The administrative rules also specify requirements for all water quality management area plans (OAR 603-90-030); procedures for landowners to appeal specific action requirements or to request alternate measures (OAR 603-90-040 and -050); procedures for enforcement proceedings, including hearings (OAR 603-90-060 through -090); civil penalty assessment procedural requirements (OAR 603-90-110); and matrices for determining penalties based on a violation's magnitude, gravity, and whether it is a first or repeat violation (OAR 603-90-120).

The Agricultural Water Quality Management Program will also implement a grazing management measure. Oregon is seeking federal approval of an alternate management measure which more clearly states the measure's objective, and which provides somewhat more concrete guidance to agricultural operators regarding their responsibilities under the measure.

In addition to the CAFO program and the Agricultural Water Quality Management Program, the state Water Resources Department implements several aspects of the irrigation management measure. WRD's water right permit program, its well programs, its water conservation program, and other authorities are Oregon's primary mechanisms for implementing the irrigation measure.

2. Management Measures for Forestry

The Oregon Forest Practices Act was adopted in 1971. The forest practice administrative rules were adopted in 1972. Both the statute and the rules have been amended many times since their original adoptions. The Act and rules are designed to protect water quality, fish and wildlife habitat, forest productivity and air quality on state and private forestlands.

The forest practice statute and rules are enforceable regulatory mechanisms designed to limit the effects of forest operations on soil, air, water, fish and wildlife. The statute applies statewide. Some rules

apply statewide, while others have been tailored to specific forest practices regions. Rules for both the northwest and southwest Oregon regions apply to the Oregon coastal zone.

The Oregon Forest Practices Act, ORS 527.610 to 527.810 and 527.990 to 527.992, provides the statutory foundation for the Forest Practices Program. ORS 527.710 and 527.715 give the Board of Forestry authority to adopt rules establishing standards for forest practices in the state.

ORS 527.630 vests in the Board of Forestry exclusive authority to develop and enforce statewide and regional rules to carry out the policy and purposes of the Act. ORS 527.710 directs the board to adopt rules to be administered by the State Forester, establishing resource protection standards for forest practices in each region or subregion of the state. Such rules are, among other things, to provide for the overall maintenance of water resources, including but not limited to fish and wildlife habitat and sources of domestic drinking water.

More specific to nonpoint source pollution control, ORS 527.765 requires the board to establish best management practices (BMPs) and other rules applying to forest practices. These rules must ensure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of state water quality standards.

Furthermore, ORS 527.765(3) contains a process wherein any person or agency may petition the board to review the BMPs adopted pursuant to ORS 527.765 if they are thought to result in violations of water quality standards. Oregon Administrative Rule 629-24-106 requires all forest operations to comply with all water pollution rules and regulations of the Department of Environmental Quality.

The State Forester may assess a civil penalty, determined by a formula established by rule, for any violation. Penalties may range up to $5000 for each violation, and are intended to make compliance more cost-effective than violation. Civil penalties are assessed for virtually all violations. Criminal prosecution may occur under appropriate conditions. Provisions governing civil and criminal penalties are contained in ORS 527.683 to 527.687 and 527.990 to 527.992.

3. Management Measures for Urban Areas

The (g) guidance management measures for urban areas address activities that occur at widely varying densities across the landscape. For the most part, these activities become a nonpoint source pollution problem or concern when they occur in highly developed areas -- that is, at urban densities. Since urban densities only occur in Oregon in designated and strictly delineated urban areas, the CNPCP (g) guidance measures for urban areas will not necessarily be applied across the entire coastal zone. Some urban measures will be applied where the targeted activity occurs at a density to result in nonpoint source pollution problems or concerns.

Existing programs already implement some of the CNPCP measures for urban areas. Principal among them are Oregon's statewide planning program and Oregon's statutes and rules governing the installation and use of on-site septic systems.

At the same time, some of the CNPCP (g) guidance measures for urban sources are not fully implemented. Integrating the applicable urban measures into state and local mechanisms to

review land use and land development proposals will constitute the main task in implementing the urban measures in the Oregon coastal zone in the implementation period.

Among the most significant gaps -- giving rise to the major tasks and program components -- are the following:

- The 80 percent TSS reduction standard in the "New Development" measure is not implemented anywhere in the coastal zone.
- There are almost no programs or regulations to address erosion and sedimentation from construction activities on sites less than five acres in size.
- In general, local jurisdictions have not identified priority NPS reduction opportunities in already-developed areas.
- The statutes and rules which govern Oregon's onsite program do not govern the operation, maintenance, and inspection of all onsite sewage disposal systems.
- Many of the activities targeted in the measures for roads, highways, and bridges are not fully implemented for local roads.

Strategies to fill these gaps, and tentative timetables, are set out in the section on urban management measures.

4. Management Measures for Marinas and Recreational Boating

The management measures addressing marinas and recreational boating are designed to prevent, reduce, or mitigate the cumulative adverse impacts of this economically important use of the state's waterways. The steady increase in registration of boats statewide, with just under 190,000 registered as of November, 1994, suggests that the sooner these actual and potential adverse impacts are addressed, the better the chances that water quality can be protected for other uses.

The State of Oregon will implement the marinas component of its Coastal Nonpoint Pollution Control Program (CNPCP) through several existing state programs, expansion of others, and development of new policies in a few areas where gaps currently exist.

The marina siting and design measures are for the most part already implemented through the state's comprehensive land use planning system and site-specific permitting requirements involving the Division of State Lands, Department of Environmental Quality, Oregon Department of Fish and Wildlife, and the Oregon State Marine Board.

Oregon is requesting several exclusions from the CNPCP for activities that are already covered by state regulatory programs. Industrial stormwater permits cover many of the facilities where boat hull maintenance is performed, so a partial exclusion is requested from the Storm Water Runoff management measure. Oregon's General Permit 1700-J, Washwater Discharge Permit, applies to all cleaning of boats in the water, so an exclusion is requested from the boat cleaning management measure.

Other DEQ regulations govern sandblasting of painted boat hulls, so the state is requesting a partial exclusion from the solid waste management measure, which addresses solid wastes produced by boat cleaning, operation, maintenance and repair.

A permit under development by DEQ will establish requirements for dealing with fish waste at fish cleaning stations. Oregon law prohibits the discharge of any fish waste into public waters without a permit. These authorities will implement the fish waste measure.

The sewage facility management measure emphasizes providing pumpout, dump station, and restroom facilities where needed. The Oregon State Marine Board's Vessel Waste Disposal Plan is a five-year (1993-1998) statewide plan to provide recreational boaters with accessible, convenient, and operational boat waste facilities, and to use education to increase public awareness of the proper ways to dispose of vessel waste. The plan proposes 92 projects in the next 4 years, including construction of pumpouts, dump stations, and/or floating restrooms at 16 marinas. Funds from the federal Clean Vessel Act are supplementing the state's Boating Facility Grants Program financed by user fees. Senate Bill 96 passed by the 1995 Oregon Legislature will allow private marinas to participate in the grant program along with publicly-funded facilities.
The Boating Facilities Grants Program also includes a Maintenance Assistance Program (MAP) that encourages compliance with the measure on maintenance of sewage facilities.

The Marine Board is the lead agency in an education and information program regarding proper disposal of marine sewage and protection of water quality.

The measure on operation of boats is implemented in part by Marine Board regulations, which authorize speed limits, no-wake zones, motor restrictions, and water skiing limits. Habitat protection is also provided by state and federal endangered species laws.

5. Management Measures For Hydromodification: Channelization and Channel Modification, Dams, and Streambank and Shoreline Erosion

In Oregon, the hydromodification management measures are implemented largely through Oregon's Removal-Fill and Statewide Comprehensive Planning Programs. However, the state and local programs are supported by other programs which are triggered by federal regulatory requirements. The Portland District Corps of Engineers (COE) implements federal regulatory programs authorized by Section 10 of the Rivers and Harbors Act and by Section 404 of the Clean Water Act (CWA) that

relate to the hydromodification management measures. In addition, the 401 certification program, implemented by the Oregon Department of Environmental Quality (DEQ), also helps Oregon meet the hydromodification management measures.

While Oregon's two programs are generally effective, they contain some apparent limitations. First, the removal-fill program does not apply to activities that involve less than fifty yards of material. However, the federal 404 program regulates all fills in "waters of the United States", including wetlands. The 404 program does not have a jurisdictional threshold similar to Oregon's. Because "fill" includes material which, during a dredging or removal operation, falls back into the water of the US, channel modification projects are regulated under Section 404.

Section 10 requires the COE to evaluate all work, including fills, that occur in, over, or under a "navigable water of the United States". All dredging and channel modification projects, including modifications caused by structures without fill or dredging, occurring in or affecting navigable waters are evaluated and regulated by the COE. The Section 10 program does not have a jurisdictional threshold and regulates projects related to the hydromodification measure.
In addition, issuance of any federal permit involving a discharge automatically invokes review under the state implemented 401 program. Therefore, projects involving less then 50 cubic yards are reviewed by DEQ. The federal 404/10 programs and the state implemented 401 certification program prevent the 50 cubic yard jurisdictional threshold from being a limitation to Oregon's ability to meet this management measure.

The 50 cubic yard threshold defines the legislatively determined limit of DSL's regulatory authority; the law is not applicable to removals or fills below that threshold. Projects involving amounts of material below the 50 cubic yard limit are not likely to involve significant impacts. Nevertheless, where a particular project may cause a significant impact, the federal regulatory system will evaluate it. Even where the COE conducts a minimal review, such as when a nationwide or another type of federal general permit is originally expected to be issued by the COE, if significant impacts are anticipated, then the level of federal review increases. In addition, if any project does not meet the conditions and management practices imposed by a COE general permit, then the project is in violation of

the general permit conditions and an individual permit may be required and the review requirements increased.

Second, Oregon has not yet adopted wetland water quality standards. As part of an MOA between the Division of State Lands (DSL) and DEQ, the state has developed permit conditions that address water quality, are routinely used and effectively constitute best management practices that prevent degradation of wetlands and other waters by applying erosion control measures.

When a Division permit is not required, for example when less then 50 cubic yards are involved, the DEQ's 401 certification requires the same erosion control measures.

The federal CNPCP requires states to develop operation and maintenance programs that identify and schedule (in one case) and implement (in the other case) opportunities to improve water quality and

restore instream and riparian habitat in all modified channels in the coastal zone. There is a gap in Oregon's program coverage with respect to these measures. While developing a program that fills this gap, Oregon will need to coordinate closely with both the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA).

6. Management Measures for Wetlands, Riparian Areas, and Vegetated Treatment Systems

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

These three programs are supported by two additional programs which are triggered by federal regulatory requirements. The federal 404 program, implemented in Oregon by the Portland District Corps of Engineers (COE), and the 401 certification program, implemented by the Oregon Department of Environmental Quality (DEQ), help Oregon meet the wetland management measures.

While Oregon's two programs are generally effective, they contain some apparent limitations. First, the removal-fill program does not apply to activities that involve less than fifty yards of material. However, the federal 404 program regulates all fills in "waters of the United States", including wetlands. The 404 program does not have a jurisdictional threshold similar to Oregon's. Because "fill" includes material which, during a dredging or removal operation, falls back into the water of the US, channel modification projects are regulated under Section 404.

The 50 cubic yard threshold defines the legislatively determined limit of DSL's regulatory authority; the law is not applicable unless that threshold is met. Projects involving amounts of material below the 50 cubic yard limit are not likely to involve significant impacts. Nevertheless, where a project may cause a significant impact, the federal regulatory system will evaluate it. Even where the COE conducts a minimal review, such as when a nationwide or another type of general permit is issued, if significant impacts are anticipated, then the level of federal review increases. In addition, if any project does not meet the conditions and management practices imposed by a COE general permit, then an individual permit is required and the review requirements are heightened. The federal 404 and the state 401 certification programs prevent the 50 cubic yard jurisdictional threshold from being a serious limitation to Oregon's ability to meet this management measure.

Second, Oregon has not yet adopted wetland water quality standards. As part of a MOA between DSL and DEQ, the state has developed permit conditions that address water quality, are routinely used and effectively constitute best management practices that prevent degradation of wetlands and other waters through water quality protection measures, for example, measures relating to erosion control.

When a DSL permit is not required, for example when less then 50 cubic yards are involved, the DEQ's 401 certification requires the same water quality measures. Nevertheless, DEQ is continuing to review

the policy and technical aspects of Oregon's current water quality standards and is evaluating how water quality standards may be best applied to wetlands.

Third, the removal-fill program does not apply to activities that occur outside a wetland but which may affect a wetland's functions. However, relative to implementing this management measure, the Oregon land use system addresses impacts on uplands and areas adjacent to wetlands and riparian areas.

7. Critical Coastal Areas and Additional Management Measures

In addition to the management measures set forth above, the CNPCP requires states to (1) identify land uses which may cause water quality problems where there is either (a) a failure to maintain water quality standards or protect designated uses, or (b) where coastal waters are threatened by increased loading from new land uses; (2) identify critical coastal areas adjacent to such waters; and (3) implement management measures in addition to the (g) guidance measures as necessary to achieve water quality standards.

Oregon's identification of critical coastal areas and development of additional management measures will start with an analysis of various special area designations in the coastal zone to determine how well they meet CNPCP objectives. In addition, a list of impaired waters potentially subject to additional management measures will be compiled. Work is anticipated to begin in January, 1996.

8. Technical Assistance

Section 6217(b)(4) of CZARA requires states to provide technical assistance to local government and the public in regard to additional management measures. Technical assistance relating to additional management measures will be developed after additional management measures have been adopted.

In addition, Oregon will provide technical assistance regarding implementation of the (g) guidance management measures. Oregon uses technical assistance as one of the central strategies of its statewide nonpoint source program.

9. Public Participation

Opportunities have been provided for public participation in all phases of development of Oregon's program to prevent and control coastal nonpoint pollution. Public presentations and public workshops provided background information on CNPCP requirements. Technical advisory groups were convened to assist in program development for agriculture, urban development, and marinas.

DEQ and DLCD funded development of a Nonpoint Source Pollution Control Guidebook for Local Governments, which has been provided to coastal local governments. Workshops were conducted to introduce the Guidebook.

Threshold review by EPA and NOAA of Oregon's Coastal Nonpoint Program included an opportunity for public comment.

Public information meetings were held in three coastal locations in early 1995. A draft of this program submittal was released for public review and comment on June 5, 1995, and a meeting was held on June 27, to receive comments from the public.

Development of the policies to address remaining gaps in Oregon's Coastal Nonpoint Program will provide further opportunities for public involvement, including participation on advisory groups and involvement in any rulemaking processes which are required.

10. Administrative Coordination

Oregon's approach to administrative coordination incorporates these concepts:

a. All agencies with a role in coastal nonpoint pollution control and related issues should be included. All levels of government--federal, tribal, regional, state, sub-state regional, and local governments--should be involved.

b. The coordination process will rely on already existing processes, or, where necessary, modifications of existing processes or structures.

c. The full range of coordination mechanisms, including those listed in the (g) guidance and others, will be employed as appropriate.

d. An important element will be to include a method for reviewing and discussing the effectiveness of the coordination efforts of various groups and agencies, to allow effective measures to be used by others, and to provide opportunity for improvement of those coordination mechanisms that fail to achieve their goals.

11. Oregon's Coastal Nonpoint Pollution Control Program Boundary

When Oregon designated its Coastal Zone pursuant to the Coastal Zone Management Act in 1977, coastal water quality was an important consideration. Activities and land uses with significant impact on coastal resources were included at that time. The designated Coastal Zone includes about 7811 square miles of land area and approximates a natural ecological unit.

Based on the rationale for the original designation of Oregon's Coastal Zone, the state intends to implement its coastal nonpoint pollution control program within the present coastal program boundary.

12. Monitoring

Oregon's basic strategy for development a monitoring component for the Coastal Nonpoint Program is to build on existing water quality monitoring efforts. Those efforts include DEQ;s ambient water quality monitoring network; DEQ;'s biomonitoring program, with its Coastal Range Reference Site

Survey; the EPA's Regional Environmental Monitoring Program (REMAP); the South Slough National Estuarine Research Reserve's participation in NOAA's NOAA's national program to monitor estuarine habitats; and the work being done to integrate data from a variety of agencies to develop the state's listing of water quality limited waters under Section 303(d) of the Clean Water Act.

Implementation monitoring is needed to assess whether statewide policies have resulted in widespread implementation of management practices. Effectiveness monitoring is necessary to determine how well the implementation of management measures improves water quality. Implementation monitoring will be incorporated into state programs for management measure implementation. Effectiveness monitoring will need to be enhanced by DEQ to assess the extent to which water quality improves after management measure implementation.

ATTACHMENT 2:

SUMMARY OF SANITARY SURVEYS IN OREGON, 1988 - 1992

South Slough 1988-89	13% needed corrective action
Yaquina Bay 1991	8.7% failing 25% marginal
Umpqua 1989	22% failing 8% marginal
Lower Nehalem Bay 1989	39% had some sewage system problems
Nehalem Bay and Nehalem River 1992	33/197 possible failures (16.8%) not less than 3.5% verified failures
Wilson, Trask, and Lower Nehalem Drainages 1989	46/1156 (4.0%) failures: 12/461 (2.6%) Trask 19/411 (4.6%) Wilson 97/248 (39%) Lower Nehalem
Wilson River 1992	16/411 possible failures (3.9%) 2.9% verified failures
Yaquina John Point (Lincoln County) 1989	55% failing (discharging sewage to the beach)
Netarts Bay 1988	4/68 (5.9%) residences failing
Kilchis and Miama River 1991	24/253 (9.5%) inadequate
Tillamook River 1988	30/386 (7.8%)

Source: Data from Oregon Department of Agriculture, Shellfish Program

ATTACHMENT 3:

ISSUES RAISED DURING PUBLIC INFORMATION MEETINGS COASTAL NONPOINT POLLUTION CONTROL PROGRAM

NONPOINT POLLUTANT SOURCES OF CONCERN:

- Population growth (CB)
- Septic systems generally (CB, F)
- Septic systems on property with only water access (CB)
- Land-based petroleum products impacting estuaries (CB)
- Herbicides, pesticides from forestry (CB, F)
- Pesticides, fertilizers from agriculture (CB)
- Cranberry industry impacts on quality and quantity of groundwater (CB)
- Streambank erosion (G)
- Leaking underground storage tanks (G) (Note: DEQ has a special program to mitigate the effects of leaking underground storage tanks, so this particular source is not governed by the Coastal Nonpoint Pollution Control Program.)
- Land clearing/grading/construction (G)
- Bacteria (G)
- Sediment (G)
- Nutrients in lakes and groundwater (G, F)
- Temperature elevation (G)
- Agricultural drainage tiling, pros and cons (G)
- Animals not covered by Confined Animal Feeding Operation (CAFO) program (G)
- Lead and other heavy metals (F)
- Fishing sinkers: a possible source of lead (F)
- Bilge-pump wastes (F)
- Herbicides and pesticides from road maintenance (F)
- Airborne pollutants, including lead (F)
- Urbanization generally, especially around lakes (F)
- Roof runoff (F)
- Development exceeding capacity of natural systems (F)
- Cattle impacts on lakes and streams (F)
- Phosphorus (F)
- Supposedly inert ingredients in pesticides (F)
- Drinking water sources needing stronger protections (CB, F)

(CB) COOS BAY (G) GARIBALDI (F) FLORENCE

GOVERNMENT'S ROLE IN NONPOINT SOURCE PREVENTION AND CONTROL:

- Need to better integrate pollution prevention and resource protection into the land use planning and zoning system; e.g., anticipating industrial runoff from certain kinds of development (CB)
- Need to set priorities to make best use of limited funds (CB)
- Need to look beyond immediate impacts and assess long-term results (CB)
- Need to provide more technical assistance regarding nonpoint source pollution (CB)
- Need for more water quality monitoring and distribution of results (CB)
- Streambank erosion permit process too slow, unpredictable (G)
- Failure of agencies to enforce violations of removal/fill laws (G)
- Fees and costs as a deterrent to participating in DEQ's underground storage tank and hazardous waste cleanup programs (G)
- State agencies backing off enforcement of laws regarding animal waste, among others (G)
- Local agencies backing off enforcement of laws regarding land use, among others (G,F)
- State agencies backing off enforcement of laws regarding foresty activities (F)
- Inadequate protection under Forest Practices Act for waters designated as non-fish bearing (F)
- Jurisdictional problems, e.g., single watersheds governed by multiple jurisdictions (F)
- Need for more educational efforts (F)
- Bureaucratic problems, such as lack of clearly defined policies and delays (F)

(CB) COOS BAY (G) GARIBALDI (F) FLORENCE

State of Oregon
Department of Environmental Quality Memorandum

Date: September 27, 1995

To: Chairman Bill Wessinger

From: Langdon Marsh

Subject: Notes on the EQC Work Session on Water Quality Standards

The following information should be conveyed to persons attending the work session on water quality standards:

- Legal counsel has advised the Department that because the public comment period for the water quality standards rulemaking has already closed, no further testimony can be taken.

- Staff have invited all members of the Technical Advisory Committee and its subcommittees, and the Policy Advisory Committee to attend the work session in order to answer questions and provide viewpoints upon request by Commission members.

- To remain in compliance with the laws on public involvement, Advisory Committee members should restrict their comments to items which were discussed within the context of Committee meetings, or which were submitted by the Advisory Committee member as part of the legal public comment record.

You may also want to reiterate that you are most interested in discussions of policy issues, rather than extensive discussion of technical information.

Finally, Commission members should be aware that a number of Advisory Committee members expressed interest in attending the work session, but were unable to do so. Due to the relatively informal nature of work sessions, the Department has not constituted an official "panel," nor assured that all interests are equally represented among those Committee members present. A formal, balanced panel could be constituted for the November EQC meeting at which the rules will be considered for adoption if the Commission so desires.