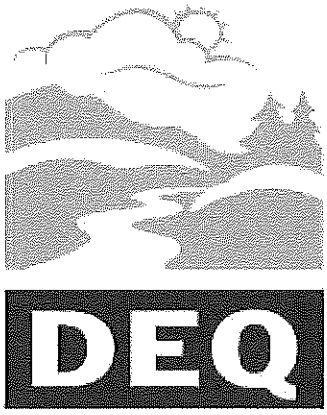
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 07/11/1996



State of Oregon
Department of Environmental Quality

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item I
Meeting July 12, 1996

Title:

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

Summary:

Crematory Incinerators, 340-025-0890 to 0905

Current rules focus more on costly source tests than on operator training. The revision would allow sources to show compliance by means other than source testing, and would require greater documentation of training.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures. The revision would require written procedures only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720

Current rules are not clear about how some Title V fees can be assessed. The revision would clarify allowable methods.

Housekeeping

The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Department Recommendation:

The Department recommends that the Commission adopt the rule revisions summarized above.

Benjamin M. Allen — Report Author
for Steve Greenwood — Division Administrator
Langdon Marsh — Director

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

State of Oregon
Department of Environmental Quality **Memorandum**

Date: June 28, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item I, Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping), EQC Meeting July 12, 1996

Background

On March 14, 1996, the Director authorized the Air Quality Division to proceed with a public notice of rulemaking on proposed rules which would revise crematory incinerator rules, modify the applicability of an excess emissions rule, clarify Title V fee assessment methods, and make housekeeping revisions.

Pursuant to the authorization, the notice was published in the Secretary of State's Bulletin on April 1, 1996. The Public 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 March 20, 1996.

No Public Hearing was held.[1] Written comment was received through April 24, 1996. Department staff have listed (Attachment C) and evaluated the comments received (Attachment D). 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 E.

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.

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[1] A public hearing **must** be held if requested by ten individuals, or an organization representing ten or more individuals.

Issue this Proposed Rulemaking Action is Intended to Address

Crematory Incinerators, 340-025-0890 to 0905

Current rules focus more on costly source tests than on operator training. The revision would allow sources to show compliance by means other than source testing, and would require greater documentation of training.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures. The revision would require written procedures only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720

Current rules are not clear about how some Title V fees can be assessed. The revision would clarify allowable methods.

Housekeeping

The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Relationship to Federal and Adjacent State Rules

Title V Fee Assessment, 340-028-2610 to 2720

Federal rules require that the Title V permit program assess fees sufficient to support the program, but do not address whether fees may be assessed on a mix of actual and permitted emissions.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The revision would replace references to a table in the Code of Federal Regulations (CFR) with references to the definitions in federally adopted rules in the CFR which were used to make the table. The result would be more up-to-date.

- Nonattainment and maintenance area boundaries, 340-031-0500, 0520

  EPA requires boundaries for certain area classifications. EPA has accepted maps in the past. However, as regulations become more complex and affect a larger number of individuals and sources, EPA has requested that areas be defined with greater certainty. This revision corrects some of those complex descriptions.

Authority to Address the Issue

ORS 468.020, 468A.025.

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

The proposed rule revisions are intended to address various unrelated issues or problems discovered during the Title V permit application and issuance process. After each issue was identified, staff discussed problems with the current rules, and suggested revisions. Staff then reviewed potential revisions, and drafted proposed language.

The Air Quality Industrial Source Advisory Committee was advised of the proposed revisions at their meeting on February 20, 1996.

Alternatives considered

Crematory Incinerators, 340-025-0890 to 0905

Continue to require source tests from each incinerator. The Department feels that these tests are unnecessarily burdensome to operators of most crematory incinerators.

Excess Emissions, 340-028-1410

Continue to require submission of startup and shutdown procedures from all sources. It is a more efficient use of Department resources to require submission only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720

The Department initially proposed rule revisions allowing sources with plant-wide PSELs to pay fees on calculated emissions *or* actual emissions, but not on a mix of the two. Based on public comment, the Department withdrew the proposal, and reconsidered the issue. The Department believes that the revisions proposed in this package would meet the requirements of industry by allowing fee assessment based on a mix of calculated *and* actual emissions, while maintaining an equitable fee assessment mechanism.

Housekeeping

- Air pollution emergencies, 340-027-0005

  Keep references to the current federal table. The table is out of date, and any replacement table would eventually become out of date. The federal table is based on federal definitions of Priority I, II, and III areas. Referring to these definitions would ensure that the state rule applies as intended.

- The remainder of the housekeeping revisions are corrections of unclear language or typographical errors. No alternatives were considered.

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

Except for the Title V fee assessment revisions and revisions to Division 32, all proposed revisions are to rules included in the State of Oregon Clean Air Act Implementation Plan.

Crematory Incinerators, 340-025-0890 to 0905

Current rules require all crematory incinerators to do costly source tests before commencing regular operation. The revision would allow some sources to show compliance with emission standards by other means. The revision would also require that each source have a Department-approved training program on file on-site, along with certification by each employee operator of the incinerator that the employee has undergone and understood the training program.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures, which the Department must then approve. The revised rule would require written procedures only from large sources, from sources in non-attainment or maintenance areas for the pollutant in question and from other sources at the Department's discretion.

Title V Fee Assessment, 340-028-2610 to 2720

Title V sources can choose to have a facility-wide Plant Site Emission Limit (PSEL) instead of emission unit-specific emission limits. The current rules are not clear about how fees can be assessed for such sources. The revision would allow sources with facility-wide PSELs to pay fees based on a mix of actual emissions from some emissions units, and permitted emissions from other units.

Housekeeping

The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Summary of Significant Public Comment and Changes Proposed in Response

Three persons commented on the revisions to the Title V fee assessment rules. All comments were generally favorable, with minor suggested changes. The Department will make some of the suggested changes, as described in Attachment E.

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

After adoption, revisions to the State of Oregon Clean Air Act Implementation Plan would be submitted to EPA for approval.

Crematory Incinerators, 340-025-0890 to 0905

Staff would be informed of changes to the rules, as would the Lane Regional Air Pollution Authority. Sources would be notified of the changes, and their permits modified if necessary. Sources would need to keep documentation of training on-site.

Excess Emissions, 340-028-1410

Written startup and shutdown procedures would no longer be required from most small sources. The Department would develop guidance on which small sources should be required to submit written procedures. Sources would be notified of the changes, and their permits modified if necessary.

Title V Fee Assessment, 340-028-2610 to 2720

The Department would ensure that Title V permit writers construct permits in a way that allows calculated permit emissions to be determined at a device or activity level when appropriate, and that the permit is structured in a way that allows the Department to determine appropriate fees. Previously issued Title V permits will be modified on renewal or during major modifications.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The Department would develop and maintain a current table of Priority I, II, and III areas based on the federal definitions.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding Crematory Incinerators, Excess Emissions, Title V Fee Assessment, and Housekeepingas 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. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice

C. List of Public Comments Received
D. Department's Evaluation of Public Comment
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 C)

Approved:

Section: Gregg E. Fonde

Division: Steve Greenwood for GEF

Report Prepared By: Benjamin M. Allen

Phone: (503) 229-6828

Date Prepared: June 28, 1996

BMA
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May 7, 1996

State of Oregon
Department of Environmental Quality Memorandum

Date: July 12, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Technical Corrections - Portland Area Air Quality Maintenance Plans and Rules

Attached are minor technical corrections that should be made to the following three agenda items scheduled for your July 12 meeting. These changes do not affect the substance of the plans or rules.

Agenda Item C, Portland Area Carbon Monoxide Maintenance Plan

Four of the proposed changes to the original rulemaking made in response to public comment and shown as additions/deletions in Attachment E were not carried forward to Attachment A, which is the edited version proposed for adoption. The necessary changes are shown in strike through and underline on revised attached pages xv, 35, 37 and 44.

A small correction to three interim year point source emission levels should have been added to Attachments A and E. This change is shown in strike through and underline on revised attached page 29 of Attachment A.

Agenda Item D, Ozone Maintenance Plan for the Portland AQMA

An increase in the VOC emission forecasts for 2003 and 2006 of one ton/day is needed because some of the expected permanent donation of unused permitted emissions actually turned out to be temporary donations. The change is shown in strike through and underline on revised attached pages 16 and 17 of Attachment A.

Agenda Item F, Employee Commute Options Program

Two changes are needed to avoid confusion about the criteria for complying with ECO through parking restrictions. These changes make it clear that an employer can exceed DEQ parking ratios and still meet ECO requirements by meeting other conditions. These changes are shown in strike through and underline on revised attached Rule 340-030-0990 and Rule 340-030-1000 of Attachment A.

Contingency Plan Elements

The maintenance plan must contain contingency measures that would be implemented either to prevent or correct a violation of the CO standard after the area has been redesignated to attainment. The FCAA requires that measures in the original attainment plan be reinstated if a standards violation occurs. Under the proposed contingency plan, adopted under the CCTMP and recommended by Metro, the DEQ would convene a planning group if the validated second highest (within one calendar year) 8-hour CO concentration equals or exceeds 8.1 ppm (90 percent of the 8-hour CO standard). A range of action would be considered from implementing candidate measures to deciding to do nothing. However, if a violation of the 8-hour CO standard were to occur, control measures that would be restored include Lowest Achievable Emission Rate (LAER) requirements plus offsets for major new and modified industrial sources and wintertime oxygenated gasoline at 2.7 percent weight for motor vehicles ~~[(if the oxygenated fuels program is repealed prior to the occurrence of violations)]~~. If the violation occurred within the defined area of the former Downtown Parking and Circulation Policy, roughly the Central Business District of downtown Portland, then the parking lid would be reinstated. The parking lid would not be reinstated if a violation occurred outside the downtown area.

To make the growth allowance "pool" last as long as possible, sources will be encouraged to provide offsets, if possible, for all or part of the proposed increase. Once the growth allowance is fully allocated, offsets for all proposed major sources and major modifications will again be required.

DEQ will prepare a thorough accounting of any activity in the growth allowance program for each period identified in Table 4.51.3.1, including any allocations to sources and any increases in the growth allowance. This information will be reported to EPA within 12 months following the end of the reporting period. If there are any increases to the growth allowance since the last report, DEQ will include a clear discussion of how each increase to the growth allowance is based on a surplus and federally enforceable emission reduction. This is also discussed in Section 4.51.4.4 "Maintenance Plan Commitments" and Appendix D2-11 (New Source Review Rules).

If a violation of the CO standard occurs after the Portland area has been redesignated to attainment, the LAER and offset requirement will be reimposed, and any remaining growth allowance will be eliminated (see Contingency Plan, below, Section 4.51.3.3).

Transportation Control Measures (TCM's)

The TCMs identified in the maintenance plan fall into two categories: non-funding based TCMs and funding based TCMs. The non-funding based TCMs reduce transportation emissions through land-use requirements and regulatory programs. The funding based TCMs reduce transportation emissions by increasing the supply of transit, bicycle and pedestrian facilities. The funding based TCMs were established in the financially constrained transportation network of Metro's interim federal RTP, adopted July, 1995, in accordance with the requirements of the federal Intermodal Surface Transportation Efficiency Act (ISTEA). This network includes only projects that can be supported based on historical funding level trends.

The funding based TCMs must receive priority funding **in Metro's transportation planning process,** and all TCMs identified in the maintenance plan must receive timely implementation. If the TCMs do not receive priority funding and timely implementation, a conformity determination can not be made for Metro's transportation plans and ~~[federal funding will be withheld]~~ **all regionally significant projects will be held up until a conformity determination can be made**. These requirements are specified in the transportation conformity rules, OAR 340-020-0710 through 340-020-1080. In general, "priority funding" means that all state and local agencies with influence over approvals or funding of the TCMs are giving maximum priority to approval of funding of the TCMs over other projects within their control. "Timely implementation" means that the TCMs are being implemented consistent with the schedule established in the maintenance plan. The determination of whether priority funding and timely implementation have been achieved is made in the context of interagency consultation as specified in the transportation conformity rules.

the Zoning Code Amendments, containing the maximum parking ratios for new development, the requirements for providing structured parking to serve older historic buildings and other regulations on parking. Key elements of the Zoning Code Amendments related to CO air quality projections are incorporated into this document as given below.

The CCTMP replaced the former Downtown Parking and Circulation Policy, first adopted in 1975 and updated in 1980 and 1985. The 1980 update of the parking policy served as a foundation for the 1982 Portland area CO attainment plan. The CCTMP is designed to minimize new vehicle traffic in the Central City and encourage alternative travel modes by extending the downtown maximum parking ratio concept to the entire Central City area. The CCTMP provided for the lifting of the downtown parking lid upon EPA approval of the maintenance plan and the request for attainment redesignation. However, until EPA approval, the CCTMP retains the parking lid.

The parking offset program (OAR 340-020-0400 through OAR 340-020-0430), designed to allow the city to increase the parking lid by up to a maximum of 1,370 spaces, was also retained until after EPA approval of the maintenance plan. The DEQ's emission projection figures for the CCTMP emissions inventory area include an estimate for the emissions associated with 827 parking spaces, as documented in Appendix D2-4-4. These are the parking spaces yet to be developed, but which were authorized by the parking offset program.

The following is a list of zoning code amendments that were incorporated directly into the Portland Carbon Monoxide Maintenance Plan. The text of critical code provisions (such as maximum parking ratios for new development and parking provisions for existing buildings) is contained in Appendix D2-8. A list of other zoning code amendments used as supporting documents for the maintenance plan is contained in Appendix D2-13 of Volume 3 of the Oregon State Implementation Plan.

Items in Volume 3 of the SIP are federally enforceable. With regard to Volume 3 items, EPA has allowed DEQ to make changes which are merely administrative, without requiring public process. DEQ and EPA make a determination as to whether a proposed change by the City of Portland is merely administrative rather than substantive.

Section 1: **Incorporated Amendments to Chapter 33.510, Central City Plan District**

Code Number	Code Title
33.510.261 -	Parking
33.510.261.E	Site split by subdistrict or parking sector boundaries
(33.510.261.E.1.a(1)-(2),b,E.2.a(1)-(2),b)	

quality impact) will be modified. The requirement to install Best Available Control Technology (BACT) will be replaced with a requirement to install Lowest Achievable Emission Rate (LAER) technology. In addition, the industrial growth allowance established in Section 4.51.3.2.3 will be eliminated. These requirements will take effect upon validation of the violation. BACT and a growth allowance may be reinstated if provided for in a new maintenance plan adopted and approved by EPA.

(2) Oxygenated gasoline at 2.7 percent weight will be required. OAR 340-022-0460 (see Appendix D2-14-3) delineates the "reinstatement" procedures. Subsection (8) (b) states that a validated violation of the 8-hour CO standard will result in the requirements of OAR 340-022-0440 through 022-0640 being **reinstated**[~~*reinstituted. Subsection (8) (c) states the oxygenated fuel program would be reinstituted*~~] **beginning** in the winter season following [~~*a validated*~~] **the** violation, but no[~~t~~] sooner than 6 months following that violation. Subsection (8) [~~*(d)*~~] **(c)** states that such reinstatement will be automatic and that no further rulemaking will be required.

(3) The downtown parking lid will be reinstated. (This measure will be implemented only if the violation occurs in the downtown area formerly under the parking lid requirement.)

Table 4.51.3.1: CO Emissions Attainment and Projection Inventories

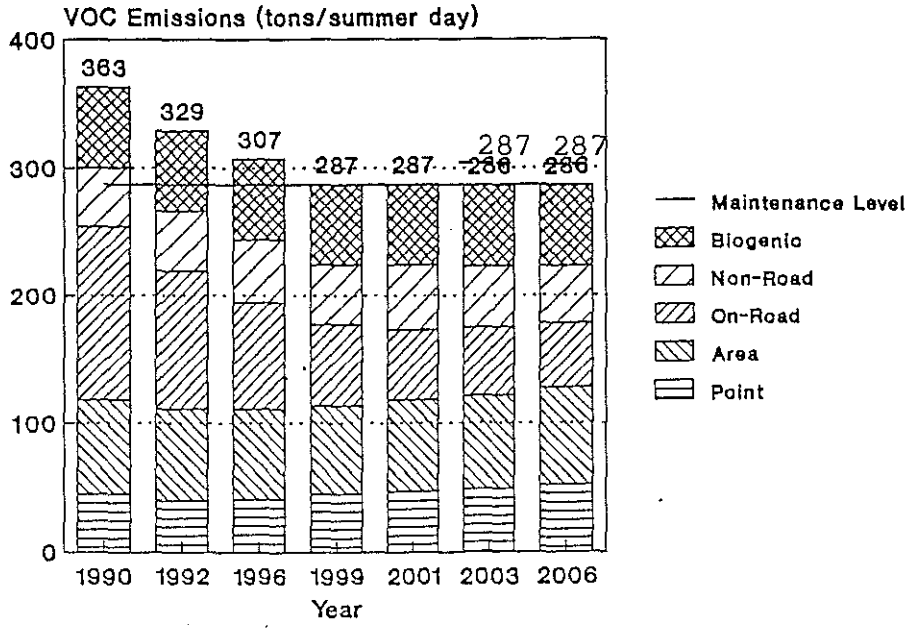
CO Emissions: Region (=CO Nonattainment Area=Metro Boundary)
(Thousand Pounds CO/Winter Day)

Year	1991	1995	1997	2001	2003	2007
Area Sources	411	382	392	405	417	447
Non-Road Mobile Sources	135	146	151	160	163	169
Large Point Sources	116	124	~~[165]~~ **167**	~~[170]~~ **171**	~~[171]~~ **173**	178
On-Road Mobile Sources	1812	1217	1075	1074	1011	947
Total	2474	1868	~~[1783]~~ **1785**	~~[1808]~~ **1810**	~~[1762]~~ **1764**	1741

CO Emissions: CCTMP Sub-Area
(Thousand Pounds CO/Winter Day)

Year	1991	1995	1997	2001	2003	2007
Area Sources	9.3	8	8	8	9	9
Non-Road Mobile Sources	3.4	4	4	4	4	4
Large Point Sources	0	0	0	0	0	0
On-Road Mobile Sources	192	123	107	103	95	86
Total	204	135	119	115	107	98

Figure 4.50.3.3: Portland/Vancouver AQMA VOC Emission Projections



VOC emissions are projected to be a total of ~~[286]~~287 tons/day for the Portland/Vancouver airshed in 2006. The 2006 VOC emissions for the Oregon portion, after the public education and incentive program credits, are a total of ~~[230]~~231 tons/day (80%) of the interstate airshed total.

Total VOC emissions stay well below the 1992 attainment emission level throughout the 10-year maintenance plan period, and VOC emissions do not exceed the maintenance emission level ("airshed capacity") as shown in Table 4.50.3.1. The on-road mobile emissions decrease from 1992 to 2006 is largely due to fleet turnover and the vehicle inspection and maintenance program. Point sources are expected to increase slightly due to growth in the area; this growth includes minor increases from existing and new sources as well as a growth allowance for major new and expanding industry. Area sources and non-road emissions are projected to grow slightly in some categories but have reductions in others due to implementation of EPA emission standards on several non-road categories and local VOC Area Source Rules (i.e, motor vehicle refinishing, architectural coatings, consumer products and spray paint).

Table 4.50.3.1: Portland/Vancouver AQMA VOC Emission Projections (tons/day)

Vancouver Emissions

	1990	1992	1996	1999	2001	2003	2006
Point Sources	5	4	4	4	4	5	5
Area Sources	15	14	14	14	15	15	16
On-road	22	16	13	11	9	9	9
Non-road	8	8	9	9	10	9	9
Biogenic	17	17	17	17	17	17	17
Total	67	59	57	55	55	55	56

Portland Emissions

	1990	1992	1996	1999	2001	2003	2006
Point Sources	40	36	37	41	43	~~[44]~~**45**	~~[47]~~**48**
Area Sources	58	57	56	56	57	59	61
On-road	114	92	70	52	46	44	41
Non-road	38	39	41	38	41	39	36
Biogenic	46	46	46	46	46	46	46
Total	296	270	250	233	233	~~[232]~~ **233**	~~[231]~~ **232**
Education and Incentive credits	--	--	--	(1)	(1)	(1)	(1)
Total Portland & Vancouver	363	329	307	287	287	~~[286]~~ **287**	~~[286]~~ **287**

Maintenance Emission Level = **287** tons/day

Can a new or relocating employer comply with ECO through restricted parking ratios?

340-030-0990 An employer locating at a work site within the AQMA after the effective date of the ECO rules will be exempt from the ECO rules for that work site if:

(1) The new work site meets the requirements of the Department's Voluntary Parking Ratio rules (OAR 340-030-1100 through 340-030-1190); ~~and~~ or

(2) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in **Table 1.** Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

Can an existing employer comply with ECO through restricted parking ratios?

340-030-1000 An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following:

(1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios *(see OAR 340-030-1100 through 340-030-1190);*

(2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and

~~(3) The work site parking meets the requirements of the Department's Voluntary Parking Ratio rules; and~~

(34) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the

maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in **Table 1.** Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item F
Meeting

Title:

Employee Commute Options Program

Summary:

Employee Commute Options is one of several strategies included in the proposed Ozone Maintenance Plan for the Portland Air Quality Maintenance Area (AQMA). This rulemaking proposal establishes a new air quality program for the Portland region. Employee Commute Options is a commute trip reduction program applying to employers in the Portland Air Quality Maintenance Area with more than 50 employees at a work site. The proposed rules would require employers to provide employees with alternatives to drive-alone commuting. Basically a good faith effort program, compliance will be based on reasonable efforts made by employers to provide alternative commute options that have the potential to reduce commute trips to their work sites by ten percent.

Nine people provided comment on ECO at the public hearings and 44 letters were received during the public comment period. Several commenters expressed support for the program, its goals, and how the program has been crafted. Some commenters do not support the ECO program because it shifts the responsibility from drivers to employers for reducing vehicle miles traveled, and targets a relatively small percentage of total driving occurring in the area.

While the basic strategy of the ECO program has not been altered, the Department has incorporated changes to the proposed rules in response to many of the concerns expressed. The proposed program represents the extensive work of advisory groups to present a reasonable approach to implementing a commute trip reduction program that will improve air quality, reduce traffic congestion, and offer options that can save commuters, and some businesses, money. The 1993 and 1995 Oregon Legislatures considered alternatives to ECO (i.e. market based vehicle use fees on drivers), but rejected these alternatives in favor of an ECO program.

Department Recommendation:

The Department recommends that the Commission adopt the rules regarding Employee Commute Options as presented in Attachment A of the Department Staff Report, as an amendment to the federal Clean Air Act State Implementation Plan.

Report Author | Division Administrator | Director

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

State of Oregon
Department of Environmental Quality Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item 'F', July 12, 1996 EQC Meeting

Employee Commute Options Program

Background

On April 12, 1996, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would require employers with more than 50 employees in the Portland Air Quality Maintenance Area to implement an Employee Commute Options (ECO) program at their work sites.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on May 1, 1996. 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 the Employee Commute Options Program.

Public Hearings were held on May 22 and 23, 1996, with Lawrence Smith and Michael Grant serving as Presiding Officers. Written comment was received through May 24, 1996 at 5 p.m. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the written comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). 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 E.

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

Employee Commute Options is one of several strategies included in the proposed Ozone Maintenance Plan for the Portland Air Quality Maintenance Area (AQMA). This strategy is included in the plan as directed by the Oregon Legislature (ORS 468A.363). The combined strategies in the plan will prevent ground-level ozone from exceeding federal health-based air quality standards over the next ten years as significant growth occurs in the region. The maintenance plan includes a number of elements, in addition to ECO, designed to reduce the growth in vehicle miles traveled in the region.

Relationship to Federal and Adjacent State Rules

An ECO program is not required under the Federal Clean Air Act. The Clean Air Act requires areas that wish to be redesignated from "nonattainment" to "attainment" status to submit a plan that will ensure that air quality standards are not violated for ten years after the Environmental Protection Agency's (EPA) approval of the plan. These plans are called Maintenance Plans.

The applicable federal requirements do not specifically address issues that are of concern to Oregon. The federal requirements are designed to give each state the flexibility to adopt emission reduction strategies that are best suited for that area.

Authority to Address the Issue

The Environmental Quality Commission has the authority to address this issue under ORS 468.020, 468.035, 468.065, 468A.035, 468A.040, 468A.355, and 468A.363.

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

The 1993 Legislature directed the Department to include an employer trip reduction program in a regional ozone maintenance plan for the Portland area. A technical advisory committee including employers in the region met for over a year to assist the Department in rule development. A policy committee of community leaders met concurrently to advise the Department on broader policy issues related to developing the Employee Commute Options Program. The program proposed for adoption incorporates virtually all recommendations agreed upon by the Technical and Policy Committees.

During the committee process, both Committees considered major issues such as including smaller employers (more than 20 employees) in the program, basing an employer's target trip reduction on an area average auto commute rate rather than the actual auto commute rate of the employer, and a narrower range of compliance options. These were all rejected by the Committees.

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

This rulemaking proposal establishes a new air quality program for the Portland region. Employee Commute Options is a commute trip reduction program applying to employers in the Portland Air Quality Maintenance Area with more than 50 employees at a work site. The proposed rules would require employers to provide employees with alternatives to drive-alone commuting. Basically a good faith effort program, compliance will be based on reasonable efforts made by employers to provide alternative commute options that have the potential to reduce commute trips to their work sites by ten percent. The proposed rules allow employers to substitute alternatives to commute trip reductions, such as reducing other vehicle traffic to and from the work site or reducing other emissions at the work site. Employers can receive credit for existing trip reduction programs, and employers with no feasible alternatives can apply for exemptions.

Summary of Significant Public Comment and Changes Proposed in Response

Nine people provided comment on ECO at the public hearings and 44 letters were received during the public comment period. This was the result of mailing to 2300 employers expected to be affected by the proposed rulemaking, in addition to 900 interested parties. A summary of the major comments and the Department's response follows. A detailed listing of public testimony and the Department's response to comments is included as Attachment D.

1. **Comment**: Several commenters expressed support for the program, its goals, and how the program has been crafted. These comments are from businesses that would be affected by the proposed rules.

Department's Response: The program represents the extensive work of advisory groups to present a reasonable approach to implementing a commute trip reduction program that will improve air quality, reduce traffic congestion, and offer options that can save commuters and businesses money.

2. **Comment**: Some commenters do not support the ECO program because it shifts the responsibility from drivers to employers for reducing vehicle miles traveled, and targets a relatively small percentage of total driving occurring in the area.

Department's Response: The 1993 and 1995 Oregon Legislatures considered alternatives to ECO (i.e. market based vehicle use fees on drivers), but rejected these alternatives in favor of an ECO program. Although commute trips represent only 25 percent of vehicle miles traveled in the region, they account for 30 to 40 percent of morning vehicle emissions which are largely responsible for ozone exceedences. This is significant and worth targeting in an air pollution reduction strategy.

3. **Comment**: Many commenters expressed concern about the ability of specific employees to use alternative commute options, given their individual work shifts, job responsibilities, or location of the work site and limitations with public transit.

Department's Response: The proposed rules address virtually all situations presented by these commenters in either the definition of affected employees, or in the exemption language. The definition of employee, employer and the exemption language have been modified to include additional situations not already addressed in the proposed rules.

4. **Comment**: Some of the commenters are under the impression that the proposed rules would require employers to force employees to use alternative transportation methods until the ten percent trip reduction target is met. These commenters feel that because of limitations in transit service and other factors, their employees have no viable commute options. They are also unclear about the definition of "good faith effort".

Department's Response: The rule does not require employers to force employees to use commute options nor does it require an employer to meet the ten percent reduction, if a good faith effort has been made to reach the target. The rules require that employers provide alternatives that have a reasonable chance of encouraging sufficient employees to choose these options to meet the ten percent trip reduction target. No particular alternative commute method is singled out in the rules. Employers are encouraged to provide incentives for the commute methods they determine are most appropriate for their work sites and employees. For employers in or near the downtown area, transit will be the most likely option; for employers in outlying suburban areas, carpooling, telecommuting, or compressed work weeks will usually be the more appropriate alternatives. The Department has incorporated language to relieve an employer of further plan modifications if, after implementing two plan revisions, the ten percent trip reduction target is not met. References to "good faith effort" have been clarified.

5. **Comment**: Several commenters suggested that ECO should be voluntary and a mandatory program should rely on market-based strategies. This is a desire to place the responsibility for reducing vehicle miles traveled more directly on the driver. An example of a market-based program would be a vehicle registration fee based on annual miles driven.

Department's Response: Both of the last two legislative sessions considered market-based programs but chose not to pursue them. Businesses providing free parking and no other commute alternatives create disincentives to reducing high single occupancy vehicle commute rates. This situation contributes to both air pollution and traffic congestion. Employers have a unique opportunity to influence a shift toward alternative commute methods by providing some alternatives to alleviate this problem.

6. **Comment**: Some employers expressed concern about their ability to get credit for existing low drive-alone rates at their work sites even though no supporting employer programs have been in place.

Department's Response: The rules have been modified to allow employers the option of demonstrating that their current single occupancy vehicle commute rate is equal to or less than two standard deviations below the mean rate for employers within their Metro transportation zone. Using criteria more liberal than two standard deviations would result in significant loss of emission reduction credit and unbalance the ozone maintenance plan.

7. **Comment**: Some employers participating in the City of Portland Central City Transportation Management Plan (CCTMP) are under the impression that, by virtue of their agreement to abide by regulations imposed in that plan, they would be exempt from further transportation-related regulations, such as ECO.

Department's Response: The Department intensively participated in the CCTMP process and knows of no such agreement. The rules allow employers in areas with such parking restrictions as those included in the CCTMP to receive full credit, without the need to document a ten percent trip reduction, unless subsidized parking is provided to employees in excess of the Department's maximum parking ratio.

8. **Comment**: Employers in areas with restricted parking, whose own parking meets parking ratio requirements, should not also be required to offer equivalent transportation allowances to those employees provided free or subsidized parking, in order to receive full credit without documentation of trip reduction.

Department's Response: The proposed language requires that mitigating measures be in place, to counter the effect of free or subsidized parking, in the form of an equivalent allowance to

employees for alternative commute methods. An employer unable to meet the criteria in 340-030-1000 still has the option of applying for credit by providing documentation of trips reduced. The proposed new option of demonstrating that current drive-alone rates are well below average rates for the employer's area, will also be available. The proposed rule language has been modified to require employers to offer a transportation allowance, in lieu of subsidized parking, only to those employees provided free or subsidized parking that exceed the Department's maximum parking ratio. Employers are also being provided with the option to offer to all employees the equivalent of 50 percent of a Tri-Met all-zone transit pass.

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

Employer registration forms and employee survey forms, guidance materials and resources for assistance will be mailed to employers as soon as the rules take effect. Guidance materials will include information on commute trip alternatives, survey methodology, and alternatives to reducing commute trips. The Department will offer training to all employers on the requirements of the program, as well as possible trip reduction strategies. Ongoing assistance with commute alternatives, such as transit, ride share, and telecommuting will be provided by other agencies, including Tri-Met and the Oregon Department of Energy. Compliance will be demonstrated by employers through either development and implementation of DEQ approved trip reduction plans or a demonstration of good faith efforts to meet the trip reduction target. Progress toward the ten percent trip reduction target will be measured by annual employee surveys. Employers will submit annual reports of survey results to the Department.

Recommendation for Commission Action

The Department recommends that the Commission adopt the rules regarding Employee Commute Options as presented in Attachment A of the Department Staff Report, as an amendment to the federal Clean Air Act State Implementation Plan.

Attachments

A. Rules Proposed for Adoption
   1. State of Oregon Clean Air Act Implementation Plan
   2. Employee Commute Options Program

B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements

5. Cover Memorandum from Public Notice

C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
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 C)

Approved:

Section: John Kowalczyk

Division: John J. Russell for Greg Green

Report Prepared By: Patti Seastrom

Phone: 229-5944

Date Prepared: June 24, 1996

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6/10/96

Attachment A-1

"State of Oregon Clean Air Act Implementation Plan"

340-020-0047

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal **Clean Air Act**, Public Law 88-206 as last amended by Public Law 101-549.

(2) Except as provided in section (3) of this rule, revisions to the SIP shall be made pursuant to the Commission's rule-making procedures in Division 11 of this Chapter and any other requirements contained in the SIP and shall be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department is authorized to submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 **CFR 51.102 (July 1, 1992)**.

[**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

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

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

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-1991; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992,f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & ef. 9-24-93; DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & ef. 3-21-94; DEQ 14-1994, f. & ef. 5-31-94; DEQ 15-1994, f. 6-8-94 & ef. 7-1-94; DEQ 22-1994, f. & ef. 10-14-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 25-1994, f. & ef. 11-2-94; DEQ 32-1994, f. & ef. 12-22-94; DEQ 1-1995, f. 1-10-95 & ef. 5-1-95; DEQ 4-1995, f. & ef. 2-17-95; DEQ 7-1995, f. & ef. 3-19-95; DEQ 9-1995, f. & ef. 5-1-95; DEQ 10-1995, f. & ef. 5-1-95; DEQ 12-1995, f. & ef. 5-25-95; DEQ 13-1995, f. & ef. 5-25-95; DEQ 14-1995, f. & ef. 5-25-95; DEQ 17-1995, f. & ef. 7-12-95; DEQ 22-1995, f. & ef. 10-6-95; DEQ 24-1995, f. & ef. 10-11-95

Attachment A2

Division 30

SPECIFIC AIR POLLUTION CONTROL RULES FOR AREAS WITH UNIQUE AIR QUALITY NEEDS

Portland Air Quality Maintenance Area

Employee Commute Options

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

What is the Employee Commute Options Program?

340-030--0800

(1) The Employee Commute Options or "ECO" Program requires larger **employers** to provide commute options to encourage **employees** to reduce **auto trips** to the **work site**.

(2) ECO is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area. The Ozone Maintenance Plan will keep the area in compliance with the federal ozone standard through the year 2006, despite the area experiencing unprecedented growth.

Who is subject to ECO?

340-030-0810 ECO applies to employers within the Portland Air Quality Maintenance Area (**AQMA**) with more than 50 employees at a work site. The Portland Air Quality Maintenance Area is defined in Oregon Administrative Rules (OAR) 340-031-0500(23) and is illustrated in **Figure 1**. (Note: the term "**employer**", and several other terms, are used throughout these rules as defined in Definitions of Terms, OAR 340-030-0840.)

What does ECO require?

340-030-0820 Employers must provide commute options that have the potential to reduce employee commute auto trips by ten percent within three years. Employers must continue to provide commute options that have the potential to achieve and maintain the reduced auto trip rate throughout the life of the ozone maintenance plan (until 2006). Options are available for alternative emission reduction measures, credits for past actions, and exemptions.

How does the Department enforce ECO?

340-030-0830 Enforcement procedures and civil penalties in OAR, Chapter 340, Division 12 apply. Under OAR 340-012-050(2)(x), violations of the **ECO rules** are Class Two violations. Failure to achieve a ten percent trip reduction is not a violation; failure to make a good faith effort toward, or prepare and implement a plan designed to achieve, a ten percent trip reduction is a violation. Civil penalties are determined by the penalty matrix under OAR 340-012-042(1). Penalties determined from this matrix can range from $50 to $10,000 for each day of each violation, but typically range from $500 to $2000 for each day of each violation.

Definitions of Terms Used in These Rules

340-030-0840 As used in OAR 340-030-0800 through 1080:

(1) "**AQMA**" means the Portland Air Quality Maintenance Area.

(2) "**Auto Trip**" means a commute trip taken by vehicle to a work site.

(3) "**Auto Trip Rate**" means the number of commute vehicles arriving at a work site divided by the number of employees that report to the work site.

(4) "**Baseline Auto Trip Rate**" means the daily average auto trip rate established by the baseline survey.

(5) "**Baseline Survey**" means the employee survey administered at the beginning of the ECO program, according to the implementation schedule in 340-030-0920, **Table 1.**

(6) "**Car/Vanpool**" means a motor vehicle occupied by two or more people traveling together for their commute trip that results in the reduction of a minimum of one auto trip.

(7) "**Compressed Work Week**" means a schedule in which employees work their regularly-scheduled number of hours in fewer days per week or over a number of weeks. *(For example, a 40-hour, 8 hours per day, Monday through Friday work week is compressed into a 40-hour, 10 hours a day, Monday through Thursday work week.)*

(8) "**Department**" means the Oregon Department of Environmental Quality.

(9) "**ECO Program" or "ECO Rules**" means OAR 340-030-0800 through 340-030-1080.

(10) "**Employee**" means any person on the employer's payroll, full or part-time (part time is 80 or more hours per 28-day period), for at least six consecutive months at the same work site, including business owners, associates, partners, and partners classified as professional corporations.

(11) "**Employer**" means any person, business, educational institution, non-profit agency or corporation, government department or agency or other entity that employs more than 50 employees at a single work site.

(12) "**Equivalent Emission Reduction**" means a reduction of vehicle emissions, or other sources of volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions, that results in a reduction of VOC and NOx emissions equal to the emission reduction resulting from one eliminated auto trip.

(13) "**Metro**" means the regional government agency, Metropolitan Planning Organization.

(14) "**New Employer**" means any employer establishing a work site within the Portland AQMA, or any employer within the Portland AQMA that expands employment at a single work site to more than 50 employees, after the effective date of the ECO rules.

(15) "**Non-Scheduled Work Week**" means a work week with no regular daily scheduled starting or ending time, no scheduled work days, or employees are on-call. This does not include employees working a traditional "8 to 5" job who may work on a flexible schedule.

(16) "**Target Auto Trip Rate**" means a rate ten percent less than the baseline auto trip rate.

(17 "**Target Compliance Deadline**" means the date by which employers must demonstrate progress toward achieving and maintaining their target auto trip rate.

(18) "**Telecommuting**" means the employees perform regular work duties at home, or at a work center closer to home than to work, rather than commuting to work. The employees may telecommute full time, or commute to work on some days and telecommute on others.

(19) "**Vehicle**" or "**Auto**" means a highway vehicle powered by a gasoline or diesel internal combustion engine with fewer than sixteen adult passenger seating positions.

(20) "**Work site**" means a property that is owned or leased by an employer or employers under common control, including a temporary or permanent building, or grouping of buildings that are in actual physical contact or separated only by a private or public roadway or other right-of-way.

Should all employees at a work site be counted?

340-030-0850 The count of employees at a work site must include:

(1) Employees from all shifts, Monday through Friday, during a 24-hour period, averaged over a 12-month period;

(2) Employees on the employer's payroll for at least six consecutive months at one work site; and

(3) Part-time employees assigned to a work site 80 or more hours per 28-day-period; but

(4) Excludes volunteers, disabled employees (as defined under the Americans with Disabilities Act), employees working on a **non-scheduled work week**, and employees required to use a personal **vehicle** as a condition of employment.

What are the major requirements of ECO?

340-030-0860 To comply with ECO, employers must:

(1) Conduct a **baseline survey** of employees to establish a **baseline auto trip rate** (or provide documentation of the current auto trip rate that is at least as accurate as a survey would provide);

(2) Calculate a **target auto trip rate** by reducing the baseline auto trip rate by 10 percent;

(3) Submit a registration form as supplied by the Department;

(4) Design and implement a trip reduction strategy that has the potential to achieve the target auto trip rate by the **target compliance deadline** (*see **Table 1** for the implementation schedule*), and the potential to maintain the target auto trip rate through 2006;

(5) Either:

(a) Prepare and implement an auto trip reduction plan for each work site and submit the plan to the **Department** for approval *(note: enforcement will be based on implementing the approved plan, see OAR 340-030-0900)*, OR

(b) Provide written notice to the Department of the intent to achieve the target auto trip rate without an approved plan *(Note: enforcement will be based on good faith effort, see OAR 340-030-0970 and special requirements in OAR 340-030-0900).*

(6) Survey employees annually, report survey findings to the Department; *(Note: reporting dates are different for those not submitting a plan, see OAR 340-030-0890)*; and

(7) Continue to implement strategies to achieve or maintain the target auto trip rate through 2006.

What are the registration requirements?

340-030-0870

(1) Employers must submit a registration form to the Department on forms provided by the Department.

(2) Employers with multiple work sites may submit one application for all work sites.

(3) The application must be submitted according to the schedule in **Table 1**.

(4) Baseline survey findings must be submitted with the registration form in the format described on the registration form.

What are the requirements for an employee survey?

340-030-0880

(1) Employers may use the survey form provided by the Department or an alternate instrument. Any alternate survey instrument must be approved by the Department before use and must provide an opportunity for employees to indicate an interest in a **carpool** matching program;

(2) The employer must distribute the survey form to all employees and achieve a minimum response rate of 75 percent;

(3) Employers with more than 400 employees at a work site may survey a statistically valid random sample of employees and must follow the Department's guidelines for random sampling;

(4) Survey forms must be distributed during the week following a typical work week for the employer and not bordering a holiday;

(5) The baseline survey must not be distributed to employees earlier than one year before reporting the results to the Department (older baseline surveys can be used to apply for credit, see OAR 340-030-1040);

(6) Follow-up surveys must not be distributed to employees earlier than 90 days before reporting the results to the Department;

(7) Employers must report survey findings to the Department annually, according to the schedule in **Table 1**;

(8) Once an employer achieves the target auto trip rate, the employer may survey every two years; and

(9) An alternative method may be substituted for the survey. Alternative methods must be at least as accurate as survey findings and must be approved by the Department. *(Such methods might include counting cars in an employee parking lot or conducting work site entrance verbal surveys.)*

Special Requirements For Employers Intending to Comply Without an Approved Plan

340-030-0890

(1) Employers who choose to achieve the target auto trip rate without an approved plan must survey employees 18 months after the baseline survey was conducted;

(2) Findings from the 18-month survey must be submitted to the Department according to the schedule in **Table 1**;

(3) If an 18-month survey shows that the employer's progress toward the target auto trip rate is less than one-third of the target trip reduction, the employer must submit an auto trip reduction plan to the Department for approval within 60 days of submitting survey findings to the Department; and

(4) Following the 18-month survey, employers must survey annually according to the schedule in **Table 1**.

What if an employer does not meet the target auto trip rate?

340-030-0900

(1) An employer with an approved plan who has fully implemented its plan yet has not achieved its target **auto trip rate** by the target compliance date, or does not maintain its target rate on annual basis, must submit a revised plan within 60 days following the target compliance date in any given year (according to **Table 1**). If an employer has not fully implemented its plan, the employer is subject to an enforcement action by the Department.

(2) An employer selecting not to submit a plan who does not achieve its target auto trip rate by the target compliance date (see **Table 1**) must demonstrate that a **good faith effort** was made to achieve the target rate. Requirements for documenting good faith effort are described in 340-030-0970. The employer must also submit a trip reduction plan within 60 days following the target compliance date. If an employer cannot demonstrate that a good faith effort was made, the employer is subject to an enforcement action by the Department.

(3) An employer will not be required to submit further plan revisions to its initial plan if, after fully implementing two revisions, the target auto trip rate is not reached. The employer must maintain strategies identified in its plan, or revisions to that plan, that resulted in improvements to the auto trip rate.

How will employers demonstrate progress toward the target auto trip rate?

340-030-0910 Employers must submit employee survey findings, including a calculated auto trip rate, to the Department. The Department will compare the annually reported auto trip rate with the employer's target auto trip rate.

What is the schedule employers must follow to implement ECO?

340-030-0920 The schedule employers must follow to implement the ECO program is detailed in **Table 1**. Implementation is staggered and employer grouping is based on work site zip code. The Department will place any work site located in a zip code not listed in this rule in a group with the most closely associated zip code. An employer with multiple work sites in more than one zip code may follow one schedule for all work sites with approval from the Department.

Table 1
Implementation Schedule

	Group 1	**Group 2**	**Group 3**	**Group 4**
Registration Forms Due	11-1-96	2-1-97	5-1-97	8-1-97
Baseline Surveys Due	11-1-96	2-1-97	5-1-97	8-1-97
Plans and Notices of Intent To Comply w/o a Plan Due	2-1-97	5-1-97	8-1-97	11-1-97
12-mo. Surveys Due for Those with a Plan	11-1-97	2-1-98	5-1-98	8-1-98
18-mo. Surveys Due for Those without a Plan	5-1-98	8-1-98	11-1-98	1-1-99
Surveys Due for Those with a Plan	11-1-98	2-1-99	5-1-99	8-1-99
Initial Target Compliance Date --Surveys Due for all Employers	11-1-99	2-1-2000	5-1-2000	8-1-2000
Annual Target Compliance Date -- Surveys Due for all Employers	every 11-1 thru 2006	every 2-1 thru 2006	every 5-1 thru 2006	every 8-1 thru 2006

Group 1 includes: Northeast zip codes: 97024, 97060, 97203, 97211, 97212, 97213, 97217, 97218, 97220, 97227, 97230, 97232;

Group 2 includes: Southeast zip codes: 97004, 97009, 97015, 97027, 97030, 97045, 97080, 97202, 97206, 97214, 97215, 97216, 97222, 97233, 97236, 97266, 97267;

Group 3 includes: Southwest zip codes: 97005, 97006, 97007, 97008, 97034, 97035, 97036, 97062, 97068, 97070, 97106, 97113, 97119, 97132, 97140, 97219, 97223, 97224;

Group 4 includes: Northwest zip codes: 97116, 97123, 97124, 97133, 97201, 97204, 97205, 97207, 97208, 97209, 97210, 97221, 97225, 97229, 97231, 97258.

How should employers account for changes in work force size?

340-030-0930 The target auto trip rate remains constant regardless of changes in work force size. Employers experiencing an annual increase or decrease in the number of employees reporting to a work site must simply maintain the target auto trip rate.

(For example, an employer has 200 employees and 180 autos arriving at the work site. The employer's baseline auto trip rate is 180 autos/200 employees, or .90. The target auto trip rate is .90 minus 10 percent, or .81. The employer's work force increases to 300 employees. The target auto trip rate remains .81. In order to maintain the target auto trip rate, auto trips to the work site cannot exceed (300 X .81), or 243 trips. Similarly, if the employer's work force decreases to 100 employees, the target auto trip rate remains .81, and auto trips to the work site cannot exceed (100 X .81) or 81 trips.)

How can an employer reduce auto commute trips to a work site?

340-030-0940 Employee commute option programs include, but are not limited to:

(1) Promoting carpool and vanpool programs;
(2) Offering transit subsidies;
(3) Establishing **telecommuting** opportunities;
(4) Offering **compressed work week** schedules;
(5) Providing an emergency ride home program;
(6) Sponsoring shuttle buses to and from transit terminals and/or during lunch hours for errands;
(7) Improving facilities to promote bicycle use;
(8) Establishing on-site amenities to decrease employees' need for a car at the work site;
(9) Discontinuing parking subsidies and charging all employees for parking.

What should be included in an auto trip reduction plan?

340-030-0950 An auto trip reduction plan must include:

(1) The results of the baseline survey (or comparable documentation);
(2) Calculation of baseline and target auto trip rates;
(3) Any employee commute option programs currently in use at the work site;
(4) New commute options to be implemented at the work site that have the potential to achieve and maintain the target auto trip rate;

(5) Empirical evidence that the commute option(s) to be offered or supported by the employer have the potential to achieve and maintain the target auto trip rate *(employers may reference the Department's report* ***Alternatives to Single Occupant Vehicle Trips*** *or provide equivalent documentation);*

(6) Any unique aspects of the business or work site influencing the trip reduction strategies selected;

(7) A schedule for implementing each of the selected commute option measures;

(8) Any alternative emission reduction proposals prepared by the employer according to OAR 340-030-1030;

(9) The name, title, telephone number, and business mailing address of the person designated by the employer as the contact for the work site *(contact person does not have to be located at the work site);* and a signed statement certifying that the documents and information submitted in the plan are true and correct to the best of that person's knowledge.

When will the Department act on a submitted auto trip reduction plan?

340-030-0960 The Department will approve or notify the employer of deficiencies in a submitted auto trip reduction plan, based on the criteria in OAR 340-030-0950, within 90 days or the plan will be automatically approved. The employer will have 30 days to correct the deficiencies and resubmit the plan to the Department. Plan approvals will be documented by letter from the Department to the employer. Employers must submit any subsequent plan modifications to the Department for review and approval. If the employer objects to any condition or limitation in the Department's letter, the employer may request a contested case hearing before the Commission or its authorized representative. Such a request for hearing must be made in writing to the Director and received by the Department within 20 days of the date of mailing of the letter. Any subsequent hearing will be conducted pursuant to the provisions of ORS Chapter 183 and OAR Chapter 340, Division 11.

What is a good faith effort?

OAR 340-030-0970 Employers who choose not to submit a plan and then fail to meet their target auto trip rates must demonstrate that a good faith effort was made to meet the target trip reduction. An employer must demonstrate good faith effort by submitting written documentation of the following:

(1) Employer established a baseline auto trip rate and corresponding target auto trip rate and conducted follow-up surveys to determine employee commute patterns and progress toward achieving the target trip reduction;

(2) Employer selected trip reduction strategies that had a reasonable likelihood of success based on documentation in the Department's report **Alternatives to Single Occupant Vehicle Trips** or equivalent documentation *(for example, auto trip reduction experience by employers in a comparable region)*; and

(3) Employer fully implemented all selected strategies, or their equivalent, on a schedule that would have reasonably allowed the employer to achieve the target auto trip rate by the target compliance deadline.

How does the ECO program affect new employers, expanding employers and employers relocating within the Portland AQMA?

340-030-0980

(1) An expanding employer who increases the number of employees at any single work site within the Portland AQMA to more than 50 after the effective date of the ECO rules must comply with the ECO rules. An employer relocating a work site within the Portland AQMA is considered a **new employer** upon relocation and must set a new baseline and target auto trip rate and comply with the ECO rules. Relocating employers may apply for credit for existing trip reductions that carry over to the new work site. Expanding employers and new employers must meet the requirements of this rule within the following number of days after they become affected employers:

(a) Survey employees and submit survey findings and a registration form within 90 days;

(b) Select strategies that have the potential to meet the target trip reduction and submit a trip reduction plan or notice of intent to reduce trips without an approved plan within 180 days; and

(c) Conduct annual follow-up surveys and report findings to the Department within 90 days of surveying.

(2) An employer affected by this rule may choose to demonstrate compliance through 340-030-1050(5) *(use of area average rate).*

Can a new or relocating employer comply with ECO through restricted parking ratios?

340-030-0990 An employer locating at a work site within the AQMA after the effective date of the ECO rules will be exempt from the ECO rules for that work site if:

(1) The new work site meets the requirements of the Department's Voluntary Parking Ratio rules (OAR 340-030-1100 through 340-030-1190); and

(2) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in **Table 1.** Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

Can an existing employer comply with ECO through restricted parking ratios?

340-030-1000 An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following:

(1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios *(see OAR 340-030-1100 through 340-030-1190);*

(2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site;

(3) The work site parking meets the requirements of the Department's Voluntary Parking Ratio rules; and

(4) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in **Table 1.** Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

What if an employer has more than one work site within the Portland AQMA?

340-030-1010

(1) An employer with more than one work site in the Portland AQMA may average its target trip reduction among those work sites in the AQMA. An employer must survey all included work sites annually. Survey findings may be reported in aggregate or separately.

(2) One trip reduction plan may be developed for all work sites of an individual employer, but strategies must be selected based on the specific transportation characteristics of each work site.

(3) Work sites with 50 or fewer employees may be included in the interest of averaging trip reductions among all work sites. Those work sites must then survey according to the schedule in Table 1 and findings must be included in the employer's report to the Department.

Can employers submit a joint plan?

340-030-1020 Different employers with work sites located near each other and with common transportation needs may develop a joint trip reduction plan for all affected work sites. The plan must address each work site individually and each employer is individually accountable for meeting all ECO requirements. Each employer must report survey findings for each specific work site, and the ten percent trip reduction target applies to each employer's work sites. Trip reductions may not be averaged among employers.

Are there alternatives to trip reduction?

340-030-1030 Alternatives to trip reduction include:

(1) Employers may purchase surplus trip reductions from other employers required to comply with ECO to meet part or all of the target trip reduction. Surplus trips must be documented by survey before sale and must be maintained through the year 2006. The Department must approve proposed transactions prior to finalizing. The Department will confirm surplus trip transactions by letter to both employers.

(2) Employers may substitute **equivalent emission reductions** to meet their target trip reduction. Equivalent emission reduction proposals must be included in the employer's trip reduction plan or submitted with the notice of intent to comply without an approved plan. In order to receive credit as an equivalent emission reduction, the Department must review and approve proposals before an employer implements the strategy. Employers selecting equivalent emission reduction strategies must meet the following requirements:

  (a) Employer sufficiently documented emission calculations so that the Department can quantify and verify the reduction;

  (b) Employer calculated equivalent emissions according to guidelines issued by the Department. The Department must approve any alternate or modified calculation methods;

  (c) Employer submits, on the same schedule as the annual survey findings, documentation of actual equivalent emissions achieved;

  (d) Equivalent emission reductions may not be bought or sold between employers for the purpose of meeting the target trip reduction.

(3) Employers may contribute to an emission reduction fund at an annual rate of $100 per employer making partial progress toward the target trip reduction may choose to contribute proportionate to the percentage of the target trip reduction yet to be achieved. The emission reduction fund will be administered through **Metro** for new transit service, local jurisdiction

alternative mode projects, and business-based Transportation Management Association (TMA) programs that result in trip reductions. Employers must make annual payments over the compliance period. The amount will be adjusted annually according to the Consumer Price Index.

What alternatives qualify as equivalent emission reductions?

340-030-1040 Equivalent emission reduction alternatives at the work site include, but are not limited to, the following:

(1) Use of alternative fueled vehicles (employer or employee vehicles);
(2) Vehicle scrappage (older high-emitting employee or employer vehicles);
(3) Forklift replacement (lower emitting technology);
(4) Lawn mower replacement (may include lawn mowers employees use at home if home is located within the Portland AQMA);
(5) Motor boat motor replacement (may include motor boats owned by employees who live within the Portland AQMA);
(6) Reductions in air pollution emissions from non-vehicle sources at the work site;
(7) Reductions in non-commute vehicle traffic to the work site or within the work site.

Can employers get credit for existing trip reduction programs?

340-030-1050 The Department may grant credits for documented trip reductions that occurred at an employer's work site any time before establishing a baseline auto trip rate. Credits will be granted upon approval by the Department. The Department will approve or deny the employer's request for credit by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-030-0960.

(1) Employers must demonstrate that pre-existing trip reduction programs resulted in actual trip reductions by providing:
  (a) A description of the trip reduction programs and how they were implemented;
  (b) The period of time that the programs have been in place;
  (c) Survey findings or comparable documentation that demonstrates a ten percent reduction in the auto trip rate for the work site; and
  (d) Current survey findings or comparable documentation verifying the employer has maintained the reduced auto trip rate.
(2) Applications for credits must be submitted to the Department with the trip reduction plan or notice of intent to reduce trips without an approved plan, according to **Table 1**.
(3) Credits will not be discounted and will be granted on a one-for-one basis.
(4) Trips documented for the purpose of receiving credits may not be bought or sold to other employers for the purpose of meeting the target trip reduction.
(5) Alternately, an employer may choose to provide documentation that its single occupant vehicle commute rate, at the time of registration, is equal to or less than two standard deviations below the mean rate for the Metro transportation zone which includes the

employer's work site. Commute data for Metro's transportation zones is available from the Department.

Are exemptions allowed if an employer is unable to reduce trips or take advantage of alternate compliance options?

340-030-1060

(1) An employer is fully exempt from OAR 340-030-0800 through 340-030-1080 if the employer submits reasonable documentation for each of the following:
  (a) Work site is located in an area for which:
    (A) Public transit service during work shift changes is less frequent than thirty minute intervals; or
    (B) The public transit service point is further than one-half mile from employee's usual parking area; or
    (C) Work shift changes occur between 8:30 p.m. and 5:30 a.m..
  (b) Upon completing the employee survey and providing reasonable promotion for a **carpool** matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;
  (c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and
  (d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.
  (a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;
  (b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal according to **Table 1**. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-030-0960.

(4) Employers must renew requests for exemptions every three years.

Participation in the Industrial Emission Management Program

340-030-1070 Employers that donate unused Plant Site Emission Limit (PSEL) to the Department's Industrial Emission Management program (see OAR 340-030-0700 through 340-030-0740) are exempt from the ECO rules for the life of the ozone maintenance plan (2006).

What kind of records must be kept and for how long?

340-030-1080 Employers must maintain records at the work site or other central location within the nonattainment area for at least three years, and must make those records available to the Department upon request. Records must include:

(1) The contents and results of employee surveys or other information gathering efforts;

(2) A full description of all measures and incentives offered to employees and the associated employee responses;

(3) Other information associated with the development, implementation, evaluation, or modification of the trip reduction program.

Portland Air Quality Maintenance Area

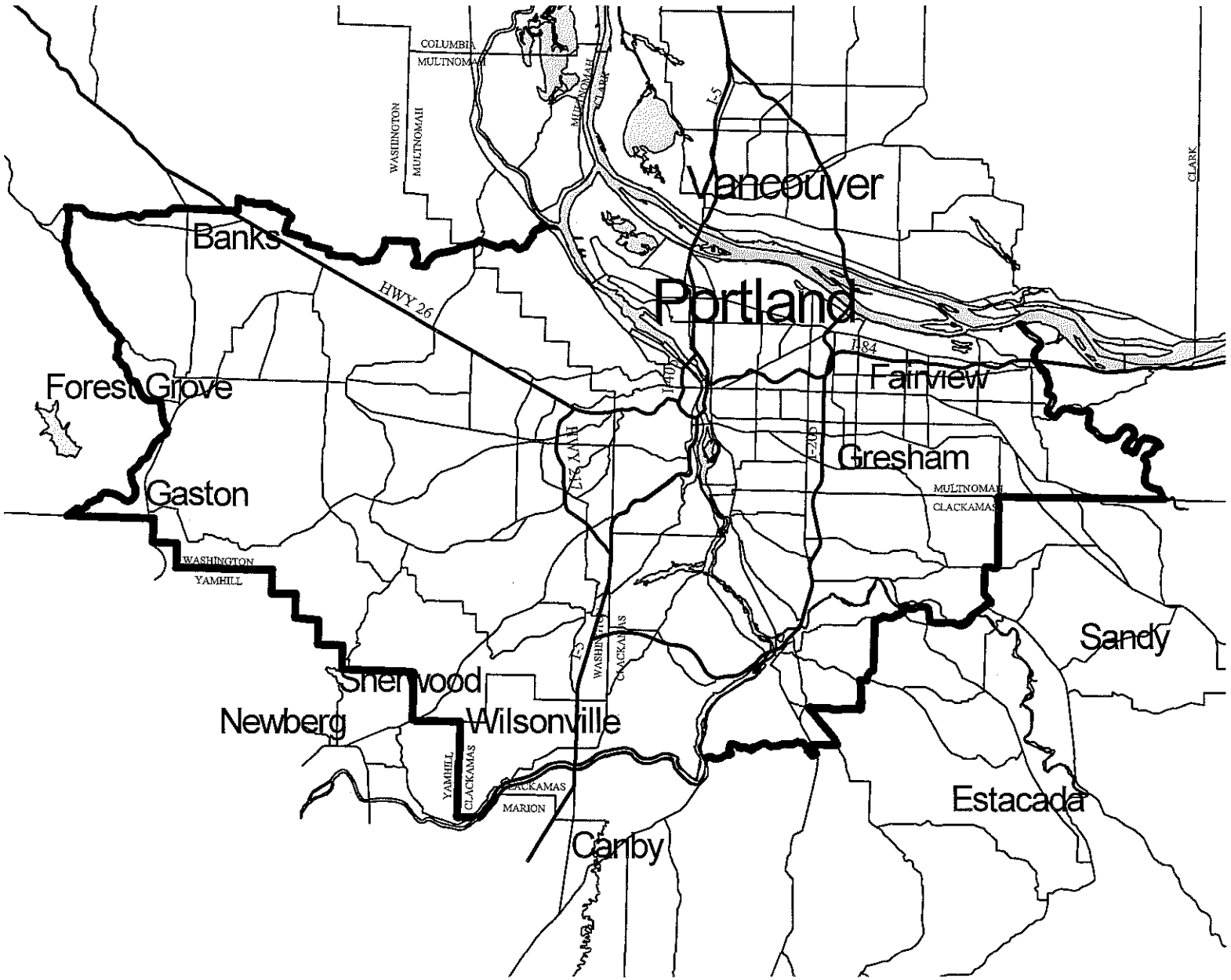

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Figure 1

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter: **340-020-0047, 340-018-0030, 340-022-0440, 340-024-0301, 340-030-0700 through -030-0750, 340-030-0800 through 1090, 340-030-1100 through 1200, 340-031-0520 through -031-0530**

DATE:	TIME:	LOCATION:
May 22, 1996	10:00 a.m.	Oregon Department of Environmental Quality Headquarters 811 SW Sixth Avenue, 3rd Floor (Room 3A) Portland (Question and answer session from 9:00 to 10:00)
May 22, 1996	7:00 p.m.	State Office Building, Room 140 800 NE Oregon Portland (Question and answer session from 6:00 to 7:00)
May 23, 1996	7:00 p.m.	City of Tigard Water Department Auditorium 8777 SW Burnham Street Tigard, Oregon (Question and answer session from 6:00 to 7:00)

HEARINGS OFFICER(s): A Professional Hearings Officer

STATUTORY AUTHORITY: or OTHER AUTHORITY: ORS 468.020, ORS 468A.035

STATUTES IMPLEMENTED: ORS 468.065, ORS 468A.310, ORS 468A.363, ORS 468.390, ORS 468A.405, ORS 468A.420

ADOPT: 340-030-0700 through -030-0750, 340-030-0800 through 1090, 340-030-1100 through 1200

AMEND: OAR 340-020-0047, OAR 340-018-0030, OAR 340-022-0460, OAR 340-24-0301, OAR 340-031-0520 through 340-031-0530

☑ This hearing notice is the initial notice given for this rulemaking action.

☑ Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY: The Department of Environmental Quality (DEQ) is proposing that the Environmental Quality Commission adopt plans to ensure that the Portland area

does not experience a recurrence of violations of the federal air quality standards for carbon monoxide and ozone. These plans and supporting rules, if adopted, will be submitted to the US Environmental Protection Agency (EPA) as revisions to the State Implementation Plan, which is a requirement of the Clean Air Act. If approved by EPA, the Portland area would be redesignated from a "nonattainment area" to an "attainment area" for carbon monoxide and ozone. The plans and supporting rules demonstrate how the Portland area will maintain compliance with the federal ambient air standards for carbon monoxide and ozone over the next ten years despite expected unprecedented growth in the area. Existing attainment plans for carbon monoxide and ozone, which will be replaced by these maintenance plans, are proposed to be repealed.

Both the carbon monoxide and ozone maintenance plans include an emission inventory, an enhanced motor vehicle inspection program, a revision to the motor vehicle inspection boundary, and transportation control measures to be implemented by Metro. Additionally, the carbon monoxide maintenance plan includes a parking management program for the Central City that will be implemented by the City of Portland. Comments are being solicited on options for continuing or repealing the current oxygenated fuel program under the carbon monoxide maintenance plan. The ozone maintenance plan includes an Employee Commute Options Program, a Voluntary Parking Ratio Program, an Industrial Emission Management Program, existing Rules for Auto Body Refinishing, Paints, and various Consumer Products, and existing Stage II Vapor Recovery Rules for gasoline service stations.

LAST DATE FOR COMMENT: May 24, 1996, 5:00 p.m.

AGENCY RULES COORDINATOR: Susan M. Greco, (503) 229-5213

AGENCY CONTACT FOR THIS PROPOSAL: Andy Ginsburg (Ozone Maintenance Plan and related rules) (503) 229-5581
Howard Harris (CO Maintenance Plan and related rules) (503) 229-6086

ADDRESS: 811 SW Sixth Avenue
Portland, Oregon 97204

TELEPHONE: 1-800-452-4011
(503) 229-5675 (FAX)

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.

Susan M. Greco
Signature

4/15/96
Date

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Employee Commute Options

Fiscal and Economic Impact Statement

Introduction

The Employee Commute Options program (ECO) is one of several important strategies in the Portland Air Quality Maintenance Area Plan to maintain air quality health standards for the next ten years. The goal of ECO is to reduce auto commute trips by 10 percent within three years. This proposed rule will primarily affect larger employers. Employers with more than 50 employees reporting to a single work site would provide commute alternatives such as carpool matching, flexible work hours, telecommuting, and assistance for public transit use.

Employers can comply with ECO either by submitting a plan to meet the target reduction to DEQ for approval or by informing DEQ of the intent to meet the reduction and implementing a program without DEQ review. Employers can also achieve compliance with the ECO requirements in various alternative ways. In submitting their plan or letter of intent to DEQ, they can: apply for credit for existing trip reduction plans; request partial or full exemption; propose on-site emission reductions of volatile organic compounds and nitrogen oxides; or pay a fee instead of implementing a trip reduction plan. Employer compliance costs will vary depending on the strategy selected. Some employers may achieve a net savings through saved parking costs.

General Public

Employees who drive to work alone will be encouraged by the options provided by their employers to alter their commuting habits. Commuting in a single occupancy vehicle is the most expensive form of travel. The American Automobile Association indicates that 1996 national average per-mile costs of owning and operating a motor vehicle (excluding parking costs) are between $0.38 and $0.53 per mile, depending on the miles traveled per year. (AAA. "Your Driving Costs." 1996 Edition). In the Portland region, the average one-way commute trip is 7 miles. Therefore, employees who drive to work alone in the region on average pay between $5.32 and $7.42 per day to travel to work.

Any of the other possible commute options (such as transit, carpool, telecommute, four day workweeks) will cost less, thereby saving employees money.

Small Business

The Employee Commute Options program will not affect small businesses because it applies only to businesses with more than 50 employees.

Large Business

ECO will affect approximately 2,000 employers (those with more than 50 employees) in the Portland Air Quality Maintenance Area. These employers will need to survey their employees to determine their commute habits and then calculate a baseline auto trip rate and a target auto trip rate, and develop strategies to meet the target auto trip rate. Employers will submit survey results, some will prepare written trip reduction plans, and some will submit credit and exemption requests to DEQ.

After DEQ approval, businesses will implement their trip reduction plans. Those not submitting plans will implement the strategies they have selected. Implementation costs will vary depending on the strategy selected.

To determine employer costs in Southern California's ride share program, Ernst & Young conducted an employer survey in August 1992. This survey indicated that total annual costs were $105 per employee in that area: $17 per employee for administrative costs and $88 per employee for program implementation costs. The Southern California ride share program applied to employers with 100 or more employees who were to achieve a 25 percent trip reduction. Since this report was released in 1992, additional studies have shown that the costs per employee are significantly less. For example, a UCLA-USC cost study on Southern California estimates annual average costs to be $31 per employee in that area.

Washington state has a Commute Trip Reduction (CTR) program requiring a final 35 percent trip reduction target for employers with 100 or more full-time employees at a single work site. Washington recently surveyed employers to determine their costs in implementing the CTR in the first year with a target reduction of 15 percent. The survey determined that average annual costs per work site are $7,296 and average private sector costs per employee are $19 per year. The following table lists the survey results:

Type of Cost	Work Site Average Cost	Work Site Cost: Minimum/Maximum	Average Private Sector Cost Per Employee
Administrative	$4,456	$0 - $46,000	$9
Incentives/Subsidy	$1,660	$0 - $56,118	$6

Capital	$860	$0 - $24,717	$3
Materials and Supplies	$320	$0 - $5,867	$1
Total	**$7,296**	**$0 - $71,789**	**$19**

T.J. Johnson, Washington State Department of Energy. "Results and Reactions: A Preliminary Assessment of Commute Trip Reduction in Washington State." Paper presented at the 1995 ACT International Conference in Houston, TX. Evening session entitled "Future Direction of Employer Trip Reduction Programs." September 18, 1995.

In Arizona, Pima County (Tucson) and Maricopa County (Phoenix) have employer trip reduction programs. Tucson's program applies to employers with 100 or more employees, and encourages employees to use an alternative mode at least once a week and/or reduce vehicle miles traveled. Average annual costs per employee in Tucson are $18, including administrative and out of pocket costs. Phoenix's program applies to employers with 50 or more employees, and aims to reduce the drive alone commuting rate by 10 percent. The goals of the Phoenix program are very similar to DEQ's Employee Commute Options program. Average annual costs per employee in Phoenix are $8. Employers in these areas generally do not offer financial incentives (which tend to be more expensive), but typically offer preferential carpool parking, telecommuting, and compressed work weeks -- all high trip reduction and low cost options.

By offering alternatives to drive-alone commuting, some employers may achieve a net savings, largely through saved parking costs. The COMSIS Corporation and Transportation Management Services, Inc. in July 1994 conducted a national survey of employer programs and examined their cost effectiveness. Their results indicated that some employers can save money by adopting trip reduction programs instead of expanding and maintaining employee parking. Every parking space that an employer does not need to build, lease or maintain represents a savings. The COMSIS Corporation computed both direct costs and avoided costs of employer trip reduction programs. Net costs (direct costs minus avoided costs) resulted in savings: annual net cost results in a $62.30 savings per employee, and net cost per trip reduced is a savings of $0.78 per trip. The chart below summarizes their findings:

Average	Annual Cost Per Employee		Per Daily Trip Reduced	
Trip Reduction	Direct	Net	Direct	Net
15.3%	$14.70	($62.30)	$0.75	($0.78)

COMSIS Corporation. TCRP B-4 Task 2 Working Paper: An Examination of Cost/Benefit and Other Decision Factors Used in the Design of Employer-Based TDM Programs. pp. 26-29. July 1994.

Businesses may comply with the proposed ECO rules by paying a fixed cost fee for the required trip reductions rather than design a trip reduction plan. Employers could pay an annual fee of $100 per employee (in real dollars) for ten years to cover the entire ten year ozone maintenance plan. This $100 fee per employee is approximately 10 percent (ten percent is the target auto trip rate) of Tri-Met's FY 94 annual cost of $1,030 to provide round trip service to

one rider. These fees would go into an Emission Reduction Fund and be administered by Metro for new transit service, local jurisdiction transportation projects, and business-based Transportation Management Association (TMA) projects that reduce trips.

The Department's fixed fee alternative compares with Southern California's current trip reduction/air quality fund. California's South Coast Air Quality Management District (SCAQMD) allows employers to pay into a regional air quality fund instead of implementing a trip reduction plan at their work site. In Southern California, employers can choose to pay either a $60 fee per employee per year, or a discounted rate of $125 per employee for three years. Southern California's $60 fee is based on the costs of emission reduction alternatives such as vehicle scrappage programs. Local government, business, and environmental groups support the fee option as a less costly way for some employers to target vehicle pollution.

Employers in the Portland AQMA can achieve compliance with the ECO requirements through other alternative means such as credits for existing programs, exemptions, or through equivalent emissions reductions such as replacing company gasoline-powered forklifts with electric vehicles. Some of these alternatives could save employers money. Employers who build or relocate within the Portland AQMA and meet the Department's voluntary maximum parking ratios can apply for exemption from ECO requirements. In addition, employers donating unused Plant Site Emission Limits according to the Department's Industrial Emission Management program will be granted exemption from ECO rules. For some businesses, these alternatives may be more cost effective than reducing trips.

Local Governments

Local governments in the Portland AQMA with more than 50 employees will need to comply with ECO requirements. Costs to local governments are not expected to vary significantly from costs projected for businesses.

ECO's goal to reduce auto commute trips, increase mobility, and achieve cleaner air complements other regional government transportation and growth plans. With or without the ECO program, local governments will be investing in transportation infrastructure projects such as light rail and bicycle facilities, as part of a broader regional growth plan. ECO will help generate demand for the use of these investments.

In 1995, the ECO program received $1 million in Congestion Mitigation and Air Quality (CMAQ) funds from the Federal Highway Administration. Half of the original CMAQ grant has already been awarded to the Cities of Portland and Beaverton ($250,000 each) to develop and implement local Transportation Management Associations. The remaining $500,000 will be allocated to regional and state agencies and contractors to provide assistance to employers who must comply with ECO. A study by A&W Consulting assessed employer assistance needs and

recommended funding the following services with CMAQ funds: DEQ information clearinghouse; survey administration and processing; employer training and education; and call for projects. (A&W Consulting. "ECO Program Employer Assistance Assessment." October 23, 1995).

Tri-Met Tri-Met will expand current employer survey processing and provide additional transportation management assistance such as helping form vanpools and paying for emergency rides home. Tri-Met expects to complete the Westside Light Rail by Fall 1998, and this transit route will increase alternatives to auto commuting in that area. Resources for Tri-Met activities that will support ECO compliance will derive from Federal Congestion Mitigation Air Quality funds and other existing funds.

State Agencies

State agencies with more than 50 employees in the Portland AQMA (as well as Federal agencies) will need to comply with ECO requirements. Costs to state agencies are not expected to vary significantly from costs projected for businesses.

DEQ and the Department of Energy (DOE) will expand their services and receive CMAQ funds for ECO implementation. DEQ will receive $80,000 of CMAQ funds to staff and print materials for an information clearinghouse, and DOE will receive $35,000 of CMAQ funds to increase telecommuting assistance.

- DEQ

  - FTE's: 2 full-time, permanent Environmental Specialists, 1 full-time, permanent Office Support; 4 full-time, temporary analysts/environmental specialists in the first year. Maintain permanent staff in following years: 2 Environmental Specialists,1 Office Support, and 1 limited duration analyst.

  - Revenues: DEQ proposes to use EPA Supplemental 105 funds and other existing funds to review employer trip reduction plans, exemptions, and credits; provide technical assistance; review modified plans; and monitor compliance. These revenues will cover program administration costs. Equivalent employer fees may be considered at a future time.

  - Expenses: The first year of implementation will include a one-time startup cost for a total of $340,000. Program implementation costs in subsequent years will be approximately $240,000.

- DOE

  - DOE plans to expand current telecommuting assistance such as providing more employer training and producing additional training materials. Funding would derive from existing Federal Congestion Mitigation Air Quality (CMAQ) funds. After assessing employer demand for telecommuting, DOE will consider increasing the number of its telecommuting specialist staff. DOE offers tax credits to businesses starting carpool, vanpool, or telecommuting programs. The Business Energy Tax Credit -- a 35 percent credit against Oregon taxes owed -- offsets the cost of equipment installation.

Assumptions

Costs to operate an ECO program in the Portland AQMA would be similar to those in Washington State, Arizona and Southern California.

Attachment B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Employee Commute Options

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Employee Commute Options program (ECO) is one of several important strategies in the Portland Air Quality Maintenance Area to maintain air quality health standards for the next ten years. The goal of ECO is to reduce auto commute trips by 10 percent within three years. This proposed rule will primarily affect larger employers. Employers with more than 50 employees reporting to a single worksite within the Portland AQMA would provide commute alternatives such as carpool matching, flexible work hours, telecommuting, and help with public transit use.

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

Yes X **No**____

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

The Employee Commute Options will be a new program included in the DEQ State Agency Coordination (SAC) Program and is proposed for incorporation into OAR 340-18-030(1)(g) concurrent with this rulemaking.

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):**

notifies employers of ECO requirements, DEQ will also send local governments a list of ECO-affected employers in their jurisdiction. This process would give local governments an opportunity to contact specific companies or to comment on specific employer trip reduction plans later on.

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

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

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

Gregory A. Green — Division

Intergovernmental Coord.

4/8/96 — Date

Attachment B-4

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Employee Commute Options

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

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

Yes, there are federal requirements applicable to this situation. The Clean Air Act requires areas that wish to be redesignated from "nonattainment" to "attainment" status to submit a plan that will ensure that air quality standards are not violated for 10 years after Environmental Protection Agency (EPA) approval of the plan. These plans are called Maintenance Plans.

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

The requirements are performance based. The Ozone Maintenance Plan must demonstrate that future emissions will not cause a violation of the ozone standard. As long as the Portland area stays in attainment with the federal ozone standard, the Clean Air Act allows states to identify the specific emission reduction strategies that will be used to maintain attainment. Selected emission reduction strategies are required to meet EPA enforceability requirements. The Employee Commute Options program is one of the selected strategies in the plan.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

The applicable federal requirements do not specifically address issues that are of concern to Oregon. The federal requirements are specifically designed to give each state the flexibility to adopt emission reduction strategies that are best suited for that area.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The emission reduction strategies included in the Maintenance Plan will ensure that air quality standards are maintained and will allow EPA to redesignate the Portland area to attainment for ozone. Once the area is redesignated, the existing stringent control requirements for major new and expanding industry will be replaced with less stringent and less expensive control requirements. In addition, the Portland area will be shielded from potential "bump-up" to a more stringent nonattainment classification. Such a bump-up would result in the imposition of prescriptive federal control requirements, including the costly retrofit of NO_x controls on existing industry.

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

There is no deadline in the Clean Air Act for submitting a maintenance plan. However, the Legislature directed DEQ to submit an approvable ozone maintenance plan to EPA as soon as possible so that the area can be redesignated to attainment and impediments to industrial growth imposed in the Clean Air Act can be removed.

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

The rate of ozone formation is dependent on temperature and other weather conditions. The maintenance plan is designed to address expected weather fluctuations over a 10-year period, but does not include surplus VOC emission reductions (there is a slight surplus NO_x emission reduction). The maintenance plan is also designed to accommodate projected growth. Emission forecasts are based on growth rates for all emission source categories, and a growth allowance is included for major new and modified industry. Further, the maintenance plan includes a contingency plan as required by the Clean Air Act to address unforeseen growth in emissions and other uncertainties.

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

The proposed maintenance plan establishes greater equity because it includes requirements applicable to emissions from all major source categories. Historically, industry has been more heavily regulated than other source categories. The ozone maintenance plan contains requirements that will reduce emissions from all four major source categories (i.e. motor vehicles, nonroad engines, area sources and industry).

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

If a maintenance plan is not adopted and a future violation of the ozone standard occurs, a new attainment plan will be required including prescriptive federal control requirements on existing industry and other sources. In addition, Metro could experience difficulty demonstrating conformity of its transportation plan with air quality plans. If conformity can not be demonstrated, Metro would not be eligible to receive federal transportation funds.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

No. The procedural requirements in the maintenance plan are required to meet EPA enforceability requirements.

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

Yes. Demonstrated technology exists to comply with all state emission reduction strategies in the maintenance plan. Employer trip reduction programs have been conducted throughout the country for a number of years.

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

The proposed maintenance plan is designed to prevent air pollution. In particular, motor vehicle trip reduction strategies (i.e. Employee Commute Options, parking ratios, Metro's Region 2040 growth concept and the information/incentive program) are cost-effective ways to prevent air pollution. These strategies generally increase the use of lower-cost transportation alternatives and reduce road congestion and maintenance costs. The maintenance plan will also reduce the cost of controls on new business that are interested in locating in the Portland area.

Attachment B5

State of Oregon
Department of Environmental Quality **Memorandum**

Date: April 17, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Employee Commute Options Program

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules establishing the Employee Commute Options program. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would establish rules which require larger employers with work sites in the Portland Air Quality Maintenance Area (AQMA) to offer incentives to their employees for alternative commute methods. Employers with more than 50 employees at a single work site will be affected. The goal is to reduce single occupant vehicle commute trips by 10 percent at each affected work site. Reducing commute trips is one of several strategies proposed in the region's ozone maintenance plan to keep the region's air healthy.

The Department has the statutory authority to address this issue under ORS 468A.363.

What's in this Package?

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

*Attachment A	The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
*Attachment B	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
*Attachment C	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
Attachment D	The actual language of the proposed new rules.

* These items are available upon request by calling 229-6829.

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

Date: Wednesday, May 22, 1996
Time: 10:00 a.m. (Question and answer session from 9:00 a.m. to 10:00 a.m.)
Place: Oregon Department of Environmental Quality Headquarters
811 SW Sixth Avenue, Third Floor, Room 3A
Portland, Oregon

Date: Wednesday, May 22, 1996
Time: 7:00 p.m. (Question and answer session from 6:00 p.m. to 7:00 p.m.)
Place: State Office Building, Room 140
800 NE Oregon
Portland, Oregon

Date: Thursday, May 23, 1996
Time: 7:00 p.m. (Question and answer session from 6:00 p.m. to 7:00 p.m.)
Place: City of Tigard Water Department Auditorium
8777 SW Burnham Street
Tigard, Oregon

Deadline for Receipt of Written Comments: 5 p.m., May 24, 1996

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish your comments to be considered by the Department in the development of these rules, your comments must be received before the close of the comment period. The Department recommends that comments be submitted as early as possible to allow adequate review and evaluation of the comments submitted.

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

If you wish to be kept advised of this proceeding and receive a copy of the recommendation that

is presented to the EQC for adoption, you should request that your name be placed on the mailing list for this rulemaking proposal.

What Happens After the Public Comment Period Closes?

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is July 12, 1996. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented **during** the hearing process so that full consideration by the Department may occur before a final recommendation is made. In accordance with ORS 183.335(13), no comments can be accepted by either the EQC or the Department after the public comment period has closed. Thus the EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department prior to the close of the public comment period so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal
Why is there a need for the rule?

Employee Commute Options is one of several strategies included in the proposed Ozone Maintenance Plan for the AQMA. This strategy is included in the plan as directed by the Oregon Legislature (ORS 468A.363). The combined strategies in the plan will prevent ground-level ozone from exceeding federal health-based air quality standards over the next ten years as significant growth occurs in the region.

How was the rule developed?

The 1993 Legislature directed the Department to include an employer trip reduction program in a regional ozone maintenance plan for the Portland region. A technical advisory committee made up of employers in the region met for over a year to assist the Department in rule development. A policy committee of community leaders met concurrently to advise the Department on broader policy issues related to developing the Employee Commute Options program.

Whom does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

Employee Commute Options affects all employers with work sites located in the AQMA that employ more than 50 employees at a work site. These employers must comply with all of the requirements included in the Employee Commute Options rules. This will include surveying employees on commute methods, developing incentive programs to encourage employees to use alternative commute methods, and reporting commute trip reduction achievements to the Department. Employees will be provided with commute options which should be more convenient and less costly than commuting in a single occupant vehicle. Because of this incentive, some should voluntarily choose to use one of these options. Costs to business may range from a savings of over $60 per employee (largely due to decreased parking needs) to a cost of $100 per employee. Since commuting in a single occupancy vehicle is the most expensive form of travel, employees choosing alternate commute methods will save on travel costs.

How will the rule be implemented?

Survey forms, guidance materials and resources for assistance will be mailed to employers as soon as the rules take effect. Guidance materials will include information on compliance alternatives to reducing commute trips, such as reducing auto trips by customers and other visitors to or from the work site or reducing emissions from sources other than motor vehicles at the work site. The Department will offer training to all employers on the requirements of the program, as well as possible trip reduction strategies. Ongoing assistance with commute alternatives, such as transit, ride share, and telecommuting will be provided by other agencies, including Tri-Met and the Oregon Department of Energy. Compliance will be demonstrated by employers through either development and implementation of DEQ approved trip reduction plans or a demonstration of good faith efforts to meet the trip reduction target.

Are there time constraints?

The Legislature directed the Department to adopt the Ozone Maintenance Plan as soon as possible. For employers, the rules allow for phasing in by geographical location. The first group of employers must survey employees and report the results to the Department within three months after the rules take effect. In another three months, these employers must turn in a plan to the Department of the incentives they will offer employees. Employers may choose to not submit a plan to the Department, but instead notify the Department that they will proceed with their selected incentives and report progress to the Department in 18 months. All employers must resurvey employees on an annual basis and report the results to the Department.

Contact for more information

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

Patti Seastrom
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5944

16. Tom Tucker, Citizen

Mr. Tucker gave testimony concerning the Ozone Maintenance Plan. He read his comments into the record.

He stated that the selected strategies were not cost-effective. He said that the maintenance plan relied on tools at DEQ's disposal, rather than the most cost-effective solutions. He suggested that DEQ should explore options to control population growth as a means of reducing air pollution. His suggested alternatives included the deportation of illegal aliens, reducing teenage pregnancies, training workers locally, helping the unemployed find work outside of the state, voter approval prior to annexation, and voter initiatives to require future development to pay for all needed infrastructure.

Mr. Tucker also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

Written Testimony

The following people handed in written comments at the hearings, but did not present oral testimony:

17. Thomasina Gabriele, Gabriele Development Services for Institutional Facilities Coalition.
18. Joy Voline

There was no further testimony and the hearing was closed at 11:15 am, 7:30 pm, and 7:45 pm, respectively.

The public comment period closed at 5:00 pm on Friday, May 24, 1996. All comments received during the public comment are indexed in Attachment C1, which has been attached to this report. All oral and written comments are summarized in Attachment D, The Department's Evaluation of Public Comments.

May 23, 1996, 7:00 pm

14. Mauri Scott, Iwasake Brothers, Inc.

Ms. Scott gave testimony concerning the ECO Program. She stated that the nature of her business, a nursery, was not taken into account. She explained that employees tending plants cannot telecommute or work a compressed work week, and truck drivers work a non-scheduled work week. She stated that the current auto trip rate was .48, but she couldn't take credit because no programs had been sponsored. She suggested that employers with lower auto trip rates should have lower goals. She also pointed out the need for the survey to be provided in other languages and in an alternate form for illiterate employees (e.g. pictograms). She suggested that the rules should allow for an easier method, such as counting cars in the parking lot.

Ms. Scott also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

15. John Williams , Citizen.

Mr. Williams gave testimony concerning the Ozone Maintenance Plan. He read his comments into the record.

He stated that DEQ should actively support the gasoline pipeline. He said the maintenance plan assumed emissions reductions from the future operation of a planned gasoline pipeline which would reduce emissions from barge loading. He said the plan, which was relatively detailed regarding the other elements of its control strategies, was silent about what steps the DEQ would take to insure that this planned pipeline would actually be constructed, and that the resulting emissions reductions would be achieved. Mr. Williams stated that this was a very important issue because of the large amount of emissions involved. He said that DEQ should consider taking some action to support the pipeline. He suggested that, for instance, DEQ could intervene or testify in the hearings and proceedings before the Washington Energy Siting Council regarding the Olympic pipeline.

Mr. Williams also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

12. Kathleen Dotten, Oregon Metals Industry Council

Ms. Dotten gave testimony concerning the Expanded Vehicle Inspection Boundary, the ECO Program, the Ozone Maintenance Plan, and the Industrial Emission Management Program. She read her comments into the record.

Ms. Dotten stated that she did not support the removal of the Newberg, Dundee, Aurora and Marquam areas from the Expanded Vehicle Inspection Boundary. She also stated that the ECO Program shifted the burden of reducing vehicle miles traveled from the driver to the employer. She objected to that shift.

Ms. Dotten stated that the contingency plan should not focus on industry. She said that industry had already made significant emission reductions. She noted that the contingency plan called for further control of industry, even if the problem is caused by another source category. She stated that the maintenance plan should include an emissions allocation for each source category. She suggested that if one category exceeded the allocation, the contingency plan should require reductions from that category, rather than further reductions from industry. As an example, she suggested that congestion pricing could be required if auto emissions exceed their allocation.

Ms. Dotten's testimony concerning the Industrial Emissions Management Program focused on the growth allowance. She stated that the industrial growth allowance should be larger. She suggested that the industrial growth allowance should be at least 1000 tons per year as this would allow existing industry to expand and new industry to develop. She stated that the result would be more high wage jobs. She said that future emission reductions made by industry should be available for increases in industrial sources, not increases in mobile sources.

Ms. Dotten also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

13. David Stoller, Small Business Owner

Mr. Stoller gave testimony concerning the ECO Program. He was concerned that government was becoming larger with more regulations that small business must follow. He said that ECO placed an unfair burden on the small business owner. He suggested that ECO be replaced with a fuel tax to target all types of auto trips. He stated that ECO singled out the employer and was a drastic means to reduce emissions.

9. E. John Resha, Portland Community College and Westside Transportation Alliance.

Mr. Resha gave testimony concerning the ECO Program. He was supportive of the Ozone Maintenance Plan and the ECO Program. He stated that the definition of "Good Faith Effort" was not clear as to what was an acceptable effort. He also stated that there was a need to understand how the trip reduction goal of 10% helped to achieve and maintain the Ozone standard.

Mr. Resha also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

10. Linda Odekirk, Nike and Westside Transportation Alliance

Ms. Odekirk gave testimony concerning the ECO program. She stated that the baseline requirement should be changed from employer baseline to area baseline so that employers will be sure to get credit for work already done.

May 22, 1996, 7:00 pm

11. Peter Fry, Central Eastside Industrial Council

Mr. Fry gave testimony concerning the ECO program. He requested that the record stay open an additional 30 days to provide adequate time to review the ECO proposal. He stated that the Central City Transportation Management Plan (CCTMP) was already consistent with State law. He asked why additional requirements were needed for employers in the CCTMP area. He said that employers were under the impression that participation in the CCTMP would meet any additional rules. He wanted to know how DEQ would determine what parking is free or paid. He stated that Central Eastside parking costs were incorporated into the business, wage rates, and the way the business operated. Mr. Fry said that the Central Eastside had lost businesses because of ill-founded regulatory issues. He stated that the Central Eastside should be included in the definition of "Central Business District". He expressed the concern that the Central Eastside has been closed out of the process.

Mr. Fry also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

Ms. Sherlock indicated that the DEQ analysis in the Plan shows compliance can be maintained without an oxygenated fuels program with a safety margin of ten percent, even in the winter of 1996/97. She stated that the analysis is based on a number of very conservative assumptions as follows: 1) worst case base year for meteorological conditions and measured concentrations; 2) extremely conservative background CO; 3) a worst case growth modeling analysis; 4) a calculated base year CO concentration that averages 40 percent higher than the actual measured concentrations during the base year; 5) a peak traffic period in the downtown area that is twice as long as the actual peak period; and 6) a traffic volume growth rate around the 82nd and Division monitor that is 75 percent higher than the traffic volume growth rate estimated by Metro.

These conservative assumptions indicate that the actual safety margin is most likely significantly greater than the ten percent that has been estimated. Ms. Sherlock concluded that an oxygenated fuel program is clearly not necessary for the Portland metropolitan area to stay well below the CO standard, beginning in the winter of 1996/97 and throughout the ten-year maintenance period. In summary, she stated that WSPA urges DEQ to discontinue the winter oxygenated fuel program prior to the start of the 1996/97 winter season.

Ms. Sherlock also submitted written testimony on behalf of WSPA and 76 Products Company. Those comments are summarized in the Department's Evaluation of Public Comments (Attachment D).

8. Joe Gilliam, National Federation of Independent Business.

Mr. Gilliam gave testimony concerning the CO maintenance plan. He stated that the National Federation of Independent Business was the largest small business group in the State, with over 17,000 employers. He indicated that his concerns were similar to those given by Ms. Sherlock for the Western States Petroleum Association, but from a slightly different angle. His organization is concerned over the size of government and overall regulation. He said that the oxygenated fuel program is unneeded, by the Department's own recommendation. The oxygenated fuel program does not make a difference between the Portland area being in attainment or nonattainment, with no significant benefit to the Metro area as far as the air shed is concerned. Mr. Gilliam also cited the costs for the Metro area, estimated at $7 million in fuel related costs and a potential of $7 million in lost transportation funds. He stated that his organization would like to see the DEQ take the action to repeal the program before the 1996/97 winter. He said that the National Federation of Independent Business cannot see a need to extend a program like oxygenated fuel and cost the region the kind of money cited. As a goodwill gesture, the DEQ should act immediately to repeal the program.

Second, she expressed WSPA's belief that the winter oxygenated fuel program is not necessary in the Portland region and should be discontinued prior to the start of the 1996/97 winter season. She stated that WSPA's position is based on the following facts:

1) The Portland metropolitan area began attaining the standard in 1990, two full years before oxygenated gasoline was required in 1992.

2) DEQ's thorough and extremely conservative analysis demonstrates that oxygenated gasoline is not needed in order for CO levels in the region to remain well below the federal health standards in the winter of 1996/1997 and throughout the ten-year maintenance period.

3) Oxygenated fuel mandates are expensive; WSPA estimates that the program costs the region's consumers, businesses and taxpayers approximately $7.4 million for increased fuel costs and losses in fuel efficiency and potentially $7.7 million in lost revenue from the federal highway trust fund.

4) Continuing an oxygenated fuel mandate when it is not needed for attainment is inconsistent with the provisions of the federal Clean Air Act Amendments of 1990.

Ms. Sherlock cited the historical record of numerous violations (in excess of 100) throughout the late 60's and early 70's. However, by the late 70's and early 80's, the number of violations were reduced significantly, with only one violation since 1985.

Ms. Sherlock explained that the reason for that big improvement in CO air quality was based on two factors and neither one of those is oxygenated gasoline: 1) more stringent new motor vehicle emission standards which resulted in the increased technological sophistication of new motor vehicle emission control systems; and 2) the State's vehicle inspection and maintenance program, ensuring that the emission control systems maintain their effectiveness. Those programs started during the late 70's and early 80's, and oxygenated gasoline came in during the winter of 1992, well after the area's big improvement. She concluded that oxygenated gasoline did not play any role at all in the marked improvement in air quality.

Ms. Sherlock indicated that the Portland area has experienced only one violation of the CO standard in the last ten years and that violation occurred at the 82nd and Division monitor in December of 1989, immediately after the monitor's installation. The monitor has not measured a CO violation since, and all the other monitors in the Portland area show that the area has been attaining the standard since 1985, without the use of oxygenated gasoline.

4. Adrian Albrecht, PED Manufacturing Inc.

Mr. Albrecht gave testimony concerning the ECO program. He stated that credit should be given for existing low auto trip rates even where an employer does not have an active program.

Mr. Albrecht also submitted written comments which are summarized in the Department's Evaluation of Public Comment (Attachment D).

5. Bill Smith, American Lung Association

Mr. Smith gave testimony in support of the Enhanced Vehicle Inspection Program. Mr. Smith supported the enhanced motor vehicle inspection program and expanded inspection boundary as a good investment in air quality. He stated that the problems reported in implementing enhanced inspection in other states have been due to poor public relations, not problems with the technology.

6. Darrell Fuller, Oregon Automobile Dealers Association.

Mr. Fuller gave testimony concerning the ECO program. He requested supporting data demonstrating need for ECO, as well as information on impact of programs in other states. He stated that the government requiring business to require employees to change commute habits presents problems, such as policing employees, carpooling liability, and employee backlash. He suggested that OAR 340-030-0820 be modified from "have the potential to" to "mandated", since that is what is intended. He also suggested that OAR 340-030-0850 be expanded to include disabled and field personnel "transporting goods and services" or "reasonably need to have vehicle".

Mr. Fuller also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

7. Melissa Sherlock, Western States Petroleum Association and 76 Products Company.

Ms. Sherlock is a fuels planning engineer for 76 Products Company. She gave testimony concerning the CO Maintenance Plan. She stated that WSPA is a trade association whose member companies account for the majority of petroleum produced, refined, transported and marketed in six western states, including Oregon. She congratulated the staff, residents and industries of the Portland area on attaining the National Ambient Air Quality Standards for carbon monoxide (CO) and ozone, making the Portland region a fine place to live and work.

Memo To: Environmental Quality Commission
June 24, 1996
Presiding Officer's Report on
May 22, 23, 1996, Rulemaking Hearing
Attachment C, Page 3

3. Francie Royce, City of Portland, Office of Transportation.

Ms. Royce gave testimony concerning the Carbon Monoxide (CO) and Ozone Maintenance Plans, and the Voluntary Parking Ratios Program. Ms. Royce stated that the City was pleased the DEQ has completed its work on the plans and were supportive of both. She noted the City's participation in the five-year process leading to this point and appreciated the long hours and hard work on the part of DEQ staff.

Ms. Royce highlighted some specific concerns regarding the CO maintenance plan. The Portland City Council has taken a position endorsing the retention of the oxygenated fuels program and supports the position adopted by the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) to continue the program for another two winters and reevaluate whether to continue the program. She stated the city is particularly at risk in the event the CO standard is violated in the downtown area, as the parking lid will be automatically reinstated, and for that reason the city would like see the oxygenated fuels continue.

Ms. Royce pointed out that the CO maintenance plan contains three transportation emissions budgets: a regional emissions budget, a budget for the Central City Transportation Management Plan (CCTMP) area, and a budget for 82nd Avenue. The city is concerned about the establishment of an emissions budget for such a small area as the 82nd Avenue area and believes it is unnecessary and could trigger an unwarranted conformity problem. The city believes the Environmental Quality Commission (EQC) should remove the 82nd Avenue emissions budget from the CO plan and rely on the 82nd Avenue monitor to track CO concentrations in the area.

Ms. Royce stated that various timelines have been projected for approval of the maintenance plans by EPA. She cited delays of up to 18 months for the agency to pass similar plans and urged the Commission and DEQ to persuade EPA to approve the submitted maintenance plans as soon as possible. She also indicated the city is willing and able to help effect a timely approval.

Ms. Royce stated that other comments dealing with the CO maintenance plan, the Ozone maintenance plan and voluntary parking ratio program would be submitted in writing. She stated that the other comments were mostly technical in nature and dealt with provisions of the CCTMP that are to be incorporated into the CO maintenance plan.

The City of Portland also submitted written comments which are summarized in the Department's Evaluations of Public Comments (Attachment D).

Memo To: Environmental Quality Commission
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The evening hearings on May 22, and May 23, 1996, were conducted by Mike Grant, an Administrative Law Judge with the Public Utility Commission. Eleven people were in attendance the evening of May 22, and three people signed up to give testimony. Thirteen people were in attendance the evening of May 23, and three people signed up to give testimony.

Prior to receiving testimony, the Department provided informational tables and the opportunity for people to informally discuss any questions concerning the proposals with Department staff. Andy Ginsburg was available for questions concerning the Portland Area Ozone Maintenance Plan. Howard Harris was available for questions concerning the Portland Area Carbon Monoxide Maintenance Plan. Patti Seastrom was available for questions concerning the Employee Commute Options Program. Susan Turner was available for question concerning the Voluntary Parking Ration Program. David Collier was available for questions concerning the Expanded Vehicle Inspection Boundary. Brian Finneran was available for questions concerning the Industrial Emissions Management Program.

Summary of Oral Testimony

May 22, 1996, 10:00 am

1. Jim Craven, American Electronic Association.

Mr. Craven gave testimony concerning the Industrial Emissions Management Program. He read his comments into the record. He focused on the Unused PSEL Management Backup Program of OAR 340-030-0730. He stated that this program conflicted with the purpose of the Plant Site Emission Limits (PSEL) program. He stated that the proposed program could adversely affect the electronics industry.

Mr. Craven also submitted written comments which are summarized in the Department's Evaluations of Public Comments (Attachment D).

2. Bob Okren, Citizen.

Mr. Okren gave testimony concerning the Employee Commute Option Program (ECO). He stated that regulating employees lives is onerous, communistic, and unconstitutional since employers will suffer penalties if employees don't cooperate. He considered ECO is another challenge to doing business in Portland.

Attachment C

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Lawrence Smith, ALJ, Employment Department
Mike Grant, ALJ, Public Utility Commission

Subject: Presiding Officer's Report for Rulemaking Hearing, Attachment C

Hearings Date and Time: May 22, 1996, beginning at 10:00 am.
May 22, 1996, beginning at 7 pm.
May 23, 1996, beginning at 7 pm.

Hearings Location: Room 3A, DEQ Headquarters, 811 SW Sixth Avenue, Portland, OR
Room 140, State Office Building, 700 NE Oregon Avenue, Portland, OR
Auditorium, Tigard Water Bureau, 8777 SW Burnham Road, Tigard, OR

Titles of Proposals: Portland Area Ozone Maintenance Plan
Portland Area Carbon Monoxide Maintenance Plan
Employee Commute Options Program
Voluntary Parking Ratios Program
Expanded Vehicle Inspection Boundary
Industrial Emissions Management Program

Three rulemaking hearings were held on the above titled proposals. The hearings were convened at 10:00 am and 7:00 pm on May 22, 1996, and 7:00 pm May 23, 1996. All the proposals were open for comment at each hearing. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearings were being tape recorded and of the procedures to be followed.

The morning hearing on May 22, 1996, was conducted by Lawrence Smith, an Administrative Law Judge with the Employment Department. Forty-five people were in attendance, ten people signed up to give testimony.

Attachment C1
Index of Public Comments Received
Attachment to the Presiding Officer's Report for Rulemaking Hearing

State of Oregon
Department of Environmental Quality

	Name/Representing	Subject	Comment Type
1	Jim Craven, American Electronics Association	Industrial Emissions Management Program	Written/ Oral
2	Bob Okren	Employee Commute Options Program	Oral
3	Francie Royce, City of Portland	Ozone and CO Maintenance Plans, Voluntary Parking Ratio Program	Oral
4	Adrian Albrecht, PED Manufacturing Ltd.	Employee Commute Options Program	Written/ Oral
5	Bill Smith, American Lung Association	Ozone Maintenance Plan (Enhanced Vehicle Inspection)	Oral
6	Darrell Fuller, Oregon Automobile Dealers Association	Employee Commute Options Program	Written/ Oral
7	Melissa Sherlock, 76 Products Company, Western States Petroleum Association	Carbon Monoxide Maintenance Plan	Written/ Oral
8	Joe Gilliam	Carbon Monoxide Maintenance Plan	Oral
9	John Resha, Westside Transportation Alliance/ Portland Community College	Ozone Maintenance Plan, Employee Commute Options Program	Written/ Oral
10	Linda Odekirk, Westside Transportation Alliance/ Nike	Ozone Maintenance Plan, Employee Commute Options Program	Oral
11	Peter F. Fry, AICP, Central Eastside Industrial Council	Employee Commute Options Program	Written/ Oral
12	Kathleen Curtis Dotten, Oregon Metals Industry Council	Ozone Maintenance Plan (Enhanced Vehicle Inspection), Expanded Motor Vehicle Inspection Boundary, Industrial Emission Management Program, Employee Commute Optionss Program,	Written/ Oral
13	David Stoller	Employee Commute Options Program	Oral
14	Mairi J. Scott, Iwasake Brothers, Inc.	Employee Commute Options Program	Written/ Oral
15	John Williams	Ozone Maintenance Plan	Written/ Oral
16	Tom Tucker	Ozone Maintenance Plan	Written/ Oral
17	Thomasina Gabriele, Gabriele Development Services, (representing Institutional Facilities Coalition)	Employee Commute Options Program, Voluntary Parking Ratio Program	Written

	Name/Representing	Subject	Comment Type
18	Joy Voline	Employee Commute Options Program	Written
19	Gayle Evans, Standard Insurance Co.	Employee Commute Options Program	Written
20	Rick Gustafson, Shiels, Obletz, Johnsen (Representing Association for Portland Progress)	Employee Commute Options Program	Written
21	Bradford R. Tracy, Maletis Beverage	Employee Commute Options Program	Written
22	Doug Hayden, Columbia Distributing Co., Henny Hinsdale, Admiralty Beverage	Employee Commute Options Program	Written
23	Jerry Griffin, Swan Island Business Association	Employee Commute Options Program	Written
24	Juan Baez, Pacificorp	Employee Commute Options Program	Written
25	Steve Klein, Epson	Employee Commute Options Program	Written
26	Elizabeth Archer, Taylor Made Labels, Inc.	Employee Commute Options Program	Written
27	Elda Orr, Multnomah Athletic Club	Employee Commute Options Program	Written
28	Virginia W. Lang, USWest Communications	Employee Commute Options Program	Written
29	L. Guy Marshall, Columbia Steel Casting Co.	Employee Commute Options Program	Written
30	Susan Duley, Saks Fifth Avenue	Employee Commute Options Program	Written
31	Gary A. Benson, Pendleton Woolen Mills	Employee Commute Options Program	Written
32	Ralph Woll/Dari Buckner, Interstate Brands Corporation	Employee Commute Options Program	Written
33	John Bohlinger, Core-Mark International	Employee Commute Options Program	Written
34	Harriet Sherburne, Portland Center for the Performing Arts	Employee Commute Options Program	Written
35	Douglas Pratt, Jr., Fulton Provision Company	Employee Commute Options Program	Written
36	J. Mark Morford, Stoel, Rives	Employee Commute Options Program	Written
37	Katy Johnson, Pacific Metal Company	Employee Commute Options Program	Written
38	Mike McGee, Oregon Department of Corrections	Employee Commute Options Program	Written
39	Debi Wali, Bullseye Glass Company	Employee Commute Options Program	Written
40	Colin Lamb, Lamb's Thriftway	Employee Commute Options Program	Written
41	William R. Johnson, Valley Wine Company	Employee Commute Options Program	Written
42	Anne Mersereau, Portland Hilton	Employee Commute Options Program	Written
43	David M. Fogle, Pacific Coast Restaurants	Employee Commute Options Program	Written
44	Denice DePaepe, Sears, Roebuck and Company	Employee Commute Options Program	Written

	Name/Representing	Subject	Comment Type
45	Fred Loomis, Gaston Public Schools	Employee Commute Options Program	Written
46	Gordon Slatford, Travelodge Hotel	Employee Commute Options Program	Written
47	S. G. Gray, E.E. Schenck Company	Employee Commute Options Program	Written
48	Louis A. Ornelas, Oregon Health Sciences University	Employee Commute Options Program	Written
49	Michael J.P.C. Kane, UEI	Employee Commute Options Program	Written
50	Charlie Young	Employee Commute Options Program	Written
51	Dan E. Mercer, Mercer Industries, Inc.	Employee Commute Options Program	Written
52	John P. Buckinger, Miller Paint Company	Employee Commute Options Program	Written
53	Ray Alford, Tom Richardson, Doug Jarmer, Pete Szambelan, Oregon Association of Temporary and Staffing Services	Employee Commute Options Program	Written
54	David H. Cook, OSF International, Inc.	Employee Commute Options Program	Written
55	G. Kent Ballantyne, Oregon Association of Hospitals and Health Systems	Employee Commute Options Program	Written
56	Donna M. Marx, The Sweetbrier Inn	Employee Commute Options Program	Written
57	William M. Hedgebeth, USEPA	Carbon Monoxide (CO) Maintenance Plan	Written
58	Jinx Faulkner	CO Maintenance Plan (oxygenated fuels)	Written
59	Matt Rahpael	CO Maintenance Plan (oxygenated fuels)	Written
60	Tom Novick, NW Bio Products Coalition	CO Maintenance Plan (oxygenated fuels)	Written
61	Neil M. Koehler, Parallel Products	CO Maintenance Plan (oxygenated fuels)	Written
62	Del J. Fogelquist, Western States Petroleum Association	CO Maintenance Plan	Written
63	Jim Alan	CO Maintenance Plan (oxygenated fuels)	Written
64	Andrea Benson	CO Maintenance Plan (oxygenated fuels)	Written
65	Kari Easton	CO Maintenance Plan (oxygenated fuels)	Written
66	Todd Easton	CO Maintenance Plan (oxygenated fuels)	Written
67	Michael Madden	CO Maintenance Plan (oxygenated fuels)	Written
68	Steven Schlesser, Schlesser Company, Inc.	CO Maintenance Plan (oxygenated fuels)	Written
69	N. Blosser	CO Maintenance Plan (oxygenated fuels)	Written
70	Chris Beck	CO Maintenance Plan (oxygenated fuels)	Written
71	Harrison Pettit	CO Maintenance Plan (oxygenated fuels)	Written
72	Dave Bernard	CO Maintenance Plan (oxygenated fuels)	Written
73	Maura Hanlon	CO Maintenance Plan (oxygenated fuels)	Written
74	Robert von Borstel, MD	CO Maintenance Plan (oxygenated fuels)	Written
75	David E. Ortman, Friends of the Earth	CO Maintenance Plan (oxygenated fuels)	Written
76	John Fletcher, Container Recovery, Inc.	CO Maintenance Plan (oxygenated fuels)	Written
77	Kim B. Puzey, Port of Umatilla	CO Maintenance Plan (oxygenated fuels)	Written
78	Caroline Weitzer, Media Mania Group	CO Maintenance Plan (oxygenated fuels)	Written

	Name/Representing	Subject	Comment Type
79	John G. White, Oregon Department of Energy	CO Maintenance Plan (oxygenated fuels)	Written
80	Dennis W. Lamb, 76 Products Company	CO Maintenance Plan (oxygenated fuels)	Written
81	Moneeka Settles	CO Maintenance Plan (oxygenated fuels)	Written
82	Claudia Burnett	CO Maintenance Plan (oxygenated fuels)	Written
83	Michelle Gallon	CO Maintenance Plan (oxygenated fuels)	Written
84	Ilene S. Moss	CO Maintenance Plan (oxygenated fuels)	Written
85	Nic Warmenhoven	CO Maintenance Plan (oxygenated fuels)	Written
86	Kenneth Lein	CO Maintenance Plan (oxygenated fuels)	Written
87	Matthew Pennewell	CO Maintenance Plan (oxygenated fuels)	Written
88	Benjamin Basin	CO Maintenance Plan (oxygenated fuels)	Written
89	Karen Notzeo	CO Maintenance Plan (oxygenated fuels)	Written
90	Lucas M. Haley	CO Maintenance Plan (oxygenated fuels)	Written
91	Carr Grey	CO Maintenance Plan (oxygenated fuels)	Written
92	Tim Cowles	CO Maintenance Plan (oxygenated fuels)	Written
93	Abigail Marble	CO Maintenance Plan (oxygenated fuels)	Written
94	Paul Reineke	CO Maintenance Plan (oxygenated fuels)	Written
95	Cynthia Toy	CO Maintenance Plan (oxygenated fuels)	Written
96	Christian G. Sturm	CO Maintenance Plan (oxygenated fuels)	Written
97	Rod Monroe, Metro Councilor, District 6	CO Maintenance Plan (oxygenated fuels)	Written
98	Robert Palzer, Sierra Club	Ozone Maintenance Plan	Written
99	Richard Ledbetter, Metro, Senior Transportation Planner	Ozone Maintenance Plan	Written
100	Ralph Engel, Chemical Specialties Manufacturers Association	Ozone Maintenance Plan	Written
101	Ted Hughes, Pacific Northwest Paint Council	Ozone Maintenance Plan	Written
102	Robert D. Elliot, Southwest Air Pollution Control Authority (Vancouver, WA)	Ozone Maintenance Plan	Written
103	Gil Haselberger, USEPA	Ozone Maintenance Plan	Written
104	Stan R. Holm, Mobil	Industrial Emission Management Program	Written
105	Chris Davies, Texaco Refining and Marketing, Inc.	Industrial Emission Management Program	Written
106	Kirk J. Thomson, Boeing	Industrial Emission Management Program	Written
107	Joseph W. Angel, Oregon Resturant Association	Voluntary Parking Ratio Program	Written
108	Larry Lazar, The Westwind Group	Voluntary Parking Ratio Program	Written
109	Steve Alverdes	Expanded Motor Vehicle Inspection Boundary	Written
110	Rita M. Bernhard, Mayor, City of Scappose	Expanded Motor Vehicle Inspection Boundary	Written

	Name/Representing	Subject	Comment Type
111	John A. Charles, Oregon Environmental Council	Industrial Emisstion Management Program, Expanded Motor Vehicle Inspection Boundary, Voluntary Parking Ratio Program, Employee Commute Options Program, Ozone Maintenance Plan	Written
112	Stanely P. Richardson, Jr.	Ozone and CO Maintenance Plans (Enhanced Vehicle Inspection and oxygenated fuels)	Written
113	Jim Whitty, Associated Oregon Industries	Ozone and CO Maintenance Plans (Enhanced Vehicle Inspection and oxygenated fuels), Industrial Emissions Management Program, Employee Commute Options Program, Voluntary Parking Ratio Program	Written
114	David F. Bartz, Jr., Schwabe, Williamson & Wyatt (representing Simpson Timber Co.)	Industrial Emissions Management Program, Employee Commute Options Program, Ozone Maintenance Plan	Written
115	Felicia Trader, City of Portland	Ozone and CO Maintenance Plans, Voluntary Parking RatioProgram	Written
116	Kristin K. Nadermann, Reynolds Metals Co.	Ozone Maintenance Plan (Enhanced Vehicle Inspection), Industrial Emissions Managment Program, Employee Commute Options Program	Written
117	Randy Tucker, OSPIRG	CO Maintenance Plan (oxygenated fuel)	Written
118	C.L. (Lew) Blackwell, Chevron Products	CO Maintenance Plan (oxygenated fuel)	Written
119	Matt Klein, Lloyd District Transportation Management Association	Employee Commute Options Program	Written
120	Lisa Logie, Westside Transportation Alliance	Employee Commute Options Program	Written
121	Mike Salsgiver, Westside Transportation Alliance	Ozone Maintenance Plan, Employee Commute Options Program	Written
122	Bonnie Gariepy, Intel	Industrial Emission Management Program	Written
123	Gary Slabaugh, Safeway, Inc.	Employee Commute Options Program	Written

Attachment D

Department's Evaluation of Public Comment

The following comments were summarized from 9 oral testimonies and 44 letters submitted during the comment period. These comments are in response to mailing public notices to 2300 employers in the region expected to be affected by ECO, in addition to a mailing list of 900 interested parties.

[Note: Commenter numbers refer to commenters listed in Attachment C.]

COMMENT 1: Support the ECO Program (Commenters: 9, 24, 25, 28, 29, 32, 45, 51, 119, 120, 121)

Commenters expressed general support for the ECO rules. Some stated they are impressed with the program as proposed and believe the rules support a program with a high chance for success. They applauded the structure of the proposed program in that it only mandates efforts to encourage trip reduction. They felt the rules are flexible and provide enough options in program content and implementation.

RESPONSE: The proposed program is supported by the ECO Technical Advisory Committee, the ECO and Parking Ratios Policy Committee and by Metro. The program represents the work of these groups and others to present a realistic and responsible approach to commute trip reduction for adoption in the Portland region.

COMMENT 2: Do not support the ECO program. (Commenters: 6, 12, 13, 41, 47, 49, 52111, 113)

Commenters felt the program shifts the responsibility from drivers to employers for reducing VMT and targets a relatively small percentage of total driving occurring in the area. One commenter opposed government sponsored mandates designed to discourage the public from using personal motor vehicles.

RESPONSE: Employers generally provide free parking and few, if any, other commute alternatives which would provide some incentive to use other modes of commuting. Thus, employers have a unique opportunity to influence a shift away from single occupancy vehicle travel. Although commute trips represent over 25 percent of vehicle miles traveled in the region, they account for 30 to 40 percent of morning vehicle emissions which are largely responsible for ozone exceedences. This is significant and worth targeting in an air pollution reduction strategy. While maintaining ozone air quality in the region is the primary goal of the maintenance plan, the Department has worked closely with Metro and local governments to ensure that the plan supports the transportation goals of the region as well. The ECO program will provide significant congestion-reduction benefits because it will primarily reduce peak-hour trips.

The maintenance plan includes a number of elements, in addition to ECO, designed to reduce the growth in vehicle miles traveled in the region. The voluntary parking ratio program is designed to reduce trips from new development. Metro's Region 2040 growth concept and the urban growth boundary are designed to reduce urban sprawl and encourage new development to be less auto-dependent. The plan also includes commitments for significant expansions in transit, pedestrian and bicycle facilities, and a public education and incentive program to encourage the use of these alternatives. The goals of the ECO program are to reduce commute trips by ten percent, not to eliminate the need for personal vehicles.

COMMENT 3: Concerned that program requires employers to force their employees to use alternate commute methods. (Commenters: 2, 6, 18, 22, 29, 33, 35, 46, 49, 50, 52, 56)

It was suggested that at some point the rules should recognize that an employer may not meet the ten percent trip reduction goal under any plan or revision. Therefore, the rules should allow an employer to simply maintain its current auto trip rate, if after submitting two approved revisions to the original plan the target has not been achieved. Commenters requested that references to good faith effort and applications of good faith effort be clarified. Many commenters objected to ECO forcing companies to force employees to change commute habits. Some were concerned about liability if an accident occurs during an employee's commute. For those who cannot reduce trips, there were concerns that enforcement actions will impact employees at the lower end of the wage scale.

RESPONSE: Employers are not required to require employees to change their commute habits. Employers are required to survey employees and provide alternatives that have the potential to reduce commute trips by ten percent. Employees are free to choose alternative commute methods at their discretion. Surveys are a measurement tool for the employer to gauge the effectiveness of strategies, and for the Department to gauge the effectiveness of the program. Because employee participation is voluntary, employers could not be held liable for injuries incurred during a commute, for an employee refusing to participate in the survey, or for employees misrepresenting their commute methods on the survey.

The Department will incorporate language to relieve an employer of further plan modifications if implementing two revisions does not result in further trip reductions. References to "good faith effort" will be clarified and made more consistent.

COMMENT 4: Substitute an alternative strategy for ECO. (Commenters: 12, 13, 22, 23, 33, 35, 41, 52, 111, 113)

While acknowledging that restricting traffic during peak periods and rewarding multiple occupancy cars with incentives is a sound strategy, suggestions for replacement strategies for ECO included

such market-based programs as: a fee on personal vehicle registration with a credit for compliance; a fuel tax in order to target all types of auto trips; a tailpipe emission tax on all older vehicles, including those currently exempt; in addition to: adding express lanes for carpools, expanding transit service outside of downtown Portland, increasing express lines, and adding more transit hubs. It was suggested that evidence from existing or recently terminated ECO programs does not support adoption in Oregon, and the small business owner already has too many regulations to follow.

RESPONSE: Additional measures, notably motor vehicle emission fees, were considered in lieu of ECO and other strategies, but lacked support in the Oregon Legislature. Express lanes for carpools were considered but were not found to be cost-effective as a stand-alone strategy. However, this concept may be reconsidered in the context of a congestion pricing pilot study being conducted by Metro.

The Department has supported market-based strategies to reduce motor vehicle emissions. The Department will continue to support the evaluation and development of such programs, and will present this information in appropriate forums. However, the Department disagrees with the viewpoint that the ECO program is not cost-effective. Based on recommendations from the ECO advisory committee, the Department has provided a wide range of compliance options that make the program more flexible than comparable programs in other states. Some of the options available to employers are low-cost or even cost-saving. Programs in other states have in fact realized trip reductions ranging from 8 percent to 22 percent. Nevertheless, a market-based strategy that achieves equivalent emission reduction could be substituted if adopted by the Legislature.

COMMENT 5: There are better ways to design the ECO program. (Commenters: 6, 18, 25, 27, 28, 29, 33, 35, 39, 41, 47, 51, 113, 123)

Some suggested that ECO should be voluntary, others suggested that the onus must be on employees as well in order for the program to succeed and the Department must clearly communicate all parts of the maintenance plan so that businesses understand what and why they are being asked. The program should include owners and tenants of business parks and malls. The program should apply to all employers. Start with more than 50 employee businesses, then expand to less than 50 once all plans are in. Only include 6 a.m. to 10 a.m. drivers; expand to all day later if needed. Offer instead tax breaks to companies who provide incentives to employees to use mass transit. Support employees efforts with publications to alert the public and encourage a commute shift. Provide employers with trip reduction program information to accomplish successful implementation. Offer public meetings for employers for questions and answers.

RESPONSE: The majority of these issues were raised and considered by the ECO Technical Advisory Committee. The basic structure of the proposed ECO program follows the intent of the Governor's Motor Vehicle Emissions Reduction Task Force as well as the specific

recommendations of the Department's ECO Technical Advisory committee. The minimum threshold of 50 employees was recommended by that advisory committee specifically to share the responsibility among most employers in the region. It was recognized that work sites with fewer than 50 employees would have greater difficulty encouraging trip reduction at a reasonable cost. The forecasted emission reductions from a ten percent target reduction requires that all employers with more than 50 employees be included. If only those with more than 100 employees are included, or only 6 a.m. to 10 a.m. drivers, the target trip reduction would need to be significantly higher than ten percent. The Advisory Committee seriously questioned whether employers with more than 100 employees could achieve this higher target.

Information on the Ozone Maintenance Plan was included in the Department's public notice mailing to all employers. The Department plans to continue to educate employers on the objectives of the Plan, in addition to providing information to employers on alternative commute methods and regional resources for trip reduction planning and implementation. The Department plans to offer training on the program for all interested employers. The Department will review employers experiencing significant changes in employment size on a case-by-case basis. In general, however, since the baseline is set as a rate, significant changes in work force size would not materially affect an employer's ability to maintain that rate. Owners of business parks and malls do not have direct contact with employees and would not be able to effectively support alternative commute methods. Tax credits are offered by the Oregon Department of Energy for 35 percent of eligible investments in energy efficiency, such as telecommuting equipment and commuter vans.

The maintenance plan includes a balance of emission reduction strategies affecting all categories of emissions including on-road mobile sources, non-road mobile sources, area sources and industry. The purpose of the maintenance plan is to protect public health by ensuring that the ozone air quality standard is not violated for the next ten years, despite rapid population growth in the region. The maintenance plan will also allow EPA to redesignate the area to attainment status, which results in significant economic benefits to the region.

COMMENT 6: Issues related to the employee survey. (Commenters: 6, 14, 17, 18, 19, 22, 25, 36, 48, 52)

These commenters expressed concern over the survey requirements in the ECO program. Some of the specific concerns included whether employers will be required to verify the answers given on the survey, whether the survey forms would be provided in other languages, and whether alternative methods could be used for illiterate employees. Commenters also pointed out that the survey requirements add a paperwork burden. Suggestions from the commenters included allowing creative alternatives to surveying, lowering the required response rate from 75 percent, requiring a survey only once every five years after the target reduction has been achieved, sending out reminder notices when follow-up surveys are due, and eliminating the requirement that DEQ review and approve survey forms.

RESPONSE: The proposed rules allow employers to use alternate methods to the survey that are at least as accurate, such as random sample surveys, records kept on carpoolers, or employee parking lot car counts. However, surveys will be the most convenient and accurate measurement tool for the majority of employers. Since the progress rate of this program can impact the success of the ozone maintenance plan to keep emissions within the healthy range, it is imperative that employers' progress be measured as accurately as possible. If general trends were being measured, a lower response rate would be acceptable. But since employers are measuring the actual number of trips eliminated, as high a response rate as possible, without becoming cost-prohibitive, is essential. Similarly, trip reduction progress must be maintained in order for the region's healthy air to be maintained. The proposed rules allow employers to survey every other year once the target has been achieved. Surveying once every five years creates significant potential to lose progress and not be aware of it. Tri-Met reports excellent success in meeting and exceeding a 75 percent response rate by employers whom they have worked with directly.

Accuracy of survey information is critical. The Department's approval of alternate survey forms is to insure that surveys will capture the correct data and do so accurately.

The Department expects to provide a Spanish language survey. A verbal survey can be administered to illiterate employees or an alternate means of capturing the information can be used, such as counting cars in an employee parking lot.

COMMENT 7: Employers' limitations to providing commute options should be acknowledged. (Commenters: 4, 6, 11, 14, 21, 22, 23, 25, 26, 29, 32, 34, 35, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 51, 54, 55, 56, 116, 120, 123)

Limitations cited by commenters included: bus service is not convenient, single parents need to drop off children, emergency ride home program is too burdensome, sponsoring a shuttle bus is unrealistic for a small company, nature of business does not allow telecommuting or compressed work week, those who can already carpool, rule should not affect field associates who do not directly report to the site, telecommuting is not appropriate for employees exhibiting excessive absenteeism, consider the ability of employers in isolated industrial zones to comply, employees who do not stay on site for their working day should not be included, and staff must be able to report to work on short notice for emergency response. Some commenters were uncomfortable encouraging employee use of alternatives during late evening and early morning shift changes.

RESPONSE: The proposed language currently allows for exemptions due to employers' limitations to implement trip reduction programs. A single employer may face one or more of these limitations, but few if any will experience all of them. Use of transit is not required; employers with limited transit service can provide assistance with carpooling, compressed work weeks, telecommuting, bicycling, or they can pursue one of several other options allowed. If none of these options are feasible, an employer can seek an exemption. The transit portion of the exemption

criteria will be expanded to insure inclusion of evening, late night, and early morning hours when service is generally not adequate.

COMMENT 8: How were the details of the ECO program developed? (Commenters: : 6, 9, 29, 31, 120)
A numbers of commenters wanted to see more specifics on program development, including supporting data on the need for ECO, how the parameters for ECO were set, and how ECO has worked in other states. These commenters also wanted to know how the Department could justify setting the minimum criteria at more than 50 employees rather than 100, as other states have done, and why the Department's alternative fee compliance has a tougher standard than Southern California.

RESPONSE: The ECO Technical Advisory Committee guided the Department in the development of the ECO program. The Committee drew upon experiences from similar programs conducted in other states. Based on those experiences, the Committee's goals were to set reasonable trip reduction goals for employers, include as many employers as feasible to keep the impact on any one employer as low as possible, keep the administrative requirements simple, and provide as much flexibility as possible. Small business, as defined by statute, is 50 or fewer employees. The criteria was set at more than 50 employees in order to not impact small business and to keep the target trip reduction percentage as low as possible.

The fee proposed for the emission reduction fund is based on the cost of providing an alternative trip method to a commuter in the Portland region. Fees collected will fund alternative commute projects in the region.

COMMENT 9: Procedures for obtaining credit for already low drive-alone rates should be simplified. (Commenters: 4, 10, 14, 19, 25, 27, 29, 30, 36, 39, 120)

Commenters requested that the Department allow reduction from an area's existing average baseline drive-alone rate in order to insure employers get credit for work already done or for low drive-alone rates occurring naturally. New employers are not given an incentive to encourage alternative commute modes during the first 90 days. In 340-030-1050, "the Department may grant credits" should be changed to "the Department will grant credits". Credit documentation should allow alternate documentation methods. Credit should also be allowed for employers initially purchasing lower emitting work site equipment, not just for replacements.

RESPONSE: The ECO Advisory Committee considered calculating required trip reductions from an employer's area drive-alone rate. This option was rejected from an equity basis by the Committee in favor of using individual employer baselines. However, recognizing that some employers have extremely low current auto trip rates, language will be added to allow an employer to demonstrate that its current auto trip rate is well below the average for its area, regardless of

whether there are employer sponsored programs. Metro data will be used to determine area average rates. This method will be an alternative and will not eliminate an employer's opportunity to get credit by providing documentation that a 10 percent trip reduction has been achieved. New employers may also choose to demonstrate that their baseline auto trip rate is well below the area average.

Employers could calculate the commute trip equivalency for equipment purchases and apply the area target rate concept.

340-030-1050 will be rephrased to clarify that the Department must approve an employer's credit application and documentation before credits will be granted. The proposed rule language already allows employers to use comparable documentation methods.

COMMENT 10: Administration should be simplified. (Commenters: 25, 36, 40, 45, 47, 52, 123)

Commenters felt that the rule requires too much paperwork, documentation and planning. Too much paperwork is required to get an exemption. The plan certification requirement is not necessary.

RESPONSE: The program has been structured to minimize administrative work as much as possible. The wide array of alternatives provided for compliance and documentation are provided with that goal in mind. Credit and exemption application forms will be designed as simply as possible, while not jeopardizing the accuracy of information needed for the Department to make a reasonable determination. It is considered important from a compliance standpoint that employer management is aware of the ECO requirements. The plan certification requirement will be modified to require the signature of the person designated by the employer to be the contact with the Department regarding the ECO plan.

COMMENT 11: Commenters felt that the existence of parking restrictions should be enough to receive full credit without documentation of a ten percent trip reduction; requiring the employer to provide an equivalent transportation allowance to mitigate free or subsidized parking goes too far. (Commenters: 11, 17, 19, 20, 22, 24, 29, 45, 119, 120)

RESPONSE: At issue is the Department's responsibility to insure that at least a ten percent reduction in commute trips has occurred before a full credit without documentation of trip reduction is granted. If an employer is offering free or subsidized parking, trip reduction becomes uncertain even though parking restrictions are in effect. The proposed language requires that mitigating measures be in place, to counter the effect of free or subsidized parking, in the form of an equivalent allowance to employees for alternative commute methods. The rule has been modified to only require mitigating measures for employees provided free or subsidized parking that exceeds

the Department's maximum parking ratios. An employer unable to meet the criteria in 340-030-1000 still has the option of applying for credit by providing documentation of trips reduced. The proposed option referenced above in comment #9 of demonstrating that current drive-alone rates are well below average rates for the employer's area, will also be available.

Other Concerns Regarding 340-030-1000

A. Comment: Concerns were expressed about the compensation issues resulting from the requirement to offer transportation allowances equal to the value of the parking.
RESPONSE: The Department's proposal does not require any greater monetary value compensation or more employees be provided compensation than are already receiving compensation in the form of subsidized parking.

B. Comment: Add to 1000(3) "or (free or subsidized all-day parking in the area) is prohibited through written policy from use by employees".
RESPONSE: This would be defined as "unavailable" and would meet the requirements of the rule.

C. Comment: Add to 1000(4) "except free or subsidized all-day parking that is exclusively designated for electric or zero emission vehicles".
RESPONSE: Electric vehicles would not be counted as vehicles arriving at the work site under the currently proposed rules.

D. Comment: Employers who qualify for 1000(1) through (4) should be exempt from conducting a baseline survey.
RESPONSE: This was the intent, and it will be clarified in the rule.

E. Comment: What was the process that led to certain Central City districts to accept mandatory parking ratios at less than DEQ's voluntary levels while still being required to comply with ECO?
RESPONSE: 340-030-1000 is intended to address those employers. It allows full credit without the need to document trip reduction, except where free or subsidized parking is available or provided in excess of maximum parking ratio requirements.

F. Comment: A similar allowance should be provided for employers participating in a TMA.
RESPONSE: Restricted parking has been proven to reduce commute trips. While transportation management associations provide vital support to trip reduction efforts, no data exists on their direct impact on commute trips.

G. Comment: Employer should be required to be in an area with parking restrictions, or its own parking should be restricted, not both.
RESPONSE: Since employees are not restricted to where they can park, an employer's own parking and surrounding parking must be restricted in order to have a direct and quantifiable effect on commute trips.

H. Comment: It is inequitable that a new employer does not have the same requirement to provide equivalent transportation allowance.
RESPONSE: The Department will have the opportunity to review an employer's site design for adequate mitigating measures to free or subsidized parking in areas without maximum parking ratio requirements. Within restricted parking areas of the region (CCTMP) the rule language has been modified to require identical requirements.

COMMENT 12: Alternative options to compliance go too far. (Commenter: 35, 40, 45, 46)

Commenters suggested that 340-030-1040 is not appropriate. Can employers get credit if an employer replaced a motor boat engine with a canoe? It is not sensible to suggest employers buy staff new lawnmowers or boat engines. Provision for wealthy employers to pay $100 per employee to comply is grossly unfair. Is 340-030-1030 suggesting that "it's fine to ignore the underlying principles of the ozone maintenance plan if one has lots of money"?

RESPONSE: Experience with similar programs in other areas has shown that flexibility is a key requirement for a successful program. In so doing, employers limited by the number of commute trips that can reasonably be reduced are able to not only comply by virtue of these alternatives, but can still contribute to the reduction of mobile source emissions in the region. The technical advisory committee encouraged providing options and concurred with the options as proposed. Employers are not required to pursue any particular option. By providing a full array of options, employers can choose the least costly approach, given their unique work site circumstances.

COMMENT 13: Requests to clarify specific sections of rules. (Commenter: 9, 36, 120)

A. Comment: In 340-030-0950, it should be clarified that the contact person can be located at another work site.
RESPONSE: Language will be clarified.

B. Comment: It is not clear if the application of non-scheduled work week is solely to establish if more than 50 employees are at a work site or if these trips are targeted for reduction as well.
RESPONSE: These trips would not be counted in the auto trip rate by definition of "employee" and according to 340-030-0850.

C. Comment: The definition of non-scheduled work week creates loopholes for salaried professionals who may start anywhere between 5:30 and 9 a.m. and leave anywhere between 5 and 10 p.m.
RESPONSE: Definition of non-scheduled work week will be modified to only apply to those not working a routine, Monday through Friday, "8 to 5" job.

D. Comment: The basis for DEQ approval or rejection of plan is not specified. Commenter suggested the following language: "The Department shall approve any plan meeting the above requirements.".
RESPONSE: Suggested language will be added; in addition, it will be made clearer that employers must provide empirical justification that selected measures have the potential to meet the target auto trip rate.

E. Comment: Be consistent in use of "auto", "vehicle" and "motor vehicle". Employer definition reference to "persons" should be "employees".
RESPONSE: Language will be modified.

F. Comment: Definition of "employer" is confusing, replace with "affected employer".
RESPONSE: In keeping with the goal of simple rule language, "employer" will be retained, but references to "employer" will be clarified with other language where needed.

G. Comment: "Arrival at the work site" should be defined as it is confused by carpool situations. The numerator and denominator of "auto trip rate" should be better defined, especially as it relates to "count of employees".
RESPONSE: Carpool vehicles are counted when they arrive at the driver's work site. A survey guidance document will be given to employers with instructions on calculating auto trip rates.

H. Comment: Definition of "good faith effort" should be expanded.
RESPONSE: Language will be added to allow selected strategies "or their equivalent".

COMMENT 14: Miscellaneous (Commenters: 6, 11, 12, 17, 18, 22, 23, 25, 28, 33, 36, 40, 41, 44, 45, 49, 114, 116, 119, 120, 123)
A. Comment: Commenters are concerned about the impacts of the program on employers, considering the amount of expected emissions reduction.
RESPONSE: Average annual private sector costs from the Washington state Commute Trip Reduction program averaged $19 per employee. A nationwide study showed the average annual cost per employee to be $14.70 with an average trip reduction of 15.3 percent. When avoided costs are included, employers realized a net savings of $62.30 per employee or $.78 net savings per daily trip reduced.

B. Comment: Average work site cost in fiscal statement is misleading for smaller employers whose per employee cost will be higher.
RESPONSE: A range of costs was provided. The high end of the range may be most applicable to smaller employers.

C. Comment: Ridesharing would actually increase the distance traveled in many cases.

RESPONSE: The slight increase in distance a rideshare driver might require to pick up a passenger will be minor compared to the total miles eliminated by the passenger. Ridesharing presumes that employees living in close proximity will rideshare.

D. Comment: Distance traveled by employees should be taken into account.
RESPONSE: Requiring employers to track distance traveled by employees would be burdensome for both the employee and the employer. The goals of the program are based on the average commute distance currently traveled in the region.

E. Comment: ECO would be more effective if delayed until transit system improvements are completed.
RESPONSE: The rules require that employers assist employees with alternatives. No particular alternative commute method is singled out in the rules. Employers are encouraged to provide incentives for the commute methods they determine are most appropriate for their work sites and employees. For employers in or near the downtown area, transit will be the most likely option; for employers in outlying suburban areas, carpooling, telecommuting, or compressed work weeks will usually be the more appropriate alternatives as transit service will not reach the level of service provided downtown.

F. Comment: It is difficult to support ECO without evidence of any enforcement of current regulations; e.g. "trip tickets" are issued for cars that can't pass DEQ inspection.
RESPONSE: Temporary registration tags are issued for 30 days, not to exceed two renewals, for vehicle owners unable to pass the Department's vehicle inspection prior to expiration of registration tags.

G. Comment: A permit is unnecessary.
RESPONSE: A letter permit was proposed as a formal, legal place to document each employer's specific status -- current and target auto trip rates, plan approval status, credit status, exemption status, and reporting schedule. Since the terminology is of concern, "permit" will be modified to a registration process, and the Department will return to employers a formal letter which will serve the same purpose as the permit.

H. Comment: Employers without an on-site employee parking lot will not realize a savings.
RESPONSE: Other savings may be possible, through establishing compressed work weeks, telecommuting, or on-site emission reductions such as electric forklift replacement.

I. Comment: No staff are available to work on this. Is DEQ prepared to pay for this service?
RESPONSE: Administrative requirements have been kept as low as possible. Department staff will be available to provide general counsel on how the rules apply to specific situations. Through grant funding, the Department will secure a variety of assistance for employers during the first year of implementation. Assistance will include training, trip planning, and technical assistance on equivalent emission reduction, telecommuting, and bicycle programs.

J. Comment: Delete the reference to temporary employees and modify definition of employee to add "at least six consecutive months at the same site".
RESPONSE: Suggested language will be incorporated.

K. Comment: Metro's administration of the trip reduction fund is not adequately defined.
RESPONSE: Metro's Transportation Policy Advisory Committee and Joint Policy Advisory Committee have a well-established, credible, and equitable process for administering all types of transportation funds in the region.

L. Comment: Is the auto trip rate referenced in 340-030-0820 the same rate that must be defined after the initial three-year target date or must a new baseline be established?
RESPONSE: The initial target auto trip rate remains constant for the ten-year period.

M. Comment: Modify definition of employer to add "more than 50 persons at a single work site with less than a 50 percent annual expected turnover".
RESPONSE: Turnover rate will be incorporated into the exemption language under the carpool criteria. A high turnover rate will not significantly affect an employer's ability to provide transit incentives, where adequate transit service is available.

N. Comment: An effective program can be designed that does not necessarily include "incentives". Current marketing and education program is effective.
RESPONSE: This is already allowed under the rules.

O. Comment: Specific equivalent emission rates of VOC and NOx per auto trip should be published to ensure constancy.
RESPONSE: The equivalent emission rates for one trip are 20 pounds of VOC and 22 pounds of NOx per year.

P. Comment: Add to 340-030-0950 "any alternative emission reduction proposal prepared according to 340-030-1030".
RESPONSE: Language will be incorporated.

Q. Comment: Allow schools to include student trips.
RESPONSE: This is already allowed under equivalent emission reductions.

R. Comment: Disabled employees should not be included in the count of employees.
RESPONSE: Disabled employees will be added to employees excluded from the count of employees.

S. Comment: ECO should not apply to evening and night work shifts in support of the Governor's Transportation Initiative Projects to better utilize existing transportation infrastructure during non-peak hours.

RESPONSE: All commute trips contribute to the accumulation of ozone, which is measured on a 24-hour basis. However, language proposed for the exemption criteria in response to Comment 7 will include evening, late night and early morning hour work shift changes. Work shift changes during those hours will meet the first of four exemption criteria.

T. Comment: Will job sites with more than 50 people that last only a few months be required to have a plan?
RESPONSE: No, the rules apply to employees at a work site for at least six months.

U. Comment: Participation in the Central City Transportation Management Plan (CCTMP) should exempt those employers from further transportation-related regulations.
RESPONSE: The rules allow employers in areas with such parking restrictions as those included in the CCTMP to receive full credit unless free or subsidized parking is available and exceeds the Department's maximum parking ratios.

V. Comment: The ECO rules put at risk the viability of a nationally recognized inner city industrial area that provides family wage jobs in close proximity to inner city residential neighborhoods.
RESPONSE: Employees will benefit from commute options supported by employers.

W. Comment: Businesses that received notices either assumed it was not relevant due to the CCTMP or a lack of awareness that these were official notices. Central Eastside has been closed out of the process.
RESPONSE: Notices of the proposed program were mailed to 2300 employers in the region expected to be affected. The notice clearly stated the intent of the notification and included proposed rules. The development of the ECO program has taken place over the last four years and included close coordination with Metro and its public processes related to transportation issues in the region.

Attachment E

Detailed Changes to Original Rulemaking Proposal Made In Response to Public Comment

Employee Commute Options

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

Definitions of Terms Used in These Rules

340-030-0840 As used in OAR 340-030-0800 through 1080:

. . . . . .

(6) "**Car/Vanpool**" means a vehicle~~motor vehicle~~ occupied by two or more people traveling together for their commute trip that results in the reduction of a minimum of one auto trip.

~~(7) "**Compliance Deadline**" means the date by which employers must demonstrate progress toward achieving and maintaining their target auto trip rate.~~

(7~~8~~) "**Compressed Work Week**" means a schedule in which employees work their regularly-scheduled number of hours in fewer days per week or over a number of weeks. *(For example, a 40-hour, 8 hours per day, Monday through Friday work week is compressed into a 40-hour, 10 hours a day, Monday through Thursday work week.)*

(8~~9~~) "**Department**" means the Oregon Department of Environmental Quality.

~~(10) "**ECO Permit**" means a written permit in letter form issued by the Department, bearing the signature of the Director or designee, that specifies the employer's requirements under ECO.~~

(9~~11~~) "**ECO Program" or "ECO Rules**" means OAR 340-030-0800 through 340-030-1080.

(10~~2~~) "**Employee**" means any person on the employer's payroll, full or part-time (part time is 80 or more hours ~~per week~~ per 28-day period), for at least six consecutive months at the same work site, including business owners, associates, partners, and partners classified as professional corporations.

(11~~3~~) "**Employer**" means any person, business, educational institution, non-profit agency or corporation, government department or agency or other entity that employs more than 50 employees~~persons~~ at a single work site.

(12~~4~~) "**Equivalent Emission Reduction**" means a reduction of vehicle~~motor vehicle~~ emissions, or other sources of volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions, that results in a reduction of VOC and NOx emissions equal to the emission reduction resulting from one eliminated auto trip.

(13~~5~~) "**Metro**" means the regional government agency, Metropolitan Planning Organization.

(146) "**New Employer**" means any employer establishing a work site within the Portland AQMA, or any employer within the Portland AQMA that expands employment at a single work site to more than 50 employees, after the effective date of the ECO rules.

(157) "**Non-Scheduled Work Week**" means a work week with no regular daily scheduled starting or ending time, ~~no daily assigned shift~~, no scheduled work days, or employees are on-call. This does not include employees working a traditional "8 to 5" job who may work on a flexible schedule.

(168) "**Target Auto Trip Rate**" means a rate ten percent less than the baseline auto trip rate~~.~~

(17) "Target **Compliance Deadline**" means the date by which employers must demonstrate progress toward achieving and maintaining their target auto trip rate.

(189) "**Telecommuting**" means the employees perform regular work duties at home, or at a work center closer to home than to work, rather than commuting to work. The employees may telecommute full time, or commute to work on some days and telecommute on others.

(1920) "**Vehicle**" or "**Auto**" means a highway vehicle powered by a gasoline or diesel internal combustion engine with fewer than sixteen adult passenger seating positions.

(2021) "**Work site**" means a property that is owned or leased by an employer or employers under common control, including a temporary or permanent building, or grouping of buildings that are in actual physical contact or separated only by a private or public roadway or other right-of-way.

Should all employees at a work site be counted?

340-030-0850 The count of employees at a work site must include:

(1) Employees~~Persons~~ from all shifts, Monday through Friday, during a 24-hour period, averaged over a 12-month period;

~~(2) Temporary employees paid directly by the employer count toward the employer's employee count. Temporary employees paid directly by the temporary agency count toward the temporary agency's employee count, where more than 50 of the temporary agency's employees report to a single work site;~~

(23) Employees~~Persons~~ on the employer's payroll for at least six consecutive months at one work site ~~or, in the case of temporary employees, persons expected to be on the payroll for at least six months;~~ and

(34) Part-time employees assigned to a work site 80 or more hours per 28-day-period; but

(45) Excludes volunteers, disabled employees (as defined under the Americans with Disabilities Act), employees~~persons~~ working on a **non-scheduled work week**, and employees~~field personnel~~ required to use a personal **vehicle** as a condition of employment.

What are the major requirements of ECO?

340-030-0860 To comply with ECO, employers must:

.....

(3) ~~Apply for an **ECO permit**;~~Submit a registration form as supplied by the Department.

(4) Design and implement a trip reduction strategy that has the potential to achieve the target auto trip rate by the target **compliance deadline** (*see **Table 1** for the implementation schedule*), and the potential to maintain the target auto trip rate through 2006;

. . . . . .

~~**How does an employer obtain an ECO Permit**~~**What are the registration requirements?**

340-030-0870

(1) Employers must submit~~apply for an **ECO permit**~~ a registration form to~~from~~ the Department on forms provided by the Department.

(2) Employers with multiple work sites may submit one ~~permit~~ form~~application~~ for all work sites.

(3) The ~~permit~~form ~~application~~ must be submitted according to the schedule in **Table 1**.

(4) Baseline survey findings must be submitted with the registration~~permit~~ form~~application~~ in the format described on the registration~~permit application~~ form.

~~(5) The permitting provisions of Oregon Administrative Rules, Chapter 340, Division 14 apply (*issuance, renewal, denial, modification, suspension*), except for OAR 340-14-025 (*public notice requirement*).~~

What are the requirements for an employee survey?

340-030-0880

(1) Employers may~~must~~ use the survey form provided by the Department or an alternate instrument. Any alternate survey instrument must be approved by the Department before use and must provide an opportunity for employees to indicate an interest in a **carpool** matching program;

. . . . . .

(9) An alternative method may be substituted for the survey. Alternative methods must be at least as accurate as survey findings and must be approved by the Department. *(Such methods might include counting cars in an employee parking lot or conducting work site entrance verbal surveys.)*

What if an employer does not meet the target auto trip rate?

340-030-0900

(1) An employer with an approved plan who has fully implemented its plan yet has not achieved its target **auto trip rate** by the target compliance date~~deadline~~, or does not maintain its target rate on annual basis, must submit a revised plan within 60 days following the target compliance date ~~deadline~~ in any given year (according to **Table 1**). If an employer has not fully implemented its plan, the employer is subject to an enforcement action by the Department.

(2) An employer selecting not to submit a plan who does not achieve its target auto trip rate by the target compliance date~~deadline~~ (see **Table 1**) must demonstrate that a **good faith effort** was made to achieve the target rate. Requirements for documenting good faith effort are described in 340-030-0970. ~~-~~The employer must also submit a trip reduction plan within 60 days following the target compliance date~~deadline~~. ~~Requirements for documenting good faith effort are described in 340-030-0970.~~ If an employer cannot demonstrate that a good faith effort was made, the employer is subject to an enforcement action by the Department.

(3) An employer will not be required to submit further plan revisions to its initial plan if, after fully implementing two revisions, the target auto trip rate is not reached. The employer must maintain strategies identified in its plan, or revisions to that plan, that resulted in improvements to the auto trip rate.

What is the schedule employers must follow to implement ECO?

340-030-0920 The schedule employers must follow to implement the ECO program is detailed in **Table 1**. Implementation is staggered and employer grouping is based on work site zip code. The Department will place any work site located in a zip code not listed in this rule in a group with the most closely associated zip code. ~~(~~An employer with multiple work sites in more than one zip code may follow one schedule for all work sites with approval from the Department.~~)~~

Table 1
Implementation Schedule

	Group 1	**Group 2**	**Group 3**	**Group 4**
~~Permit Applications~~ Registration Forms Due	11-1-96	2-1-97	5-1-97	8-1-97
Baseline Surveys Due	11-1-96	2-1-97	5-1-97	8-1-97
Plans and Notices of Intent To Comply w/o a Plan Due	2-1-97	5-1-97	8-1-97	11-1-97
12-mo. Surveys Due for Those with a Plan	11-1-97	2-1-98	5-1-98	8-1-98
18-mo. Surveys Due for Those without a Plan	5-1-98	8-1-98	11-1-98	1-1-99
Surveys Due for Those with a Plan	11-1-98	2-1-99	5-1-99	8-1-99

Table 1
Implementation Schedule

	Group 1	Group 2	Group 3	Group 4
Initial Target Compliance Date~~Deadline~~ Surveys Due for all Employers	11-1-99	2-1-2000	5-1-2000	8-1-2000
Annual Target Compliance Date~~Deadline~~ -- Surveys Due for all Employers	every 11-1 thru 2006	every 2-1 thru 2006	every 5-1 thru 2006	every 8-1 thru 2006

. . . . . .

What should be included in an auto trip reduction plan?

340-030-0950 An auto trip reduction plan must include:

. . . . . .

(4) New commute options to be implemented at the work site that have the potential to achieve and maintain the target auto trip rate;

(5) ~~The basis of the forecasted use by employees of each~~ Empirical evidence that the commute option(s) to be offered or ~~promoted~~ supported by the employer have the potential to achieve and maintain the target auto trip rate (employers may reference the Department's report **Alternatives to Single Occupant Vehicle Trips** or provide equivalent documentation);

. . . . . .

(8) Any alternative emission reduction proposals prepared by the employer according to 340-030-1030.

(~~9~~8) The name, title, telephone number, and business mailing address of the person designated by the employer as the contact for the work site (contact person does not have to be located at the work site), and a signed statement certifying that the documents and information submitted in the plan are true and correct to the best of that person's knowledge.

~~(9) A statement, signed by either the senior manager at the work site or the senior manager responsible for operations at the work site on behalf of the employer, certifying that the documents and information submitted in the plan are true and correct to the best of that person's knowledge, having made reasonable inquiry of all individuals who participated in their preparation.~~

When will the Department act on a submitted auto trip reduction plan?

340-030-0960 The Department will approve or notify the employer of deficiencies in a submitted auto trip reduction plan, based on the criteria in 340-030-0950, within 90 days or the plan will be automatically approved. The employer will have 30 days to correct the deficiencies and resubmit the plan to the Department. Plan approvals will be documented ~~in~~ by letter from the Department to the employer~~'s ECO permit~~. Employers must submit any subsequent plan modifications to the Department for review and approval. If the employer objects to any condition or limitation in the Department's letter, the employer may request a contested case hearing before the Commission or its authorized representative. Such a request for hearing must be made in writing to the Director and received by the Department within 20 days of the date of mailing of the letter. Any subsequent hearing will be conducted pursuant to the provisions of ORS Chapter 183 and OAR Chapter 340, Division 11.

What is a good faith effort?

OAR 340-030-0970

. . . . . .

(3) Employer fully implemented all selected strategies, or their equivalent, on a schedule that would have reasonably allowed the employer to achieve the target auto trip rate by the compliance deadline.

How does the ECO program affect new employers, expanding employers and employers relocating within the Portland AQMA?

340-030-0980

(1) An expanding employer who increases the number of employees at any single work site within the Portland AQMA to more than 50 after the effective date of the ECO rules must comply with the ECO rules. An employer relocating a work site within the Portland AQMA is considered a **new employer** upon relocation and must set a new baseline and target auto trip rate and comply with the ECO rules. Relocating employers may apply for credit for existing trip reductions that carry over to the new work site. Expanding employers and new employers must meet the requirements of this rule within the following number of days after they become affected employers:

(a) Survey employees and submit a registration form~~apply for an ECO permit~~ within 90 days;

(b) Submit a trip reduction plan or notice of intent to reduce trips without an approved plan within 180 days;

(c) Select strategies that have the potential to meet ~~Meet~~ the target trip reduction within three years of becoming an affected employer.

(2) An employer affected by this rule may choose to demonstrate compliance through 340-030-1050(5).

Can a new or relocating employers comply with ECO through restrictedby locating at a work site that meets the Department's voluntary parking ratios?

340-030-0990 An employer locating at a work site within the AQMA after the effective date of the ECO rules will be exempt from the ECO rules for that work site if:

(1) The property owner of the new work site meets the requirements ofbuilds no more than the amount of parking allowed by the Department's Vvoluntary Pparking Rratio rules (OAR 340-030-1100 through 1190).; or

(2) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in **Table 1.** Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

Can an existing employer comply with ECO through restricted parking ratios?

340-030-1000 An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation showing all of the following:

(1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios *(see OAR 340-1100 through 340-030-1190).*

(2) Any parking provided by the employer for employees reporting to the affected work site meets the Department's parking ratio maximums;

(2~~3~~) Free or subsidized all-day parking is generally~~virtually~~ unavailable within a one-half mile radius of the work site~~, except to employees required to have a vehicle at the work site as a condition of employment~~; and

(3) The work site parking meets the requirements of the Department's Voluntary Parking Ratio rules; and

(4) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; OR

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal specified in **Table 1.** Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

Are there alternatives to trip reduction?

340-030-1030 Alternatives to trip reduction include:

. . . . . .

(1) Employers may purchase surplus trip reductions from other employers required to comply with ECO to meet part or all of the target trip reduction. Surplus trips must be documented by survey before sale and must be maintained through the year 2006. The Department must approve proposed transactions prior to finalizing. The Department will confirm~~incorporate~~ surplus trip transactions by letter to~~into~~ both employers' ~~permits by permit modification~~.

Can employers get credit for existing trip reduction programs?

340-030-1050 The Department may grant credits for documented trip reductions that occurred at an employer's work site any time before establishing a baseline auto trip rate. Credits will be granted upon approval by the Department. The Department will approve or deny the employer's request for credit by letter to the employer. If the employer objects to

any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-030-0960.

.....

(5) Alternately, an employer may choose to provide documentation that its single occupant vehicle commute rate, at the time of registration, is equal to or less than two standard deviations below the mean rate for the Metro transportation zone which includes the employer's work site. Commute data for Metro's transportation zones is available from the Department.

Are exemptions allowed if an employer is unable to reduce trips or take advantage of alternate compliance options?

340-030-1060

(1) An employer is fully exempt from OAR 340-030-0800 through 1080 if the employer submits reasonable documentation for each of the following:

(a) Work site is located in an area for which:

(A) Public transit service during work shift changes is less frequent than thirty minute intervals; or

(B) The public transit service point is further than one-half mile from employee's usual parking area; or

(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m.

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's **carpool** matching database or employee turnover rate is greater than 50 percent per year;

.....

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal according to Table 1. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-030-0960.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Employee Commute Options Program

Employee Commute Options
Technical Advisory Committee

Interest	Organization	Name
Meeting Facilitator	Confluence Northwest	Elaine Hallmark
Heavy Industry	Gunderson	Tom Gallagher
Labor/Union	United Food and Commercial Workers Union	Bob Patterson
Contractors/Product Manufacturing	Columbia Wire & Iron Works	David Dewitte
Restaurants	Shari's	Charlie Kloss
Food Stores	Albertson's	Jeff Lang
Health Care	Tuality Health Care	Elda Orr and replacement Linda Copelen
Schools	Gresham School District	Michele Granger-Moore
Utility/Telecomm.	US West	Virginia Lang
Suburban Employers	Sunset Corridor Association	Betty Atteberry
Manufacturing	NACCO Materials Handling Group, Inc	Dennis Jurries
Central City Employers	Association for Portland Progress (APP)	Ruth Scott
Forest Products	James River Corp.	Ron Stokes
Electronics/High Tech	Sequent Computer Systems and WestsideTransportation Alliance	Warren Jones and replacement Lisa Logie
Government Employer	Port of Portland	Jane McFarland
County Government	Washington County	Andy Back
County Government	Clackamas County	Ron Weinman
City Government	City of Portland	Francie Royce
Transit	Tri-Met	Marian Maxfield
Regional Government	Metro	Rich Ledbetter
Environmental Organization	Sensible Transportation Options for People (STOP)	Dave Stewart

Employee Commute Options and Parking Ratio
Policy Advisory Committee

Interest	Organization	Name
Meeting Chair	Brooks Resources	Mike Hollern
Financial Advisor/Lender	Alex Kleinwort Benson	Bill Barendrick, Jr.
Environmental Organization	1,000 Friends	Keith Bartholomew
Urban Development Association	Association for Portland Progress	Marty Brantley
State Land Use Policy	Land Conservation Development Commission	Bill Blosser
City Government	City of Portland	Earl Blumenauer
Employer	Kantor & Associates	Gregg Kantor
Public Land Investor	Port of Portland	David Lohman
Economist	US Bank	John Mitchell
Employer	Intel	Craig Modahl
Regional Planning Organization	Metro	Terry Moore
Private Land Investor	Standard Insurance	Eric Parsons
Employer	US West	Dana Rasmussen
County Government	Washington County	Roy Rogers
Urban Developer	Golub Pacific	Steve Rosenberg
Suburban Development Association	Sunset Cooridor Association	Marty Sevier
Suburban Developer	Specht Development	Greg Specht
Transit	Tri-Met	Tom Walsh
Building Owners & Managers	BOMA	Robin White
Heavy Industry	Schnitzer Steel Industries, Inc.	Tom Zelenka

State of Oregon
Department of Environmental Quality Memorandum

Date: March 14, 1995

To: Parking Ratio/ECO Policy Advisory Committee

From: John Kowalczyk

Subject: Policy Committee Recommendations for ECO/Parking Ratio Programs

Attached is the final report from the DEQ Policy Advisory Committee on ECO and Parking Ratio Programs. This report reflects the Committee's conceptual recommendations and viewpoints.

The Department will continue to work with our ECO and Parking Ratio Technical Advisory Committees to develop program details and rule language.

Two committee members provided suggestions for changes to the draft report. One committee member felt that the committee's stronger support for the scaled down programs should have been reflected in the one page summaries of the committee recommendations. We have added a footnote to reflect this position. The other committee member felt it was important to be clear on whether or not the committee favored emission or mileage based motor vehicle fees. Also, the committee member stated that the committee made its recommendations with the understanding that parking ratios and offset fees would be at certain levels. We have added clarifying language in the first paragraph of the second page of the report to indicate the committee is supportive of both emission and mileage based motor vehicle fees. We did not change the second paragraph of the third page which indicates the committee thought a mileage based fee would be a good first step toward a vehicle emission fee. We have also added footnotes that indicate the approximate level of parking ratios and offset fee costs that were considered when the committee made it's recommendation.

A House Special Task Force on Motor Vehicle Emissions has been formed to review DEQ's efforts to implement HB 2214 and to review alternatives and possible modifications to the Air Quality Maintenance Plan. A bill has been introduced that would repeal our recent expansion of the vehicle testing boundary. There may be discussion by the Task Force about using the surplus emission reduction credit from the plan "rebalance" to make up for the possible elimination of the boundary expansion. We will be certain to make the Task Force aware of strong advisory committee support for placing as much responsibility as possible on individual motorists to reduce emissions. We will also inform them of our advisory committees desires to see that the surplus emission reduction credit from the plan "rebalance" be used to mitigate the impact of the ECO and parking ratio programs.

A special thanks to all who have contributed to our advisory committee process. The recommended programs reflect a substantial amount of thought and ideas that clearly will make these programs more workable and less onerous to the regulated community.

Policy Advisory Committee
on
Employee Commute Options (ECO) and Parking Ratio Programs

Mike Hollern, Chair Brooks Resources	Keith Bartholomew 1,000 Friends of Oregon	Bill Blosser LCDC	Earl Blumenauer City of Portland	Marty Brantley Association for Portland Progress
Gregg Kantor PGE	David Lohman Port of Portland	John Mitchell US Bank	Craig Modahl Intel	Terry Moore Metro
Eric Parsons Standard Insurance	Dana Rasmussen US West	Roy Rogers* Washington County	Steve Rosenberg Golub Pacific	Marty Sevier Sunset Cooridor
Greg Specht Specht Development	Tom Walsh Tri-Met	Robin White Building Owners and Managers Association	Tom Zelenka Schnitzer Steel Ind. Inc.	

*abstained from voting

RECOMMENDATIONS
TO
THE DEPARTMENT OF ENVIRONMENTAL QUALITY
3/13/95

Mission

In April of 1994, then DEQ Director Fred Hansen appointed a 19 member Committee to advise the Department on developing rules to implement two of the ten strategies contained in the Clean Air Plan for the Portland Metropolitan Area (HB 2214 which was enacted by the 1993 Oregon legislature). Technical Advisory Committees were also appointed by Fred Hansen to aid in this process. The specific charge to the Committee was to recommend the best structures for the ECO and Parking Ratio Programs which could achieve the emission reduction target intended by HB 2214. The ECO and Parking Ratio Programs represented about 10% of the VOC and 20% of the NOx emission reduction targets reflected in the Clean Air Plan.

Preface To Recommendations

While the Committee's charge is to address the ECO and Parking Ratio Programs, the Committee strongly expresses support for expeditious adoption of a complete, and EPA approvable, Air Quality Maintenance Plan for the Portland Metropolitan Area in order to stay in compliance with the federal Clean Air Act. We urge this action not only to protect public health, but to enable lifting of federal sanctions on industrial growth and avoiding imposition of federal transportation funding restrictions.

We recognize that there are reservations and concerns about many of the Clean Air Plan strategies formulated in HB 2214. In fact, we have reservations about the ECO and Parking Ratio Programs which are part of the strategy array in HB 2214 and would prefer to see market based motor vehicle fees based on emissions or mileage implemented instead.

However, what is most important, in our view, is that some appropriate mix of strategies is adopted and implemented as soon as possible so that the threats of returning to unhealthy air and imposition of federal Clean Air Act sanctions are avoided.

Deliberation Process

We and our companion Technical Advisory Committees for ECO and Parking Ratios include a diverse array of members. In particular, there is substantial representation from the business community that would be potentially regulated by the ECO and Parking Ratio Programs. Our Committees spent nearly 10 months evaluating extensive information and alternatives before making conceptual recommendations. These recommendations were made under a charge of designing programs that had the best chance of achieving the emission reduction target assumed in HB 2214. There was mutual consideration of views between the Policy Committee and Technical Advisory Committees. In the end, both Policy and Technical Committees came to virtual consensus on all recommendations.

Recommendations For Programs To Meet Intent Of HB 2214

Our base program recommendations for ECO and Parking Ratio, before taking into account use of newly identified surplus credits to mitigate these programs, are contained in attachments 1 and 2. These recommendations represent our good faith efforts to create programs that would be as fair and effective as they probably can be made and still meet the emission reduction target of HB 2214. However, there is far more committee support for scaled down programs than for our base program recommendations.

The ECO Program referenced in HB 2214 was based on a 10% trip reduction target for employers with 50 to 100 employees and a 20 % trip reduction target for employers with over 100 employees. For our base program we have recommended that an equivalent ECO Program apply to employers with 20 or more employees and that it have a uniform trip reduction target of 15% to provide a more equitable program and achievable target. We also recommend that the portion of the program for the 20-50 employee businesses be phased-in in a voluntary manner.

We have recommended that maximum Parking Ratio base program be variable across the region (less stringent in areas with lower densities and poor transit service), be phased-in to better mesh with increasing density and transit service as the region develops and apply to most employment, retail and commercial land uses.

Reservations

We recognize that ECO and Parking Ratio Programs have potential for meeting air quality objectives as well as reducing traffic congestion, saving businesses money, and supporting the state's transportation goals and the region's land use plans. However, there is significant concern among most committee members about these programs, especially as they would need to be structured to meet the intent of HB 2214. There are concerns that the administrative and fiscal impact of ECO would be unreasonable, especially for small businesses, and that some businesses could not achieve compliance with the aggressive trip reduction target. There are also concerns about the feasibility of the Parking Ratio Program actually reducing vehicle emissions, especially for land uses that have highly fluctuating parking demand such as retail and restaurants.

Most members of the Committee feel that a motor vehicle emission fee imposed on all motorists in the region would be a more effective and equitable approach to achieve the desired emission reduction. Such a program would impose market forces on all motorists in the region instead of imposing a regulatory burden on some businesses. A good beginning step toward such a market based program would be conversion of existing vehicle fees, such as the state's biennial registration fee, to a mileage based fee in a revenue neutral manner. This type of program would have additional advantages of being more equitable to low income households and households with multiple vehicles that are not driven extensively.

Recommendations For Scaled Back ECO And Parking Ratio Programs

Recently DEQ has "rebalanced" the proposed Air Quality Maintenance Plan to account for changing conditions over the last three years. As a result, DEQ has identified a small surplus in emission reduction credits. If a market based vehicle emission fee is not able to be developed to mitigate or replace the ECO and Parking Ratio Programs, we strongly recommend that all of this surplus credit be used to reduce the potential negative impacts of these programs.

We and the Technical Advisory Committees have considered a range of options for mitigating the ECO and Parking Ratio Programs. We reached consensus that the surplus credit would be best used for the following:

- Raise ECO threshold for affected employers from 20 to 50 employees,
- Lower ECO trip reduction target from 15% to 10% (for all affected employers)
- Eliminate specific shopping and dining land uses from Parking Ratio Program.

By raising the affected employer cut point of ECO to 50 employees, we believe impact on small business will be reduced to a more reasonable level. By lowering the ECO trip reduction target to 10%, we believe overall compliance will be much more feasible.

While there was concern about the equity of eliminating specific shopping and dining land uses from the Parking Ratio Program, eliminating them removes the most problematic land uses with respect to achieving emission reduction targets through use of maximum parking levels. Eliminating these program elements would only reduce the Parking Ratio Program emission reduction effectiveness about 20 percent since these land uses represent a small percentage of the total vehicle trips generated by land uses potentially affected by the Parking Ratio Program.

Overall, we feel that implementation of the recommended scaled back ECO and Parking Ratio Programs would be far more reasonable and effective than implementation of the programs we have recommended to meet the emission reduction target of HB 2214. This approach would go a long way toward addressing many of the concerns about these programs raised in the committee deliberation process.

Conclusion

In conclusion, our recommendations for ECO and Parking Ratio Programs represent our good faith efforts to identify programs that might achieve the emission reduction intent of HB 2214. However, we are even more comfortable recommending implementation of these programs in the scaled back form using surplus emission reduction credits from the maintenance plan "rebalance". Nevertheless, we continue to believe that a vehicle emission fee imposed on all motorists in the region would be a more effective and equitable way of achieving the needed emission reduction credits.

PAC.REC

PARKING RATIO PROGRAM
To Meet Emission Reduction Target
Of Air Quality Maintenance Plan (HB2214)
(Revised 3/14/95)

Recommendations Of DEQ Parking Ratios/ECO Policy Committee

1. PARKING RATIOS
   3 stringency levels of parking ratios for each land use. Least stringent ratio applies in zones with lowest mode splits. [1]
2. LAND AREAS SUBJECT TO PARKING RATIOS
   Apply parking ratios to METRO 2040 land design types (zones 1,2,3 as defined in footnote 1)
3. PHASE-IN SCHEDULE
   Phase in parking ratios (7½% trip reduction 1st 5 years, 12½% trip reduction last 5 years of maintenance plan).
4. LOCAL GOVERNMENT FLEXIBILITY
   Allow local government flexibility to vary ratios (around DEQ average) subject to a DEQ approved plan.[2]
5. EXEMPTIONS
   Apply program only to proposed DEQ list* of regulated land uses. (See backside)
6. PARKING ABOVE RATIOS
   Allow parking above DEQ ratios if adequate emission offsets are provided.
7. LOCAL GOVERNMENT PROGRAM ADMINISTRATION
   Local governments administers DEQ parking ratios:
   - Approves development if within DEQ parking ratios;
   - Collects offset fee if parking is requested above DEQ parking ratios or
   - Obtains DEQ approval if other external or internal offsets are proposed;
   - Use offset fees for new transit service, local jurisdiction transportation projects, business based Transportation Management Association (TMA) programs with the program administration by Metro's TPAC/JPACT process.
8. OFFSETS
   A. Allow non-trip reduction internal offsets;
   B. Limit external offsets to trip reduction measures;
   C. Base offset fee on an average $/parking space added above DEQ parking ratio and at a level that should provide offsetting emission reductions; [3]
   D. Allow option of one up front average fee payment for ten year period or annual payments of offset fee to cover 10 year maintenance plan period.
9. PROGRAM REVIEW
   Review program effectiveness in meeting emission reduction target after 2 years with the Technical Advisory Committee (with at least some of the original TAC members).
10. CONTINUATION OF PROGRAM IN FUTURE OZONE MAINTENANCE PLANS
    Assess whether Parking Ratio Program should be continued or modified by due date of next Maintenance Plan (8 years).

* *The complete list would be needed to meet the base program emission reduction target. However, the policy committee more strongly supports using the "re-balance surplus credits" to scale back the program to also exempt specific shopping and dining land uses.*

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1 Recommendations were based on parking ratios, for example, ranging from 1.9 - 2.9 spaces/1,000 gsf for General Office, i.e. Zone 1: 1.9, Zone 2: 2.4, Zone 3: 2.9 where:
Zone 1 is Central City less North Macadam, Central Eastside, Northwest Triangle and Lower Albina.
Zone 2 is Regional and Town Centers, Main Streets, 1/4 mile of Light Rail Station Areas and North Macadam, Central Eastside, Northwest Triangle, Lower Albina.
Zone 3 is the rest of the Metro region.

2 Plan would demonstrate that with proposed ratio scheme and expected growth distribution, parking allowance on average would be no greater than allowed by the DEQ parking ratios.

3 Recommendations based on an offset fee of approximately $3,000 - $6,000 one time/space or $300 - $700/year/space if paid through project's permanent financing. The high range applies to the base program and the low range to the more strongly supported scaled down program which would exempt specific shopping and dining land uses.

Proposed List Of Land Uses To Be Regulated For Base Parking Ratio Program

The following is a list of the land uses proposed to be regulated under the Base Parking Ratio Program. Land uses not listed would not be regulated. "Exempt" land uses are considered to generate small amounts of emissions and there generally is no data upon which to base maximum ratios.

General Office Bldg.
Discount Store *
Furniture/Carpet Store *
Fast Food with Drive Thru *
Casual Dining *
Industrial Park
Warehouse
Tennis/Racquetball Court
Sports Club/Health Spa
City Rec. Center
Supermarket *
Convenience Market *
Senior High School
University/College
Airports
Office Park
Light Industrial
Manufacturing
Hardware/Paint/Home Improvement *
Shopping Center *
Church/Synagogue
Medical/Dental Clinic
Bank with Drive-In
Bowling Center
Movie Theater
Family Restaurant *
Government Office Bldg.
Tech College
Hospital
Fast Food without Drive-In *
Quality Restaurants *

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* The Policy Committee also supports exempting these land uses from the program and making up the lost emission reduction credit with credit from the Maintenance Plan "re-balance surplus credit".

EMPLOYEE COMMUTE OPTIONS PROGRAM
To Meet Emission Reduction Target
Of Air Quality Maintenance Plan (HB 2214)
(Revised 3/14/95)

Recommendations Of DEQ Parking Ratio/ECO Policy Committee

1. AFFECTED EMPLOYERS/TARGET REDUCTION *
   Employers with ≥ 20 Employees - 15% Trip Reduction
   - Includes 2% credit to compensate for employers with reasonably documented trip reduction programs prior to baseline and for new exemptions.
2. COMPLIANCE STRUCTURE
   A. Allow selection of performance or prescriptive for >50 employees.
   B. Employers with 20 to 50 employees start with voluntary performance program.
   C. Midway during 3 year compliance time DEQ converts those on performance to prescriptive if adequate progress in reducing trips is not made.
3. ENFORCEMENT
   A. Prescriptive:
      - require revised plan if trip reduction target not met.
      - Punitive monetary penalties for failure to submit approvable plan or implement approved plan.
   B. Performance:
      - Punitive monetary penalties only if good faith effort is not made to meet trip reduction target by deadline.
4. EXEMPTIONS
   Allow partial or total exemption for employers who meet all following criteria:
   - In poorest transit service zones;
   - In low employment density areas with minimal ride share options;
   - Have applied 4 day work week and telecommuting to the extent feasible considering nature of business;
   - Have applied all reasonable no cost internal offsets.
5. OFFSETS
   A. Allow non trip reduction internal offsets;
   B. Limit external offsets to trip reductions;
   C. Base offset fee on $/trip reduction not achieved; [1]
   D. Use offset fees for new transit service, local jurisdiction transportation projects, business based Transportation Management Association (TMA) programs with the program administration by Metro's TPAC/JPACT process;
   E. Allow option of one up front average fee payment for ten year period or annual payments of offset fee to cover 10 year maintenance plan period.
6. PROGRAM REVIEW
   Within first 3 years of program implementation evaluate effectiveness of achieving emission reduction goals and consider adjustments as necessary.

* *This represents our recommendation to meet the base program emission reduction target. However, the committee more strongly supports using the "re-balance surplus credit" to limit the program to employers with 50 or more employees and to reduce the trip reduction target to 10%.*

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[1] Recommendations were based on offset fee of approximately $1,000/year/trip not reduced for the ten year life of the maintenance plan

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Employee Commute Options

Rule Implementation Plan

Summary of the Proposed Rule

This rulemaking proposal establishes a new air quality program for the Portland region. Employee Commute Options is a commute trip reduction program applying to employers in the Portland Air Quality Maintenance Area with more than 50 employees at a work site. The proposed rules would require employers to provide alternatives to drive-alone commuting. Basically a good faith effort program, compliance will be based on reasonable efforts made by employers to provide alternative commute options that have potential to reduce commute trips to their work sites by ten percent. The proposed rules allow employers to substitute alternatives to work trip reductions, such as reducing other vehicle traffic to and from the work site or reducing other emissions at the work site. Employers can receive credit for existing trip reduction programs, and employers with no feasible alternatives can apply for exemptions.

Proposed Effective Date of the Rule

The proposed effective date of the Employee Commute Options Program will be upon filing with the Secretary of State, immediately following rule adoption by the Environmental Quality Commission (EQC) on July 12, 1996.

Proposal for Notification of Affected Persons

The Department notified the employers who will be affected by the ECO rule when the proposed rules were sent out for public comment. The Department sent the rulemaking package which includes the proposed rules and compliance deadlines to more than two thousand employers who will be affected. The Department will notify all employers of the requirements shortly after the rule goes into affect, and then on a quarterly basis re-notify the employers that will have to comply during that quarter. The Department divided the region

into quarters by zip code (NE, SE, SW, NW) to reduce the administrative work load of the Department.

Proposed Implementing Actions

Employee survey forms, guidance materials and resources for assistance will be mailed to employers as soon as the rules take effect. Guidance materials will include information on commute trip alternatives, survey methodology, and alternatives to reducing commute trips. The Department will offer training to all employers on the requirements of the program, as well as possible trip reduction strategies. Ongoing assistance with commute alternatives, such as transit, ride share, and telecommuting will be provided by other agencies, including Tri-Met and the Oregon Department of Energy.

Compliance will be demonstrated by employers through either development and implementation of DEQ commute options plans or a demonstration of good faith efforts to meet the trip reduction target. Progress toward the ten percent trip reduction target will be measured by annual employee surveys. Employers will submit annual reports of survey results to the Department

Proposed Training/Assistance Actions

There will not be a need for special staff training regarding the interpretation and implementation of the Employee Commute Options Rule. The rule will be implemented by the staff who developed the rule. If any training is necessary for other Department staff, it will be done internally by ECO staff who developed the rule.

The Department secured federal funding for ECO technical assistance. The technical assistance will be offered to employers who will be affected by ECO in the following ways:

- *ECO Workshops:* There will be ECO training which will be in the form of one day workshops. The workshops will cover rule requirements and compliance strategies. The workshop will provide employers with "how to" materials on possible compliance strategies. Examples of compliance strategies employers can offer their employees include, but not limited to carpooling, transit subsidies and telecommuting.
- *Information Clearinghouse:* The federal funding provides for an Information Clearinghouse that will be located at the Department. The Information Clearinghouse will be a place employers can call for ECO information. The concept of the Information Clearinghouse stems from businesses telling the Department they want one place they can call for information and if necessary, then be directed to others who specialize in the different compliance strategies. For example, the Oregon Department of Energy has an expertise in telecommuting;
- *Survey Processing:* Survey processing will be offered to employers for their first year, baseline survey. The free service will provide the survey instrument, guidance on how to achieve a 75% response rate (a rule requirement), processing of completed surveys and a report of the results. The report will include information the employer must report to the

Department, as well as helpful information the employer can use to develop a successful ECO program;

- *Rideshare Assistance:* Tri-met will continue to provide rideshare assistance to employers in the way of carpool matching, transit subsidy program and other ways depending on the employer's employee demographics;
- *Bicycle Assistance:* Bicycling is an option employers may want to pursue upon request of the employees. There will be funds to help employers offer bicycling as a way to reduce auto commute trips by the employees.
- *Alternative Compliance Strategies:* It may make sense for some employers to comply with the ECO requirements by reducing emissions from other sources besides emissions from their employees auto commute trips. There will be funds available for employers to explore this option.
- *Miscellaneous:* A small amount of funds have been set aside to be used upon request of one or more of the options outlined above. Request for the funds will be approved by a committee.

Environmental Quality Commission

■ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item G
July 12, 1996 Meeting

Title:

Voluntary Maximum Parking Ratio Program

Summary:

The Department is proposing to establish by rule a Voluntary Maximum Parking Ratio Program as one of the strategies in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area (AQMA). This proposed voluntary program establishes maximum parking ratios (number of parking spaces per one thousand square feet of gross leasable area of a building) for new construction and redevelopment of commercial, industrial and retail land uses. The combination of this program with other strategies in the Ozone Maintenance Plan will allow the Department to request re-designation of the Portland AQMA to attainment for ozone.

Department Recommendation:

It is recommended that the Commission adopt the rules regarding the Voluntary Maximum Parking Ratios for new commercial, industrial and retail development as presented in Attachment A of the Department Staff Report as a revision to the State Implementation Plan.

Report Author | Division Administrator | Director

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

State of Oregon
Department of Environmental Quality Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item G, July 12, 1996 EQC Meeting

Voluntary Maximum Parking Ratio Program

Background

On April 4, 1996 the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would establish a Voluntary Maximum Parking Ratio Program for commercial, industrial and retail land uses. This program would become part of the Ozone Maintenance Plan for the Portland area.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on May 1, 1996. 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 April 17, 1996.

A Public Hearing was held May 22, 1996 and May 23, 1996 with Lawrence S. Smith and Mike Grant respectively serving as Presiding Officers. Written comment was received through May 24, 1996 at 5pm. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). 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 E.

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

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

Issue this Proposed Rulemaking Action is Intended to Address

The Voluntary Maximum Parking Ratio Program will establish maximum parking ratios for new construction and the re-development of commercial, industrial and retail land uses. Parking ratios are the number of parking spaces per one thousand square feet of gross leasable area of a building. This program is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area (AQMA). The 1993 Legislature directed the Department (HB 2214) to incorporate a maximum parking ratio program, along with other strategies, into the Ozone Maintenance Plan. The combination of this program and the other strategies will result in adequate reductions of ozone forming pollutants to balance the increase in pollutants expected to result from significant regional growth. The balanced plan allows the Department to request re-designation of the Portland AQMA from marginal non-attainment to attainment for ozone.

Relationship to Federal and Adjacent State Rules

The Clean Air Act requires areas that wish to be redesignated from "nonattainment" to "attainment" status to submit a plan that will ensure that air quality standards are not violated for ten years after the Environmental Protection Agency (EPA) approval of the plan. These plans are called Maintenance Plans.

The applicable federal requirements do not specifically address issues that are of concern to Oregon. The federal requirements are specifically designed to give each state the flexibility to adopt emission reduction strategies that are best suited for that area.

Authority to Address the Issue

The EQC has the authority to address this issue under ORS 468.020, ORS 468.035, ORS 486A.03, ORS 486A.355, and ORS 468A.363.

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

The 1993 Legislature directed the Department to incorporate a regional Maximum Parking Ratio Program, along with other strategies, into the Ozone Maintenance Plan for the Portland area. Technical and policy advisory committees were established in April 1994, and they met on a monthly basis until February 1995. The committees advised the Department's staff on relevant issues during the process of developing the program. The committee was comprised of real estate lenders, lessors and appraisers, representatives of the business community such as retail, restaurants, commercial/industrial, employment, institutions (airports, schools, health care) and local, county and state representation. Metro, the lead agency for transportation related control measures, had Council representation and staff representation that served on the policy and technical advisory committees which reviewed the program throughout the advisory committee process.

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

The Department proposed a program that will affect property owners who voluntarily comply with the Department's parking ratios. A voluntary program was proposed in lieu of a mandatory program on the basis of substantial concerns by business and the legislature about the financial impact of a mandatory program. The program is directed at new construction and re-development of commercial, industrial and retail land uses that add new parking. The program requires a no-cost parking ratio letter permit from the Department. Information requested in the letter permit application form will be minimal and not require any special studies on behalf of the property owner.

The Voluntary Parking Ratio Program encourages property owners to locate and design new developments or re-developments so that the user of the property can have better access to the development by transportation modes other than the single occupant vehicle. Examples of this would be walking, bicycling or taking transit to work or shopping. Having these options available should effectively reduce an individual's expenses on gasoline and car maintenance by driving less.

Property owners who build in a transportation-efficient manner will need less parking, and they can save construction and maintenance costs of parking spaces of approximately $300-700 per year per space.

Reductions in auto trips will benefit local governments by reducing construction and maintenance costs of roadway improvements, and it will benefit motorists by a reduction in congestion. Employers located in developments that participate in the Voluntary Parking Ratio Program will be exempt from the Employee Commute Options (ECO) rule requirements. This may save employers ECO compliance costs of approximately $20-100 per employee.

Metro is proceeding to require local governments to reduce minimum parking requirements to not exceed the proposed parking ratios to enable participation in the Department's program.

Summary of Significant Public Comment and Changes Proposed in Response

The issues raised during the public comment period were primarily technical. There was one legal issue. The City of Portland raised technical issues. The other technical issues were raised by the restaurant industry and a coalition representing hospitals and higher education facilities.

1. Comment: The City of Portland suggested the Department modify some definitions of terms and land uses in the rule to make them more clear.

Department's Response: The Department can make the changes without any significant effect to the intent of the proposed rule language.

2. Comment: The restaurant industry expressed concern that the parking ratios do not accurately reflect their peak parking needs which is during the summer months and therefore, create an unfair economic burden on the restaurant business because of an insufficient amount of parking.

Department's Response: The Department's purpose was to develop parking ratios that encourage new development to locate in areas with greater density, good transit and walking or bicycling convenience by choosing parking ratios which restrict parking by about ten percent from parking needs for low density and low transit use area. As the program is voluntary, it will not place an unfair economic burden on the restaurant industry.

3. Comment: Representatives of hospitals would like to participate in the Voluntary Parking Ratio Program, so they have requested the Department include in-patient care in the definition of medical/dental facilities which as proposed only includes out-patient type care.

Department's Response: The Department recommends including the in-patient care in the definition of medical/dental facilities. There was also a request to increase the parking ratio

for medical facilities, but the Department recommends keeping the proposed parking ratio as it is in the rule to provide an incentive to locate in transportation efficient areas.

4. Comment: Based on their experience, higher education facilities requested an increase in the applicable parking ratio.

Department's Response: The data collected at Portland area higher education facilities does not indicate the need to increase the parking ratio. Again, the program is voluntary and higher education facilities are not prohibited from building more parking than proposed in the rule.

5. Comment: An environmental group expressed concern that the Voluntary Parking Ratio Program will not meet the "permanent, measurable and enforceable" requirements of the federal Clean Air Act (CAA).

Department's Response: The Department proposes adding a backup strategy commitment for the Voluntary Parking Ratio Program to address the enforceability concern. If the Parking Ratio Program does not achieve the targeted emission reductions, the Department will use other enforceable reductions besides those already counted on in the Ozone Maintenance Plan if available or adopt a regulatory backup strategy. Emission reductions will be estimated by comparing parking built under the Voluntary Parking Ratio Program with total parking built under local government's building permits.

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

The Department plans to implement the proposed Voluntary Maximum Parking Ratio Rule by offering property owners of new developments incentives to build with less parking. If the property owner built with less parking they would be issued a letter permit. This would demonstrate the new development has built their parking in accordance to the Department's maximum parking ratios. Property owners could offer this letter permit to employers looking for office space to lease and in turn, the employer could use the letter permit to be exempt from Employee Commute Options requirements. The other incentive the Department is offering is priority permit processing with air and water permits. The Department's implementation plan includes coordinating with state, county and local jurisdictions by providing the planners who interact with property owners and other officials working with businesses looking to locate in the Portland area with information on the Voluntary Maximum Parking Ratio Program. This also means coordinating efforts with institutions such as lending institutions and real estate appraisers who are integral to any new development.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules regarding the Voluntary Maximum Parking Ratios for new commercial, industrial and retail development as presented in Attachment A of the Department Staff Report as a revision to the State Implementation Plan.

Attachments

A. Rule (Amendments) Proposed for Adoption
   1. State of Oregon Clean Air Act Implementation Plan
   2. Voluntary Maximum Parking Ratio Program
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
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 C)
(Other Documents supporting rule development process or proposal)

Approved:

Section: John Kowalczyk

Division: John J. Russagno for Greg Green

Report Prepared By: Susan M. Turner
Phone: (503) 229-5518
Date Prepared: June 10, 1996

Attachment A-1

"State of Oregon Clean Air Act Implementation Plan"

340-020-0047

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(2) Except as provided in section (3) of this rule, revisions to the SIP shall be made pursuant to the Commission's rule-making procedures in Division 11 of this Chapter and any other requirements contained in the SIP and shall be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department is authorized to submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 1992).

[NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

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

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

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-1991; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992,f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & ef. 9-24-93; DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & ef. 3-21-94; DEQ 14-1994, f. & ef. 5-31-94; DEQ 15-1994, f. 6-8-94 & ef. 7-1-94; DEQ 22-1994, f. & ef. 10-14-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 25-1994, f. & ef. 11-2-94; DEQ 32-1994, f. & ef. 12-22-94; DEQ 1-1995, f. 1-10-95 & ef. 5-1-95; DEQ 4-1995, f. & ef. 2-17-95; DEQ 7-1995, f. & ef. 3-19-95; DEQ 9-1995, f. & ef. 5-1-95; DEQ 10-1995, f. & ef. 5-1-95; DEQ 12-1995, f. & ef. 5-25-95; DEQ 13-1995, f. & ef. 5-25-95; DEQ 14-1995, f. & ef. 5-25-95; DEQ 17-1995, f. & ef. 7-12-95; DEQ 22-1995, f. & ef. 10-6-95; DEQ 24-1995, f. & ef. 10-11-95

Attachment A-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

Division 30

SPECIFIC AIR POLLUTION CONTROL RULES FOR AREAS WITH UNIQUE AIR QUALITY RULES

Portland Air Quality Maintenance Area

Portland AQMA Voluntary Maximum Parking Ratio Program

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

What is the Voluntary Parking Ratio Program?

340-030-1100 The Voluntary Parking Ratio Program encourages property owners to voluntarily locate and design facilities that need less parking by building in a more pedestrian, bicycle and transit friendly manner.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Who can participate in the Voluntary Parking Ratio Program?

340-030-1110 Any property owner constructing a new development or a re-development of an existing site that adds new building floor area and requires new parking spaces in the Portland Air Quality Maintenance Area (AQMA) for the specific land uses defined below in 340-030-1160

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

How does a property owner comply with the Voluntary Parking Ratio Program?

340-030-1120 A property owner complies by building no more than the number of parking spaces specified by maximum parking ratios in OAR 340-030-1190 and obtaining a Parking Ratio Permit from the Department.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

What are the incentives for complying with the Voluntary Parking Ratio Program?

340-030-1130

(1) Employers in the development receive an exemption from the Employee Commute Options program in OAR 340-030-0800 through OAR 340-030-1080.

(2) Property owners who require other air and water permits from the Department receive priority permit processing.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Why do I need a Parking Ratio Permit?

340-030-1140

(1) The parking ratio permit formally documents the agreement with the Department to construct parking within the maximum parking ratio and it provides an enforcement mechanism if the property owner builds more parking without the Department's approval.

(2) The parking ratio permit formally exempts applicable employers from the Employee Commute Options rule requirements.

(3) The parking ratio permit formally provides priority permit processing for other air and water permits from the Department.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

What is required to obtain a Parking Ratio Permit?

340-030-1150 Any property owner who chooses to limit construction of parking facilities at its site must submit the following information:

(1) A completed permit application form;

(2) Identification of the proposed land uses in OAR 340-030-1160;

(3) A map showing the location of the site;

(4) A site plan showing the location of the parking and the total number of parking spaces proposed;

(5) Quantification of the gross leasable area and gross floor area of the buildings proposed for the site and the associated parking ratio;

(6) Facts about design and location features that will allow the facility to meet the trip demand with less parking. This can be documented by completing the Department's Parking Ratio Checklist or providing similar documentation.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Definitions of terms and land uses

340-030-1160

As used in OAR 340-030-1100 through 340-030-1190:

(1) General Definitions:

(a) "AQMA" means the Portland Air Quality Maintenance Area as defined in OAR 340-031-0500.

(b) "CCTMP" means the Central City Transportation Management Plan as defined by ordinance number 169535 and resolution number 35472, adopted by City of Portland City Council December 6, 1995, effective January 8, 1996.

(c) "Department" means the Department of Environmental Quality.

(d) "Director" means the Director or the Director's designee.

(e) "Employee Commute Options Program" or "Employee Commute Options Rule" means OAR 340-030-0800 through 340-030-1080.

(f) "Gross Floor Area" means the total area expressed in square feet of all floors of a building that include halls, stairwells, elevator shafts, basements, mezzanines or upper floors but excludes structured parking. Gross floor area is measured to the outside surfaces of exterior wall.

(g) "Gross Leasable Area" means total building area expressed in square feet designed for tenant occupancy and exclusive use that includes basements, mezzanines or upper floors, but does not include stairwells, elevator shafts. Gross leasable area is measured to the inside surfaces of exterior walls. Gross leasable area is that area for which tenant pays rent; it is the area that produces income.

(h) "OAR" means Oregon Administrative Rules.

(i) "Parking Ratio Permit" means a permit in letter form issued by the Department, bearing the signature of the Director or designee, that specifies the property owner's requirements under the parking ratio program.

(j) "Parking Ratio Program" means the Voluntary Parking Ratio Program, OAR 340-030-1100 through 340-030-1190.

(k) "Parking Space" means any off-street area of space below, above or at ground level, open or enclosed that is used for parking one motor vehicle at a time. If the property owner intends to stack cars (valet parking) on-site and off-site, the total area or areas used for parking must be calculated as parking spaces, not just the striped parking spaces. This does not include handicapped parking spaces officially designated pursuant to the Americans with Disabilities Act.

(l) "Property Owner" means individual, corporation, partnership, limited partnership (reflecting the proposed development), association, government, firm or joint stock company who owns title to real property.

(2) Land Use Definitions:

(a) "Bank with Drive-In and Walk-In" means banking facilities for motorists remaining in a vehicle and for someone walking into the building.

(b) "Commercial Retail" means either a free standing store or an integrated group of retail establishments planned, developed and managed as a unit. These retail facilities offer a variety of products, but do not include a separate grocery store.

(c) "Fast-food Restaurant with Drive-In Window" means a fast food restaurant with motor vehicle drive-in window order service.

(d) "General Office" means an office usually housing single or multiple tenants including, but not limited to, professional services; characterized by landscaped office park or campus-type atmosphere; a group of buildings where the tenant space is flexible to house a variety of uses including, but not limited to, start-up companies or small mature companies that require a variety of space, such as research and development, engineering, or biotechnology; or a facility that houses one or more agencies of city, county, state, federal or other governmental unit. These facilities may also include tenant and support services

including, but not limited to, banks, restaurants and other small retail support services.

(e) "Light Industrial, Industrial Park, Manufacturing" means an area containing a number of industrial or related facilities such as office, warehouse, research and associated functions, manufacturing and fabrication; facilities that are diversified which may have a large number of small businesses and others with one or two dominant industries; or facilities with features including, but not limited to, craneways, heavy power, grade and/or dock level doors.

(f) "Medical Clinic/Hospital/Dental Clinic" means a facility that provides diagnostic outpatient care and is equipped to provide prolonged in-patient medical care.

(g) "Movie Theater" means indoor cinemas showing motion pictures. Live stage performances are not included in this land use.

(h) "Other Restaurants" means other establishments serving food for immediate consumption that are not classified as fast food with drive-in.

(i) "Place of Worship" means church, synagogue or other religious facility.

(j) "Schools" means a facility attended by students, including senior high school, junior college, technical college and university levels.

(k) "Sports Club and Recreational Facilities" means a facility offering multiple types of fitness activities including, but not limited to, basketball, tennis, racquetball, volleyball and basketball courts, weight training, aerobics, jazzercise, running. The facility may also include a sauna, swimming pool, game rooms and/or meeting rooms.

(l) "Supermarket" means a retail store selling a complete assortment of food and food preparation materials, household items, and other retail items; may include pharmacies, delicatessens, and snack bars.

(m) "Tennis and Racquetball Courts" means a facility where the predominant activity is tennis courts and/or racquetball courts; it may include exercise facilities.

(n) "Warehouse" means a facility that is primarily devoted to the storage of materials, but may also include some office and maintenance areas.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

How is the Parking Ratio Program enforced?

340-030-1170

(1) A Parking Ratio Permit is a written permit in letter form issued by the Department bearing the signature of the Director or his/her designee.

(2) The general permitting provisions of Oregon Administrative Rules, Chapter 340, Division 14 apply (issuance, renewal, denial, suspension), except that OAR 340-14-0025 (public notice requirement) does not apply.

(3) An employer is no longer exempt from the ECO rule requirements if the property owner fails to comply with the terms of the Parking Ratio letter permit.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

When will the Department act on a submitted permit application?
340-030-1180

(1) The Department will notify the applicant within 15 days of filing an application if further information is needed or if the application is complete.

(2) The Department will grant or deny a letter permit within 45 days of receiving a complete application.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

What are the applicable parking ratios?
340-030-1190

Department of Environmental Quality Voluntary Maximum Parking Ratios For The Portland AQMA Parking ratios are based on spaces per1,000 sqft GLA means gross leasable area GFA means gross floor area				
Land Use	**CCTMP Areas:** **Downtown parking sectors 1-6, University District and River District parking sectors 3-5 of the CCTMP.**	**CCTMP Areas:** **Central Eastside parking sectors 2 & 3, Goose Hollow and Lloyd District of the CCTMP.**	**CCTMP Areas:** **Lower Albina, North Macadam, Central Eastside parking sectors 1, 4-6 and River District 1 & 2 of the CCTMP.**	**Outside CCTMP:** **Areas outside of CCTMP areas, but inside AQMA boundary.**
Bank with Drive-In	River District parking sectors 3-5: 4.3 (gfa) Bank with Drive-In is a prohibited land use in Downtown sectors 1-6, University District.	Central Eastside parking sectors 2 & 3 and Lloyd District: 4.3 (gla) Bank with Drive-In is a prohibited land use in Goose Hollow.	4.3 (gla)	4.3 (gla)
Bank with Walk-In	1.0 - 2.0* (gfa)	4.3 (gla)	4.3 (gla)	4.3 (gla)
Place of Worship	.25 (gfa)	.5 (gfa)	.5 (gfa)	.5 (gfa)
Commercial Retail **	1.0- 2.0* (gfa)	4.1 (gfa)	4.1 (gfa)	4.1 (gfa)
Fast Food with Drive Thru	River District parking sectors 3-5: 9.9 (gla) Fast Food with Drive Thru is a prohibited land use in Dowtown sectors 1-6, University District.	Central Eastside parking sectors 2 & 3 and Lloyd District: 9.9 (gla) Fast Food with Drive Thru is a prohibited land use in Goose Hollow.	9.9 (gla)	9.9 (gla)
Other Restaurants	1.0 - 2.0* (gfa)	15.3 (gla)	15.3 (gla)	15.3 (gla)

Land Use	CCTMP Areas: Downtown parking sectors 1-6, University District and River District parking sectors 3-5 of the CCTMP.	CCTMP Areas: Central Eastside parking sectors 2 & 3, Goose Hollow and Lloyd District of the CCTMP.	CCTMP Areas: Lower Albina, North Macadam, Central Eastside parking sectors 1, 4-6 and River District 1 & 2 of the CCTMP.	Outside CCTMP: Areas outside of CCTMP areas, but inside AQMA boundary.
General Office	.7 - 2.0* (gfa)	2.0 - 2.5 (gfa)	2.7 (gla)	2.7 (gla)
Light Industrial, Industrial Park, Manufacturing	.7 (gfa)	1.6 (gfa)	1.6 (gfa)	1.6 (gfa)
Medical and Dental	.07-2.0* (gfa)	3.9 (gla)	3.9 (gla)	3.9 (gla)
Movie Theater	.25 (gfa)	.3 (spaces per number of seats)	.3 (spaces per number of seats)	.3 (spaces per number of seats)
Schools	1.0 - 2.0* (gfa)	.2 (spaces per number of students and staff)	.2 (spaces per number of students and staff)	.2 (spaces per number of students and staff)
Sports Club and Recreational Facility	1.0-2.0* (gfa)	4.3 (gla)	4.3 (gla)	4.3 (gla)
Supermarket**	1.0 - 2.0*(gfa)	2.9 (gla)	2.9 (gla)	2.9 (gla)
Tennis and Racquetball Court	1.0-2.0* (gfa)	1.0 (gla)	1.0 (gla)	1.0 (gla)
Warehouse	.7 (gfa) This parking ratio applies to all sizes of warehouses.	.3 (gla) This parking ratio applies to warehouses that are greater than 150,000 sqft.	.3 (gla) This parking ratio applies to warehouses that are greater than 150,000 sqft.	.3 (gla) This parking ratio applies to warehouses that are greater than 150,000 sqft.

*See parking ratios for specific parking sectors in Central City Transportation Management Plan (CCTMP) adopted by the Portland City Council December 6, 1995.

**See the CCTMP for definition of the land uses Commercial Retail and Supermarket that are located in the CCTMP.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter: **340-020-0047, 340-018-0030, 340-022-0440, 340-024-0301, 340-030-0700 through -030-0750, 340-030-0800 through 1090, 340-030-1100 through 1200, 340-031-0520 through -031-0530**

DATE:	TIME:	LOCATION:
May 22, 1996	10:00 a.m.	Oregon Department of Environmental Quality Headquarters 811 SW Sixth Avenue, 3rd Floor (Room 3A) Portland (Question and answer session from 9:00 to 10:00)
May 22, 1996	7:00 p.m.	State Office Building, Room 140 800 NE Oregon Portland (Question and answer session from 6:00 to 7:00)
May 23, 1996	7:00 p.m.	City of Tigard Water Department Auditorium 8777 SW Burnham Street Tigard, Oregon (Question and answer session from 6:00 to 7:00)

HEARINGS OFFICER(s): A Professional Hearings Officer

STATUTORY AUTHORITY: or OTHER AUTHORITY: ORS 468.020, ORS 468A.035

STATUTES IMPLEMENTED: ORS 468.065, ORS 468A.310, ORS 468A.363, ORS 468.390, ORS 468A.405, ORS 468A.420

ADOPT: 340-030-0700 through -030-0750, 340-030-0800 through 1090, 340-030-1100 through 1200

AMEND: OAR 340-020-0047, OAR 340-018-0030, OAR 340-022-0460, OAR 340-24-0301, OAR 340-031-0520 through 340-031-0530

☑ This hearing notice is the initial notice given for this rulemaking action.

☑ Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY: The Department of Environmental Quality (DEQ) is proposing that the Environmental Quality Commission adopt plans to ensure that the Portland area

does not experience a recurrence of violations of the federal air quality standards for carbon monoxide and ozone. These plans and supporting rules, if adopted, will be submitted to the US Environmental Protection Agency (EPA) as revisions to the State Implementation Plan, which is a requirement of the Clean Air Act. If approved by EPA, the Portland area would be redesignated from a "nonattainment area" to an "attainment area" for carbon monoxide and ozone. The plans and supporting rules demonstrate how the Portland area will maintain compliance with the federal ambient air standards for carbon monoxide and ozone over the next ten years despite expected unprecedented growth in the area. Existing attainment plans for carbon monoxide and ozone, which will be replaced by these maintenance plans, are proposed to be repealed.

Both the carbon monoxide and ozone maintenance plans include an emission inventory, an enhanced motor vehicle inspection program, a revision to the motor vehicle inspection boundary, and transportation control measures to be implemented by Metro. Additionally, the carbon monoxide maintenance plan includes a parking management program for the Central City that will be implemented by the City of Portland. Comments are being solicited on options for continuing or repealing the current oxygenated fuel program under the carbon monoxide maintenance plan. The ozone maintenance plan includes an Employee Commute Options Program, a Voluntary Parking Ratio Program, an Industrial Emission Management Program, existing Rules for Auto Body Refinishing, Paints, and various Consumer Products, and existing Stage II Vapor Recovery Rules for gasoline service stations.

LAST DATE FOR COMMENT: May 24, 1996, 5:00 p.m.

AGENCY RULES COORDINATOR: Susan M. Greco, (503) 229-5213

AGENCY CONTACT FOR THIS PROPOSAL: Andy Ginsburg (Ozone Maintenance Plan and related rules) (503) 229-5581
Howard Harris (CO Maintenance Plan and related rules) (503) 229-6086

ADDRESS: 811 SW Sixth Avenue
Portland, Oregon 97204

TELEPHONE: 1-800-452-4011
(503) 229-5675 (FAX)

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.

Susan M. Greco
Signature

4/15/96
Date

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

Fiscal and Economic Impact Statement

Introduction

The Voluntary Maximum Parking Ratio Program (parking ratio program) is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area. The goal of the parking ratio program is to encourage property owners to voluntarily locate and design facilities that need less parking by building in a more pedestrian, bicycle and transit friendly manner, thereby reducing congestion, increasing mobility and maintaining healthful air quality. The parking ratios established for this program are expected to achieve a ten percent reduction in peak parking and peak auto trips.

The parking ratio program will be limited to new non-residential land uses (commercial, industrial and retail). This is a voluntary program; therefore fiscal and economic impacts will be impossible to determine until the extent of participation is known. In some cases, a property owner may achieve some savings from the cost of not developing and maintaining a parking space at its development.

General Public

The public in general will probably benefit from some although as yet indeterminate savings as a result of the parking ratio program. The program encourages property owners to design new developments or re-developments of an existing site so the general public can access the development by transportation modes other than the automobile. Examples are walking, bicycling or taking transit to work or shopping. Having these options available should reduce an individual's expenses on gasoline and car maintenance by driving less.

Small Business

The parking ratio program will impact only small business property owners who voluntarily choose to comply with the Department's maximum parking ratios and the small businesses that fall under the land use categories of commercial, industrial and retail. There may be increased costs, but marginal costs likely will be small, associated with designing and building in a more transportation efficient manner that would support other modes of transportation. If the development or re-development is infill, the costs may be less than sprawl type development because of substantial infrastructure (i.e., utilities, roads, etc.) already exists.
There may be a savings on the cost of construction and maintenance of a parking space of $300 to $700 per year per parking space not built. The range of costs was calculated at a current interest rate of 9.375 percent and 25 year term, if the cost for a parking space were incorporated into the property owner's permanent financing. The loan rates and terms may vary significantly depending on the type of land use. Costs may be in the upper range in high density areas due to higher land costs. Project and site specific cases would need to be analyzed to identify the actual costs or savings.

Large Business

Large business property owners can opt into the parking ratio program voluntarily just as small businesses property owners can. The impact on a large business would be similar to that on a small business. The range of potential savings from building fewer parking spaces also will be in the range of $300 to $700 per year per parking space.

A large national business that has a chain of stores across the country and uses the same blueprint for the design of it's store layout and parking may incur a small marginal cost to redesign the blueprint with less parking to fit the Department's parking ratio. As stated in the impacts on a small business, the project and each site specific case must be analyzed to identify the actual costs or savings. Large employers (greater than 50 employees) at a site participating in the parking ratio program will be exempt from the Employee Commute Options (ECO) program, thereby saving the employer approximately $20 - $100 per employee per year.

Local Governments

The parking ratio program is a voluntary program, and the Department does not expect this to increase a local government's work load significantly. The costs for transportation infrastructure projects such as light rail, transit, bicycle and pedestrian pathways local governments currently are investing in will support the parking ratio program.

Property owners who voluntarily participate in the parking ratio program are unlikely to increase local government's costs as they continue with their transportation infrastructure improvements. The program will reduce costs of roadway construction and maintenance by encouraging fewer auto trips.

State Agencies

DEQ

FTE: Twenty percent of one permanent Environmental Specialist. This part time position will be part of an existing full time position that supports implementation of the ECO program.

Revenues: The Department proposes to use existing ECO funds and some special project funds.

Expenses: An estimated $13,000 to $15,000 per year to start and implement on an annual basis.

Other Agencies

Department of Energy: The Department of Energy (DOE) may need to provide more telecommuting assistance if large businesses reduce their parking and become more dependent on their employees working from their home (telecommuting). Funding would derive from existing Federal Congestion Mitigation Air Quality (CMAQ) funds. DOE currently offers tax credits to businesses that start carpools, vanpools or telecommuting programs. The Business Energy Tax Credit is a 35 percent credit against Oregon taxes owed to offset the cost of equipment installation.

Tri-Met: Property owners that elect to participate in the Department's parking ratio program may depend in part on Tri-Met's light rail and transit services to meet the expected auto trip demand to a particular business. Tri-Met's financial commitment to increase light rail and transit service in the Portland region should be able to manage any incremental demand resulting from the Department's parking ratio program.

Assumptions

The Department anticipates about 20 percent participation from new development. This means the Department estimates it may process 25 to 75 parking ratio permits on an annual basis.

Attachment B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratios

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The regional Voluntary Maximum Parking Ratio Program is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area (AQMA). The 1993 legislature directed the Department to incorporate a regional Maximum Parking Ratio Program, along with other strategies, into the Ozone Maintenance Plan. The purpose of this program is to encourage property owners to voluntarily locate and design facilities that need less parking by building in a more pedestrian, bicycle and transit friendly manner, thereby reducing congestion, increasing mobility and maintaining healthful air quality. The parking ratios established for this program (Attachment D, Page 4) are expected to achieve a ten percent reduction in peak parking and peak auto trips.

The combination of the regional Voluntary Maximum Parking Ratio Program and the other strategies in the Ozone Maintenance Plan will result in adequate reductions of ozone forming pollutants to offset the increase in pollutants expected to result from significant regional growth. The balanced plan allows the Department to request re-designation of the Portland AQMA from marginal non-attainment to attainment for ozone.

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: NA

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

Yes___ No___ **(if no, explain):** NA

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

The Voluntary Parking Ratio Program is technically not a DEQ program affecting land use because it is voluntary. The primary responsibility of implementing parking ratios is at city and county planning departments. However, the Voluntary Parking Ratio Program is consistent with Statewide Planning Goals 2 (Land Use Planning), 6 (Air, Water and Land Resources Quality), 11 (Public Facilities), 12 (Transportation) and Metro will ensure compatibility with local comprehensive plans through the adoption of their Regional Framework Plan. This plan will require local jurisdictions to amend their parking regulations.

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.**

NA

Division Gregory A. Green Intergovernmental Coord. Robert Hall Date 4/8/96

Attachment B-4

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

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

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

Yes, there are federal requirements applicable to this situation. The Clean Air Act requires areas that wish to be redesignated from "nonattainment" to "attainment" status to submit a plan that will ensure that air quality standards are not violated for 10 years after Environmental Protection Agency (EPA) approval of the plan. These plans are called Maintenance Plans.

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

The requirements are performance based. The Ozone Maintenance Plan must demonstrate that future emissions will not cause a violation of the ozone standard. As long as the Portland area stays in attainment with the federal ozone standard, the Clean Air Act allows states to identify the specific emission reduction strategies that will be used to maintain attainment. Selected emission reductions strategies are required to meet EPA enforceability requirements.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

The applicable federal requirements do not specifically address issues that are of concern to Oregon.
The federal requirements are specifically designed to give each state the flexibility to adopt emission reduction strategies that are best suited for that area.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The emission reduction strategies included in the Maintenance Plan will ensure that air quality standards are maintained and will allow EPA to redesignate the Portland area to attainment for ozone. Once the area is redesignated, the existing stringent control requirements for major new and expanding industry will be replaced with less stringent and less expensive control requirements. In addition, the Portland area will be shielded from potential "bump-up" to a more stringent nonattainment classification. Such a bump-up would result in the imposition of prescriptive federal control requirements, including the costly retrofit of NO_x controls on existing industry.

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

There is no deadline in the Clean Air Act for submitting a maintenance plan. However, the Legislature directed DEQ to submit an approvable ozone maintenance plan to EPA as soon as possible so that the area can be redesignated to attainment and impediments to industrial growth imposed in the Clean Air Act can be removed.

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

The rate of ozone formation is dependent on temperature and other weather conditions. The maintenance plan is designed to address expected weather fluctuations over a 10-year period, but does not include surplus VOC emission reductions (there is a slight surplus NO_x emission reduction). The maintenance plan is also designed to accommodate projected growth. Emission forecasts are based on growth rates for all emission source categories, and a growth allowance is included for major new and modified industry. Further, the maintenance plan includes a contingency plan as required by the Clean Air Act to address unforeseen growth in emissions and other uncertainties.

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

The proposed maintenance plan establishes greater equity because it includes requirements applicable to emissions from all major source categories. Historically, industry has been more heavily regulated than other source categories. The ozone maintenance plan contains requirements that will reduce emissions from all four major source categories (i.e. motor vehicles, nonroad engines, area sources and industry).

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

If a maintenance plan is not adopted and a future violation of the ozone standard occurs, a new attainment plan will be required including prescriptive federal control requirements on existing industry and other sources. In addition, Metro could experience difficulty demonstrating conformity of their transportation plan with air quality plans. If conformity can not be demonstrated, Metro would not be eligible to receive federal transportation funds.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

No. The procedural requirements in the maintenance plan are required to meet EPA enforceability requirements.

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

Yes. Demonstrated technology exists to comply with all state emission reduction strategies in the maintenance plan.

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

The proposed maintenance plan is designed the prevent air pollution. In particular, motor vehicle trip reduction strategies (i.e. ECO, parking ratios, Metro's Region 2040 growth concept and the information/incentive program) are cost-effective ways to prevent air pollution. These strategies generally increase the use of lower-cost transportation alternatives and reduce road congestion and maintenance costs. The maintenance plan will also reduce the cost of controls on new business that are interested in locating in the Portland area.

Attachment B-5

State of Oregon
Department of Environmental Quality **Memorandum**

Date: April 17, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Voluntary Maximum Parking Ratios

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules and rule amendments regarding Voluntary Maximum Parking Ratios for the Portland Air Quality Maintenance Area (AQMA). Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule. This program is an essential part of the proposed Ozone Maintenance Plan for the AQMA.

The Department has the statutory authority to address this issue under ORS 468A.363.

What's in this Package?

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

Attachment A	The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335);
Attachment B	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans;
Attachment C	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements;
Attachment D	A table of contents of the proposed Rules;
Attachment E	Additional background information.

Hearing Process Details

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

Date: Wednesday, May 22, 1996
Time: 10:00 a.m. (Question and answer session from 9:00am to 10:00am)
Place: Oregon Department of Environmental Quality Headquarters
811 SW 6th Ave., 3rd Floor (Room 3A)
Portland, Oregon

Date: Wednesday, May 22, 1996
Time: 7:00 p.m. (Question and answer session from 6:00pm to 7:00pm)
Place: State Office Building, Room 140
800 NE Oregon
Portland, Oregon

Date: Thursday, May 23, 1996
Time: 7:00 p.m. (Question and answer session from 6:00pm to 7:00pm)
Place: City of Tigard Water Department Auditorium
8777 SW Burnham Street
Tigard, Oregon

Deadline for receipt of Written Comments: May 24, 1996 at 5:00 PM

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus, if you wish your comments to be considered by the Department in the development of these rules, your comments must be received before the close of the comment period. The Department recommends that comments be submitted as early as possible to allow adequate review and evaluation of the comments submitted.

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

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

What Happens After the Public Comment Period Closes?

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is July 12, 1996. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented **during** the hearing process so that full consideration by the Department may occur before a final recommendation is made. In accordance with ORS 183.335(13), no comments can be accepted by either the EQC or the Department after the public comment period has closed. Thus the EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department prior to the close of the public comment period so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

The Voluntary Maximum Parking Ratio Program will establish maximum parking ratios for new construction and the re-development of commercial, industrial and retail land uses. Parking ratios are the number of parking spaces per one thousand square feet of gross leasable area of a building. This program is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area (AQMA). The 1993 legislature directed the Department (HB 2214) to incorporate a maximum parking ratio program, along with other strategies, into the Ozone Maintenance Plan. The combination of this program and the other strategies will result in adequate reductions of ozone forming pollutants to balance the increase in pollutants expected to result from significant regional growth. The balanced plan allows the Department to request re-designation of the Portland AQMA from marginal non-attainment to attainment for ozone.

How was the rule developed?

The 1993 Legislature directed the Department to incorporate a regional Maximum Parking Ratio Program, along with other strategies, into the Ozone Maintenance Plan. Technical and policy advisory committees were established in April 1994, and they met on a monthly basis until February 1995. The committees advised the Department's staff on relevant issues during the process of developing the program. The committee was comprised of real estate lenders, lessors and appraisers, representatives of the business community such as retail, restaurants,

commercial/industrial, employment, institutions (airports, schools, health care) and local, county and state representation. Metro, the lead agency for transportation related control measures, reviewed the program throughout the advisory committee process.

Whom does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

This will be a voluntary parking ratio program that will affect property owners who voluntarily comply with the Department's parking ratios. The program is directed at new construction and re-development of commercial, industrial and retail land uses that add new parking. The program requires a no-cost parking ratio letter permit from the Department. Information requested in the letter permit application form will be minimal and not require any special studies on behalf of the property owner.

The Voluntary Parking Ratio Program encourages property owners to locate and design new developments or re-developments so that the user of the property can have better access to the development by transportation modes other than the single occupant vehicle. Examples of this would be walking, bicycling or taking transit to work or shopping. Having these options available should effectively reduce an individual's expenses on gasoline and car maintenance by driving less.

Property owners who build in a transportation-efficient manner will need less parking, and they can save construction and maintenance costs of parking spaces of approximately $300-700 per year per space. Reductions in auto trips will benefit local governments by reducing construction and maintenance costs of roadway improvements, and it will benefit motorists by a reduction in congestion. Employers located in developments that participate in the Voluntary Parking Ratio Program will be exempt from the Employee Commute Options (ECO) rule requirements. This may save employers ECO compliance costs of approximately $20-100 per employee.

How will the rule be implemented?

The Voluntary Parking Ratio rule will be implemented by the Department in conjunction with the ECO rule. The Department will educate affected property owners, local jurisdictions and other public agencies on the rule requirements and benefits of voluntary compliance.

Are there time constraints?

There is no deadline in the Clean Air Act for submitting a maintenance plan. However, the Legislature directed DEQ to submit an approvable ozone maintenance plan to EPA as soon as possible so that the area can be redesignated to attainment and impediments to industrial growth imposed in the Clean Air Act can be removed.

Contact for More Information

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

Susan M. Turner
DEQ / Air Quality
811 SW Sixth Ave.
Portland. OR 97204

Phone: (503) 229-5518
Fax: (503) 229-5675

Attachment C

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Lawrence Smith, ALJ, Employment Department
Mike Grant, ALJ, Public Utility Commission

Subject: Presiding Officer's Report for Rulemaking Hearing, Attachment C

Hearings Date and Time: May 22, 1996, beginning at 10:00 am.
May 22, 1996, beginning at 7 pm.
May 23, 1996, beginning at 7 pm.

Hearings Location: Room 3A, DEQ Headquarters, 811 SW Sixth Avenue, Portland, OR
Room 140, State Office Building, 700 NE Oregon Avenue, Portland, OR
Auditorium, Tigard Water Bureau, 8777 SW Burnham Road, Tigard, OR

Titles of Proposals: Portland Area Ozone Maintenance Plan
Portland Area Carbon Monoxide Maintenance Plan
Employee Commute Options Program
Voluntary Parking Ratios Program
Expanded Vehicle Inspection Boundary
Industrial Emissions Management Program

Three rulemaking hearings were held on the above titled proposals. The hearings were convened at 10:00 am and 7:00 pm on May 22, 1996, and 7:00 pm May 23, 1996. All the proposals were open for comment at each hearing. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearings were being tape recorded and of the procedures to be followed.

The morning hearing on May 22, 1996, was conducted by Lawrence Smith, an Administrative Law Judge with the Employment Department. Forty-five people were in attendance, ten people signed up to give testimony.

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The evening hearings on May 22, and May 23, 1996, were conducted by Mike Grant, an Administrative Law Judge with the Public Utility Commission. Eleven people were in attendance the evening of May 22, and three people signed up to give testimony. Thirteen people were in attendance the evening of May 23, and three people signed up to give testimony.

Prior to receiving testimony, the Department provided informational tables and the opportunity for people to informally discuss any questions concerning the proposals with Department staff. Andy Ginsburg was available for questions concerning the Portland Area Ozone Maintenance Plan. Howard Harris was available for questions concerning the Portland Area Carbon Monoxide Maintenance Plan. Patti Seastrom was available for questions concerning the Employee Commute Options Program. Susan Turner was available for question concerning the Voluntary Parking Ration Program. David Collier was available for questions concerning the Expanded Vehicle Inspection Boundary. Brian Finneran was available for questions concerning the Industrial Emissions Management Program.

Summary of Oral Testimony

May 22, 1996, 10:00 am

1. Jim Craven, American Electronic Association.

Mr. Craven gave testimony concerning the Industrial Emissions Management Program. He read his comments into the record. He focused on the Unused PSEL Management Backup Program of OAR 340-030-0730. He stated that this program conflicted with the purpose of the Plant Site Emission Limits (PSEL) program. He stated that the proposed program could adversely affect the electronics industry.

Mr. Craven also submitted written comments which are summarized in the Department's Evaluations of Public Comments (Attachment D).

2. Bob Okren, Citizen.

Mr. Okren gave testimony concerning the Employee Commute Option Program (ECO). He stated that regulating employees lives is onerous, communistic, and unconstitutional since employers will suffer penalties if employees don't cooperate. He considered ECO is another challenge to doing business in Portland.

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3. Francie Royce, City of Portland, Office of Transportation.

Ms. Royce gave testimony concerning the Carbon Monoxide (CO) and Ozone Maintenance Plans, and the Voluntary Parking Ratios Program. Ms. Royce stated that the City was pleased the DEQ has completed its work on the plans and were supportive of both. She noted the City's participation in the five-year process leading to this point and appreciated the long hours and hard work on the part of DEQ staff.

Ms. Royce highlighted some specific concerns regarding the CO maintenance plan. The Portland City Council has taken a position endorsing the retention of the oxygenated fuels program and supports the position adopted by the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) to continue the program for another two winters and reevaluate whether to continue the program. She stated the city is particularly at risk in the event the CO standard is violated in the downtown area, as the parking lid will be automatically reinstated, and for that reason the city would like see the oxygenated fuels continue.

Ms. Royce pointed out that the CO maintenance plan contains three transportation emissions budgets: a regional emissions budget, a budget for the Central City Transportation Management Plan (CCTMP) area, and a budget for 82nd Avenue. The city is concerned about the establishment of an emissions budget for such a small area as the 82nd Avenue area and believes it is unnecessary and could trigger an unwarranted conformity problem. The city believes the Environmental Quality Commission (EQC) should remove the 82nd Avenue emissions budget from the CO plan and rely on the 82nd Avenue monitor to track CO concentrations in the area.

Ms. Royce stated that various timelines have been projected for approval of the maintenance plans by EPA. She cited delays of up to 18 months for the agency to pass similar plans and urged the Commission and DEQ to persuade EPA to approve the submitted maintenance plans as soon as possible. She also indicated the city is willing and able to help effect a timely approval.

Ms. Royce stated that other comments dealing with the CO maintenance plan, the Ozone maintenance plan and voluntary parking ratio program would be submitted in writing. She stated that the other comments were mostly technical in nature and dealt with provisions of the CCTMP that are to be incorporated into the CO maintenance plan.

The City of Portland also submitted written comments which are summarized in the Department's Evaluations of Public Comments (Attachment D).

4. Adrian Albrecht, PED Manufacturing Inc.

Mr. Albrecht gave testimony concerning the ECO program. He stated that credit should be given for existing low auto trip rates even where an employer does not have an active program.

Mr. Albrecht also submitted written comments which are summarized in the Department's Evaluation of Public Comment (Attachment D).

5. Bill Smith, American Lung Association

Mr. Smith gave testimony in support of the Enhanced Vehicle Inspection Program. Mr. Smith supported the enhanced motor vehicle inspection program and expanded inspection boundary as a good investment in air quality. He stated that the problems reported in implementing enhanced inspection in other states have been due to poor public relations, not problems with the technology.

6. Darrell Fuller, Oregon Automobile Dealers Association.

Mr. Fuller gave testimony concerning the ECO program. He requested supporting data demonstrating need for ECO, as well as information on impact of programs in other states. He stated that the government requiring business to require employees to change commute habits presents problems, such as policing employees, carpooling liability, and employee backlash. He suggested that OAR 340-030-0820 be modified from "have the potential to" to "mandated", since that is what is intended. He also suggested that OAR 340-030-0850 be expanded to include disabled and field personnel "transporting goods and services" or "reasonably need to have vehicle".

Mr. Fuller also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

7. Melissa Sherlock, Western States Petroleum Association and 76 Products Company.

Ms. Sherlock is a fuels planning engineer for 76 Products Company. She gave testimony concerning the CO Maintenance Plan. She stated that WSPA is a trade association whose member companies account for the majority of petroleum produced, refined, transported and marketed in six western states, including Oregon. She congratulated the staff, residents and industries of the Portland area on attaining the National Ambient Air Quality Standards for carbon monoxide (CO) and ozone, making the Portland region a fine place to live and work.

Second, she expressed WSPA's belief that the winter oxygenated fuel program is not necessary in the Portland region and should be discontinued prior to the start of the 1996/97 winter season. She stated that WSPA's position is based on the following facts:

1) The Portland metropolitan area began attaining the standard in 1990, two full years before oxygenated gasoline was required in 1992.

2) DEQ's thorough and extremely conservative analysis demonstrates that oxygenated gasoline is not needed in order for CO levels in the region to remain well below the federal health standards in the winter of 1996/1997 and throughout the ten-year maintenance period.

3) Oxygenated fuel mandates are expensive; WSPA estimates that the program costs the region's consumers, businesses and taxpayers approximately $7.4 million for increased fuel costs and losses in fuel efficiency and potentially $7.7 million in lost revenue from the federal highway trust fund.

4) Continuing an oxygenated fuel mandate when it is not needed for attainment is inconsistent with the provisions of the federal Clean Air Act Amendments of 1990.

Ms. Sherlock cited the historical record of numerous violations (in excess of 100) throughout the late 60's and early 70's. However, by the late 70's and early 80's, the number of violations were reduced significantly, with only one violation since 1985.

Ms. Sherlock explained that the reason for that big improvement in CO air quality was based on two factors and neither one of those is oxygenated gasoline: 1) more stringent new motor vehicle emission standards which resulted in the increased technological sophistication of new motor vehicle emission control systems; and 2) the State's vehicle inspection and maintenance program, ensuring that the emission control systems maintain their effectiveness. Those programs started during the late 70's and early 80's, and oxygenated gasoline came in during the winter of 1992, well after the area's big improvement. She concluded that oxygenated gasoline did not play any role at all in the marked improvement in air quality.

Ms. Sherlock indicated that the Portland area has experienced only one violation of the CO standard in the last ten years and that violation occurred at the 82nd and Division monitor in December of 1989, immediately after the monitor's installation. The monitor has not measured a CO violation since, and all the other monitors in the Portland area show that the area has been attaining the standard since 1985, without the use of oxygenated gasoline.

Ms. Sherlock indicated that the DEQ analysis in the Plan shows compliance can be maintained without an oxygenated fuels program with a safety margin of ten percent, even in the winter of 1996/97. She stated that the analysis is based on a number of very conservative assumptions as follows: 1) worst case base year for meteorological conditions and measured concentrations; 2) extremely conservative background CO; 3) a worst case growth modeling analysis; 4) a calculated base year CO concentration that averages 40 percent higher than the actual measured concentrations during the base year; 5) a peak traffic period in the downtown area that is twice as long as the actual peak period; and 6) a traffic volume growth rate around the 82nd and Division monitor that is 75 percent higher than the traffic volume growth rate estimated by Metro.

These conservative assumptions indicate that the actual safety margin is most likely significantly greater than the ten percent that has been estimated. Ms. Sherlock concluded that an oxygenated fuel program is clearly not necessary for the Portland metropolitan area to stay well below the CO standard, beginning in the winter of 1996/97 and throughout the ten-year maintenance period. In summary, she stated that WSPA urges DEQ to discontinue the winter oxygenated fuel program prior to the start of the 1996/97 winter season.

Ms. Sherlock also submitted written testimony on behalf of WSPA and 76 Products Company. Those comments are summarized in the Department's Evaluation of Public Comments (Attachment D).

8. Joe Gilliam, National Federation of Independent Business.

Mr. Gilliam gave testimony concerning the CO maintenance plan. He stated that the National Federation of Independent Business was the largest small business group in the State, with over 17,000 employers. He indicated that his concerns were similar to those given by Ms. Sherlock for the Western States Petroleum Association, but from a slightly different angle. His organization is concerned over the size of government and overall regulation. He said that the oxygenated fuel program is unneeded, by the Department's own recommendation. The oxygenated fuel program does not make a difference between the Portland area being in attainment or nonattainment, with no significant benefit to the Metro area as far as the air shed is concerned. Mr. Gilliam also cited the costs for the Metro area, estimated at $7 million in fuel related costs and a potential of $7 million in lost transportation funds. He stated that his organization would like to see the DEQ take the action to repeal the program before the 1996/97 winter. He said that the National Federation of Independent Business cannot see a need to extend a program like oxygenated fuel and cost the region the kind of money cited. As a goodwill gesture, the DEQ should act immediately to repeal the program.

9. E. John Resha, Portland Community College and Westside Transportation Alliance.

Mr. Resha gave testimony concerning the ECO Program. He was supportive of the Ozone Maintenance Plan and the ECO Program. He stated that the definition of "Good Faith Effort" was not clear as to what was an acceptable effort. He also stated that there was a need to understand how the trip reduction goal of 10% helped to achieve and maintain the Ozone standard.

Mr. Resha also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

10. Linda Odekirk, Nike and Westside Transportation Alliance

Ms. Odekirk gave testimony concerning the ECO program. She stated that the baseline requirement should be changed from employer baseline to area baseline so that employers will be sure to get credit for work already done.

May 22, 1996, 7:00 pm

11. Peter Fry, Central Eastside Industrial Council

Mr. Fry gave testimony concerning the ECO program. He requested that the record stay open an additional 30 days to provide adequate time to review the ECO proposal. He stated that the Central City Transportation Management Plan (CCTMP) was already consistent with State law. He asked why additional requirements were needed for employers in the CCTMP area. He said that employers were under the impression that participation in the CCTMP would meet any additional rules. He wanted to know how DEQ would determine what parking is free or paid. He stated that Central Eastside parking costs were incorporated into the business, wage rates, and the way the business operated. Mr. Fry said that the Central Eastside had lost businesses because of ill-founded regulatory issues. He stated that the Central Eastside should be included in the definition of "Central Business District". He expressed the concern that the Central Eastside has been closed out of the process.

Mr. Fry also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

12. Kathleen Dotten, Oregon Metals Industry Council

Ms. Dotten gave testimony concerning the Expanded Vehicle Inspection Boundary, the ECO Program, the Ozone Maintenance Plan, and the Industrial Emission Management Program. She read her comments into the record.

Ms. Dotten stated that she did not support the removal of the Newberg, Dundee, Aurora and Marquam areas from the Expanded Vehicle Inspection Boundary. She also stated that the ECO Program shifted the burden of reducing vehicle miles traveled from the driver to the employer. She objected to that shift.

Ms. Dotten stated that the contingency plan should not focus on industry. She said that industry had already made significant emission reductions. She noted that the contingency plan called for further control of industry, even if the problem is caused by another source category. She stated that the maintenance plan should include an emissions allocation for each source category. She suggested that if one category exceeded the allocation, the contingency plan should require reductions from that category, rather than further reductions from industry. As an example, she suggested that congestion pricing could be required if auto emissions exceed their allocation.

Ms. Dotten's testimony concerning the Industrial Emissions Management Program focused on the growth allowance. She stated that the industrial growth allowance should be larger. She suggested that the industrial growth allowance should be at least 1000 tons per year as this would allow existing industry to expand and new industry to develop. She stated that the result would be more high wage jobs. She said that future emission reductions made by industry should be available for increases in industrial sources, not increases in mobile sources.

Ms. Dotten also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

13. David Stoller, Small Business Owner

Mr. Stoller gave testimony concerning the ECO Program. He was concerned that government was becoming larger with more regulations that small business must follow. He said that ECO placed an unfair burden on the small business owner. He suggested that ECO be replaced with a fuel tax to target all types of auto trips. He stated that ECO singled out the employer and was a drastic means to reduce emissions.

May 23, 1996, 7:00 pm

14. Mauri Scott, Iwasake Brothers, Inc.

Ms. Scott gave testimony concerning the ECO Program. She stated that the nature of her business, a nursery, was not taken into account. She explained that employees tending plants cannot telecommute or work a compressed work week, and truck drivers work a non-scheduled work week. She stated that the current auto trip rate was .48, but she couldn't take credit because no programs had been sponsored. She suggested that employers with lower auto trip rates should have lower goals. She also pointed out the need for the survey to be provided in other languages and in an alternate form for illiterate employees (e.g. pictograms). She suggested that the rules should allow for an easier method, such as counting cars in the parking lot.

Ms. Scott also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

15. John Williams , Citizen.

Mr. Williams gave testimony concerning the Ozone Maintenance Plan. He read his comments into the record.

He stated that DEQ should actively support the gasoline pipeline. He said the maintenance plan assumed emissions reductions from the future operation of a planned gasoline pipeline which would reduce emissions from barge loading. He said the plan, which was relatively detailed regarding the other elements of its control strategies, was silent about what steps the DEQ would take to insure that this planned pipeline would actually be constructed, and that the resulting emissions reductions would be achieved. Mr. Williams stated that this was a very important issue because of the large amount of emissions involved. He said that DEQ should consider taking some action to support the pipeline. He suggested that, for instance, DEQ could intervene or testify in the hearings and proceedings before the Washington Energy Siting Council regarding the Olympic pipeline.

Mr. Williams also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

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16. Tom Tucker, Citizen

Mr. Tucker gave testimony concerning the Ozone Maintenance Plan. He read his comments into the record.

He stated that the selected strategies were not cost-effective. He said that the maintenance plan relied on tools at DEQ's disposal, rather than the most cost-effective solutions. He suggested that DEQ should explore options to control population growth as a means of reducing air pollution. His suggested alternatives included the deportation of illegal aliens, reducing teenage pregnancies, training workers locally, helping the unemployed find work outside of the state, voter approval prior to annexation, and voter initiatives to require future development to pay for all needed infrastructure.

Mr. Tucker also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

Written Testimony

The following people handed in written comments at the hearings, but did not present oral testimony:

17. Thomasina Gabriele, Gabriele Development Services for Institutional Facilities Coalition.
18. Joy Voline

There was no further testimony and the hearing was closed at 11:15 am, 7:30 pm, and 7:45 pm, respectively.

The public comment period closed at 5:00 pm on Friday, May 24, 1996. All comments received during the public comment are indexed in Attachment C1, which has been attached to this report. All oral and written comments are summarized in Attachment D, The Department's Evaluation of Public Comments.

Attachment C1
Index of Public Comments Received
Attachment to the Presiding Officer's Report for Rulemaking Hearing

State of Oregon
Department of Environmental Quality

	Name/Representing	Subject	Comment Type
1	Jim Craven, American Electronics Association	Industrial Emissions Management Program	Written/ Oral
2	Bob Okren	Employee Commute Options Program	Oral
3	Francie Royce, City of Portland	Ozone and CO Maintenance Plans, Voluntary Parking Ratio Program	Oral
4	Adrian Albrecht, PED Manufacturing Ltd.	Employee Commute Options Program	Written/ Oral
5	Bill Smith, American Lung Association	Ozone Maintenance Plan (Enhanced Vehicle Inspection)	Oral
6	Darrell Fuller, Oregon Automobile Dealers Association	Employee Commute Options Program	Written/ Oral
7	Melissa Sherlock, 76 Products Company, Western States Petroleum Association	Carbon Monoxide Maintenance Plan	Written/ Oral
8	Joe Gilliam	Carbon Monoxide Maintenance Plan	Oral
9	John Resha, Westside Transportation Alliance/ Portland Community College	Ozone Maintenance Plan, Employee Commute Options Program	Written/ Oral
10	Linda Odekirk, Westside Transportation Alliance/ Nike	Ozone Maintenance Plan, Employee Commute Options Program	Oral
11	Peter F. Fry, AICP, Central Eastside Industrial Council	Employee Commute Options Program	Written/ Oral
12	Kathleen Curtis Dotten, Oregon Metals Industry Council	Ozone Maintenance Plan (Enhanced Vehicle Inspection), Expanded Motor Vehicle Inspection Boundary, Industrial Emission Management Program, Employee Commute Optionss Program,	Written/ Oral
13	David Stoller	Employee Commute Options Program	Oral
14	Mairi J. Scott, Iwasake Brothers, Inc.	Employee Commute Options Program	Written/ Oral
15	John Williams	Ozone Maintenance Plan	Written/ Oral
16	Tom Tucker	Ozone Maintenance Plan	Written/ Oral
17	Thomasina Gabriele, Gabriele Development Services, (representing Institutional Facilities Coalition)	Employee Commute Options Program, Voluntary Parking Ratio Program	Written

	Name/Representing	Subject	Comment Type
18	Joy Voline	Employee Commute Options Program	Written
19	Gayle Evans, Standard Insurance Co.	Employee Commute Options Program	Written
20	Rick Gustafson, Shiels, Obletz, Johnsen (Representing Association for Portland Progress)	Employee Commute Options Program	Written
21	Bradford R. Tracy, Maletis Beverage	Employee Commute Options Program	Written
22	Doug Hayden, Columbia Distributing Co., Henny Hinsdale, Admiralty Beverage	Employee Commute Options Program	Written
23	Jerry Griffin, Swan Island Business Association	Employee Commute Options Program	Written
24	Juan Baez, Pacificorp	Employee Commute Options Program	Written
25	Steve Klein, Epson	Employee Commute Options Program	Written
26	Elizabeth Archer, Taylor Made Labels, Inc.	Employee Commute Options Program	Written
27	Elda Orr, Multnomah Athletic Club	Employee Commute Options Program	Written
28	Virginia W. Lang, USWest Communications	Employee Commute Options Program	Written
29	L. Guy Marshall, Columbia Steel Casting Co.	Employee Commute Options Program	Written
30	Susan Duley, Saks Fifth Avenue	Employee Commute Options Program	Written
31	Gary A. Benson, Pendleton Woolen Mills	Employee Commute Options Program	Written
32	Ralph Woll/Dari Buckner, Interstate Brands Corporation	Employee Commute Options Program	Written
33	John Bohlinger, Core-Mark International	Employee Commute Options Program	Written
34	Harriet Sherburne, Portland Center for the Performing Arts	Employee Commute Options Program	Written
35	Douglas Pratt, Jr., Fulton Provision Company	Employee Commute Options Program	Written
36	J. Mark Morford, Stoel, Rives	Employee Commute Options Program	Written
37	Katy Johnson, Pacific Metal Company	Employee Commute Options Program	Written
38	Mike McGee, Oregon Department of Corrections	Employee Commute Options Program	Written
39	Debi Wali, Bullseye Glass Company	Employee Commute Options Program	Written
40	Colin Lamb, Lamb's Thriftway	Employee Commute Options Program	Written
41	William R. Johnson, Valley Wine Company	Employee Commute Options Program	Written
42	Anne Mersereau, Portland Hilton	Employee Commute Options Program	Written
43	David M. Fogle, Pacific Coast Restaurants	Employee Commute Options Program	Written
44	Denice DePaepe, Sears, Roebuck and Company	Employee Commute Options Program	Written

	Name/Representing	Subject	Comment Type
45	Fred Loomis, Gaston Public Schools	Employee Commute Options Program	Written
46	Gordon Slatford, Travelodge Hotel	Employee Commute Options Program	Written
47	S. G. Gray, E.E. Schenck Company	Employee Commute Options Program	Written
48	Louis A. Ornelas, Oregon Health Sciences University	Employee Commute Options Program	Written
49	Michael J.P.C. Kane, UEI	Employee Commute Options Program	Written
50	Charlie Young	Employee Commute Options Program	Written
51	Dan E. Mercer, Mercer Industries, Inc.	Employee Commute Options Program	Written
52	John P. Buckinger, Miller Paint Company	Employee Commute Options Program	Written
53	Ray Alford, Tom Richardson, Doug Jarmer, Pete Szambelan, Oregon Association of Temporary and Staffing Services	Employee Commute Options Program	Written
54	David H. Cook, OSF International, Inc.	Employee Commute Options Program	Written
55	G. Kent Ballantyne, Oregon Association of Hospitals and Health Systems	Employee Commute Options Program	Written
56	Donna M. Marx, The Sweetbrier Inn	Employee Commute Options Program	Written
57	William M. Hedgebeth, USEPA	Carbon Monoxide (CO) Maintenance Plan	Written
58	Jinx Faulkner	CO Maintenance Plan (oxygenated fuels)	Written
59	Matt Rahpael	CO Maintenance Plan (oxygenated fuels)	Written
60	Tom Novick, NW Bio Products Coalition	CO Maintenance Plan (oxygenated fuels)	Written
61	Neil M. Koehler, Parallel Products	CO Maintenance Plan (oxygenated fuels)	Written
62	Del J. Fogelquist, Western States Petroleum Association	CO Maintenance Plan	Written
63	Jim Alan	CO Maintenance Plan (oxygenated fuels)	Written
64	Andrea Benson	CO Maintenance Plan (oxygenated fuels)	Written
65	Kari Easton	CO Maintenance Plan (oxygenated fuels)	Written
66	Todd Easton	CO Maintenance Plan (oxygenated fuels)	Written
67	Michael Madden	CO Maintenance Plan (oxygenated fuels)	Written
68	Steven Schlesser, Schlesser Company, Inc.	CO Maintenance Plan (oxygenated fuels)	Written
69	N. Blosser	CO Maintenance Plan (oxygenated fuels)	Written
70	Chris Beck	CO Maintenance Plan (oxygenated fuels)	Written
71	Harrison Pettit	CO Maintenance Plan (oxygenated fuels)	Written
72	Dave Bernard	CO Maintenance Plan (oxygenated fuels)	Written
73	Maura Hanlon	CO Maintenance Plan (oxygenated fuels)	Written
74	Robert von Borstel, MD	CO Maintenance Plan (oxygenated fuels)	Written
75	David E. Ortman, Friends of the Earth	CO Maintenance Plan (oxygenated fuels)	Written
76	John Fletcher, Container Recovery, Inc.	CO Maintenance Plan (oxygenated fuels)	Written
77	Kim B. Puzey, Port of Umatilla	CO Maintenance Plan (oxygenated fuels)	Written
78	Caroline Weitzer, Media Mania Group	CO Maintenance Plan (oxygenated fuels)	Written

	Name/Representing	Subject	Comment Type
79	John G. White, Oregon Department of Energy	CO Maintenance Plan (oxygenated fuels)	Written
80	Dennis W. Lamb, 76 Products Company	CO Maintenance Plan (oxygenated fuels)	Written
81	Moneeka Settles	CO Maintenance Plan (oxygenated fuels)	Written
82	Claudia Burnett	CO Maintenance Plan (oxygenated fuels)	Written
83	Michelle Gallon	CO Maintenance Plan (oxygenated fuels)	Written
84	Ilene S. Moss	CO Maintenance Plan (oxygenated fuels)	Written
85	Nic Warmenhoven	CO Maintenance Plan (oxygenated fuels)	Written
86	Kenneth Lein	CO Maintenance Plan (oxygenated fuels)	Written
87	Matthew Pennewell	CO Maintenance Plan (oxygenated fuels)	Written
88	Benjamin Basin	CO Maintenance Plan (oxygenated fuels)	Written
89	Karen Notzeo	CO Maintenance Plan (oxygenated fuels)	Written
90	Lucas M. Haley	CO Maintenance Plan (oxygenated fuels)	Written
91	Carr Grey	CO Maintenance Plan (oxygenated fuels)	Written
92	Tim Cowles	CO Maintenance Plan (oxygenated fuels)	Written
93	Abigail Marble	CO Maintenance Plan (oxygenated fuels)	Written
94	Paul Reineke	CO Maintenance Plan (oxygenated fuels)	Written
95	Cynthia Toy	CO Maintenance Plan (oxygenated fuels)	Written
96	Christian G. Sturm	CO Maintenance Plan (oxygenated fuels)	Written
97	Rod Monroe, Metro Councilor, District 6	CO Maintenance Plan (oxygenated fuels)	Written
98	Robert Palzer, Sierra Club	Ozone Maintenance Plan	Written
99	Richard Ledbetter, Metro, Senior Transportation Planner	Ozone Maintenance Plan	Written
100	Ralph Engel, Chemical Specialties Manufacturers Association	Ozone Maintenance Plan	Written
101	Ted Hughes, Pacific Northwest Paint Council	Ozone Maintenance Plan	Written
102	Robert D. Elliot, Southwest Air Pollution Control Authority (Vancouver, WA)	Ozone Maintenance Plan	Written
103	Gil Haselberger, USEPA	Ozone Maintenance Plan	Written
104	Stan R. Holm, Mobil	Industrial Emission Management Program	Written
105	Chris Davies, Texaco Refining and Marketing, Inc.	Industrial Emission Management Program	Written
106	Kirk J. Thomson, Boeing	Industrial Emission Management Program	Written
107	Joseph W. Angel, Oregon Resturant Association	Voluntary Parking Ratio Program	Written
108	Larry Lazar, The Westwind Group	Voluntary Parking Ratio Program	Written
109	Steve Alverdes	Expanded Motor Vehicle Inspection Boundary	Written
110	Rita M. Bernhard, Mayor, City of Scappose	Expanded Motor Vehicle Inspection Boundary	Written

	Name/Representing	Subject	Comment Type
111	John A. Charles, Oregon Environmental Council	Industrial Emisstion Management Program, Expanded Motor Vehicle Inspection Boundary, Voluntary Parking Ratio Program, Employee Commute Options Program, Ozone Maintenance Plan	Written
112	Stanely P. Richardson, Jr.	Ozone and CO Maintenance Plans (Enhanced Vehicle Inspection and oxygenated fuels)	Written
113	Jim Whitty, Associated Oregon Industries	Ozone and CO Maintenance Plans (Enhanced Vehicle Inspection and oxygenated fuels), Industrial Emissions Management Program, Employee Commute Options Program, Voluntary Parking Ratio Program	Written
114	David F. Bartz, Jr., Schwabe, Williamson & Wyatt (representing Simpson Timber Co.)	Industrial Emissions Management Program, Employee Commute Options Program, Ozone Maintenance Plan	Written
115	Felicia Trader, City of Portland	Ozone and CO Maintenance Plans, Voluntary Parking RatioProgram	Written
116	Kristin K. Nadermann, Reynolds Metals Co.	Ozone Maintenance Plan (Enhanced Vehicle Inspection), Industrial Emissions Managment Program, Employee Commute Options Program	Written
117	Randy Tucker, OSPIRG	CO Maintenance Plan (oxygenated fuel)	Written
118	C.L. (Lew) Blackwell, Chevron Products	CO Maintenance Plan (oxygenated fuel)	Written
119	Matt Klein, Lloyd District Transportation Management Association	Employee Commute Options Program	Written
120	Lisa Logie, Westside Transportation Alliance	Employee Commute Options Program	Written
121	Mike Salsgiver, Westside Transportation Alliance	Ozone Maintenance Plan, Employee Commute Options Program	Written
122	Bonnie Gariepy, Intel	Industrial Emission Management Program	Written
123	Gary Slabaugh, Safeway, Inc.	Employee Commute Options Program	Written

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

Department's Evaluation of Public Comment

Comment 1: Correct City of Portland CCTMP Language (Commenters #: 3,115)

There was a request to make specific corrections to the parking ratio chart (340-030-1190) to accurately represent maximum parking ratios for the districts within the Central City Transportation Management Plan (CCTMP). They are as follows:

a) Every maximum parking ratio in the first column (CCTMP core) should be based on net building area versus gross leasable area;
b) Office parking ratios in the next two columns (other CCTMP) districts) should also be based on net building area versus gross leasable area;
c) Bank with Drive-In and Fast Food with Drive-In land use are prohibited uses in Downtown parking sectors 1-6, University District and Goose Hollow;
d) Light Industrial land use maximum parking ratio in the Downtown parking sectors 1-6, University District and River District parking sectors 3-5 is .07.
e) Medical and dental land uses maximum parking ratio in the Downtown parking sectors 1-6, University District and River District 3-5 is .07 to 2.0.
f) Sports Club and Recreational Facilities maximum parking ratio in the Downtown parking sectors 1-6, University District and River District 3-5 is 1.0 to 2.0.
g) Tennis and Racquetball maximum parking ratio in the Downtown parking sectors 1-6, University District and River District 3-5 is 1.0 to 2.0.
h) Warehouse maximum parking ratio in the Downtown parking sectors 1-6, University District and River District 3-5 is .7 for all sizes of warehouse. Small sized warehouses are not exempt from maximum parking ratio.
i) * (asterisk) note should say "See parking ratios for specific parking sectors in Central City Transportation Management Plan (CCTMP) adopted by the Portland City Council December 6, 1995."
j) Commercial Retail and Supermarket should be ** (double asterisked) to refer reader to CCTMP definition for such uses within the CCTMP.

Response: Per the request, the Department will change the Parking Ratio chart (340-030-1190) to accurately reflect parking ratios in the Central City Management Plan and modify definitions (340-030-1160) for more succinct definitions.

Comment 2: Modifications To Definitions Of Terms and land Uses (Commenters #: 3, 115)

There was suggested comments to modify the definitions of terms and land uses (340-030-1160) for a more clear definition which are as follows:

a) Gross Leasable Area: The definition in (f) has gla measured from the outside surfaces of exterior walls. A better definition would be inside of exterior walls;
b) Gross Floor Area: Structured parking should be excluded from the gfa calculation;
c) Church or Synagogue: Places of Worship would be a category name consistent with regional maximum parking ratios pending adoption at Metro.
d) Warehouse: This is a use the City of Portland has a minimum parking ratio greater than the voluntary maximum outside of the CCTMP districts. For example, a 150,000 square foot warehouse would be required to build 78 parking spaces in Portland, but be limited to 45 in order to participate in the DEQ voluntary parking maximum program. The City of Portland will examine its minimum parking ratio.
e) Parking Space: Include maneuvering areas if valet parking is to be allowed. If the owner of site intends to do valet parking at the site on a regular basis (i.e., stacking cars so every part of the parking lot is covered, even the aisles), they must calculate the total area or areas for parking, not just the striped parking and even off-site areas they use for parking.

Response: The Department agrees with the suggested comments and will make the changes accordingly in the rule.

Comment 4: Change Independent Variable For Place of Worship (Commenters #: 3, 115)

There was a suggestion to use gross floor area of main assembly area as the independent variable instead of seats.

Response: The Department will not be changing the parking ratio chart (340-030-1160) to use gross floor area of main assembly area as the independent variable because seats is the best explanatory independent variable according to currently available national data.

Comment 5: Change Independent Variable For Schools (Commenters #: 3, 115)

There was a suggestion that the Department change the parking ratio chart (340-030-1160) to use fixed space (gross leasable area or gross square feet) as the independent variable for schools versus students and staff.

Response: The Department will not change the parking ratio chart (340-030-1160) to use fixed space as the independent variable because students and staff is the best explanatory independent variable according to currently available local and national data.

Comment 6: Raw Parking Data Should be Adjusted (Commenters #: 107, 108)

The DEQ technical advisory committee understood that parking data was to be taken to ascertain the peak usage for the various land uses. It is felt the Department should adjust the original parking data collected to reflect seasonal variation or high use months, hence, peak usage since the data was not collected at 100 percent peak usage. Information developed by Kittleson and Associates will be submitted, as soon as possible, to allow an adjustment of the data to reflect true peak usage. Alternatively, the December numbers should be calibrated by utilizing the sales volume increase between December and July to reflect the July demand.

Response: The Department received information developed by Kittleson and Associates for Mr. Joseph Angel (Commenter # 107) after the close of the public comment period. The information presented by Kittleson and Associates expanded on Mr. Angel's public testimony that was submitted before the close of the public comment period. The Department cannot/would not use the information submitted after the close of the public comment period for two reasons. First, the Department is prohibited by ORS 183.335(13) from accepting testimony after the close of the public comment period. Secondly, the "growth factor" of 1.3 Kittleson and Associates proposes the Department use to adjust all of the raw data used to develop the restaurant parking ratio is based on sales information from just one restaurant. The Department does not believe it is technically justified to use such a limited amount of information and further more it is not certain this data reflects actual peak conditions which are expected to occur in a relatively short period of time (1-2 hours) in a specific time of year. Sales volume data presented was not specifically reflective of this condition.

Comment 7: Data Does Not Reflect Restaurant's Peak Parking Demand (Commenters #: 107, 108)

There are concerns that the restaurant data used to develop the maximum parking ratios does not reflect restaurant's 100 percent peak parking period which are claimed to be summer months of June, July, August. By establishing parking ratios based on 90 percent peak data of the months November and December versus 100 peak parking data, it is claimed to put an unfair economic burden on the restaurant business because of an insufficient amount of parking.

Response: The Department maintains the position that parking for all types of land uses is typically designed and built for 85-95 percent peak hourly demand (based on national trade association publications and guidance on parking), not 100 percent peak demand. The Department's purpose was to develop parking ratios to encourage new development into areas with greater density, good transit, walking or bicycling by choosing parking ratios restricting parking by about 10 percent from parking needed for low density and low transit use area. As the program is voluntary, it will not necessarily place an unfair economic burden on the restaurant business.

Comment 8: Urban And Suburban Parking Ratio Categories (Commenters #: 107, 108)

Restaurant industry representatives encourage the Department separate the restaurant data collected by the Department in 1994 into urban and suburban parking ratio categories to more accurately reflect the restaurant industry's needs in different areas of density and to add new data as it is collected. They encourage the Department to emphasize the importance of density when parking ratios are established for all land uses; so urban facilities are dealt with differently than suburban facilities

Response: The restaurant data collected by the Department in 1994 represented suburban and urban restaurants. Separate parking ratios are proposed for high density transit areas (urban) and low density transit areas (suburban) to reflect different parking needs of each area.

Comment 9: Allow For An Exception To Maximum Parking Ratios (Commenter #107)

In any written report to Metro or local jurisdictions, DEQ needs to include a proposal for an adequate and simple exception procedure whereby operators can demonstrate actual parking needs in order to exceed any code required maximums. Any criteria for these exceptions processes must include a criteria that allows for a restaurants volume and its economic consequence being a legitimate criteria for recommending an exception because of this disparity between volumes of same size unit.

Response: The Department did recommend to Metro that they include an exception process in the language that addresses regional maximum parking ratios (Title 2 - Urban Growth Management Functional Plan). Title 2 recommends regional maximum parking ratios that are less restrictive than the Department's voluntary maximum parking ratios and it also recommends that local jurisdictions include an exception process for those developments that need more parking than the maximum parking ratio would allow.

Comment 10: Maximum Parking Ratio Will Cause Spillover Parking On Public Streets (Commenter #: 108)

The current parking ratio at 9.9/1,000 gfa for a fast food with drive-thru does not address parking demand and will result in land use impacts. Patrons of fast food restaurants unable to park at the restaurants parking lot will seek parking on surrounding commercial properties and on public streets.

Response: As a voluntary program, a restaurant can build more than 9.9/1,000 gsf. This is a voluntary program to encourage new restaurants to design and locate so they will not need as much parking as they might have with past practices.

Comment 11: Parking Studies Done Wrong Day Of The Week (Commenter #: 108)

Fast food entities, serving primarily hamburger sandwiches, should have been studied on Friday and Saturday.

Response: The Department studied fast food entities on Friday and Saturday except for a couple of sites. The consultant confirmed peak business days with the managers of the restaurants.

Comment 12: Parking Studies Done Wrong Time of Day (Commenters #:107, 108)

Kentucky Fried Chicken should have been studies only at the dinner hours. Historical sales demonstrate that this restaurant serves primarily a dinner customer base.

Response: The consultant reported the Kentucky Fried Chicken had peak business at lunch and dinner. This Kentucky Fried Chicken is located in a densely populated area that includes a shopping center(Lloyd Center) and a business district (Lloyd District), so the Department supports the consultant's decision to survey during lunch hours versus dinner hours.

Comment 13: Less Parking Creates Economic Burden (Commenters #:108)

The fiscal and economic impact statement does account for savings to business from developing less parking spaces, it does not account for lost revenue. Factually, a fast-food restaurant without adequate parking will experience dramatic damage to sales.

Response: This is a voluntary program which means if a restaurant believes their particular restaurant needs more parking, they can build more parking than the Department's maximum parking ratio allows. Thus, it should not create an unfair economic burden (i.e., lost revenue).

Comment 14: Parking Spaces Undercounted During Study (Commenters #:108)

In several instances the number of on-site spaces were under counted and no consideration was given to sites that, in practice, share parking with an adjacent use. Concurrently, adjacent on-street parking was not considered.

Response: The Department reviewed the data and in one instance the on-site spaces were under counted. The Department has re-calculated the parking ratio. It changed

from a 15.3/1,000 gsf to 15.8/1,000 gsf. The consultant did count shared parking with other facilities located on the same site when in their professional opinion it was appropriate to count the shared parking. On street parking is not normally counted in these type of surveys, only on-site parking is counted.

Comment 15: Building Square Footage Mis-Represented (Commenters #:108)

The actual square footage of the restaurants may have been mis-represented. This is an important factor in determining parking demand on a per square foot basis.

Response: There is a ten to fifteen percent difference between gross leasable area (GLA) and gross square feet (GSF). GLA typically does not include areas that does not generate an income where GSF includes every part of the building. In the case of restaurants, counting or not counting the garbage area or some other part of the building can make up the ten to fifteen percent difference. The Department re-checked the data and a couple of sites reported different numbers, but when calculated into a parking ratio the difference was insignificant. At one site the parking ratio difference was .63 (from 17.38 to 18.01).

Comment 16: Amend Medical / Dental Definition (Commenter #:17)

Representatives of health care and higher education facilities in Portland, would like hospital institutions to be able to take advantage of Employee Commute Options compliance by restricting parking to the Department's voluntary maximum parking ratio, but the current medical and dental definition only includes parking ratios for outpatient care and not parking ratios for inpatient care which would be hospitals.

Response: The Department can amend the definition of Medical and Dental facilities to include outpatient care type facilities which would include hospitals by definition.

Comment 17: Medical Facilities Recommend Higher Parking Ratio (Commenter #:17)

Hospital representatives recommend a higher parking ratio for medical and dental (outpatient care) at 5.0/1,000 gross square feet and keep the proposed parking ratio at 3.9/1,000 gross square feet for hospitals (inpatient care). This recommendation would create two land use categories; one for medical and dental facilities and one for hospitals.

Response: The Department believes the proposed maximum parking ratio of 3.9/1,000 gross square feet for all types of medical facilities, inpatient and outpatient, is appropriate based on data and because the intent of this voluntary program is to squeeze parking to encourage new businesses to locate in areas with greater density, good transit, walking or bicycling.

Comment 18: Higher Education Facilities Recommend Higher Parking Ratio (Commenter #:17)

Higher education representatives is concerned that the parking ratio for higher education institutions is too low. They recommend the proposed parking ratio be revised to .75 spaces per student and faculty. Please note that this ratio is based on actual head count and not full time equivalent.

Response: The Department recommends not changing the proposed parking ratio for higher education (high school and college) facilities because the parking ratio is based on data from Portland area higher education facilities.

Comment 19: Concern That Voluntary Type Program Will Not Meet Federal Clean Air Act Requirements (Commenter #:111)

There is concern that the Voluntary Maximum Parking Ratio Program will not meet the "permanent, measurable, enforceable" requirements of the federal Clean Air Act (CAA).

Response: The Department proposes to add a backup strategy commitment for the Voluntary Parking Ratio Program to address the enforceability concern. If the Parking Ratio Program does not achieve the targeted emission reductions, the Department's commitment will be to adopt a regulatory backup strategy or use other enforceable reductions that may materialize above those already counted on in the Ozone Maintenance Plan.

Comment 20: Support's Maximum Parking Ratios (Commenter #:113)

The Associated Oregon Industries (AOI) supports strategies that work to reduce automobile emissions in the airshed. AOI supports voluntary maximum parking ratios as symbolic to residents in the Portland airshed.

Response: The Department listened to the concerns of the business community when they said a mandatory maximum parking ratio program would be too stringent, but a voluntary program will allow for some property owners (new development) who want to take advantage of the incentives offered. The incentives include exemption from Employee Commute Options requirements and DEQ priority permit processing.

Comment 21: American Disabilities Act (Commenter #: 19)

Parking ratios should account for disabled parking.

Response: Parking ratios do not apply to parking provided for disabled. The definition of a parking space does not include handicapped parking spaces officially designated pursuant to the Americans with Disabilities Act.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

Detailed Changes To Original Rulemaking Proposal Made In Repsonse To Public Comment

1. Revisions to OAR 340-030-1160, Definitions of terms and land uses

(1) General Definitions:

...

(f) "Gross Floor Area" means the total area expressed in square feet of all floors of a building that include halls, stairwells, elevator shafts, basements, mezzanines or upper floors but excludes on-site and structured parking~~-~~. Gross floor area is measured to the outside surfaces of exterior walls.

...

(g) "Gross Leasable Area" means total building area expressed in square feet designed for tenant occupancy and exclusive use that includes basements, mezzanines or upper floors, but does not include stairwells, elevator shafts. Gross leasable area is measured to the ~~outside~~inside surfaces of exterior walls. Gross leasable area is that area for which tenant pays rent; it is the area that produces income.

...

(k) "Parking Space" means any off-street area of space below, above or at ground level, open or enclosed that is used for parking one motor vehicle at a time. If the property owner intends to stack cars (valet parking) on-site and off-site, the total area or areas used for parking must be calculated as parking spaces, not just the striped parking spaces. This does not include handicapped parking spaces officially designated pursuant to the Americans with Disabilities Act.

...

(2) Land Use Definitions:

...

(b) ~~"Church or Synagogue"~~"Place of Worship" means ~~an established place of worship.~~church, synagogue or other religious facility.

...

(g) "Medical/Dental Clinic" means a facility that provides diagnostic ~~and~~ outpatient care~~, but~~ and is ~~not~~ equipped to provide prolonged in-patient medical care.

...

2. Revisions to 340-030-1190, What are the applicable parking ratios?

What are the applicable parking ratios?
340-030-1190

Voluntary Maximum Parking Ratios *(Parking ratios are based on spaces per1,000 sqft of gross leasable area unless other wise stated)*				
	Column 1	Column 2	Column 3	Column 4
Land Use	**Maximum Parking Ratio:** *Downtown parking sectors 1-6, University District and River District parking sectors 3-5 of the CCTMP.*	**Maximum Parking Ratio:** *Central Eastside parking sectors 2 & 3, Goose Hollow and Lloyd District of the CCTMP.*	**Maximum Parking Ratio:** *Lower Albina, North Macadam, Central Eastside parking sectors 1, 4-6 and River District 1 & 2 of the CCTMP.*	**Maximum Parking Ratio:** *Areas outside of CCTMP, but inside AQMA boundary.*
Bank with Drive-In (gross floor area for Column 1, 2 parking ratio)	~~4.3~~ Bank with Drive-In: prohibited land use in Downtown sectors 1-6, University District. In the River District parking sectors 3-5 a 4.3 parking ratio applies.	~~4.3~~ Bank with Drive-In: prohibited land use in Goose Hollow. In the Central Eastside parking sectors 2 & 3 and Lloyd District a 4.3 parking ratio applies.	4.3	4.3
Bank with Walk-In (gross floor area for Column 1 parking ratio)	1.0 - 2.0*	4.3	4.3	4.3
~~Church or Synagogue (spaces per seat)~~ Place of Worship (gross floor area for Column 1-4 parking ratio)	.25	.5	.5	.5
Commercial Retail ** (gross floor area)	1.0- 2.0*	4.1	4.1	4.1
Fast Food with Drive Thru (gross floor area for Column 1,2 parking ratio)	~~9.9~~Fast Food with Drive Thru: prohibited land use in Dowtown sectors 1-6, University District. In the River District parking sectors 3-5 a 9.9 parking ratio applies.	~~9.9~~ Fast Food with Drive Thru: prohibited land use in Goose Hollow. In the Central Eastside parking sectors 2 & 3 and Lloyd a 9.9 parking ratio applies.	9.9	9.9
~~General Office~~	0.7 - 2.0*	2.0 - 2.5*	2.7	2.7

General Office (gross floor area for Column 1 & 2 parking ratio)				
Light Industrial, Industrial Park, Manufacturing (gross floor area)	~~1.6~~ .07	1.6	1.6	1.6
Medical and Dental (gross floor area for Column 1 parking ratio)	~~1.0 – 2.0*~~ .07-2.0*	3.9	3.9	3.9
Movie Theater (Spaces/number of seats) (gross floor area for Column 1 parking ratio)	.25	.3	.3	.3
Other Restaurants (gross floor area for Column 1 parking ratio)	1.0 - 2.0~~*~~	15.3	15.3	15.3
Schools (spaces/number of students and staff) (gross floor area for Column 1 parking ratio)	1.0 - 2.0~~*~~	.2	.2	.2
Sports Club and Recreational Facility (gross floor area for Column 1 parking ratio)	~~.25~~1.0-2.0	4.3	4.3	4.3
Supermarket** (gross floor area for Column 1 parking ratio)	1.0 - 2.0~~*~~	2.9	2.9	2.9
Tennis and Racquetball Court (gross floor area for Column 1 parking ratio)	~~.25~~1.0-2.0	1.0	1.0	1.0
Warehouse (parking ratio applies to~~for~~ warehouses greater than 150,000 gross floor area ~~per warehouse~~, but in Column 1 parking ratio applies to all warehouses not	.7	.3	.3	.3

just warehouses over 150,000) (gross floor area for Column 1 parking ratio)				

* See parking ratios for specific parking sectors in Central City Transportation Management Plan (CCTMP) adopted by the Portland City Council December 6, 1995. ~~Parking ratio for specific districts and parking sectors of the CCTMP in the CCTMP document with an effective date of January 8, 1996~~

**See the CCTMP for definition of the land uses Commercial Retail and Supermarket that are located in the CCTMP.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

Parking Ratio
Technical Advisory Committee

Interest	Organization	Name
Meeting Facilitator	Dispute Resolution Services	Richard Forester
Restaurants	Oregon Restaurant Association	Joe Angel
Health Services	Kaiser	Beverly Bookin
State Land Use Policy	Department of Land Conservation and Development	Cortright, Bob
County Government	Washington County	Andy Back
Food	Albertson's	Don Duncombe
Transit	Tri-Met	Michael Fisher
Suburban Office Developer	Forum Properties	Monte Haynes
Financial Institution	First Interstate	Anne Hill
Regional Planning Organization	Metro	Mike Hoglund
Retail	Westwood Corporation	John Liljegren
Architect/Planners	Zimmer, Gunsal, Frasca	Brian McCarter
Real Estate Appraiser	Palmer, Gothe & Pietka	David Pietka
Urban Office Developer	Russell Development	John Russell,
Suburban Development Association	Trammel Crow	John Stirek
Public Land Investor	Port of Portland	Craig Smith
Citizen	Community Investment Advisors, Inc.	Irma Trommlitz
County Government	Clackamas County	Dick VanIngen
Schools	Portland Community College	Dick Vanzommeran
City Government	City of Portland	Lavinia Wihtol
Urban Development Association	Association for Portland Progress	Rick Williams

Parking Ratio and Employee Commute Options
Policy Advisory Committee

Interest	Organization	Name
Meeting Chair	Brooks Resources	Mike Hollern
Financial Advisor/Lender	Alex Kleinwort Benson	Bill Barendrick, Jr.
Environmental Organization	1,000 Friends	Keith Bartholomew
Urban Development Association	Association for Portland Progress	Marty Brantley
State Land Use Policy	Land Conservation Development Commission	Bill Blosser
City Government	City of Portland	Earl Blumenauer
Employer	Kantor & Associates	Gregg Kantor
Public Land Investor	Port of Portland	David Lohman
Economist	US Bank	John Mitchell
Employer	Intel	Craig Modahl
Regional Planning Organization	Metro	Terry Moore
Private Land Investor	Standard Insurance	Eric Parsons
Employer	US West	Dana Rasmussen
County Government	Washington County	Roy Rogers
Urban Developer	Golub Pacific	Steve Rosenberg
Suburban Development Association	Sunset Cooridor Association	Marty Sevier
Suburban Developer	Specht Development	Greg Specht
Transit	Tri-Met	Tom Walsh
Building Owners & Managers	BOMA	Robin White
Heavy Industry	Schnitzer Steel Industries, Inc.	Tom Zelenka

State of Oregon
Department of Environmental Quality Memorandum

Date: March 14, 1995

To: Parking Ratio/ECO Policy Advisory Committee

From: John Kowalczyk

Subject: Policy Committee Recommendations for ECO/Parking Ratio Programs

Attached is the final report from the DEQ Policy Advisory Committee on ECO and Parking Ratio Programs. This report reflects the Committee's conceptual recommendations and viewpoints.

The Department will continue to work with our ECO and Parking Ratio Technical Advisory Committees to develop program details and rule language.

Two committee members provided suggestions for changes to the draft report. One committee member felt that the committee's stronger support for the scaled down programs should have been reflected in the one page summaries of the committee recommendations. We have added a footnote to reflect this position. The other committee member felt it was important to be clear on whether or not the committee favored emission or mileage based motor vehicle fees. Also, the committee member stated that the committee made its recommendations with the understanding that parking ratios and offset fees would be at certain levels. We have added clarifying language in the first paragraph of the second page of the report to indicate the committee is supportive of both emission and mileage based motor vehicle fees. We did not change the second paragraph of the third page which indicates the committee thought a mileage based fee would be a good first step toward a vehicle emission fee. We have also added footnotes that indicate the approximate level of parking ratios and offset fee costs that were considered when the committee made it's recommendation.

A House Special Task Force on Motor Vehicle Emissions has been formed to review DEQ's efforts to implement HB 2214 and to review alternatives and possible modifications to the Air Quality Maintenance Plan. A bill has been introduced that would repeal our recent expansion of the vehicle testing boundary. There may be discussion by the Task Force about using the surplus emission reduction credit from the plan "rebalance" to make up for the possible elimination of the boundary expansion. We will be certain to make the Task Force aware of strong advisory committee support for placing as much responsibility as possible on individual motorists to reduce emissions. We will also inform them of our advisory committees desires to see that the surplus emission reduction credit from the plan "rebalance" be used to mitigate the impact of the ECO and parking ratio programs.

A special thanks to all who have contributed to our advisory committee process. The recommended programs reflect a substantial amount of thought and ideas that clearly will make these programs more workable and less onerous to the regulated community.

Policy Advisory Committee
on
Employee Commute Options (ECO) and Parking Ratio Programs

Mike Hollern, Chair Brooks Resources	Keith Bartholomew 1,000 Friends of Oregon	Bill Blosser LCDC	Earl Blumenauer City of Portland	Marty Brantley Association for Portland Progress
Gregg Kantor PGE	David Lohman Port of Portland	John Mitchell US Bank	Craig Modahl Intel	Terry Moore Metro
Eric Parsons Standard Insurance	Dana Rasmussen US West	Roy Rogers* Washington County	Steve Rosenberg Golub Pacific	Marty Sevier Sunset Cooridor
Greg Specht Specht Development	Tom Walsh Tri-Met	Robin White Building Owners and Managers Association	Tom Zelenka Schnitzer Steel Ind. Inc.	

*abstained from voting

RECOMMENDATIONS
TO
THE DEPARTMENT OF ENVIRONMENTAL QUALITY
3/13/95

Mission

In April of 1994, then DEQ Director Fred Hansen appointed a 19 member Committee to advise the Department on developing rules to implement two of the ten strategies contained in the Clean Air Plan for the Portland Metropolitan Area (HB 2214 which was enacted by the 1993 Oregon legislature). Technical Advisory Committees were also appointed by Fred Hansen to aid in this process. The specific charge to the Committee was to recommend the best structures for the ECO and Parking Ratio Programs which could achieve the emission reduction target intended by HB 2214. The ECO and Parking Ratio Programs represented about 10% of the VOC and 20% of the NOx emission reduction targets reflected in the Clean Air Plan.

Preface To Recommendations

While the Committee's charge is to address the ECO and Parking Ratio Programs, the Committee strongly expresses support for expeditious adoption of a complete, and EPA approvable, Air Quality Maintenance Plan for the Portland Metropolitan Area in order to stay in compliance with the federal Clean Air Act. We urge this action not only to protect public health, but to enable lifting of federal sanctions on industrial growth and avoiding imposition of federal transportation funding restrictions.

We recognize that there are reservations and concerns about many of the Clean Air Plan strategies formulated in HB 2214. In fact, we have reservations about the ECO and Parking Ratio Programs which are part of the strategy array in HB 2214 and would prefer to see market based motor vehicle fees based on emissions or mileage implemented instead.

However, what is most important, in our view, is that some appropriate mix of strategies is adopted and implemented as soon as possible so that the threats of returning to unhealthy air and imposition of federal Clean Air Act sanctions are avoided.

Deliberation Process

We and our companion Technical Advisory Committees for ECO and Parking Ratios include a diverse array of members. In particular, there is substantial representation from the business community that would be potentially regulated by the ECO and Parking Ratio Programs. Our Committees spent nearly 10 months evaluating extensive information and alternatives before making conceptual recommendations. These recommendations were made under a charge of designing programs that had the best chance of achieving the emission reduction target assumed in HB 2214. There was mutual consideration of views between the Policy Committee and Technical Advisory Committees. In the end, both Policy and Technical Committees came to virtual consensus on all recommendations.

Recommendations For Programs To Meet Intent Of HB 2214

Our base program recommendations for ECO and Parking Ratio, before taking into account use of newly identified surplus credits to mitigate these programs, are contained in attachments 1 and 2. These recommendations represent our good faith efforts to create programs that would be as fair and effective as they probably can be made and still meet the emission reduction target of HB 2214. However, there is far more committee support for scaled down programs than for our base program recommendations.

The ECO Program referenced in HB 2214 was based on a 10% trip reduction target for employers with 50 to 100 employees and a 20 % trip reduction target for employers with over 100 employees. For our base program we have recommended that an equivalent ECO Program apply to employers with 20 or more employees and that it have a uniform trip reduction target of 15% to provide a more equitable program and achievable target. We also recommend that the portion of the program for the 20-50 employee businesses be phased-in in a voluntary manner.

We have recommended that maximum Parking Ratio base program be variable across the region (less stringent in areas with lower densities and poor transit service), be phased-in to better mesh with increasing density and transit service as the region develops and apply to most employment, retail and commercial land uses.

Reservations

We recognize that ECO and Parking Ratio Programs have potential for meeting air quality objectives as well as reducing traffic congestion, saving businesses money, and supporting the state's transportation goals and the region's land use plans. However, there is significant concern among most committee members about these programs, especially as they would need to be structured to meet the intent of HB 2214. There are concerns that the administrative and fiscal impact of ECO would be unreasonable, especially for small businesses, and that some businesses could not achieve compliance with the aggressive trip reduction target. There are also concerns about the feasibility of the Parking Ratio Program actually reducing vehicle emissions, especially for land uses that have highly fluctuating parking demand such as retail and restaurants.

Most members of the Committee feel that a motor vehicle emission fee imposed on all motorists in the region would be a more effective and equitable approach to achieve the desired emission reduction. Such a program would impose market forces on all motorists in the region instead of imposing a regulatory burden on some businesses. A good beginning step toward such a market based program would be conversion of existing vehicle fees, such as the state's biennial registration fee, to a mileage based fee in a revenue neutral manner. This type of program would have additional advantages of being more equitable to low income households and households with multiple vehicles that are not driven extensively.

Recommendations For Scaled Back ECO And Parking Ratio Programs

Recently DEQ has "rebalanced" the proposed Air Quality Maintenance Plan to account for changing conditions over the last three years. As a result, DEQ has identified a small surplus in emission reduction credits. If a market based vehicle emission fee is not able to be developed to mitigate or replace the ECO and Parking Ratio Programs, we strongly recommend that all of this surplus credit be used to reduce the potential negative impacts of these programs.

We and the Technical Advisory Committees have considered a range of options for mitigating the ECO and Parking Ratio Programs. We reached consensus that the surplus credit would be best used for the following:

- Raise ECO threshold for affected employers from 20 to 50 employees,
- Lower ECO trip reduction target from 15% to 10% (for all affected employers)
- Eliminate specific shopping and dining land uses from Parking Ratio Program.

By raising the affected employer cut point of ECO to 50 employees, we believe impact on small business will be reduced to a more reasonable level. By lowering the ECO trip reduction target to 10%, we believe overall compliance will be much more feasible.

While there was concern about the equity of eliminating specific shopping and dining land uses from the Parking Ratio Program, eliminating them removes the most problematic land uses with respect to achieving emission reduction targets through use of maximum parking levels. Eliminating these program elements would only reduce the Parking Ratio Program emission reduction effectiveness about 20 percent since these land uses represent a small percentage of the total vehicle trips generated by land uses potentially affected by the Parking Ratio Program.

Overall, we feel that implementation of the recommended scaled back ECO and Parking Ratio Programs would be far more reasonable and effective than implementation of the programs we have recommended to meet the emission reduction target of HB 2214. This approach would go a long way toward addressing many of the concerns about these programs raised in the committee deliberation process.

Conclusion

In conclusion, our recommendations for ECO and Parking Ratio Programs represent our good faith efforts to identify programs that might achieve the emission reduction intent of HB 2214. However, we are even more comfortable recommending implementation of these programs in the scaled back form using surplus emission reduction credits from the maintenance plan "rebalance". Nevertheless, we continue to believe that a vehicle emission fee imposed on all motorists in the region would be a more effective and equitable way of achieving the needed emission reduction credits.

PAC.REC

PARKING RATIO PROGRAM
To Meet Emission Reduction Target Of Air Quality Maintenance Plan (HB2214)

Revised 3/14/95

Recommendations Of DEQ Parking Ratios/ECO Policy Committee

1. PARKING RATIOS
   3 stringency levels of parking ratios for each land use. Least stringent ratio applies in zones with lowest mode splits. [1]
2. LAND AREAS SUBJECT TO PARKING RATIOS
   Apply parking ratios to METRO 2040 land design types (zones 1,2,3 as defined in footnote 1)
3. PHASE-IN SCHEDULE
   Phase in parking ratios (7½% trip reduction 1st 5 years, 12½% trip reduction last 5 years of maintenance plan).
4. LOCAL GOVERNMENT FLEXIBILITY
   Allow local government flexibility to vary ratios (around DEQ average) subject to a DEQ approved plan.[2]
5. EXEMPTIONS
   Apply program only to proposed DEQ list* of regulated land uses. (See backside)
6. PARKING ABOVE RATIOS
   Allow parking above DEQ ratios if adequate emission offsets are provided.
7. LOCAL GOVERNMENT PROGRAM ADMINISTRATION
   Local governments administers DEQ parking ratios:
   - Approves development if within DEQ parking ratios;
   - Collects offset fee if parking is requested above DEQ parking ratios or
   - Obtains DEQ approval if other external or internal offsets are proposed;
   - Use offset fees for new transit service, local jurisdiction transportation projects, business based Transportation Management Association (TMA) programs with the program administration by Metro's TPAC/JPACT process.
8. OFFSETS
   A. Allow non-trip reduction internal offsets;
   B. Limit external offsets to trip reduction measures;
   C. Base offset fee on an average $/parking space added above DEQ parking ratio and at a level that should provide offsetting emission reductions; [3]
   D. Allow option of one up front average fee payment for ten year period or annual payments of offset fee to cover 10 year maintenance plan period.
9. PROGRAM REVIEW
   Review program effectiveness in meeting emission reduction target after 2 years with the Technical Advisory Committee (with at least some of the original TAC members).
10. CONTINUATION OF PROGRAM IN FUTURE OZONE MAINTENANCE PLANS
    Assess whether Parking Ratio Program should be continued or modified by due date of next Maintenance Plan (8 years).

* *The complete list would be needed to meet the base program emission reduction target. However, the policy committee more strongly supports using the "re-balance surplus credits" to scale back the program to also exempt specific shopping and dining land uses.*

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1 Recommendations were based on parking ratios, for example, ranging from 1.9 - 2.9 spaces/1,000 gsf for General Office, i.e. Zone 1: 1.9, Zone 2: 2.4, Zone 3: 2.9 where:
Zone 1 is Central City less North Macadam, Central Eastside, Northwest Triangle and Lower Albina.
Zone 2 is Regional and Town Centers, Main Streets, 1/4 mile of Light Rail Station Areas and North Macadam, Central Eastside, Northwest Triangle, Lower Albina.
Zone 3 is the rest of the Metro region.

2 Plan would demonstrate that with proposed ratio scheme and expected growth distribution, parking allowance on average would be no greater than allowed by the DEQ parking ratios.

3 Recommendations based on an offset fee of approximately $3,000 - $6,000 one time/space or $300 - $700/year/space if paid through project's permanent financing. The high range applies to the base program and the low range to

Proposed List Of Land Uses To Be Regulated For Base Parking Ratio Program

The following is a list of the land uses proposed to be regulated under the Base Parking Ratio Program. Land uses not listed would not be regulated. "Exempt" land uses are considered to generate small amounts of emissions and there generally is no data upon which to base maximum ratios.

General Office Bldg.
Discount Store *
Furniture/Carpet Store *
Fast Food with Drive Thru *
Casual Dining *
Industrial Park
Warehouse
Tennis/Racquetball Court
Sports Club/Health Spa
City Rec. Center
Supermarket *
Convenience Market *
Senior High School
University/College
Airports
Office Park
Light Industrial
Manufacturing
Hardware/Paint/Home Improvement *
Shopping Center *
Church/Synagogue
Medical/Dental Clinic
Bank with Drive-In
Bowling Center
Movie Theater
Family Restaurant *
Government Office Bldg.
Tech College
Hospital
Fast Food without Drive-In *
Quality Restaurants *

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* The Policy Committee also supports exempting these land uses from the program and making up the lost emission reduction credit with credit from the Maintenance Plan "re-balance surplus credit".

Attachment 2

EMPLOYEE COMMUTE OPTIONS PROGRAM
To Meet Emission Reduction Target
Of Air Quality Maintenance Plan (HB 2214)
(Revised 3/14/95)

Recommendations Of DEQ Parking Ratio/ECO Policy Committee

1. AFFECTED EMPLOYERS/TARGET REDUCTION *
   Employers with ≥ 20 Employees - 15% Trip Reduction
   - Includes 2% credit to compensate for employers with reasonably documented trip reduction programs prior to baseline and for new exemptions.
2. COMPLIANCE STRUCTURE
   A. Allow selection of performance or prescriptive for >50 employees.
   B. Employers with 20 to 50 employees start with voluntary performance program.
   C. Midway during 3 year compliance time DEQ converts those on performance to prescriptive if adequate progress in reducing trips is not made.
3. ENFORCEMENT
   A. Prescriptive:
      - require revised plan if trip reduction target not met.
      - Punitive monetary penalties for failure to submit approvable plan or implement approved plan.
   B. Performance:
      - Punitive monetary penalties only if good faith effort is not made to meet trip reduction target by deadline.
4. EXEMPTIONS
   Allow partial or total exemption for employers who meet all following criteria:
   - In poorest transit service zones;
   - In low employment density areas with minimal ride share options;
   - Have applied 4 day work week and telecommuting to the extent feasible considering nature of business;
   - Have applied all reasonable no cost internal offsets.
5. OFFSETS
   A. Allow non trip reduction internal offsets;
   B. Limit external offsets to trip reductions;
   C. Base offset fee on $/trip reduction not achieved; [1]
   D. Use offset fees for new transit service, local jurisdiction transportation projects, business based Transportation Management Association (TMA) programs with the program administration by Metro's TPAC/JPACT process;
   E. Allow option of one up front average fee payment for ten year period or annual payments of offset fee to cover 10 year maintenance plan period.
6. PROGRAM REVIEW
   Within first 3 years of program implementation evaluate effectiveness of achieving emission reduction goals and consider adjustments as necessary.

* *This represents our recommendation to meet the base program emission reduction target. However, the committee more strongly supports using the "re-balance surplus credit" to limit the program to employers with 50 or more employees and to reduce the trip reduction target to 10%.*

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[1] Recommendations were based on offset fee of approximately $1,000/year/trip not reduced for the ten year life of the maintenance plan

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Voluntary Maximum Parking Ratio Program

Rule Implementation Plan

Summary of the Proposed Rule

The Department proposed a program that will affect property owners who voluntarily comply with the Department's parking ratios. A voluntary program was proposed in lieu of a mandatory program on the basis of substantial concerns by business and the legislature about the financial impact of a mandatory program. The program is directed at new construction and re-development of commercial, industrial and retail land uses that add new parking. The program requires a no-cost parking ratio letter permit from the Department. Information requested in the letter permit application form will be minimal and not require any special studies on behalf of the property owner.

The Voluntary Parking Ratio Program encourages property owners to locate and design new developments or re-developments so that the user of the property can have better access to the development by transportation modes other than the single occupant vehicle. Examples of this would be walking, bicycling or taking transit to work or shopping. Having these options available should effectively reduce an individual's expenses on gasoline and car maintenance by driving less.

Property owners who build in a transportation-efficient manner will need less parking, and they can save construction and maintenance costs of parking spaces of approximately $300-700 per year per space. Reductions in auto trips will benefit local governments by reducing construction and maintenance costs of roadway improvements, and it will benefit motorists by a reduction in congestion.

Employers located in developments that participate in the Voluntary Parking Ratio Program will be exempt from the Employee Commute Options (ECO) rule requirements. This may save employers ECO compliance costs of approximately $20-100 per employee.

Metro is proceeding to require local governments to reduce minimum parking requirements to not exceed the proposed parking ratios to enable participation in the Department's program.

Proposed Effective Date of the Rule

The proposed effective date of the Voluntary Maximum Parking Ratio Program will be upon filing with the Secretary of State, immediately following rule adoption by the Environmental Quality Commission (EQC) on July 12, 1996.

Proposal for Notification of Affected Persons

The Department plans to notify affected persons of the opportunity to voluntarily comply with the Voluntary maximum Parking Ratio Program through a series of informational and educational outreach strategies. The strategies include contacting state, county and local jurisdictions by mail, telephone and presentations at staff meetings. The outreach will be targeted towards staff who work directly with property owners during their design review and permitting process. Outreach will also include contacting public agencies such as the Oregon Economic Development Department who work with property owners that are considering locating in the Portland area and the private sector such as banks who are reviewing loans for new developments or re-developments.

Proposed Implementing Actions

The Department will prepare guidance documents for the location and design for new development and re-development so that travel demand can be met with the reduced amount of parking. Options include locating the development near light rail or other major transit routes, orienting buildings to improve pedestrian access, developing retail and employment centers within walking or bicycling distance of residential areas, and providing pedestrian and bicycle facilities sidewalks, bicycle paths and bicycle parking. The guidance documents will be made available upon request and by a mass mailing to the regulated community and others.

Proposed Training/Assistance Actions

There will not be a need for special staff training regarding the interpretation and implementation of the Voluntary Maximum Parking Ratio Rule. The rule will be implemented by the staff who developed the rule. Since this is a voluntary program, the Department does not anticipate the need for a full time staff person, but rather a part time staff person who will also be implementing the Employee Commute Options (ECO) program. The Department will provide training and technical assistance for the regulated community through informational and educational outreach strategies. This will be done on a one-on-one basis with property owners who would like to comply with ECO requirements by complying the Department's maximum parking ratio and by distributing maximum parking ratio guidance documents so other public agency's (city, county, state) staff can work with the regulated community through their design review and permitting process.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item H
July 12, 1996 Meeting

Title:

Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan and the Portland Metro Area Carbon Monoxide Maintenance Plan

Summary:

The Department has developed carbon monoxide and ozone maintenance plans which rely on careful management of industrial emissions. These plans rely on proposed industrial emission management rules which will ensure that the use of existing unused permitted emssions and new industrial growth of Volatile Organic Compounds (VOC) and Nitrogen Oxides (NOx) do not exceed the airshed allocation assigned to industry in the plan, which would jeopardize maintenance of the ozone standard. The following rules were developed as part of this industrial emission management strategy: (1) an Unused PSEL Donation Program, to encourage industrial VOC and NOx sources to relinquish unused permitted emissions; (2) an Ozone and CO Growth Allowance, for new major industrial sources and major modifications in the Portland Area to replace the current emission offset requirements; and (3) a Growth Allowance Allocation Program. A proposed backup program which was not supported by hearing testimony has been dropped based on expected sufficient PSEL donations being obtained which obviates its need.

Department Recommendation:

The Department recommends that the Commission adopt the Industrial Emission Management Rules as presented in Attachment A of this report, as an amendment to the federal Clean Air Act State Implementation Plan.

Report Author | Division Administrator | Director

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

State of Oregon
Department of Environmental Quality Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item H, July 12, 1996 EQC Meeting

Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan and the Portland Metro Area Carbon Monoxide Maintenance Plan

Background

On April 12, 1996, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would adopt new industrial emission management rules as part of the Portland Ozone and Carbon Monoxide Maintenance Plans.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on May 1, 1996. 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 April 17, 1996.

A Public Hearing was held May 22 and 23, 1996, with Lawrence Smith and Mike Grant serving as Presiding Officers. Written comment was received through May 24, 1996. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). 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 E.

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

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

Issue this Proposed Rulemaking Action is Intended to Address

The Portland metropolitan area has attained compliance with the federal Ozone and Carbon Monoxide (CO) health standards. Under the federal Clean Air Act, the Department must develop plans for maintenance of the ozone and CO standards for ten years. This will allow EPA to redesignate Portland as being in attainment with both standards, and will remove certain restrictions on industrial growth.

Accompanying the removal of these restrictions, however, is the need to include in the maintenance plans a new industrial emission management strategy to ensure that unused permitted emissions and other emissions of Volatile Organic Compounds (VOC) and Nitrogen Oxides (NOx) set aside for industrial growth are not used all at once. "Unused permitted emissions" refers to the difference between an industrial source's actual emissions and its permitted emissions or Plant Site Emission Limit (PSEL). Although current actual emissions are significantly below permitted levels, a significant increase in use of unused PSEL could jeopardize maintenance of the ozone standard during the interim years of the plan when other control strategies are phasing in. Additional criteria for managing emission allocations set aside for industrial growth under both the Ozone and CO plans are also needed.

The following rules (OAR 340-030-0700 through 340-030-0750) were developed as part of this industrial emission management strategy:

- Unused PSEL Donation Program, to encourage industrial VOC and NOx sources to return unused permitted emissions to the airshed;
- Unused PSEL Management Program, as a backup program to the Donation Program (if insufficient donations are achieved);
- Ozone and CO Growth Allowance, for new major industrial sources and major modifications in the Portland Area; and
- Growth Allowance Allocation Program, for allocating the industrial emissions provided in the Growth Allowance.

Relationship to Federal and Adjacent State Rules

As the Ozone Maintenance Plan is based on permitted industrial emissions, EPA requires that this level of emissions combined with other projected emissions will not exceed the airshed capacity identified as necessary to assure continued compliance with the standard.

Authority to Address the Issue

The Commission has authority to address this issue under ORS 468.020 and 468A.310(2).

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

The Department developed the Ozone and CO Maintenance Plans through an extensive public process covering a four-year period. The following industrial emission management support rules were developed in part through discussions with the Industrial Source Advisory Committee and Metro. In addition, an ad hoc industry group was consulted on the Unused PSEL Allocation Program, which will directly affect VOC and NOx sources with unused PSELs. This group also advised the Department on the preferred method for allocating industrial growth emissions.

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

1. Unused PSEL Donation Program.

Under the Portland ozone maintenance plan, if VOC and NOx industrial sources were to increase emissions to their full permitted level, this would exceed the airshed allocation assigned to industrial emissions in the plan and jeopardize maintenance of the ozone standard during the interim years of the plan when control strategies are phasing in. To address this issue and balance the maintenance plan, the Department initiated a program in the fall of 1995 asking major holders of unused VOC and NOx PSELs in the Portland area to permanently or temporarily donate unused PSEL. The Department favored this approach over a mandatory approach of restricting the use of PSELs during the life of the maintenance plan, which would essentially take away unused PSELs. Sources were offered the following incentives for their donation: (1) exemption from the Department's proposed Employee Commute Options (ECO) Program; (2) priority permit processing; and (3) priority access to the new industrial growth allowance for new and expanding industries. Approximately 3,700 tons of VOC and 500 tons of NOx in unused PSEL donations were needed to balance the maintenance plan.

2. Growth Allowance and Allocation Program

An industrial growth allowance for major new sources and major modifications to existing sources is being proposed for the ozone and CO maintenance plans. These growth allowances will allow elimination of the present emission offset requirements. To ensure that new VOC, NOx , and CO major sources and major modifications have a reasonable opportunity to receive part of a growth allowance, the following emissions allocation criteria are being proposed: (1) access on a first-come, first-served basis; (2) based on date of completed permit application; (3) unused PSEL donation sources have priority as a "tie-breaker" over non-donation sources, limited to an emissions allocation equal to or less than the tons donated; and (4) access to no more than 50% of the available growth

allowance or 10 tons per year by any source, whichever is greater, unless an exception is approved by the Environmental Quality Commission on a case-by-case basis. For the allocation of VOC and NOx emissions, only a portion of the total emissions in growth allowances can be allocated during the early years of the plan. This gradual allocation is needed to ensure attainment during the maintenance plan's interim years when ozone strategies are phasing in.

Summary of Significant Public Comment and Changes Proposed in Response

During the public comment period the Department received ten written comments; eight from industry representatives and two from environmental groups. At the public hearings, two industry representatives who submitted written comments provided oral testimony as well. The following summarizes public comment and Department responses, and is described in Attachment D. Rule changes made based on public comment are also summarized below, and are described in Attachment E.

1. Comment: The most significant comment was from industry and focused on eliminating the Unused PSEL Management rules as a backup to the Unused PSEL Donation Program. Industry opposed the provision requiring sources with unused PSELs to submit annual emission projections, and the provision that could require non-donation sources to obtain temporary offsets or make temporary reductions in their PSEL. In their opposition they cited the following reasons: (1) concerns about the confidentiality of submitting information which could provide a competitive advantage to other businesses; (2) delays and uncertainties in making business projections involving expansion and growth, in terms of not knowing year to year whether restrictions might be placed on a sources PSEL; and (3) basic objections to the Department's placing any restrictions on a source's use of its unused PSEL.

Department's response: Sufficient donations are expected to be identified through the Unused PSEL Donation Program to balance the maintenance plan. Therefore, the Department believes this backup program is not needed and has deleted OAR 340-030-0730. The Department is currently finalizing agreements with participating donation sources. It is anticipated that these agreements will allow the Department to balance the maintenance plan.

2. Comment: An industry representative stated that the Department should make every attempt to reach the original growth allowance goals for major new and modified industrial sources. This would allow existing industry to expand and new industry to develop, resulting in more high wage jobs.

Department's response: (1) The growth allowance in the proposed maintenance plan was set at the maximum level possible without unbalancing the plan, which would result in disapproval by EPA; (2) the original goals for the growth allowance were not reached in the proposal because of insufficient unused PSEL donations, and because it was deemed necessary to relax the stringency of other strategies (the Expanded Vehicle Inspection Boundary, Employee Commute Options Program, and Voluntary Parking Ratio Program); (3) based on expected new additional PSEL donations the

Department believes it is possible to restore the original growth allowance (1056 tons for VOC and 438 tons for NOx) in the final years of the maintenance plan (2004 to 2006), however, not enough new donations are expected at this time to increase the growth allowance during the interim years to the original goal; (4) when all of the donation agreements are completed the Department may be able to increase the growth allowance during the interim years or further increase the growth allowance during the final years of the plan, as a specific mechanism has been included in the maintenance plan to allow this without a SIP revision; and (5) the Department will continue to work to increase the growth allowance by using new emission reductions or shutdown credits that were not relied upon in the maintenance demonstration that might materialize in the future. The Department also notes that major new and modified industry may use offsets as they now do if the growth allowance is totally allocated in the future.

3. Comment: A representative from an environmental organization stated that the Department should eliminate the Growth Allowance and continue to require Lowest Achievable Emission Rate (LAER) technology and offsets for new major sources and major modifications.

Department's response: It is appropriate to replace LAER with Best Available Control Technology (BACT) upon redesignation of a nonattainment area to attainment. BACT is the level of control required for attainment areas under the Prevention of Significant Deterioration Program, and still provides a very high level of control for new major sources. If the emissions in the Growth Allowance are fully consumed, then offsets will again be required. In addition, if the area violates the ozone standard in the future, any remaining growth allowance will be eliminated, and LAER and offsets will be required again.

4. Comment: Two environmental organization representatives commented that the Department should simply take back unused PSELs rather than take a voluntary approach.

Department's response: A mandatory approach is not necessary given the success of the voluntary program. A voluntary approach is also more fair because it targets those sources that have no anticipated need for their unused PSEL.

5. Comment: An industry representative stated that under the Growth Allowance Allocation rule, the "tie-breaker" priority access to the growth allowance for unused PSEL donation sources is of little value, as the only benefit is when a donation and non-donation source both seek an emission allocation from the growth allowance at exactly the same time. Instead, the rule should be revised to either set aside a portion of the growth allowance for "major" donating sources (e.g. donations over 250 tons), or provide notice to major donators when requests (submittal of permit application) for emissions from the growth allowance are received.

Department's response: It is agreed that the "tie-breaker" provision is likely to provide benefit to donation sources only in rare cases. However, setting aside part of the growth allowance for major donating sources could unnecessarily tie-up the growth allowance, while providing notice to major

donating sources when each emission allocation request is made would be administratively burdensome for the Department. The Department believes a more equitable and reasonable approach would be to notify all donation sources when only 50 percent of the emissions in the growth allowance remain. The Department has amended OAR 340-030-0740 (2) to reflect this approach.

Although no direct comments were received on the provision related to "tie-breaker" priority use for donation sources "of up to 50 percent of any remaining growth allowance *or up to the amount of emissions donated, whichever is less"*(emphasis added) in OAR 340-030-0720 (2) (c), the Department has reconsidered this provision. The primary purposes of the growth allowance allocation rule is to give both donation and non-donation sources opportunity to receive up to 50 percent of the remaining growth allowance, while providing donation sources with priority access to the growth allowance as a "tie-breaker" over non-donation sources (in addition to the notification described above). Even though proposed rule language limited this "tie-breaker" provision to a growth allocation no greater the emissions donated, the Department believes this to be of little or no practical benefit and unnecessarily complicates the rule. In addition, over recent months the Department has negotiated donation agreements which are reflective of the proposed rule provisions, with the exception of this particular additional "tie-breaker" provision, and the Department feels compelled to honor these agreements. For these reasons the provisions referencing access to the growth allowance based on a source's original donation have been deleted from 340-030-0720 (2) (c) and 340-030-740 (1) (b).

6. Comment: An industry representative pointed out that under the Unused PSEL Donation Program the Department has the discretion to offer additional incentives to those listed in the rule.

Department's response: Certain considerations can be reflected in the donation agreement that are within the Department's rule authority. For example, if a donating source had previously submitted an emission reduction request and seeks expeditious Department approval of this request, it can make this a condition of the donation agreement. Such considerations do not represent additional "incentives" as such. The Department has amended OAR 340-030-0720 (2) by adding language to indicate that on a case-by-case basis, certain considerations within DEQ authority can be added to the donation agreement by the Department.

7. Comment: An industry representative recommended changing the provision in the proposed Growth Allowance Allocation rule which limits the emissions available to 50 percent for any one source, to allow 100 percent for any one source if needed.

Department's response: Section 340-030-0740 (1) (c) (A) under the Growth Allowance Allocation rule already allows the Commission to approve an emissions allocation greater than 50 percent on a case-by-case basis upon consideration of significant economic, employment or other benefits to the Portland area that could result from the proposed new major source or major modification.

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

The Unused PSEL Donation Program requires participating sources to enter into legally enforceable donation agreements with the Department, and to have their PSEL in their air permit permanently or temporarily adjusted. The Department will track the use of VOC and NOx emissions from the industrial growth allowance by new major sources and major modifications, allocate it according to the rule criteria, and notify all donation sources by mail if the growth allowance is reduced by 50 percent. The Department will be able to accommodate this additional workload as part of normal permitting work with existing staff.

Recommendation for Commission Action

The Department recommends that the Commission adopt the Industrial Emission Management Rules as presented in Attachment A of this report, as an amendment to the federal Clean Air Act State Implementation Plan.

Attachments

A. Rule (Amendments) Proposed for Adoption
   1. OAR 340-020-0047, State of Oregon Clean Air Implementation Plan
   2. Final Proposed Rules, OAR 340-030-0700 through 340-030-0740

B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice

C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
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 C)

Approved:

Section: John Kowalczyk

Division: John J. Russell for Langdon

Report Prepared By: Brian Finneran

Phone: 229-6278

Date Prepared: June 18, 1996

Attachment A 1

"State of Oregon Clean Air Act Implementation Plan"

340-020-0047

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal **Clean Air Act**, Public Law 88-206 as last amended by Public Law 101-549.

(2) Except as provided in section (3) of this rule, revisions to the SIP shall be made pursuant to the Commission's rule-making procedures in Division 11 of this Chapter and any other requirements contained in the SIP and shall be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department is authorized to submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 **CFR 51.102 (July 1, 1992)**.

[**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

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

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

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-1991; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992,f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & ef. 9-24-93; DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & ef. 3-21-94; DEQ 14-1994, f. & ef. 5-31-94; DEQ 15-1994, f. 6-8-94 & ef. 7-1-94; DEQ 22-1994, f. & ef. 10-14-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 25-1994, f. & ef. 11-2-94; DEQ 32-1994, f. & ef. 12-22-94; DEQ 1-1995, f. 1-10-95 & ef. 5-1-95; DEQ 4-1995, f. & ef. 2-17-95; DEQ 7-1995, f. & ef. 3-19-95; DEQ 9-1995, f. & ef. 5-1-95; DEQ 10-1995, f. & ef. 5-1-95; DEQ 12-1995, f. & ef. 5-25-95; DEQ 13-1995, f. & ef. 5-25-95; DEQ 14-1995, f. & ef. 5-25-95; DEQ 17-1995, f. & ef. 7-12-95; DEQ 22-1995, f. & ef. 10-6-95; DEQ 24-1995, f. & ef. 10-11-95

Attachment A2
Final Rule Proposed for Adoption

Division 30

Specific Air Pollution Control Rules for the Portland AQMA and Portland Metro Area

Industrial Emission Management Programs for the Portland Area

Application

340-030-0700

(1) OAR 340-030-0720 through 340-030-0740 apply to all sources that emit VOC and NOx within the boundaries of the Portland Air Quality Maintenance Area (AQMA), and to the following additional sources:
   (a) VOC and NOx sources with a PSEL of 100 tons per year or greater within 25 miles of the Portland AQMA are subject to OAR 340-030-0720;
   (b) VOC and NOx sources that are new major sources or major modifications within 30 kilometers of the Portland AQMA are subject to OAR 340-030-0730 and 340-030-0740.

(2) OAR 340-030-0730 and 340-030-0740 apply to new major sources and major modifications that emit CO within the Portland Metro Area, including new major sources and major modifications outside the Portland Metro Area that have a significant air quality impact within this area.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Definition of Terms

340-030-0710

(1) **"PSEL"** means the Plant Site Emission Limit of an individual air pollutant specified in an Air Contaminant Discharge Permit or Title V permit issued to a source by the Department, pursuant to OAR 340-028-1700 through 340-028-1770.

(2) **"Unused PSEL"** means the difference between a source's actual emissions and its permitted level or PSEL in 1990 or 1992, whichever is lower, as determined through the Department's emission inventory data.

(3) **"Unused PSEL Donation Source"** means any source that voluntarily returns to the Department unused PSEL, as part of the Unused PSEL Donation Program in OAR 340-030-0720.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Unused PSEL Donation Program
340-030-0720

(1) This program encourages owners or operators of VOC and NOx sources identified in OAR 340-030-0700 (1) (a) to donate unused PSEL to the Department. Under this program, donations can be either permanent or temporary.

(2) VOC sources donating at least 35 percent of their unused PSEL and NOx sources donating at least 50 percent of their unused PSEL will receive the following incentives and considerations from the Department for participating in this program:
   (a) Exemption from the Employee Commute Options (ECO) Program in OAR 340-030-0800 through 340-030-1080 for the duration of the Portland Ozone Maintenance plan;
   (b) Priority permit processing for any required air quality permit;
   (c) In accordance with OAR 340-030-0730 and 340-030-0740 (1), priority use of up to 50 percent of any remaining growth allowance. This applies only to sources making permanent donations, pursuant to section (3) of this rule; and
   (d) Other considerations may be added to the donation agreement on a case-by-case basis, consistent with the Department's rules and statutes.

(3) The Department will adjust the PSEL of sources providing permanent donations to reflect the emissions donated. Permanent donations will result in adjustment to the source's baseline emission rate and PSEL, consistent with the definition of "major modification" under OAR 340-028-0110 and changes to PSELs required by rule under OAR 340-028-1020.

(4) Temporary donations of unused PSEL must be for a minimum of five years for VOC and four years for NOx. The Department will adjust the PSEL of sources providing temporary donations to reflect the time period and emissions donated. Any source that desires a return of any temporary donation before the end of the donation period must obtain written approval from the Department. Approval will be granted only if the Department determines that excess temporary donations exist. Such approval will disqualify the source from receiving the incentives listed in section (2) of this rule.

(5) Sources participating in this program must enter into a donation agreement with the Department that identifies the commitments of both parties. Any such agreement is legally binding and enforceable.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Industrial Growth Allowances

340-030-0730

(1) This rule establishes industrial growth allowances for sources identified in OAR 340-030-0700 (1) (b) and (2). The amount of each growth allowance that is available is defined in the **State Implementation Plan** and is on file with the Department.

(2) The owner or operator of a proposed new major source or major modification emitting VOCs, NOx, or CO may obtain a portion of the respective growth allowance pursuant to OAR 340-030-0740.

(3) If no emissions remain in the respective growth allowance, the owner or operator of the proposed major source or major modification shall provide offsets for CO emissions at a 1 to 1 ratio, and for VOC and NOx emissions at a 1.1 to 1 ratio (i.e., demonstrate a 10% new reduction).

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

Industrial Growth Allowance Allocation

340-030-0740

(1) The owner or operator of a proposed new major source or major modification emitting VOCs, NOx, or CO as identified in OAR 340-030-0700 (1) (b) and (2), may obtain a portion of any remaining emissions in the respective growth allowance based on the following conditions:

- (a) Access is on a first-come-first-served basis, based on the submittal date of a complete permit application;
- (b) Unused PSEL donation sources that meet the donation criteria specified in OAR 340-030-0720 (2) have priority access to their respective growth allowance as a "tie-breaker" over non-donation sources; and
- (c) No single source may receive an emissions allocation of more than 50% of any remaining growth allowance, or up to 10 tons per year, whichever is greater. On a case-by-case basis, the Environmental Quality Commission may approve an emissions allocation of greater than 50 % upon consideration of the following:
  - (A) Information submitted by the source to the Department justifying its request for exceeding the 50% emissions allocation, based on significant economic, employment, or other benefits to the Portland area that will result from the proposed new major source or major modification;
  - (B) Information provided by the Department on other known new major sources or major modifications seeking an emissions allocation from the same growth allowance; and
  - (C) Other relevant information submitted by the source or the Department.

(2) To avoid jeopardizing maintenance of the ozone standard during the interim years of the plan, the Department will allocate only a portion of the VOC and NOx growth allowances each year. The Department will track the use of emissions from the growth allowances and will notify unused PSEL donation sources by mail if either growth allowance is reduced by 50 percent. The amount of the growth allowance that can be allocated each year is identified in Section 4.50 of the **State Implementation Plan (SIP)**, which is on file with the Department.

(3) The amount of the CO growth allowance that can be allocated is identified in Section 4.51 of the SIP on file with the Department.

[**NOTE:** These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047]

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter: **340-020-0047, 340-018-0030, 340-022-0440, 340-024-0301, 340-030-0700 through -030-0750, 340-030-0800 through 1090, 340-030-1100 through 1200, 340-031-0520 through -031-0530**

DATE:	TIME:	LOCATION:
May 22, 1996	10:00 a.m.	Oregon Department of Environmental Quality Headquarters 811 SW Sixth Avenue, 3rd Floor (Room 3A) Portland (Question and answer session from 9:00 to 10:00)
May 22, 1996	7:00 p.m.	State Office Building, Room 140 800 NE Oregon Portland (Question and answer session from 6:00 to 7:00)
May 23, 1996	7:00 p.m.	City of Tigard Water Department Auditorium 8777 SW Burnham Street Tigard, Oregon (Question and answer session from 6:00 to 7:00)

HEARINGS OFFICER(s): A Professional Hearings Officer

STATUTORY AUTHORITY: or OTHER AUTHORITY: ORS 468.020, ORS 468A.035

STATUTES IMPLEMENTED: ORS 468.065, ORS 468A.310, ORS 468A.363, ORS 468.390, ORS 468A.405, ORS 468A.420

ADOPT: 340-030-0700 through -030-0750, 340-030-0800 through 1090, 340-030-1100 through 1200

AMEND: OAR 340-020-0047, OAR 340-018-0030, OAR 340-022-0460, OAR 340-24-0301, OAR 340-031-0520 through 340-031-0530

☑ This hearing notice is the initial notice given for this rulemaking action.

☑ Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY: The Department of Environmental Quality (DEQ) is proposing that the Environmental Quality Commission adopt plans to ensure that the Portland area

does not experience a recurrence of violations of the federal air quality standards for carbon monoxide and ozone. These plans and supporting rules, if adopted, will be submitted to the US Environmental Protection Agency (EPA) as revisions to the State Implementation Plan, which is a requirement of the Clean Air Act. If approved by EPA, the Portland area would be redesignated from a "nonattainment area" to an "attainment area" for carbon monoxide and ozone. The plans and supporting rules demonstrate how the Portland area will maintain compliance with the federal ambient air standards for carbon monoxide and ozone over the next ten years despite expected unprecedented growth in the area. Existing attainment plans for carbon monoxide and ozone, which will be replaced by these maintenance plans, are proposed to be repealed.

Both the carbon monoxide and ozone maintenance plans include an emission inventory, an enhanced motor vehicle inspection program, a revision to the motor vehicle inspection boundary, and transportation control measures to be implemented by Metro. Additionally, the carbon monoxide maintenance plan includes a parking management program for the Central City that will be implemented by the City of Portland. Comments are being solicited on options for continuing or repealing the current oxygenated fuel program under the carbon monoxide maintenance plan. The ozone maintenance plan includes an Employee Commute Options Program, a Voluntary Parking Ratio Program, an Industrial Emission Management Program, existing Rules for Auto Body Refinishing, Paints, and various Consumer Products, and existing Stage II Vapor Recovery Rules for gasoline service stations.

LAST DATE FOR COMMENT: May 24, 1996, 5:00 p.m.

AGENCY RULES COORDINATOR: Susan M. Greco, (503) 229-5213

AGENCY CONTACT FOR THIS PROPOSAL: Andy Ginsburg (Ozone Maintenance Plan and related rules) (503) 229-5581
Howard Harris (CO Maintenance Plan and related rules) (503) 229-6086

ADDRESS: 811 SW Sixth Avenue
Portland, Oregon 97204

TELEPHONE: 1-800-452-4011
(503) 229-5675 (FAX)

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.

Susan M. Greco
Signature

4/15/96
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Industrial Emission Management Strategy for the Portland AQMA Ozone Maintenance Plan and Portland Metro Area Carbon Monoxide Maintenance Plan

Fiscal and Economic Impact Statement

Introduction

The Portland metropolitan area has attained compliance with the federal Ozone and Carbon Monoxide (CO) health standards. Under the federal Clean Air Act, the Department must develop plans for maintenance of the ozone and CO standards for ten years. This will allow EPA to redesignate Portland as being in attainment with both standards, and will remove certain restrictions on industrial growth. Accompanying the removal of these restrictions, however, is the need to include in the maintenance plans new VOC and NOx industrial emission management strategies to ensure that unused permitted emissions and other emissions set aside for industrial growth are not used all at once and cause a violation of the ozone standard.

"Unused permitted emissions" or Plant Site Emission Limits (PSEL) refers to an industrial source that is emitting at a level lower than its PSEL (i.e., actual emissions are lower than permitted). Under the Portland ozone maintenance plan, if VOC and NOx industrial sources were to increase to their full permitted level, this would exceed the airshed allocation for industry in the plan and jeopardize maintenance of the ozone standard during the interim years of the plan when control strategies are phasing in.

In addition, as part of the ozone and CO maintenance plans, industrial growth allowances will be established for new and expanding industries. However, if the emissions in the VOC and NOx growth allowances were allocated all at once, this would also exceed airshed allocation and jeopardize maintenance of the ozone standard during the interim years.

Therefore, in developing a strategy to address these potential problems, three new industrial emission management support rules are being proposed by the Department: (1) a Voluntary Unused PSEL Donation Program; (2) an Unused PSEL Management Backup Program; (3) an industrial Growth Allowance and Allocation Program.

The Voluntary Unused PSEL Donation Program will encourage VOC and NOx sources in the Portland area that have actual emissions significantly below their PSEL to donate their unused PSEL to balance the Portland ozone maintenance plan. Two target donation goals have been set of 1,000 tons per year of VOC and 500 tons per year of NOx. Incentives to participate include exemption from the Department's proposed Employee Commute Options (ECO) Program, priority permit processing, and priority use of an industrial growth allowance for new and expanding industries.

The Unused PSEL Management Backup Program is needed if the Voluntary Unused Donation Program does not achieve its VOC and NOx donation goals. This program will ensure that all of the remaining unused PSELs are not used all at once and cause the industrial airshed allocation to be exceeded. Under this program sources would report projected actual VOC and NOx emissions for next 12 month period, and the Department would track projected actual emissions each year. If projected annual emissions indicate the airshed allocation will be exceeded, sources will be required to refine their projections, and if necessary the Department would temporarily allocate emissions from the VOC or NOx Growth Allowance to cover this exceedance. If additional emissions are still needed, as a last resort the Department would require non-PSEL donating sources to purchase temporary emission offsets or implement other equivalent measures to keep emissions within acceptable levels.

The Industrial Growth Allowance and Allocation Program will establish a VOC, NOx, and CO growth allowance for major new and expanding industries, eliminating the need for emission offsets. To ensure that these sources have a reasonable opportunity to receive part of a growth allowance, the following emissions allocation criteria are proposed: (1) access on a first-come, first-served basis; (2) based on date of completed permit application; (3) PSEL donation sources have priority as a "tie-breaker" over non-donation sources, limited to an emissions allocation equal to or less than the tons donated; and (4) access to no more than 50 percent of the available growth allowance or 10 tons per year by any source, whichever is greater, unless an exception is approved by the Environmental Quality Commission on a case-by-case basis. For major new and expanding CO sources, only criteria (1) (2) and (4) apply. Also under this program, only a portion of the total emissions in the VOC and NOx growth allowances can be allocated during the early years of the plan. This gradual allocation is needed to ensure attainment during the maintenance plan's interim years when ozone strategies are phasing in.

General Public

There is no fiscal and/or economic impact on the general public.

Small Business

The three new programs being proposed by the Department are more likely to affect large businesses or industrial sources in the Portland area that emit VOC or NOx than small businesses or

industrial sources. In general, large sources have a greater amount of unused PSEL than small sources and are, therefore, more likely to participate in the Voluntary Unused PSEL Donation Program described below. Expanding large sources are also more likely to require more emissions out of the growth allocation than small sources. Overall, the costs outlined below for large businesses will be very similar for small businesses who are affected.

Large Business

1. The Voluntary Unused PSEL Donation Program.

VOC and NOx sources opting to participate in this program will be donating unused PSELs that are not needed or tradable, and therefore of no value to them. Sources participating will benefit by being exempted from the Department's proposed ECO Program, which will result in cost savings in the range of $20 to $100 per employee per year for these sources.* Other incentives associated with this donation program are of an intangible nature and cannot be estimated.

2. The Unused PSEL Management Backup Program.

This program will go into effect only if the VOC and NOx target donation goals under the Voluntary PSEL Donation Program are not met. Industrial sources of VOC or NOx in the Portland area which have 15 percent or more unused PSEL (out of their total PSEL) would be affected by this proposed rule. These sources would face minor administrative costs of submiting annual emission projections to the Department. Because sources already are required to submit actual emissions to the Department in an annual permit report, submitting these projections along with their annual reports should have no noticeable economic impact.

As described above, non-PSEL donation sources could be required to purchase temporary emission offsets, or implement other equivalent measures, if projected actual emissions exceed airshed allocation. The Department believes the probability of this occurring is very low. The estimated costs for temporary emission offsets are approximately $4,000 per ton, which is based on costs associated with a vehicle scrappage program (assuming $500 per car). Similar costs would be expected for trading with other sources that may have additional amounts of unused PSEL they are willing to sell. If permanent offsets are purchased, they would be in the range of $5,000 to $10,000 per ton.

3. The Growth Allowance Allocation Program.

New major VOC, NOx, or CO sources, as well as existing sources considering major modifications, will have the opportunity to obtain an emissions allocation from the industrial

* Additional fiscal impact information is provided in the Fiscal and Economic Impact Statement, Attachment A of the Department's Memorandum to Interested and Affected Public on the Proposed Employees Commute Options Program, April 17, 1996.

growth allowance established under the Portland Ozone and CO maintenance plans. The growth allowances will reduce the likelihood that these sources will need emission offsets, which is a savings of approximately $5,000 to $10,000 per ton.

Local Governments

There is no fiscal and/or economic impact on local governments.

State Agencies

The Voluntary Unused PSEL Donation Program will result in some workload increase for the Department due to the need to adjust each donation source's Air Contaminant Discharge Permit to reflect a permanent reduction in its PSEL. Additional workload will be associated with the memorandum of agreement each donating source must enter into with the Department in order to make the commitments of both parties legal and enforceable. The Department believes it can accommodate this increased workload with existing staff.

If the VOC and NOx target donation goals under the Voluntary PSEL Donation Program are not reached, then the Unused PSEL Management Backup Program would go into effect. The Department would then notify 44 VOC sources and 20 NOx sources to submit annual projections of actual emissions, and would review and track these projections each year. The Department anticipates that the increased workload associated with reviewing emission projections can be accommodated with existing staff.

The Department does not anticipate any significant workload increase from the Growth Allowance Allocation Program.

No other state agencies will be affected by these proposed rules.

Assumptions

The comparative highest economic impact from these proposed programs is from the Unused PSEL Management Backup Program, if the consumption of unused PSEL occurs at a rate greater than can be accommodated in the airshed, and if sources must obtain temporary offsets or take other action. The Department believes the probability of unused PSEL consumption occurring at such an accelerated rate is very low. Implementation of this program is predicated on a shortfall in the Voluntary Unused PSEL Donation Program in achieving the donation goals for VOC and NOx, which the Department is optimistic will be met.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Industrial Emission Management Strategy for the Portland AQMA Ozone Maintenance Plan and Portland Metro Area Carbon Monoxide Maintenance Plan

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Portland metropolitan area has attained compliance with the federal Ozone and Carbon Monoxide (CO) health standards. As required under the federal Clean Air Act, the Department has developed plans for maintenance of the ozone and CO standards for ten years, which includes the following industrial emission management support rules: (1) a Voluntary Unused PSEL Donation Program; (2) an Unused PSEL Management Backup Program; (3) an industrial Growth Allowance and Allocation Program.

1. The Voluntary Unused PSEL Donation Program.

"Unused permitted emissions" or Plant Site Emission Limits (PSEL) refers to an industrial source that is emitting at a level lower than its PSEL (i.e., actual emissions are lower than permitted). Under the Portland ozone maintenance plan, if VOC and NOx industrial sources were to increase to their full permitted level, this would exceed the airshed allocation assigned to industrial emissions in the plan and jeopardize maintenance of the ozone standard during the interim years of the plan when control strategies are phasing in. VOC and NOx sources in the Portland area which have actual emissions significantly below their PSEL are being encouraged to donate their unused PSEL to balance the Portland ozone maintenance plan. Two target donation goals have been set of 1,000 tons per year of VOC and 500 tons per year of NOx. Incentives to participate include exemption from the Department's proposed Employee Commute Options (ECO) Program, priority permit processing, and priority use of an industrial growth allowance for new and expanding industries.

2. Unused PSEL Management Backup Program

Should the Voluntary Unused Donation Program not achieve the VOC and NOx donation goals, a management program is needed to ensure that all of the remaining unused PSELs are not used all at once and cause the industrial airshed allocation to be exceeded. The Department has developed a management program as a backup to the donation program, that would give maximum flexibility for use of unused PSELs while meeting EPA enforceability requirements. Under the Unused PSEL Management Backup Program, sources would report projected actual VOC and NOx emissions for next 12 month period, and the Department would track projected actual emissions each year and compare to the industrial airshed allocation. If projected annual emissions indicate the airshed allocation will be exceeded, sources will be required to refine their projections. If necessary the Department will temporarily allocate emissions from the VOC or NOx Growth Allowance to cover this exceedance. If any additional emissions are still needed, non-PSEL donating sources would then be required to purchase temporary emission offsets or implement other equivalent measures that would keep emissions within acceptable levels.

3. Growth Allowance and Allocation Program

Both the ozone and CO maintenance plans will include a growth allowance for major new and expanding industries. These growth allowances will allow the present emission offset requirements to be eliminated. To ensure that new VOC, NOx , and CO major sources and major modifications have a reasonable opportunity to receive part of a growth allowance, the following emissions allocation criteria are being proposed: (1) access on a first-come, first-served basis; (2) based on date of completed permit application; (3) PSEL donation sources have priority as a "tie-breaker" over non-donation sources, limited to an emissions allocation equal to or less than the tons donated; and (4) access to no more than 50% of the available growth allowance or 10 tons per year by any source, whichever is greater, unless an exception is approved by the Environmental Quality Commission on a case-by-case basis. For major new and expanding CO sources, only criteria (1) (2) and (4) apply. Also under this program, only a portion of the total emissions in the VOC and NOx growth allowances can be allocated during the early years of the plan. This gradual allocation is needed to ensure attainment during the maintenance plan's interim years when ozone strategies are phasing in.

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?

1. **Yes_X_ No____**

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

The Department's Air Contaminant Discharge Permit (ACDP) program applies to air contaminant sources and modification of sources that emit significant air contaminants. It has been previously determined through the DEQ SAC program that the ACDP program does affect land

previously determined through the DEQ SAC program that the ACDP program does affect land use. These proposed rules involve sources which have been issued ACDPs and therefore affect land use.

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):

Before DEQ issues an ACDP, the applicant must submit a Land Use Compatibility Statement which contains the local government's determination of land use compatibility with the permit application.

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

N/A

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

N/A

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

N/A

Gregory A. Green
Division

Intergovernmental Coord.

8/9/96
Date

Questions to be Answered to Reveal
Potential Justification for Differing from Federal Requirements.
for
Industrial Emission Management Strategy for the Portland AQMA Ozone Maintenance Plan and Portland Metro Area Carbon Monoxide Maintenance Plan

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

EPA guidance for ozone maintenance plans requires they be consistent with New Source Review rules. Since Department's NSR rules are based on permitted (or allowable) emissions rather than actual emissions, plan must be based on permitted.

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

Not applicable. EPA allows states flexibility to base maintenance plan on actuals or allowables, per comment no.1 above.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

The applicable federal requirements do not specifically address issues that are of concern to Oregon. The federal requirements give each state the flexibility to adopt emission reduction strategies that are best suited for that area.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The proposed industrial management support rules will ensure that the ozone air quality standard is maintained, and will allow EPA to redesignate the Portland area to attainment. Once the area is redesignated, the existing stringent control requirements for major new and expanding industry will be replaced with less stringent and less expensive control requirements.

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

There is no deadline in the Clean Air Act for submitting a maintenance plan. However, the Legislature directed DEQ to submit an approvable ozone maintenance plan to EPA as soon as possible so that the area can be redesignated to attainment and impediments to industrial growth imposed in the Clean Air Act can be removed. The plan must address the management of increases in actual emissions from industrial sources.

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

The rate of ozone formation is dependent on temperature and other weather conditions. The maintenance plan is designed to address expected weather fluctuations over a 10-year period but does not include surplus VOC emission reductions (there is a slight surplus NO_x emission reduction). This assumes use of unused PSELs will stay within historical growth rates and not increase to a level exceeding the available airshed space. The maintenance plan is also designed to accommodate projected growth. Emission forecasts are based on growth rates for all emission source categories, and a growth allowance is included for major new and modified industry. Further, the maintenance plan includes a contingency plan as required by the Clean Air Act to address unforeseen growth in emissions and other uncertainties.

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

The ozone maintenance plan is equitable in that it includes requirements that will reduce emissions from all four major source categories (i.e. motor vehicles, nonroad engines, area sources and industry). These support rules will manage industrial emissions in an equitable manner by: (1) providing incentives for VOC and NOx sources to donate unused PSEL, thereby eliminating the need for further unused PSEL management, (2) provide a mechanisms for tracking unused PSEL consumption, and (3) provide emissions for industrial growth and an equitable process for allocating these emissions.

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

If these support rules are not adopted, the Department could not demonstrate continued attainment in the ozone maintenance plan. This would invalidate the plan, and could eventually lead to a future violation of the ozone standard. A new attainment plan would then be required including prescriptive federal control requirements on existing industry and other sources. In addition, Metro could experience difficulty demonstrating conformity of their transportation plan with air quality plans. If conformity can not be demonstrated, Metro would not be eligible to receive federal transportation funds.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

These support rules differ from federal requirements in that they contain reporting provisions which would require sources to submit annual emission projections to allow the Department to track the use of unused PSELs. These reporting provision were developed in lieu of a more restrictive approach of reducing PSELs to actual emissions for VOC and NOx sources with significant amounts of unused PSEL. In addition, by encouraging voluntary donation of unused PSEL from these sources, the emission management requirements regarding unused PSEL may be eliminated if sufficient donations are received.

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

Yes. Demonstrated technology exists to comply with the industrial emission management rules being proposed.

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

The proposed ozone maintenance plan is designed to reduce air pollution. As part of this plan, these industrial emission management rules contain provisions addressing the possibility of the airshed allocation for industry being exceeded by increases in actual emissions, and the need for incentives for industrial sources to donate unused permitted emissions, which is a cost-effective means of reducing air pollution.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: April 17, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan and the Portland Metro Area Carbon Monoxide Maintenance Plan

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules and rule amendments. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal contains the following rules as part of the Portland Air Quality Maintenance Area (AQMA) Ozone Maintenance Plan and Portland Metro Area Carbon Monoxide (CO) Maintenance Plans:

1. A Voluntary Unused Plant Site Emission Limit (PSEL) Donation Program for industrial sources of Volatile Organic Compounds (VOC) and Nitrogen Oxides (NOx);

2. An Unused PSEL Management Backup Program for ensuring that potential use of unused VOC and NOx permitted emissions does not jeopardize continued attainment of the ozone standard during intermediate years of the plan. (This program will not go into effect if the target donation goal in the Voluntary Unused PSEL Donation Program is met.); and

3. An industrial VOC, NOx, and CO Growth Allowance and Allocation Program for new major sources and major modifications in the Portland AQMA and Metro Area, which eliminates the current need to purchase emission offsets.

These amendments, if adopted, will be submitted to the Environmental Protection Agency (EPA) as a revision to the Oregon Clean Air Act Implementation Plan.

The Department has the statutory authority to address this issue under ORS 468.020 and ORS 468A.310(2).

What's in this Package?

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

Attachment A: The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335).

Memo To: Interested and Affected Public
April 17, 1996

Attachment B:	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
Attachment C:	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
Attachment D:	The actual language of the proposed rule.

Hearing Process Details

You are invited to review these materials and present written or oral comments. Three public hearings will be held, one during the day and the other two during evening hours as follows:

Date: Wednesday, May 22, 1996
Time: 10:00 a.m. (Question and answer session from 9:00 a.m. to 10:00 a.m.)
Place: Oregon Department of Environmental Quality Headquarters
811 SW 6th Ave., 3rd Floor (Room 3A)
Portland, OR

Date: Wednesday, May 22, 1996
Time: 7:00 p.m. (Question and answer session from 6:00 p.m. to 7:00 p.m.)
Place: State Office Building, Room 140
800 NE Oregon
Portland, OR

Date: Thursday, May 23, 1996
Time: 7:00 p.m. (Question and answer session from 6:00 p.m. to 7:00 p.m.)
Place: City of Tigard Water Department Auditorium
8777 SW Burnham St.
Tigard, OR

Deadline for Receipt of Written Comments: May 24, 1996, 5:00 p.m.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for receipt of comments has passed. Thus if you wish your comments to be considered by the Department in the development of these rules, your comments must be received before the close of the comment period. The Department recommends that comments be submitted as early

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

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

What Happens After the Public Comment Period Closes

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is July 12, 1996. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented **during** the hearing process so that full consideration by the Department may occur before a final recommendation is made. In accordance with ORS 183.335(13), no comments can be accepted by either the EQC or the Department after the public comment period has closed. Thus the EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department before the close of the public comment period so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

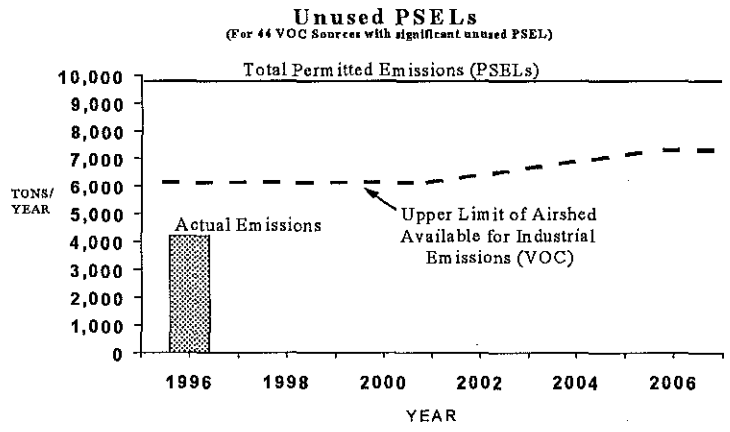
The Portland metropolitan area has attained compliance with the federal Ozone and Carbon Monoxide (CO) health standards, but rapid population and traffic growth will result in future violations unless additional control measures are implemented. The Department has developed maintenance plans for ozone and CO through an extensive public process covering a four-year

period. These plans provide for maintenance of the ozone and CO standard for ten years, and will allow EPA to officially redesignate the region as an "attainment area" for both pollutants. The maintenance plan and redesignation will assure that public health is protected, remove Clean Air Act impediments to industrial growth, and shield the Portland metropolitan area from Clean Air Act sanctions on federal transportation funds.

No new VOC/NOx emission *reduction* strategies have been included in the ozone maintenance plan for industrial sources* because emissions from these sources were reduced under the original attainment plan and new controls would not be cost effective. However, new emission *management* strategies are needed because the use of unused permitted emissions could cause a violation of the ozone standard. Additionally, criteria for managing emissions set aside for industrial growth under both the Ozone and CO plans are needed.

"Unused permitted emissions" refers to the difference between an industrial source's actual emissions and its permitted or plant site emission level (PSEL). Under the Portland ozone maintenance plan, if VOC and NOx industrial sources were to increase to their full permitted level, this would exceed the airshed allocation for industrial emissions in the plan and jeopardize maintenance of the ozone standard during the interim years of the plan when control strategies are phasing in. Figure 1 below indicates the level to which permitted emissions must be limited in order to stay within the airshed allocation level for the industrial sector.

Figure 1



* Except for anticipated Clean Air Act Reasonable Available Control Technology (RACT) updates.

In addition, as part of the ozone and CO maintenance plans, industrial growth allowances will be established for major new and expanding industries. However, if the emissions in the VOC and NOx growth allowances were allocated all at once, this would also exceed the airshed allocation for industry and jeopardize maintenance of the ozone standard during the interim years of the plan.

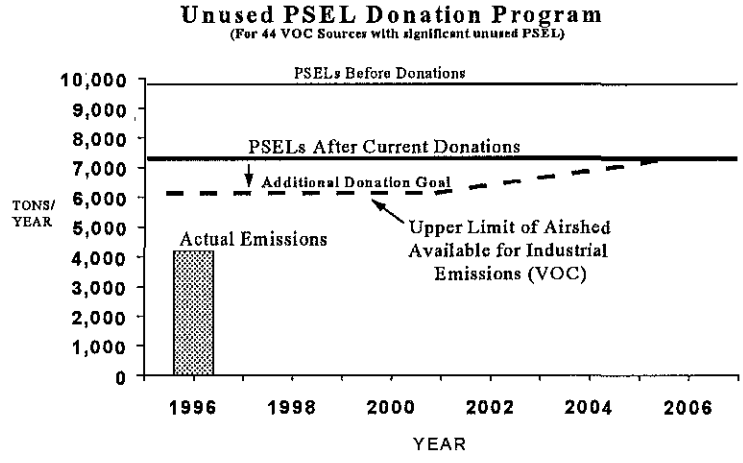
How was the rule developed?

The Department developed the Ozone and CO Maintenance Plans through an extensive public process covering a four-year period. The following industrial emission management support rules were developed in part through discussions with the Industrial Source Advisory Committee and Metro. In addition, an ad hoc industry group was consulted on the Unused PSEL Allocation Program, which will directly affect VOC and NOx sources with unused PSELs. This group also advised the Department on the preferred method for allocating industrial growth emissions.

1. Voluntary Unused PSEL Donation Program

To meet EPA requirements and demonstrate maintenance, industrial emissions must be limited to the airshed allocation level identified in the maintenance plan, as shown in Figure 1. In lieu of a regulatory program, a voluntary donation program to recover unused permitted emissions was

Figure 2

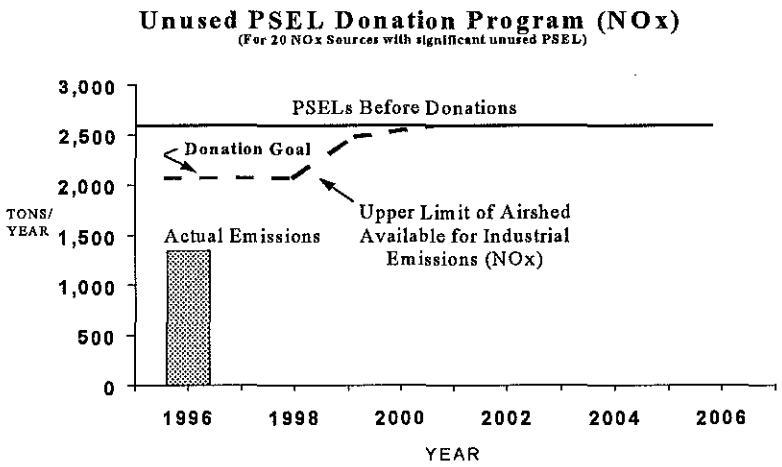


conceived. The Department asked major holders of unused VOC and NOx PSELs in the Portland area to permanently donate at least 60 tons of their unused PSEL. Incentives to participate were

offered to these sources which included exemption from the Department's proposed Employee Commute Options (ECO) Program, priority permit processing, and priority use of an industrial growth allowance for new and expanding industries.

As Figure 2 indicates, industry already has donated a significant amount (approximately 2,700 tons VOC) of unused PSEL. The Department is asking additional sources to donate approximately 1,000 tons to stay within the available airshed allocation for industry during the interim years of the plan. If this additional tonnage is donated, along with 500 tons of NOx (see Figure 3), the Unused PSEL Management Backup Program described below will not be needed.

Figure 3



2. Backup Program for Management of Unused PSELs

If the Voluntary Unused Donation Program does not achieve the VOC and NOx donation targets, a backup program is needed to ensure that the remaining unused permitted emissions are not used all at once, causing the airshed allocation to be exceeded. As Figure 2 indicates, use of unused PSEL would have to increase significantly to exceed airshed allocation. Based on recent trends in industrial growth in the Portland metropolitan area, there is no indication this will occur. However, the maintenance plan must provide legal assurances to prevent this from happening.

The Department has developed a program to manage unused PSEL during the interim years that would give maximum flexibility while meeting EPA's enforceability requirements. This program would try to keep the industrial emissions under the airshed allocation level by tracking projected use and borrowing emissions from the industrial growth allowance or using any new emission reductions

that were not relied upon in the maintenance plan. As a last resort, non-donating sources would be required to purchase temporary emission offsets or implement other equivalent measures that would keep emissions within acceptable levels.

3. Industrial Growth Allowances and Allocation Program

Both the ozone and CO maintenance plans will include a growth allowance for major new and expanding industries. These growth allowances will allow the present emission offset requirements to be reduced or eliminated. The Department expects the total growth allowance will be approximately 900 tons per year for VOC and 450 tons per year for NOx.* The CO growth allowance will be 2,475 tons. During the 10-year life of the ozone maintenance plan, additional permanent VOC and NOx donations of unused PSEL and other emission reductions not required by the plan that become available will be used to increase these growth allowances.

To ensure that new VOC, NOx , and CO major sources and major modifications have a reasonable opportunity to receive part of a growth allowance, the following emissions allocation criteria are proposed: (1) access on a first-come, first-served basis; (2) based on date of completed permit application; (3) PSEL donation sources have priority as a "tie-breaker" over non-donation sources, limited to an emissions allocation equal to or less than the tons donated; and (4) access to no more than 50 percent of the available growth allowance or 10 tons per year by any source, whichever is greater, unless an exception is approved by the EQC on a case-by-case basis. For major new and expanding CO sources, only criteria (1) (2) and (4) apply.

Also under this program, only a portion of the total emissions in the VOC and NOx growth allowances can be allocated during the early years of the plan; about 35 percent will be available in the first three years of the plan, about 20 percent will be added in years 4 to 5, another 20 percent will be added in years 6 to 7, and the final 25 percent will be added in the last three years. This gradual allocation is needed to ensure attainment during the maintenance plan's interim years when ozone strategies are phasing in. Such an allocation approach is not needed for the CO growth allowance due to additional airshed availability for industrial emissions in the CO maintenance plan.

Whom does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

* The VOC growth margin originally projected under the Portland Ozone Maintenance Plan was 1060 tons per year. The NOx growth margin was projected at 638 tons per year.

In terms of the regulated community, these support rules will have the following effects:

1. Voluntary Unused PSEL Donation Program

VOC and NOx sources that participate in the donation program will receive incentives such as exemption from the Department's ECO Program, which may result in cost savings in the range of $20 to $100 per employee per year. Other cost savings may be associated with priority permit processing and priority use of the industrial growth allowance for new and expanding industries. Donation sources will also benefit from being exempted from most parts of the unused PSEL Management Backup Program.

2. Unused PSEL Management Backup Program

The proposed Unused PSEL Management Backup Program, if implemented, will affect VOC or NOx sources having 15 percent or more unused PSEL (out of their total PSEL). These sources will be required to submit 12 month projections of actual emissions. They also may need to refine and resubmit these projections if notified by the Department. Since these sources already are required to submit actual emissions to the Department in an annual permit report, the administrative costs of submitting these projections should be minor.

As a last resort, the Department would require non-donating sources to purchase temporary emission offsets or implement other equivalent measures to keep emissions within acceptable levels. The anticipated costs for temporary emission offsets are approximately $4,000 per ton, which is based on costs associated with an older, high-polluting vehicle scrappage program (assuming $500 per car). Similar costs would be expected for trading with other sources that may have additional amounts of unused PSEL they are willing to sell. This compares to $5,000 to $10,000 per ton for permanent emissions offsets, such as installation of pollution control equipment on industrial processes.

These projections would be considered by the Department to be a "best estimate" of future actual emissions. Failure to accurately project emissions will not be basis for enforcement action. However, sources not submitting a 12 month emission projections or refined projections when requested by the Department would be subject to enforcement action.

3. Industrial Growth Allowances and Allocation Program

Major new and expanding VOC, NOx, and CO sources will benefit from the establishment of industrial growth allowances, which will eliminate the current emission offset requirements. This

represents a cost savings of approximately $5,000 to $10,000 per ton. These sources will need to meet the "first-come-first served" and other criteria when requesting emissions from the growth allowance. Additionally, because it will take time for the growth allowance to build up as other control strategies are phased in, VOC and NOx sources as a whole will have access to only a portion of the total growth allowance during the interim years of the plan.

How will the rule be implemented?

The Voluntary Unused PSEL Donation Program is on-going and requires participating sources to enter into a memorandum of agreement with the Department and have their PSEL permanently or temporarily reduced. If the donation goals are reached, the Unused PSEL Management Backup Program will not be implemented.

If the donation goals are not reached, the Department will notify in writing VOC and NOx sources meeting the applicability criteria of the Unused PSEL Management Backup Program to submit written emission projections with their annual report, which the Department will track and compare to the industrial airshed allocation in the ozone maintenance plan. The Department will also track use of the industrial growth allowance and allocate it according to the rule criteria.

Are there time constraints?

These industrial emission management support rules are a key component of the Portland Ozone and Carbon Monoxide Maintenance Plans. All components of these maintenance plans, including these support rules, are scheduled for simultaneous adoption at the EQC meeting on July 12, 1996. Failure to adopt these rules in a timely manner may lead to delay or disapproval of the maintenance plans.

Contact for more information

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

Brian Finneran
229-6278

Attachment C

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Lawrence Smith, ALJ, Employment Department
Mike Grant, ALJ, Public Utility Commission

Subject: Presiding Officer's Report for Rulemaking Hearing, Attachment C

Hearings Date and Time: May 22, 1996, beginning at 10:00 am.
May 22, 1996, beginning at 7 pm.
May 23, 1996, beginning at 7 pm.

Hearings Location: Room 3A, DEQ Headquarters, 811 SW Sixth Avenue, Portland, OR
Room 140, State Office Building, 700 NE Oregon Avenue, Portland, OR
Auditorium, Tigard Water Bureau, 8777 SW Burnham Road, Tigard, OR

Titles of Proposals: Portland Area Ozone Maintenance Plan
Portland Area Carbon Monoxide Maintenance Plan
Employee Commute Options Program
Voluntary Parking Ratios Program
Expanded Vehicle Inspection Boundary
Industrial Emissions Management Program

Three rulemaking hearings were held on the above titled proposals. The hearings were convened at 10:00 am and 7:00 pm on May 22, 1996, and 7:00 pm May 23, 1996. All the proposals were open for comment at each hearing. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearings were being tape recorded and of the procedures to be followed.

The morning hearing on May 22, 1996, was conducted by Lawrence Smith, an Administrative Law Judge with the Employment Department. Forty-five people were in attendance, ten people signed up to give testimony.

Memo To: Environmental Quality Commission
June 24, 1996
Presiding Officer's Report on
May 22, 23, 1996, Rulemaking Hearing
Attachment C, Page 2

The evening hearings on May 22, and May 23, 1996, were conducted by Mike Grant, an Administrative Law Judge with the Public Utility Commission. Eleven people were in attendance the evening of May 22, and three people signed up to give testimony. Thirteen people were in attendance the evening of May 23, and three people signed up to give testimony.

Prior to receiving testimony, the Department provided informational tables and the opportunity for people to informally discuss any questions concerning the proposals with Department staff. Andy Ginsburg was available for questions concerning the Portland Area Ozone Maintenance Plan. Howard Harris was available for questions concerning the Portland Area Carbon Monoxide Maintenance Plan. Patti Seastrom was available for questions concerning the Employee Commute Options Program. Susan Turner was available for question concerning the Voluntary Parking Ration Program. David Collier was available for questions concerning the Expanded Vehicle Inspection Boundary. Brian Finneran was available for questions concerning the Industrial Emissions Management Program.

Summary of Oral Testimony

May 22, 1996, 10:00 am

1. Jim Craven, American Electronic Association.

Mr. Craven gave testimony concerning the Industrial Emissions Management Program. He read his comments into the record. He focused on the Unused PSEL Management Backup Program of OAR 340-030-0730. He stated that this program conflicted with the purpose of the Plant Site Emission Limits (PSEL) program. He stated that the proposed program could adversely affect the electronics industry.

Mr. Craven also submitted written comments which are summarized in the Department's Evaluations of Public Comments (Attachment D).

2. Bob Okren, Citizen.

Mr. Okren gave testimony concerning the Employee Commute Option Program (ECO). He stated that regulating employees lives is onerous, communistic, and unconstitutional since employers will suffer penalties if employees don't cooperate. He considered ECO is another challenge to doing business in Portland.

Memo To: Environmental Quality Commission
June 24, 1996
Presiding Officer's Report on
May 22, 23, 1996, Rulemaking Hearing
Attachment C, Page 3

3. Francie Royce, City of Portland, Office of Transportation.

Ms. Royce gave testimony concerning the Carbon Monoxide (CO) and Ozone Maintenance Plans, and the Voluntary Parking Ratios Program. Ms. Royce stated that the City was pleased the DEQ has completed its work on the plans and were supportive of both. She noted the City's participation in the five-year process leading to this point and appreciated the long hours and hard work on the part of DEQ staff.

Ms. Royce highlighted some specific concerns regarding the CO maintenance plan. The Portland City Council has taken a position endorsing the retention of the oxygenated fuels program and supports the position adopted by the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) to continue the program for another two winters and reevaluate whether to continue the program. She stated the city is particularly at risk in the event the CO standard is violated in the downtown area, as the parking lid will be automatically reinstated, and for that reason the city would like see the oxygenated fuels continue.

Ms. Royce pointed out that the CO maintenance plan contains three transportation emissions budgets: a regional emissions budget, a budget for the Central City Transportation Management Plan (CCTMP) area, and a budget for 82nd Avenue. The city is concerned about the establishment of an emissions budget for such a small area as the 82nd Avenue area and believes it is unnecessary and could trigger an unwarranted conformity problem. The city believes the Environmental Quality Commission (EQC) should remove the 82nd Avenue emissions budget from the CO plan and rely on the 82nd Avenue monitor to track CO concentrations in the area.

Ms. Royce stated that various timelines have been projected for approval of the maintenance plans by EPA. She cited delays of up to 18 months for the agency to pass similar plans and urged the Commission and DEQ to persuade EPA to approve the submitted maintenance plans as soon as possible. She also indicated the city is willing and able to help effect a timely approval.

Ms. Royce stated that other comments dealing with the CO maintenance plan, the Ozone maintenance plan and voluntary parking ratio program would be submitted in writing. She stated that the other comments were mostly technical in nature and dealt with provisions of the CCTMP that are to be incorporated into the CO maintenance plan.

The City of Portland also submitted written comments which are summarized in the Department's Evaluations of Public Comments (Attachment D).

4. Adrian Albrecht, PED Manufacturing Inc.

Mr. Albrecht gave testimony concerning the ECO program. He stated that credit should be given for existing low auto trip rates even where an employer does not have an active program.

Mr. Albrecht also submitted written comments which are summarized in the Department's Evaluation of Public Comment (Attachment D).

5. Bill Smith, American Lung Association

Mr. Smith gave testimony in support of the Enhanced Vehicle Inspection Program. Mr. Smith supported the enhanced motor vehicle inspection program and expanded inspection boundary as a good investment in air quality. He stated that the problems reported in implementing enhanced inspection in other states have been due to poor public relations, not problems with the technology.

6. Darrell Fuller, Oregon Automobile Dealers Association.

Mr. Fuller gave testimony concerning the ECO program. He requested supporting data demonstrating need for ECO, as well as information on impact of programs in other states. He stated that the government requiring business to require employees to change commute habits presents problems, such as policing employees, carpooling liability, and employee backlash. He suggested that OAR 340-030-0820 be modified from "have the potential to" to "mandated", since that is what is intended. He also suggested that OAR 340-030-0850 be expanded to include disabled and field personnel "transporting goods and services" or "reasonably need to have vehicle".

Mr. Fuller also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

7. Melissa Sherlock, Western States Petroleum Association and 76 Products Company.

Ms. Sherlock is a fuels planning engineer for 76 Products Company. She gave testimony concerning the CO Maintenance Plan. She stated that WSPA is a trade association whose member companies account for the majority of petroleum produced, refined, transported and marketed in six western states, including Oregon. She congratulated the staff, residents and industries of the Portland area on attaining the National Ambient Air Quality Standards for carbon monoxide (CO) and ozone, making the Portland region a fine place to live and work.

Second, she expressed WSPA's belief that the winter oxygenated fuel program is not necessary in the Portland region and should be discontinued prior to the start of the 1996/97 winter season. She stated that WSPA's position is based on the following facts:

1) The Portland metropolitan area began attaining the standard in 1990, two full years before oxygenated gasoline was required in 1992.

2) DEQ's thorough and extremely conservative analysis demonstrates that oxygenated gasoline is not needed in order for CO levels in the region to remain well below the federal health standards in the winter of 1996/1997 and throughout the ten-year maintenance period.

3) Oxygenated fuel mandates are expensive; WSPA estimates that the program costs the region's consumers, businesses and taxpayers approximately $7.4 million for increased fuel costs and losses in fuel efficiency and potentially $7.7 million in lost revenue from the federal highway trust fund.

4) Continuing an oxygenated fuel mandate when it is not needed for attainment is inconsistent with the provisions of the federal Clean Air Act Amendments of 1990.

Ms. Sherlock cited the historical record of numerous violations (in excess of 100) throughout the late 60's and early 70's. However, by the late 70's and early 80's, the number of violations were reduced significantly, with only one violation since 1985.

Ms. Sherlock explained that the reason for that big improvement in CO air quality was based on two factors and neither one of those is oxygenated gasoline: 1) more stringent new motor vehicle emission standards which resulted in the increased technological sophistication of new motor vehicle emission control systems; and 2) the State's vehicle inspection and maintenance program, ensuring that the emission control systems maintain their effectiveness. Those programs started during the late 70's and early 80's, and oxygenated gasoline came in during the winter of 1992, well after the area's big improvement. She concluded that oxygenated gasoline did not play any role at all in the marked improvement in air quality.

Ms. Sherlock indicated that the Portland area has experienced only one violation of the CO standard in the last ten years and that violation occurred at the 82nd and Division monitor in December of 1989, immediately after the monitor's installation. The monitor has not measured a CO violation since, and all the other monitors in the Portland area show that the area has been attaining the standard since 1985, without the use of oxygenated gasoline.

Ms. Sherlock indicated that the DEQ analysis in the Plan shows compliance can be maintained without an oxygenated fuels program with a safety margin of ten percent, even in the winter of 1996/97. She stated that the analysis is based on a number of very conservative assumptions as follows: 1) worst case base year for meteorological conditions and measured concentrations; 2) extremely conservative background CO; 3) a worst case growth modeling analysis; 4) a calculated base year CO concentration that averages 40 percent higher than the actual measured concentrations during the base year; 5) a peak traffic period in the downtown area that is twice as long as the actual peak period; and 6) a traffic volume growth rate around the 82nd and Division monitor that is 75 percent higher than the traffic volume growth rate estimated by Metro.

These conservative assumptions indicate that the actual safety margin is most likely significantly greater than the ten percent that has been estimated. Ms. Sherlock concluded that an oxygenated fuel program is clearly not necessary for the Portland metropolitan area to stay well below the CO standard, beginning in the winter of 1996/97 and throughout the ten-year maintenance period. In summary, she stated that WSPA urges DEQ to discontinue the winter oxygenated fuel program prior to the start of the 1996/97 winter season.

Ms. Sherlock also submitted written testimony on behalf of WSPA and 76 Products Company. Those comments are summarized in the Department's Evaluation of Public Comments (Attachment D).

8. Joe Gilliam, National Federation of Independent Business.

Mr. Gilliam gave testimony concerning the CO maintenance plan. He stated that the National Federation of Independent Business was the largest small business group in the State, with over 17,000 employers. He indicated that his concerns were similar to those given by Ms. Sherlock for the Western States Petroleum Association, but from a slightly different angle. His organization is concerned over the size of government and overall regulation. He said that the oxygenated fuel program is unneeded, by the Department's own recommendation. The oxygenated fuel program does not make a difference between the Portland area being in attainment or nonattainment, with no significant benefit to the Metro area as far as the air shed is concerned. Mr. Gilliam also cited the costs for the Metro area, estimated at $7 million in fuel related costs and a potential of $7 million in lost transportation funds. He stated that his organization would like to see the DEQ take the action to repeal the program before the 1996/97 winter. He said that the National Federation of Independent Business cannot see a need to extend a program like oxygenated fuel and cost the region the kind of money cited. As a goodwill gesture, the DEQ should act immediately to repeal the program.

9. E. John Resha, Portland Community College and Westside Transportation Alliance.

Mr. Resha gave testimony concerning the ECO Program. He was supportive of the Ozone Maintenance Plan and the ECO Program. He stated that the definition of "Good Faith Effort" was not clear as to what was an acceptable effort. He also stated that there was a need to understand how the trip reduction goal of 10% helped to achieve and maintain the Ozone standard.

Mr. Resha also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

10. Linda Odekirk, Nike and Westside Transportation Alliance

Ms. Odekirk gave testimony concerning the ECO program. She stated that the baseline requirement should be changed from employer baseline to area baseline so that employers will be sure to get credit for work already done.

May 22, 1996, 7:00 pm

11. Peter Fry, Central Eastside Industrial Council

Mr. Fry gave testimony concerning the ECO program. He requested that the record stay open an additional 30 days to provide adequate time to review the ECO proposal. He stated that the Central City Transportation Management Plan (CCTMP) was already consistent with State law. He asked why additional requirements were needed for employers in the CCTMP area. He said that employers were under the impression that participation in the CCTMP would meet any additional rules. He wanted to know how DEQ would determine what parking is free or paid. He stated that Central Eastside parking costs were incorporated into the business, wage rates, and the way the business operated. Mr. Fry said that the Central Eastside had lost businesses because of ill-founded regulatory issues. He stated that the Central Eastside should be included in the definition of "Central Business District". He expressed the concern that the Central Eastside has been closed out of the process.

Mr. Fry also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

12. Kathleen Dotten, Oregon Metals Industry Council

Ms. Dotten gave testimony concerning the Expanded Vehicle Inspection Boundary, the ECO Program, the Ozone Maintenance Plan, and the Industrial Emission Management Program. She read her comments into the record.

Ms. Dotten stated that she did not support the removal of the Newberg, Dundee, Aurora and Marquam areas from the Expanded Vehicle Inspection Boundary. She also stated that the ECO Program shifted the burden of reducing vehicle miles traveled from the driver to the employer. She objected to that shift.

Ms. Dotten stated that the contingency plan should not focus on industry. She said that industry had already made significant emission reductions. She noted that the contingency plan called for further control of industry, even if the problem is caused by another source category. She stated that the maintenance plan should include an emissions allocation for each source category. She suggested that if one category exceeded the allocation, the contingency plan should require reductions from that category, rather than further reductions from industry. As an example, she suggested that congestion pricing could be required if auto emissions exceed their allocation.

Ms. Dotten's testimony concerning the Industrial Emissions Management Program focused on the growth allowance. She stated that the industrial growth allowance should be larger. She suggested that the industrial growth allowance should be at least 1000 tons per year as this would allow existing industry to expand and new industry to develop. She stated that the result would be more high wage jobs. She said that future emission reductions made by industry should be available for increases in industrial sources, not increases in mobile sources.

Ms. Dotten also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

13. David Stoller, Small Business Owner

Mr. Stoller gave testimony concerning the ECO Program. He was concerned that government was becoming larger with more regulations that small business must follow. He said that ECO placed an unfair burden on the small business owner. He suggested that ECO be replaced with a fuel tax to target all types of auto trips. He stated that ECO singled out the employer and was a drastic means to reduce emissions.

May 23, 1996, 7:00 pm

14. Mauri Scott, Iwasake Brothers, Inc.

Ms. Scott gave testimony concerning the ECO Program. She stated that the nature of her business, a nursery, was not taken into account. She explained that employees tending plants cannot telecommute or work a compressed work week, and truck drivers work a non-scheduled work week. She stated that the current auto trip rate was .48, but she couldn't take credit because no programs had been sponsored. She suggested that employers with lower auto trip rates should have lower goals. She also pointed out the need for the survey to be provided in other languages and in an alternate form for illiterate employees (e.g. pictograms). She suggested that the rules should allow for an easier method, such as counting cars in the parking lot.

Ms. Scott also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

15. John Williams , Citizen.

Mr. Williams gave testimony concerning the Ozone Maintenance Plan. He read his comments into the record.

He stated that DEQ should actively support the gasoline pipeline. He said the maintenance plan assumed emissions reductions from the future operation of a planned gasoline pipeline which would reduce emissions from barge loading. He said the plan, which was relatively detailed regarding the other elements of its control strategies, was silent about what steps the DEQ would take to insure that this planned pipeline would actually be constructed, and that the resulting emissions reductions would be achieved. Mr. Williams stated that this was a very important issue because of the large amount of emissions involved. He said that DEQ should consider taking some action to support the pipeline. He suggested that, for instance, DEQ could intervene or testify in the hearings and proceedings before the Washington Energy Siting Council regarding the Olympic pipeline.

Mr. Williams also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

16. Tom Tucker, Citizen

Mr. Tucker gave testimony concerning the Ozone Maintenance Plan. He read his comments into the record.

He stated that the selected strategies were not cost-effective. He said that the maintenance plan relied on tools at DEQ's disposal, rather than the most cost-effective solutions. He suggested that DEQ should explore options to control population growth as a means of reducing air pollution. His suggested alternatives included the deportation of illegal aliens, reducing teenage pregnancies, training workers locally, helping the unemployed find work outside of the state, voter approval prior to annexation, and voter initiatives to require future development to pay for all needed infrastructure.

Mr. Tucker also submitted written comments which are summarized in the Department's Evaluation of Public Comments (Attachment D).

Written Testimony

The following people handed in written comments at the hearings, but did not present oral testimony:

17. Thomasina Gabriele, Gabriele Development Services for Institutional Facilities Coalition.
18. Joy Voline

There was no further testimony and the hearing was closed at 11:15 am, 7:30 pm, and 7:45 pm, respectively.

The public comment period closed at 5:00 pm on Friday, May 24, 1996. All comments received during the public comment are indexed in Attachment C1, which has been attached to this report. All oral and written comments are summarized in Attachment D, The Department's Evaluation of Public Comments.

Attachment C1
Index of Public Comments Received
Attachment to the Presiding Officer's Report for Rulemaking Hearing

State of Oregon
Department of Environmental Quality

	Name/Representing	Subject	Comment Type
1	Jim Craven, American Electronics Association	Industrial Emissions Management Program	Written/ Oral
2	Bob Okren	Employee Commute Options Program	Oral
3	Francie Royce, City of Portland	Ozone and CO Maintenance Plans, Voluntary Parking Ratio Program	Oral
4	Adrian Albrecht, PED Manufacturing Ltd.	Employee Commute Options Program	Written/ Oral
5	Bill Smith, American Lung Association	Ozone Maintenance Plan (Enhanced Vehicle Inspection)	Oral
6	Darrell Fuller, Oregon Automobile Dealers Association	Employee Commute Options Program	Written/ Oral
7	Melissa Sherlock, 76 Products Company, Western States Petroleum Association	Carbon Monoxide Maintenance Plan	Written/ Oral
8	Joe Gilliam	Carbon Monoxide Maintenance Plan	Oral
9	John Resha, Westside Transportation Alliance/ Portland Community College	Ozone Maintenance Plan, Employee Commute Options Program	Written/ Oral
10	Linda Odekirk, Westside Transportation Alliance/ Nike	Ozone Maintenance Plan, Employee Commute Options Program	Oral
11	Peter F. Fry, AICP, Central Eastside Industrial Council	Employee Commute Options Program	Written/ Oral
12	Kathleen Curtis Dotten, Oregon Metals Industry Council	Ozone Maintenance Plan (Enhanced Vehicle Inspection), Expanded Motor Vehicle Inspection Boundary, Industrial Emission Management Program, Employee Commute Optionss Program,	Written/ Oral
13	David Stoller	Employee Commute Options Program	Oral
14	Mairi J. Scott, Iwasake Brothers, Inc.	Employee Commute Options Program	Written/ Oral
15	John Williams	Ozone Maintenance Plan	Written/ Oral
16	Tom Tucker	Ozone Maintenance Plan	Written/ Oral
17	Thomasina Gabriele, Gabriele Development Services, (representing Institutional Facilities Coalition)	Employee Commute Options Program, Voluntary Parking Ratio Program	Written

	Name/Representing	Subject	Comment Type
18	Joy Voline	Employee Commute Options Program	Written
19	Gayle Evans, Standard Insurance Co.	Employee Commute Options Program	Written
20	Rick Gustafson, Shiels, Obletz, Johnsen (Representing Association for Portland Progress)	Employee Commute Options Program	Written
21	Bradford R. Tracy, Maletis Beverage	Employee Commute Options Program	Written
22	Doug Hayden, Columbia Distributing Co., Henny Hinsdale, Admiralty Beverage	Employee Commute Options Program	Written
23	Jerry Griffin, Swan Island Business Association	Employee Commute Options Program	Written
24	Juan Baez, Pacificorp	Employee Commute Options Program	Written
25	Steve Klein, Epson	Employee Commute Options Program	Written
26	Elizabeth Archer, Taylor Made Labels, Inc.	Employee Commute Options Program	Written
27	Elda Orr, Multnomah Athletic Club	Employee Commute Options Program	Written
28	Virginia W. Lang, USWest Communications	Employee Commute Options Program	Written
29	L. Guy Marshall, Columbia Steel Casting Co.	Employee Commute Options Program	Written
30	Susan Duley, Saks Fifth Avenue	Employee Commute Options Program	Written
31	Gary A. Benson, Pendleton Woolen Mills	Employee Commute Options Program	Written
32	Ralph Woll/Dari Buckner, Interstate Brands Corporation	Employee Commute Options Program	Written
33	John Bohlinger, Core-Mark International	Employee Commute Options Program	Written
34	Harriet Sherburne, Portland Center for the Performing Arts	Employee Commute Options Program	Written
35	Douglas Pratt, Jr., Fulton Provision Company	Employee Commute Options Program	Written
36	J. Mark Morford, Stoel, Rives	Employee Commute Options Program	Written
37	Katy Johnson, Pacific Metal Company	Employee Commute Options Program	Written
38	Mike McGee, Oregon Department of Corrections	Employee Commute Options Program	Written
39	Debi Wali, Bullseye Glass Company	Employee Commute Options Program	Written
40	Colin Lamb, Lamb's Thriftway	Employee Commute Options Program	Written
41	William R. Johnson, Valley Wine Company	Employee Commute Options Program	Written
42	Anne Mersereau, Portland Hilton	Employee Commute Options Program	Written
43	David M. Fogle, Pacific Coast Restaurants	Employee Commute Options Program	Written
44	Denice DePaepe, Sears, Roebuck and Company	Employee Commute Options Program	Written

	Name/Representing	Subject	Comment Type
45	Fred Loomis, Gaston Public Schools	Employee Commute Options Program	Written
46	Gordon Slatford, Travelodge Hotel	Employee Commute Options Program	Written
47	S. G. Gray, E.E. Schenck Company	Employee Commute Options Program	Written
48	Louis A. Ornelas, Oregon Health Sciences University	Employee Commute Options Program	Written
49	Michael J.P.C. Kane, UEI	Employee Commute Options Program	Written
50	Charlie Young	Employee Commute Options Program	Written
51	Dan E. Mercer, Mercer Industries, Inc.	Employee Commute Options Program	Written
52	John P. Buckinger, Miller Paint Company	Employee Commute Options Program	Written
53	Ray Alford, Tom Richardson, Doug Jarmer, Pete Szambelan, Oregon Association of Temporary and Staffing Services	Employee Commute Options Program	Written
54	David H. Cook, OSF International, Inc.	Employee Commute Options Program	Written
55	G. Kent Ballantyne, Oregon Association of Hospitals and Health Systems	Employee Commute Options Program	Written
56	Donna M. Marx, The Sweetbrier Inn	Employee Commute Options Program	Written
57	William M. Hedgebeth, USEPA	Carbon Monoxide (CO) Maintenance Plan	Written
58	Jinx Faulkner	CO Maintenance Plan (oxygenated fuels)	Written
59	Matt Rahpael	CO Maintenance Plan (oxygenated fuels)	Written
60	Tom Novick, NW Bio Products Coalition	CO Maintenance Plan (oxygenated fuels)	Written
61	Neil M. Koehler, Parallel Products	CO Maintenance Plan (oxygenated fuels)	Written
62	Del J. Fogelquist, Western States Petroleum Association	CO Maintenance Plan	Written
63	Jim Alan	CO Maintenance Plan (oxygenated fuels)	Written
64	Andrea Benson	CO Maintenance Plan (oxygenated fuels)	Written
65	Kari Easton	CO Maintenance Plan (oxygenated fuels)	Written
66	Todd Easton	CO Maintenance Plan (oxygenated fuels)	Written
67	Michael Madden	CO Maintenance Plan (oxygenated fuels)	Written
68	Steven Schlesser, Schlesser Company, Inc.	CO Maintenance Plan (oxygenated fuels)	Written
69	N. Blosser	CO Maintenance Plan (oxygenated fuels)	Written
70	Chris Beck	CO Maintenance Plan (oxygenated fuels)	Written
71	Harrison Pettit	CO Maintenance Plan (oxygenated fuels)	Written
72	Dave Bernard	CO Maintenance Plan (oxygenated fuels)	Written
73	Maura Hanlon	CO Maintenance Plan (oxygenated fuels)	Written
74	Robert von Borstel, MD	CO Maintenance Plan (oxygenated fuels)	Written
75	David E. Ortman, Friends of the Earth	CO Maintenance Plan (oxygenated fuels)	Written
76	John Fletcher, Container Recovery, Inc.	CO Maintenance Plan (oxygenated fuels)	Written
77	Kim B. Puzey, Port of Umatilla	CO Maintenance Plan (oxygenated fuels)	Written
78	Caroline Weitzer, Media Mania Group	CO Maintenance Plan (oxygenated fuels)	Written

	Name/Representing	Subject	Comment Type
79	John G. White, Oregon Department of Energy	CO Maintenance Plan (oxygenated fuels)	Written
80	Dennis W. Lamb, 76 Products Company	CO Maintenance Plan (oxygenated fuels)	Written
81	Moneeka Settles	CO Maintenance Plan (oxygenated fuels)	Written
82	Claudia Burnett	CO Maintenance Plan (oxygenated fuels)	Written
83	Michelle Gallon	CO Maintenance Plan (oxygenated fuels)	Written
84	Ilene S. Moss	CO Maintenance Plan (oxygenated fuels)	Written
85	Nic Warmenhoven	CO Maintenance Plan (oxygenated fuels)	Written
86	Kenneth Lein	CO Maintenance Plan (oxygenated fuels)	Written
87	Matthew Pennewell	CO Maintenance Plan (oxygenated fuels)	Written
88	Benjamin Basin	CO Maintenance Plan (oxygenated fuels)	Written
89	Karen Notzeo	CO Maintenance Plan (oxygenated fuels)	Written
90	Lucas M. Haley	CO Maintenance Plan (oxygenated fuels)	Written
91	Carr Grey	CO Maintenance Plan (oxygenated fuels)	Written
92	Tim Cowles	CO Maintenance Plan (oxygenated fuels)	Written
93	Abigail Marble	CO Maintenance Plan (oxygenated fuels)	Written
94	Paul Reineke	CO Maintenance Plan (oxygenated fuels)	Written
95	Cynthia Toy	CO Maintenance Plan (oxygenated fuels)	Written
96	Christian G. Sturm	CO Maintenance Plan (oxygenated fuels)	Written
97	Rod Monroe, Metro Councilor, District 6	CO Maintenance Plan (oxygenated fuels)	Written
98	Robert Palzer, Sierra Club	Ozone Maintenance Plan	Written
99	Richard Ledbetter, Metro, Senior Transportation Planner	Ozone Maintenance Plan	Written
100	Ralph Engel, Chemical Specialties Manufacturers Association	Ozone Maintenance Plan	Written
101	Ted Hughes, Pacific Northwest Paint Council	Ozone Maintenance Plan	Written
102	Robert D. Elliot, Southwest Air Pollution Control Authority (Vancouver, WA)	Ozone Maintenance Plan	Written
103	Gil Haselberger, USEPA	Ozone Maintenance Plan	Written
104	Stan R. Holm, Mobil	Industrial Emission Management Program	Written
105	Chris Davies, Texaco Refining and Marketing, Inc.	Industrial Emission Management Program	Written
106	Kirk J. Thomson, Boeing	Industrial Emission Management Program	Written
107	Joseph W. Angel, Oregon Resturant Association	Voluntary Parking Ratio Program	Written
108	Larry Lazar, The Westwind Group	Voluntary Parking Ratio Program	Written
109	Steve Alverdes	Expanded Motor Vehicle Inspection Boundary	Written
110	Rita M. Bernhard, Mayor, City of Scappose	Expanded Motor Vehicle Inspection Boundary	Written

	Name/Representing	Subject	Comment Type
111	John A. Charles, Oregon Environmental Council	Industrial Emisstion Management Program, Expanded Motor Vehicle Inspection Boundary, Voluntary Parking Ratio Program, Employee Commute Options Program, Ozone Maintenance Plan	Written
112	Stanely P. Richardson, Jr.	Ozone and CO Maintenance Plans (Enhanced Vehicle Inspection and oxygenated fuels)	Written
113	Jim Whitty, Associated Oregon Industries	Ozone and CO Maintenance Plans (Enhanced Vehicle Inspection and oxygenated fuels), Industrial Emissions Management Program, Employee Commute Options Program, Voluntary Parking Ratio Program	Written
114	David F. Bartz, Jr., Schwabe, Williamson & Wyatt (representing Simpson Timber Co.)	Industrial Emissions Management Program, Employee Commute Options Program, Ozone Maintenance Plan	Written
115	Felicia Trader, City of Portland	Ozone and CO Maintenance Plans, Voluntary Parking RatioProgram	Written
116	Kristin K. Nadermann, Reynolds Metals Co.	Ozone Maintenance Plan (Enhanced Vehicle Inspection), Industrial Emissions Managment Program, Employee Commute Options Program	Written
117	Randy Tucker, OSPIRG	CO Maintenance Plan (oxygenated fuel)	Written
118	C.L. (Lew) Blackwell, Chevron Products	CO Maintenance Plan (oxygenated fuel)	Written
119	Matt Klein, Lloyd District Transportation Management Association	Employee Commute Options Program	Written
120	Lisa Logie, Westside Transportation Alliance	Employee Commute Options Program	Written
121	Mike Salsgiver, Westside Transportation Alliance	Ozone Maintenance Plan, Employee Commute Options Program	Written
122	Bonnie Gariepy, Intel	Industrial Emission Management Program	Written
123	Gary Slabaugh, Safeway, Inc.	Employee Commute Options Program	Written

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for
Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan
and Portland Metro Area Carbon Monoxide Maintenance Plan

Department's Evaluation of Public Comment

[**Note:** Commenter numbers refer to the list in Attachment C]

UNUSED PSEL DONATION PROGRAM

Comment 1: It is questionable whether the Unused PSEL Donation Program is necessary, as actual industrial emissions are well below permitted levels, and there is no reason to expect a rapid increase in industrial emissions in the near future. (Commenters 104, 105)

Response: The Department agrees that actual industrial emissions are well under permitted levels and may not increase up to permitted levels in the future. However, as described in the proposed rule package, in order for the plan to be approvable by EPA, measures must be included to prevent industrial emissions from exceeding the airshed allocation level identified in the ozone maintenance plan that could cause the ozone standard to be exceeded. Since this allocation is somewhat below permitted emissions, steps need to be taken to limit emission increases through regulatory or voluntary approaches. The Department has chosen a voluntary approach.

Comment 2: PSEL reductions should be mandatory. (Commenters 98, 111)
Permitted levels of emissions in industrial permits are not property rights for the permit holder - if DEQ determines permit levels should be lowered to protect public health, welfare or the environment, then the agency should take this action. In addition, industrial sources should be required to surrender unused PSEL. PSELs should be based on the past two years, unless production has been down due to economic conditions. Remaining unused PSEL should be relinquished back to the environment.

Response: The Department doesn't believe this is necessary given the success of the Donation Program. The voluntary approach is more fair because it targets those sources that have no anticipated need for unused PSEL.

Comment 3: Permanent or temporary donation should not affect a sources' baseline emission rate. (Commenter 114) Under 340-030-0730 (3) in the proposed Unused PSEL Donation rule it is stated that "permanent donations will be considered emission reductions required by rule for purposes of the definition of major modification" - which means that any permanent or temporary donation *should not* (emphasis added) affect a sources' baseline emission rate, since the definition of major modification pertains only to the calculation of a net significant emission rate increase above baseline for major new sources and major modifications under New Source Review.

Response: Under the Department's current PSEL rules, the basis for establishing a source's PSEL is its baseline emission rate (defined as its average actual emission rate during 1977 or 1978). In the proposed Unused PSEL Donation rules, it is the Department's intent that for "permanent" PSEL donations, both the PSEL and the baseline emission rate must be adjusted, otherwise at some time in the future the source could potentially increase its PSEL back up to its original baseline level. "Temporary" donations, on the other hand, do not require adjusting the baseline emission rate. The Department's proposed rule language attempted to make this distinction between temporary and permanent donations by referencing the definition of "major modification" in OAR 340-028-0110, where emission decreases required by rule would affect a sources baseline emission rate when calculating a net significant emission rate increase under New Source Review.

However, the Department believes additional clarification is necessary, and will amend OAR 340-030-0720 (3) by adding language to reflect adjustments made to the baseline emission rate for permanent donations, and referencing the Department's PSEL rule OAR 340-028-1020 (7)(b), which basically makes permanent donations the same as PSEL reductions "required by rule". (*See Attachment E, No. 5.*)

Comment 4: Amend the Voluntary Unused PSEL Donation rule to reflect that the Department has the authority to offer other incentives than those listed in this rule. (Commenter 114)

Response: The Department's Unused PSEL Donation Program offers the same incentives to all sources. The Department agrees that certain additional considerations can be reflected in the donation agreement that are within its rule authority and responsibilities. For example, if a donating source had previously submitted an emission reduction request and seeks Department's expeditious approval of this request, it can make this a condition of the donation agreement. Such considerations are available to all donating sources, and do not represent additional "incentives" as such. The Department will amend the rule to reflect this. (*See Attachment E, No. 4.*)

Comment 5: Change the title of the Voluntary Unused PSEL Donation Program, as use of the word "voluntary" and "donation" are redundant. (Commenter 111)

Response: The Department agrees with this comment and has retitled the rule simply "Unused PSEL Donation Program". (*See Attachment E, No. 3.*)

Comment 6: Unused PSEL Donation agreements should be in the form of an "order" rather than an "agreement". (Commenter 114)

Response: The Department originally proposed a legal format similar to an "order" for Unused PSEL donations, but was advised by legal counsel that this format was more suited for enforcement related matters, and that an "agreement" format was more appropriate in this case.

UNUSED PSEL MANAGEMENT RULE

Comment 7: The Department's proposed Unused PSEL Management backup rule should be eliminated. (Commenters 1, 12, 104, 105, 113, 114, 116, 122) The following objections were cited:

- this rule only applies to sources with permitted emissions greater than their actual emissions, which essentially penalizes sources that have been environmentally proactive in reducing their emissions;
- the submittal of annual emission projections is a burden by requiring reporting of all changes, both major and minor, in the business forecast;
- the reporting requirement requires disclosure of confidential and proprietary business information that potentially could valuable to competitors if known;
- since the rule could potentially require non-donating sources to obtain temporary offsets or reduce their PSEL, a source cannot reliably count on the availability of its full PSEL, which would cause unnecessary delays and uncertainties in making business projections that involve expansion and growth;
- any limitations placed on a source's full use of its PSEL is contrary to the stated purpose in the Department's PSEL rules (OAR 340-028-1000) and to a long-standing understanding between the Department and Industry not to interfere with this use; and
- the cost projections for temporary offsets in the fiscal impact statement will be unreasonably burdensome on some industries and may be considerably higher as offsets become scarce.

Response: As originally proposed, implementation of the Unused PSEL Management rule would only occur if the VOC and NOx donation target levels set for the Unused PSEL Donation Program were not achieved. Sufficient donations are expected to be identified through the Unused PSEL Donation Program to balance the maintenance plan. Therefore the Department believes this backup program is not needed and has deleted OAR 340-030-0730. (*See Attachment E, No. 6.*) The Department is currently finalizing agreements with participating donation sources. It is anticipated that these agreements will allow the Department to balance the maintenance plan.

INDUSTRIAL GROWTH ALLOWANCE RULE

Comment 8: The industrial growth allowance should be larger. (Commenters 12, 113) Every attempt should be made to reach the original growth allowance goals. This would allow existing industry to expand and new industry to develop, resulting in more high wage jobs. Future emission reductions made by industry should be available for increases in industrial sources, not increases in mobile sources.

Response: The growth allowance in the proposed maintenance plan was set at the maximum level possible without unbalancing the plan, which would result in disapproval by EPA. The original goals for the growth allowance were not reached in the proposal because of insufficient unused PSEL donations, and because it was deemed necessary to relax the stringency of other strategies (the Expanded Vehicle Inspection Boundary, Employee Commute Options Program, and Voluntary Parking Ratio Program). Based on expected new additional PSEL donations being made, the Department believes it is possible to restore the original growth allowance (1056 tons for VOC and 438 for NOx) in the final years of the maintenance plan (2004 to 2006), however not enough new donations are expected at this time to increase the growth allowance during the interim years. When all of the donation agreements are completed the Department may be able to increase the growth allowance during the interim years or further increase the growth allowance during the final years of the plan to the original goal, as a specific mechanism has been included in the maintenance plan to allow this without a SIP revision.

As indicated in the maintenance plan, the Department will continue to work to increase the growth allowance during the life of the plan by using new emission reductions or shutdown credits that were not relied upon in the maintenance demonstration. This could include future reductions made by industry or other source categories, provided the reductions are surplus and federally enforceable. In contrast, the transportation emission budgets for on-road mobile sources can not be increased without an EPA revision to the maintenance plan. This would be considered only if, despite implementation of all identified transportation control measures, Metro is unable to design a transportation system that meets the adopted emissions budgets. Metro has committed to using surplus reductions in transportation emissions to build the industrial growth allowance back to the original goals.

The Department also notes that major new and modified industry may use offsets, as they now do, if the growth allowance is totally allocated in the future. The growth allowance is intended to make it easier for major new industry to locate in the Portland area while protecting air quality. However, the offset program ensures that there will never be a construction moratorium.

Comment 9: The proposed industrial growth allowance should be eliminated and the current emission offset requirement should be retained. (Commenter 98) In addition, the current requirement for Lowest Achievable Emission Rate (LAER) technology should not be replaced with Best Available Control Technology (BACT). Most new sources have been able to stay below the level that would subject them to these requirements. The current system has

worked well and is not detrimental to industrial sources. It is inequitable to relax industrial requirements while tightening standards on individuals. In addition, new small (minor) sources should be included in the growth allowance.

Response: The Department believes that the growth allowance is a more efficient way than offsets to allow economic development while protecting air quality. Rather than require each new major source to obtain offsets, the plan provides for a central pool of offsets, or growth allowance, to accommodate expected new major sources. If the growth allowance is consumed, offsets will again be required. In addition, if the area violates the ozone standard in the future, any remaining growth allowance will be eliminated and offsets will be required again. This ensures that any inaccurate growth forecasts will not create artificial industrial growth allowance. If the growth allowance were eliminated and replaced with an offset requirement, air quality would not be improved because there would be a commensurate reduction in emission control strategies in the maintenance plan.

The Department also believes that it is appropriate to replace LAER with BACT upon redesignation to attainment. BACT is the level of control required for attainment areas under the Prevention of Significant Deterioration Program, and still provides a very high level of control for new major sources. Whether or not LAER and offsets has been detrimental to industrial sources is difficult to assess, since it cannot be known how many new major sources avoided locating in the Portland area due to these more stringent requirements.

The Department believes that the maintenance plan is equitable to all source categories. Industry contributed substantially to the improvement in ozone air quality through compliance with Reasonably Available Control Technology (RACT) and additional voluntary permitted emission reductions. A significant amount of the voluntary reduction has been made permanent through donations of unused permit limits. No requirements for existing industrial sources are being relaxed under the maintenance plan.

Finally, the maintenance plan does include a growth forecast for minor industrial source emissions in addition to the growth allowance for major sources. The plan identifies these separately because the growth allowance for major sources must be tracked under the New Source Review program.

INDUSTRIAL GROWTH ALLOWANCE ALLOCATION RULE

Comment 10: Under the proposed Industrial Growth Allowance rule, giving "unused PSEL donation sources" first-come-first-served rights or "tie-breaker" priority to the growth allowance does not provide donation sources with sufficient opportunity to access the growth margin. (Commenter 114) The rule should be revised to either set aside a portion of the growth allowance for "major" donating sources (e.g. donations over 250 tons), or provide notice to major donators when requests (submittal of permit application) for emissions from the growth allowance are received .

Response: The Department agrees that the "tie-breaker" provision is likely to provide benefit to donation sources only in rare cases. However, setting aside part of the growth allowance for major donating sources could unnecessarily tie-up the growth allowance, while providing notice to major donating sources when each emission allocation request is made would be administratively burdensome for the Department. The Department believes a more equitable and reasonable approach would be to notify all donation sources when only 50 percent of the emissions in the growth allowance remain. The Department has amended OAR 340-030-0740 (2) to reflect this approach. (To clarify that these provisions only apply to the VOC and NOx growth allowances, the Department has added section 3, which references the CO growth allowance. *See Attachment E, No. 9.*)

Although no direct comments were received on the provision related to "tie-breaker" priority use for donation sources "of up to 50 percent of any remaining growth allowance *or up to the amount of emissions donated, whichever is less"*(emphasis added) in OAR 340-030-0720 (2) (c), the Department has reconsidered this provision. The primary purposes of the growth allowance allocation rule is to give both donation and non-donation sources opportunity to receive up to 50 percent of the remaining growth allowance, while providing donation sources with priority access to the growth allowance as a "tie-breaker" over non-donation sources (in addition to the notification described above). Even though proposed rule language limited this "tie-breaker" provision to an amount no greater the emissions donated, the Department believes this to be of little or no practical benefit and unnecessarily complicates the rule. In addition, over recent months the Department has negotiated donation agreements which are reflective of the proposed rule provisions, with the exception of this particular additional "tie-breaker" provision, and the Department feels compelled to honor these agreements. For these reasons the provisions referencing access to the growth allowance based on a source's original donation have been deleted from 340-030-0720 (2) (c) and 340-030-740 (1) (b). (*See Attachment E, No. 4 and 7.*)

Comment 11: The 10 tons per year limit in the Industrial Growth Allowance Allocation rule should be deleted, as new major sources and major modifications will need at least 40 tons (the Significant Emission Rate for VOC and NOx as defined under OAR 340-28-110) from the growth allowance. (Commenters 113, 114, 118)

Response: The Department agrees that the proposed rule language under 340-030-0750 (1)(c), which says no source may receive "more than 50 percent of any remaining growth allowance, or 10 tons per year, whichever is greater," needs clarification. This does not limit access to the growth allowance to 10 tons, but rather prevents applying 50 percent when only a small amount of the growth allowance remains. For example, if 80 tons of the growth allowance remains, this would allow an emissions allocation of 40 tons, not 10 tons. However, if only 8 tons remained in the growth allowance, rather than give a source half of the remaining tons, the rule would allow the full amount to be given. Therefore, for purposes of clarification, the Department has amended this language to read "up to 10 tons per year". (*See Attachment E, No. 8*)

Comment 12: Change the provision in the proposed Growth Allowance Allocation rule, which limits the emissions available to 50 percent for any one source , to allow 100 percent for any one source if needed. (Commenter 12)

Response: The proposed Growth Allowance Allocation rule already allows this on a case-by-case basis; allowing the EQC to approve an emissions allocation greater than 50 percent upon consideration of significant economic, employment or other benefits to the Portland area that could result from the proposed new major source or major modification.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for
Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan and Portland Metro Area Carbon Monoxide Maintenance Plan

Detailed Changes to Original Rulemaking Proposal Made in Response to Public Comment

1. Clarification to 340-030-0700, Application:

(1) OAR 340-030-0720 through 340-030-0740 ~~50~~ apply to all sources that emit VOC and NOx ~~in~~ within the boundaries of the Portland Air Quality Maintenance Area (AQMA), ~~including the following~~ and to the following additional sources:

(a) VOC and NOx sources with a PSEL of 100 tons per year or greater within 25 miles of the Portland AQMA are subject to OAR 340-030-0720 ~~and 340-030-0730~~;

(b) VOC and NOx sources that are new major sources or major modifications within 30 kilometers of the Portland AQMA are subject to OAR 340-030-0730 ~~40~~ and 340-030-0740 ~~50~~.

2. Revision to 340-030-0710, Definition of Terms:

~~(1) "Available industrial airshed allocation" means the upper limit of airshed space available for actual industrial emissions of VOC and NOx under the Portland Ozone Maintenance Plan. If total actual emissions exceed this upper limit, continued maintenance of the ozone national ambient air quality standard is jeopardized.~~

(1)~~(2)~~ **"PSEL"** means the Plant Site Emission Limit of an individual air pollutant specified in an Air Contaminant Discharge Permit or Title V permit issued to a source by the Department, pursuant to OAR 340-028-1700 through 340-028-1770.

(2)~~(3)~~ **"Unused PSEL"** means the difference between a source's actual emissions and its permitted level or PSEL in 1990 or 1992, whichever is lower, as determined through the Department's emission inventory data.

(3)~~(4)~~ **"Unused PSEL Donation Source"** means any source that voluntarily returns to the Department unused PSEL, as part of the Unused PSEL Donation Program in OAR 340-030-0720.

3. Revision to 340-030-0720, Unused PSEL Donation Program:

~~Voluntary~~ Unused PSEL Donation Program
340-030-0720

4. Revision to 340-030-0720, Unused PSEL Donation Program:

(2) VOC sources donating at least 35 percent of their unused PSEL and NOx sources donating at least 50 percent of their unused PSEL will receive the following incentives and considerations from the Department for participating in this program:

(a) Exemption from the Employee Commute Options (ECO) Program in OAR 340-030-0800 through 340-030-1080 for the duration of the Portland Ozone Maintenance plan;

(b) Priority permit processing for any ~~new air contaminant discharge permit application or permit modification~~ required air quality permit;

~~(c) Exemption from the Unused PSEL Management requirements listed in OAR 340-030-0730 (7) (c);~~

(c)~~(d)~~ In accordance with OAR 340-030-0730 ~~40~~ and 340-030-0740 ~~50~~ (1), priority use of up to 50 percent of any remaining growth allowance, or up to the amount of emissions donated~~, whichever is less, for the type of pollutant donated~~. This applies only to sources making permanent donations, pursuant to section (3) of this rule; and

(d) Other considerations may be added to the donation agreement on a case-by-case basis, consistent with the Department's rules and statutes.

5. Revision to 340-030-0720, Unused PSEL Donation Program:

(3) The Department will adjust the PSEL of sources providing permanent donations to reflect the emissions donated. Permanent donations will result in adjustment to the source's baseline emission rate and PSEL, consistent with ~~be considered "emission reductions required by rule" for purposes of~~ the definition of "major modification" under OAR 340-028-0110 and changes to PSELs required by rule under OAR 340-028-1020.

6. Deletion of 340-030-0730, Unused PSEL Management:

~~Unused PSEL Management~~
~~340-030-0730~~

The Department proposes deleting this entire rule.

7. Revision to 340-030-0740 (formally -0750), Industrial Growth Allowance Allocation:

(1)(b) Unused PSEL donation sources that meet the donation criteria specified in OAR 340-030-0720 (2) have priority access to their respective growth allowance as a "tie-breaker" over non-donation sources~~, and are limited to a VOC or NOx emissions allocation equal to or less than the tons donated~~; and

8. Revision to 340-030-0740 (formally -0750), Industrial Growth Allowance Allocation:

(1)(c) No single source may receive an emissions allocation of more than 50% of any remaining growth allowance, or up to 10 tons per year, whichever is greater. On a case-by-case basis, the Environmental Quality Commission may approve an emissions allocation of greater than 50 % upon consideration of the following:

9. Revision to 340-030-0740 (formally -0750), Industrial Growth Allowance Allocation:

(2) To avoid jeopardizing maintenance of the ozone standard during the interim years of the plan, the Department will allocate only a portion of the VOC and NOx growth allowances each year. The Department will track the use of emissions from the growth allowances and will notify unused PSEL donation sources by mail if either growth allowance is reduced by 50 percent. The ~~portion~~ amount of the growth allowance that can be allocated each year is identified in Section 4.50 of the **State Implementation Plan (SIP)**, which is on file with the Department.

(3) The amount of the CO growth allowance that can be allocated is identified in Section 4.51 of the SIP on file with the Department.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for
Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan
and Portland Metro Area Carbon Monoxide Maintenance Plan

Advisory Committee Membership and Report

These Industrial Emission Management Rules support the Ozone and Carbon Monoxide (CO) maintenance plans, which were developed through an extensive public process covering a four-year period, and through discussions with the Industrial Source Advisory Committee and Metro (See Attachment F in the Portland Area Ozone Maintenance Plan and the Portland Metro CO Maintenance Plan).

In addition, an ad hoc industry group was consulted on the Unused PSEL Allocation Program, the Unused PSEL Management rules, and the Growth Allowance Allocation rules. This ad hoc industry group consisted of members of the Portland Air Quality Project Subcommittee and the Associated Oregon Industries Air Quality Committee, and met on March 11, 1996, at DEQ Headquarters. The meeting was chaired by Janet Gillaspie of Environmental Strategies. The group discussed the basis for the Unused PSEL donation program being put forward by the Department, and numerous options for allocating emissions from the growth margin (allowance). Attached is a memorandum dated 3/11/96 summarizing the meeting.

Portland Air Quality Project

A Multnomah/Washington Counties Regional Strategies Board Project

Ater Wynne
John Schultz
226-1191

Dames & Moore
Josh Margolis
228-7683

Dotten & Associates
Kathleen Curtis Dotten
223-8983

Environmental Strategies
Janet Gillaspie
233-3980

MEMORANDUM

TO: People interested in the Portland ozone growth margin allocation

FROM: Janet Gillaspie

DATE: 11 March 96

Re: *3/7/96 Meeting Summary*

Summary

The group reached consensus that:

1. *Industry would cooperatively attempt to secure an additional 1,000 tons of returned unused PSEL to balance the maintenance plan.*
2. *Consensus was reached on these points with regard to the growth margin allocation - - allocation should be on a "first-come, first-served" type system, and that finding additional growth margin should be a high priority. There was no consensus on the appropriate amount of the available growth margin should be given to one company. Some people thought that a fair policy would be that no one applicant could have over 50% of the available remaining growth margin - - others thought that system needlessly tied up the economy.*

Subcommittees of the Associated Oregon Industries Air Quality Committee and Portland Air Quality Project met with DEQ representatives on March 7th to review options for allocating the VOC growth margin. Two major issues were discussed:

1. Unused PSEL management within the maintenance plan
2. Allocation of the growth margin.

Unused PSEL management within the maintenance plan

At the meeting, DEQ indicated that the ozone plan no longer balances to show achieving the ozone standard for the next 10 years if companies use the full amount of their Plant Site Emission Limits (PSELs) for VOCs. The attached chart, developed by DEQ, shows the actual VOC tonnage currently in use in the Portland airshed (about 4,200 tons per year), the current permitted VOC PSELs (after the return of the unused PSELs by six Portland area companies) at about 7,200 tons per year, and the plan only balancing at about 6,200 tons per year. These numbers are only the 44 largest facilities which have over 15% unused PSEL. DEQ assumes that the remaining sources will fully use their PSELs.

funded by the Oregon Lottery

DEQ laid out a strategy of attempting to balance the unused PSELs of about 44 targeted sources over the 10-year life of the maintenance plan. This would involve an annual reporting of the amount of PSEL each source would use over the next year, temporary allocation from the growth margin to cover any short-fall, and a possible temporary across-the-board reduction in PSELs to meet ozone standard attainment target.

The group found this plan very disturbing, and agreed to seek the necessary additional approximately 1,000 tons of unused PSEL as voluntary reductions returned to the Department as an alternative. Jim Whitty of AOI agreed to lead this effort, and he will be joined by Bonnie Gariepy of Intel, Howard Werth of Gunderson, and Cheryl Padula of Northwest Pipe.

Growth Margin Allocation Summary

The group discussed numerous options for allocating the growth margin. The group reached consensus on these principles for growth margin allocation:

1. Growth margin should be allocated on a first-come, first-served system based on the date of DEQ receipt of a completed allocation. Those companies which have returned unused PSEL to the DEQ to balance the ozone plan and create the growth margin will receive priority use of the growth margin allocation.
2. There should be a constant focus within the region and at DEQ to increase the growth margin.
3. There should be no additional public notice associated with growth margin allocation.

There was one additional point where no consensus could be reached. This was on the concept of the amount of the growth margin a single company should be allowed to consume. Many people believed that no single application should be allowed to take over 50% of the remaining growth margin; others felt that the entire amount should be allocated to a single company if they needed it and that restricting access to the growth margin would unnecessarily tie down the economy and associated jobs.

Feedback

If you were unable to attend the meeting, or if you have additional thoughts to add, please let me or Jim Whitty know your thoughts on these issues. Jim can be reached in Portland by phone at 227-3730 extension #103 or by fax at 227-0415. I can be reached by phone at 233-3980 or by fax at 230-2892.

If you are willing to assist in the effort to secure an additional tons of voluntary VOC PSEL return, please contact Jim Whitty at AOI.

Attachment

Environmental Strategies 25 NE 11th Avenue, Suite 200, Portland, OR 97232

FAX

Portland Air Quality Project Subcommittee/AOI Task Force

Growth Margin Allocation

Date: 3/11/96

Number of pages including cover sheet: 4

From:

Janet Gillaspie

Phone: 503/233-3980

Fax phone: 503/230-2892

Name	Organization	Fax Number
Jim Whitty	AOI	227-0115
David Boomer	Armstrong World	503/397-2993
John Schultz	Ater Wynne	226-0079
Tom Gallagher	Ball, Janik	503/399-1029
Carolyn Young	DEQ	229-6124
John Kowalcyzk	DEQ	229-5675
Audrey O'Brien	DEQ - NWR	229-6957
Janet Gillaspie	Env. Strategies	230-2892
Carter Webb	ESCO	778-6833
Susan Aha	Freightliner	735-7070
Milan Synak	Freightliner	735-7070
Howard Werth	Gunderson	242-0207
Linda Scabery	Gunderson	242-0207
Bonnie Gariepy	Intel	649-3996
Mike Bernard	Intel	649-3996
Bob Gilbert	James River	360/834-8327
Cheryl Padula	NW Pipe	285-2913
Lynn Beaton	OEDD	503/581-5115
Marcy Jacobs	OEDD	222-5050
Mark Rowsell	OR. Steel Mill	240-5775
John Surrett	PacifiCorp	275-2827
Kirk Leonard	PDC	823-3368
Wayne Lei	PGE	464-8527
Terry Worrell	PGE	464-8527
Dave Murray	Precision Cast.	652-4532
J. Gosenheimer	Rexham Graphics	283-3025
Tom Zelenka	Schnitzer Steel	323-2804
Dave Berg	Simpson Timber	978-2607
Bruce Martin	Smurfit	650-4295
Mark Morford	Stoel, Rives	220-2480
John Odisio	Tektronix	627-3105

Attached is a summary of the meeting with DEQ on the growth margin allocation.

Janet Gillaspie

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for
Industrial Emission Management Rules for the Portland AQMA Ozone Maintenance Plan
and Portland Metro Area Carbon Monoxide Maintenance Plan

Rule Implementation Plan

Summary of the Proposed Rule:

The following rules were developed as part of the industrial emission management strategy for the Portland ozone and CO maintenance plans:

1. An Unused PSEL Donation Program to encourage industrial VOC and NOx sources to return unused permitted emissions to the airshed in order to stay within the available airshed allocation for industry during the interim years of the plan;

2. An Ozone and CO Growth Allowance for new major sources and major modifications in the Portland Area, which would eliminate the current emission offset requirements; and

3. A Growth Allowance Allocation Program for allocating emissions set aside in the plan to accommodate industrial growth in a manner which would not jeopardize maintenance with the standard.

Proposed Effective Date of the Rule:

These new rules will become effective upon adoption by the Commission.

Proposal for Notification of Affected Persons:

The Department has already notified affected sources of the Unused PSEL Donation Program through letters requesting donations. These were industrial sources in the Portland area with 15 percent or more unused PSEL (out of their total PSEL).
New major VOC, NOx, and CO sources, as well as existing sources considering major modifications, will be informed of the Industrial Growth Allowance and Allocation Program as part of the Department's on-going New Source Review program.

Proposed Implementing Actions:

The Unused PSEL Donation Program requires participating sources to enter into legal donation agreements with the Department, and to have their PSEL in their air permit permanently or temporarily adjusted.

In the future as permit applications for new major sources and major modifications in the Portland area are received by the Department, VOC and NOx emissions from the industrial growth allowance will be allocated out according to rule criteria. The Department will track use of growth emissions and if necessary notify unused PSEL donation sources by mail if either growth allowance is reduced by 50 percent.

Proposed Training/Assistance Actions:

DEQ Headquarters staff is currently coordinating Unused PSEL donation agreements with participating industrial sources. Headquarters staff will provide DEQ Northwest Region permit staff with copies of all donation agreements for purposes of making PSEL adjustments to donating source air quality permits. Tracking of industrial growth allowance emission use and notification of donation sources will be conducted by Headquarters staff with assistance from Northwest Region permit staff.

6/17/96

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item I
Meeting July 12, 1996

Title:

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

Summary:

Crematory Incinerators, 340-025-0890 to 0905
Current rules focus more on costly source tests than on operator training. The revision would allow sources to show compliance by means other than source testing, and would require greater documentation of training.

Excess Emissions, 340-028-1410
Current rules require all air pollutant sources to submit written startup and shutdown procedures. The revision would require written procedures only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720
Current rules are not clear about how some Title V fees can be assessed. The revision would clarify allowable methods.

Housekeeping
The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Department Recommendation:

The Department recommends that the Commission adopt the rule revisions summarized above.

Benjamin M. Aller	Steve Greenwood for Cite	[illegible]
Report Author	Division Administrator	Director

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

State of Oregon
Department of Environmental Quality **Memorandum**

Date: June 28, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item I, Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping), EQC Meeting July 12, 1996

Background

On March 14, 1996, the Director authorized the Air Quality Division to proceed with a public notice of rulemaking on proposed rules which would revise crematory incinerator rules, modify the applicability of an excess emissions rule, clarify Title V fee assessment methods, and make housekeeping revisions.

Pursuant to the authorization, the notice was published in the Secretary of State's Bulletin on April 1, 1996. The Public 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 March 20, 1996.

No Public Hearing was held.[1] Written comment was received through April 24, 1996. Department staff have listed (Attachment C) and evaluated the comments received (Attachment D). 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 E.

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.

---

[1] A public hearing **must** be held if requested by ten individuals, or an organization representing ten or more individuals.

Issue this Proposed Rulemaking Action is Intended to Address

Crematory Incinerators, 340-025-0890 to 0905

Current rules focus more on costly source tests than on operator training. The revision would allow sources to show compliance by means other than source testing, and would require greater documentation of training.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures. The revision would require written procedures only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720

Current rules are not clear about how some Title V fees can be assessed. The revision would clarify allowable methods.

Housekeeping

The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Relationship to Federal and Adjacent State Rules

Title V Fee Assessment, 340-028-2610 to 2720

Federal rules require that the Title V permit program assess fees sufficient to support the program, but do not address whether fees may be assessed on a mix of actual and permitted emissions.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The revision would replace references to a table in the Code of Federal Regulations (CFR) with references to the definitions in federally adopted rules in the CFR which were used to make the table. The result would be more up-to-date.

- Nonattainment and maintenance area boundaries, 340-031-0500, 0520

  EPA requires boundaries for certain area classifications. EPA has accepted maps in the past. However, as regulations become more complex and affect a larger number of individuals and sources, EPA has requested that areas be defined with greater certainty. This revision corrects some of those complex descriptions.

Authority to Address the Issue

ORS 468.020, 468A.025.

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

The proposed rule revisions are intended to address various unrelated issues or problems discovered during the Title V permit application and issuance process. After each issue was identified, staff discussed problems with the current rules, and suggested revisions. Staff then reviewed potential revisions, and drafted proposed language.

The Air Quality Industrial Source Advisory Committee was advised of the proposed revisions at their meeting on February 20, 1996.

Alternatives considered

Crematory Incinerators, 340-025-0890 to 0905

Continue to require source tests from each incinerator. The Department feels that these tests are unnecessarily burdensome to operators of most crematory incinerators.

Excess Emissions, 340-028-1410

Continue to require submission of startup and shutdown procedures from all sources. It is a more efficient use of Department resources to require submission only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720

The Department initially proposed rule revisions allowing sources with plant-wide PSELs to pay fees on calculated emissions *or* actual emissions, but not on a mix of the two. Based on public comment, the Department withdrew the proposal, and reconsidered the issue. The Department believes that the revisions proposed in this package would meet the requirements of industry by allowing fee assessment based on a mix of calculated *and* actual emissions, while maintaining an equitable fee assessment mechanism.

Housekeeping

- Air pollution emergencies, 340-027-0005

  Keep references to the current federal table. The table is out of date, and any replacement table would eventually become out of date. The federal table is based on federal definitions of Priority I, II, and III areas. Referring to these definitions would ensure that the state rule applies as intended.

- The remainder of the housekeeping revisions are corrections of unclear language or typographical errors. No alternatives were considered.

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

Except for the Title V fee assessment revisions and revisions to Division 32, all proposed revisions are to rules included in the State of Oregon Clean Air Act Implementation Plan.

Crematory Incinerators, 340-025-0890 to 0905

Current rules require all crematory incinerators to do costly source tests before commencing regular operation. The revision would allow some sources to show compliance with emission standards by other means. The revision would also require that each source have a Department-approved training program on file on-site, along with certification by each employee operator of the incinerator that the employee has undergone and understood the training program.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures, which the Department must then approve. The revised rule would require written procedures only from large sources, from sources in non-attainment or maintenance areas for the pollutant in question and from other sources at the Department's discretion.

Title V Fee Assessment, 340-028-2610 to 2720

Title V sources can choose to have a facility-wide Plant Site Emission Limit (PSEL) instead of emission unit-specific emission limits. The current rules are not clear about how fees can be assessed for such sources. The revision would allow sources with facility-wide PSELs to pay fees based on a mix of actual emissions from some emissions units, and permitted emissions from other units.

Housekeeping

The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Summary of Significant Public Comment and Changes Proposed in Response

Three persons commented on the revisions to the Title V fee assessment rules. All comments were generally favorable, with minor suggested changes. The Department will make some of the suggested changes, as described in Attachment E.

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

After adoption, revisions to the State of Oregon Clean Air Act Implementation Plan would be submitted to EPA for approval.

Crematory Incinerators, 340-025-0890 to 0905

Staff would be informed of changes to the rules, as would the Lane Regional Air Pollution Authority. Sources would be notified of the changes, and their permits modified if necessary. Sources would need to keep documentation of training on-site.

Excess Emissions, 340-028-1410

Written startup and shutdown procedures would no longer be required from most small sources. The Department would develop guidance on which small sources should be required to submit written procedures. Sources would be notified of the changes, and their permits modified if necessary.

Title V Fee Assessment, 340-028-2610 to 2720

The Department would ensure that Title V permit writers construct permits in a way that allows calculated permit emissions to be determined at a device or activity level when appropriate, and that the permit is structured in a way that allows the Department to determine appropriate fees. Previously issued Title V permits will be modified on renewal or during major modifications.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The Department would develop and maintain a current table of Priority I, II, and III areas based on the federal definitions.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding Crematory Incinerators, Excess Emissions, Title V Fee Assessment, and Housekeepingas 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. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice

C. List of Public Comments Received
D. Department's Evaluation of Public Comment
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 C)

Approved:

Section: Gregg E. Fowle

Division:

Report Prepared By: Benjamin M. Allen

Phone: (503) 229-6828

Date Prepared: June 28, 1996

BMA
E:_WORD\RULES\RULE_7\RDOCS\R7_STAFF.DOC
May 7, 1996

Proposed Rule Amendments

Crematory Incinerators

Emission Limitations

340-025-0890

(1) No person may ~~shall~~ cause to be emitted particulate matter from any crematory incinerator in excess of 0.080 grains per dry standard cubic foot of exhaust gases corrected to 7 percent 0_2 at standard conditions.

(2) Opacity. No visible emissions may ~~shall~~ be present except for a period aggregating no more than six minutes in any 60 minute period and not exceeding 20% opacity as measured by EPA Method 9.

(3) Odors. In cases where incinerator operation may cause odors which unreasonably interfere with the use and enjoyment of property, the Department may require by permit the use of good practices and procedures to prevent or eliminate those odors.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Stat. Auth.: ORS Ch. 183, 468 & 468A
Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; AQ 20-1992, f & cert. ef. 8-3-92; DEQ 4-1993, f. & cert. ef. 3-10-93

Design and Operation

340-025-0895

(1) Temperature and Residence Time. The temperature at the final combustion chamber shall be 1800 °F. for new incinerators, and 1600 °F. for existing incinerators, with a residence time of at least 0.5 second. At no time while firing material may ~~waste shall~~ the temperature in the final chamber fall below 1400 °F.

(2) Operator Training and Certification. Each crematory incinerator shall be operated at all times under the direction of individuals who have received training necessary for proper operation. The following shall be available on-site at all times for Department inspection:

(a) A description of a Department-approved ~~the~~ training program; and

(b) A written statement signed by each operator stating that the operator has undergone and understood the training program. ~~shall be submitted to the Department for approval.~~

(3) As defined in OAR 340-025-0855(4), crematory incinerators may only be used for incineration of human and animal bodies, and appropriate containers. No waste, including infectious waste as defined in OAR 340-025-0855(~~10~~), may be incinerated unless specifically authorized in the Department's Air Contaminant Discharge Permit.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Stat. Auth.: ORS Ch. 183, 468 & 468A
Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; AQ 20-1992, f. & cert. ef. 8-3-92; DEQ 4-1993, f. & cert. ef. 3-10-93

Monitoring and Reporting

340-025-0900

(1) All crematory incinerators shall operate and maintain continuous monitoring for final combustion chamber exit temperature. The monitoring device shall be installed and operated in accordance with the manufacturer's instructions, and shall be located in an area of the secondary combustion chamber that will allow evaluation of compliance with OAR 340-025-0895.

(2) All records associated with continuous monitoring data including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least one year and shall be furnished to the Department upon request.

~~(3) All crematory incinerators must conduct testing to demonstrate compliance with OAR 340-025-0890 through 340-025-0905 in accordance with a schedule specified by the Department.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Stat. Auth.: ORS Ch. 183, 468 & 468A
Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93

Compliance

340-025-0905

~~(1) All existing crematory incinerators must demonstrate compliance with the applicable provisions of OAR 340-025-0890 through 340-025-0905 by March 13, 1993. Existing data such as that collected in accordance with the requirements of an Air Contaminant Discharge Permit may be used to demonstrate compliance. Until compliance is demonstrated, existing sources shall continue to be subject to the provisions of OAR 340-021-0025 and all applicable permit conditions.~~

~~(2) New crematory incinerators must demonstrate compliance with the emission limits and operating requirements of OAR 340-025-0890 through 340-025-0905 in accordance with a schedule established by the Department before commencing regular operation.~~

(1) A source must demonstrate compliance with OAR 340-025-0890:

(a) If the source is a new crematory incinerator; or

(b) If the source violates the requirements OAR 340-025-0890(2) or (3); or

(c) At the Department's request.

(2) As proof of compliance, a source may submit to the Department:

(a) A source test conducted in accordance with OAR 340-028-1100 through 340-028-1120; or

(b) The results of testing performed on a crematory incinerator that the Department agrees is comparable to the incinerator in question.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Stat. Auth.: ORS Ch. 183, 468 & 468A
Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; AQ 20-1992, f. & cert. ef. 8-3-92; DEQ 4-1993, f. & cert. ef. 3-10-93

Excess Emissions

Planned Startup and Shutdown

340-28-1410

(1) This rule applies to any source where startup or shutdown of a production process or system may result in excess emissions, and

(a) which is a major source; or

(b) which is in a non-attainment or maintenance area for the pollutant which may constitute excess emissions; or

(c) from which the Department requires the application in section (2) of this rule.

(~~1~~2) The permitee shall obtain ~~For cases where startup or shutdown of a production process or system may result in excess emissions,~~ prior Department authorization ~~shall be obtained~~ of startup/shutdown procedures that will be used to minimize excess emissions. Application for approval of new procedures or modifications to existing procedures shall be submitted and received by the Department in writing at least seventy-two (72) hours prior to the first occurrence of a startup or shutdown event to which these procedures apply, and shall include the following:

(a) The reasons why the excess emissions during startup and shutdown cannot be avoided;

(b) Identification of the specific production process or system that causes the excess emissions;

(c) The nature of the air contaminants likely to be emitted, and an estimate of the amount and duration of the excess emissions; and

(d) Identification of specific procedures to be followed which will minimize excess emissions at all times during startup and shutdown.

(~~2~~3) Approval of the startup/shutdown procedures by the Department shall be based upon determination that said procedures are consistent with good pollution control practices, and will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The permittee shall record all excess emissions in the upset log as required in OAR 340-28-1440(3). Approval of the startup/shutdown procedures shall not absolve the permittee from enforcement action if the approved procedures are not followed, or if excess emissions which occur are determined by the Department to be avoidable, pursuant to OAR 340-28-1450.

(~~3~~4) Once startup/shutdown procedures are approved, the permitee is ~~owners or operators shall~~ not ~~be~~ required to notify the Department of a planned startup or shutdown event which may result in excess emissions unless:

(a) required by permit condition; or

(b) ~~if~~ the source is located in a nonattainment area for a pollutant which may be emitted in excess of applicable standards.

(54) When required by subsection (43)(a) or (b) of this rule, notification shall be made by telephone or in writing as soon as possible prior to the startup or shutdown event and shall include the date and estimated time and duration of the event.

(65) The Department may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.

(76) No startups or shutdowns resulting in excess emissions associated with the approved procedures in section (32) of this rule shall occur during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced yellow or red woodstove curtailment period in areas designated by the Department as PM_{10} Nonattainment Areas.

(87) The permittee shall immediately notify the Department by telephone of a startup or shutdown event and shall be subject to the requirements under Upsets and Breakdowns in OAR 340-28-1430 if the permittee fails to:

(a) Obtain Department approval of startup/shutdown procedures in accordance with OAR section (21) of this rule; or

(b) Notify the Department of a startup or shutdown event which may result in excess emissions in accordance with section (43) of this rule.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; Renumbered from OAR 340-20-360, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

Definitions

340-028-0110 As used in this Division:

. . .

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

. . .

(110) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-28-2420 or OAR 340-28-2610 from one or more emissions devices or activities ~~point and from an area~~ within a major source. ~~For routine process emissions, emissions of each pollutant in OAR 340-28-2420 or OAR 340-28-2610 from each emission point included in an ACDP or federal operating program permit shall be an assessable emission.~~

. . .

(27) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

. . .

(7068) "Permitted Emissions" as used in OAR 340-28-2400 through 340-28-2550, and OAR 340-28-2560 through 340-28-2740 means each assessable emission portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-028-2640.

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

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from OAR 340-020-0033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & ef. 1-30-92; DEQ 27-1992, f. & ef. 11-12-92; Renumbered from OAR 340-020-0145; Renumbered from OAR 340-020-0225; Renumbered from OAR 340-020-0305; Renumbered from OAR 340-020-0355; Renumbered from OAR 340-020-0460; Renumbered from OAR 340-020-0520, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ --1994, f. & ef. 10-28-94; DEQ 12-1995, f. & ef. 5-1-95; DEQ 22-1995, f. & ef. 10-6-95

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-020-047.]

Plant Site Emission Limits for Sources of Hazardous Air Pollutants
340-028-1050

(1) For purposes of establishing PSELs, hazardous air pollutants listed under OAR 340-032-0130 or OAR 340-032-5400 shall not be considered regulated pollutants under OAR 340-028-1010 until such time as the Commission determines otherwise.

(2) The Department may establish PSELs for hazardous air pollutants for the following causes:
   (a) an owner or operator elects to establish a PSEL for any hazardous air pollutant emitted for purposes of determining emission fees as prescribed in OAR 340-028-2400 through 340-028-2740~~2550~~ or,
   (b) the source is subject to a hazardous air pollutant emission standard, limitation, or control requirement other than Plant Site Emission Limits.

(3) Procedures for establishing and modifying PSELs for hazardous air pollutant emissions shall be consistent with OAR 340-028-1020 except for the following:
   (a) a baseline emission rate shall not apply, and
   (b) the provisions of OAR 340-028-1030 shall not apply.

(4) PSELs established for hazardous air pollutants shall not be used for any provisions other than those prescribed in section (2) of this rule.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 22-1995, f. & ef. 10-6-95

Pollutants Subject to Emission Fees
340-028-2610

(1) The Department shall assess emission fees on assessable emissions up to and including 4,000 tons per year for each regulated pollutant ~~for fee purposes~~.

(2) If the emission fee on PM_{10} emissions is based on the permitted emissions ~~PSEL~~ for a major source that does not have a PSEL for PM_{10}, the Department shall assess the emission fee on the permitted emissions ~~PSEL~~ for ~~TSP~~particulate matter (PM).

~~(3) The owner or operator shall determine each assessable emission separately or collectively.~~

(34) The owner or operator shall pay emission fees on all assessable emissions ~~from each emission source included in the permit or application review report~~.

(5) The Department shall assess emission fees only once for a regulated air pollutant that the permitee can demonstrate, using procedures approved by the Department, is accounted for in more than one category of assessable emissions (e.g., a Hazardous Air Pollutants that is also demonstrated to be a Criteria Pollutant). ~~The owner or operation shall not pay emission fees on Hazardous Air Pollutants already covered by a Criteria Pollutant.~~

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

Exclusions

340-28-2620

(1) The Department shall not assess emission fees on newly permitted major sources that have not begun initial operation.

(2) The Department shall not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-28-2560.

(3) The Department shall not assess emission fees~~, OAR 340-28-2610,~~ on any device or activity which did not operate at any time during the ~~if there are no emissions of a regulated pollutant from an emission unit for the entire~~ calendar year.

(4) If an owner or operator of a major source operates a~~n assessable emission~~ device or activity ~~unit~~ for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a proration of the permitted emissions ~~PSEL~~ for the actual operating time .

(5) The Department shall not assess emission fees on emissions categorized as credits or unassigned PSELs within a federal operating permit. However, credits and unassigned PSELs shall be included in determining whether a source is a major ~~federal operating permit program~~ source, as defined in OAR 340-28-110~~(41)~~.

(6) The Department shall not assess emission fees on categorically insignificant emissions as defined in OAR 340-28-110~~(15)~~.

(7) The Department shall not assess emission fees on Hazardous Air Pollutants that are also Criteria Pollutants.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & ef. 10-6-95

Election For Each Assessable Emission

340-28-2640

(1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions or a combination of both for the previous calendar year for each assessable emission and notify the Department in accordance with OAR 340-28-2660.

(2) The owner or operator may elect to pay emission fees on permitted emissions for hazardous air pollutants. An owner or operator may elect a Hazardous Air Pollutant PSEL in accordance with OAR 340-28-1050. The HAP PSEL shall only be used for fee purposes.

(3) If an owner or operator fails to notify the Department of the election for an assessable emission, the Department shall assess emission fees for the assessable emission based on permitted emissions~~;~~.

(4) If the permit or review report does not identify permitted emissions ~~a PSEL~~ for an assessable emission, the Department shall develop permitted emissions representative of the assessable emissions~~a PSEL~~.

(5)~~(4)~~An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 12-1995, f. & ef. 5-1-95

Emission Reporting

340-28-2650

(1) The ~~For the purpose of assessing emission fees the~~ owner or operator shall, using ~~submit the following information on~~ a form(s) developed by the Department, report the following for each assessable emission or group of assessable emissions ~~in tons per year, reported as follows~~:

(a) ~~Particulate Matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as defined in OAR 340-28-110(71), as~~ PM_{10}, or if permit specifies Particulate Matter (PM), ~~Total Suspended Particulate (TSP)~~ then ~~as~~ PM~~TSP~~,

(b) Sulfur Dioxide as SO_2,

(c) Oxides of Nitrogen (NO_X) as Nitrogen Dioxide (NO_2),

(d) Total Reduced Sulfur (TRS) as H_2S in accordance with OAR 340-25-150~~(15)~~,

(e) Volatile Organic Compounds as:

(A) VOC for material balance emission reporting, or

(B) Propane (C_3H_8), unless otherwise specified by permit, or OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.

(f) Fluoride as F.

(g) Lead as Pb.

(h) Hydrogen Chloride as HCl.

(i) Estimate of Hazardous Air Pollutants as specified in a Department approved ~~test~~ method.

(2) The owner or operator ~~electing to pay emission fees on actual emissions~~ shall report emissions in tons per year and as follows:

(a) Round up to the nearest whole ton for emission values 0.5 and greater, and

(b) Round down to the nearest whole ton for emission values less than 0.5.

(3) The owner or operator electing to pay emission fees on actual emissions shall:

(a) Submit complete information on the forms including all assessable emissions, ~~emission units and sources,~~ and

(b) Submit documentation necessary to support emission calculations.

(4) The owner or operator electing to pay on actual emissions for an assessable emission shall report total emissions including those emissions in excess of 4,000 tons for each assessable emission.

(5) The owner or operator electing to pay on permitted emissions for an assessable emission shall ~~submit a statement to~~ identify such an election on the form(s) developed by the Department ~~that they shall pay on the PSEL in effect for the calendar year for which they are paying, in accordance with OAR 340-28-2640 and 340-28-2650~~.

(6) If more than one permit is in effect for a calendar year for a major source, the owner or operator electing to pay on permitted emissions shall pay on the most current ~~PSEL(s)~~ permitted or actual emissions.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 12-1995, f. & ef. 5-1-95

Actual Emissions

340-28-2670 An owner or operator electing to pay on actual emissions shall obtain emission data and determine assessable emissions using one of the following methods:

(1) Continuous monitoring systems used in accordance with OAR 340-28-2680,

(2) Verified emission factors developed for that particular source in accordance with OAR 340-28-2720 for:

(a) Each assessable emission, or

(b) A combination of assessable emissions if there are multiple ~~sources~~ devices or activities venting to the atmosphere through one common emission point (e.g., stack). The owner or operator shall have a verified emission factor plan approved by the Department prior to conducting the source testing in accordance with OAR 340-28-2720,

(3) Material balances determined in accordance with OAR 340-28-2690, OAR 340-28-2700, or OAR 340-28-2710, or

(4) Verified emission factors for source categories developed in accordance with OAR 340-28-2720(11).

(5) For specific assessable emissions of regulated air pollutants listed under OAR 340-32-130 and not subject by permit to a Plant Site Emission Limit, where the Department determines there are not applicable methods to demonstrate actual emissions, the owner or operator shall use the best representative data to develop an emission factor, subject to Department approval.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 12-1995, f. & ef. 5-1-95

Verified Emission Factors Using Source Testing

340-28-2720

(1) To verify emission factors used to determine assessable emissions the owner or operator shall either perform source testing in accordance with the Department's Source Sampling Manual or other methods approved by the Department for source tests. Source tests shall be conducted in accordance with testing procedures on file at the Department and the pretest plan submitted at least fifteen (15) days in advance and approved by the Department. All test data and results shall be submitted for review to the Department within thirty (30) days after testing.

NOTE: It is recommended that the owner or operator notify the Department and obtain pre-approval of the Emission Factor source testing program prior to or as part of the submittal of the first source test notification.

(2) The owner or operator shall conduct or have conducted at least three compliance source tests, each consisting of at least three individual test runs for a total of at least nine test runs.

(3) The owner or operator shall monitor and record or have monitored and recorded applicable process and control device operating data.

(4) The owner or operator shall perform or have performed a source test either:

(a) In each of three quarters of the year with no two successive source tests performed any closer than thirty (30) days apart, or

(b) At equal intervals over the operating period if the owner or operator demonstrates and the Department agrees ~~approves~~ that:

~~(A)~~ the device or activity ~~The process~~ operates or has operated for part of the year, or

~~(c) (B) The~~At any time during the year, if the owner or operator demonstrates and the Department agrees that the process is or was not subject to seasonal variations.

(5) The owner or operator shall conduct or have conducted the source tests to test the entire range of operating levels. At least one test shall be conducted at minimum operating conditions, one test at normal or average operating levels, and one test at anticipated maximum operating levels. If the process rate is constant, all tests shall be conducted at that rate. The owner or operator shall submit documentation to the Department demonstrating a constant process rate.

(6) The owner or operator shall determine or have determined an emission factor for each source test by dividing each test run emissions, in pounds per hour, by the applicable process rate during the source test run. At least nine emission factors shall be plotted against the respective process rates and a regression analysis performed to determine the best fit equation and the correlation coefficient (R^2). If the correlation coefficient is less than 0.50, which would indicate that there is a relatively weak relationship between emissions and process rates, the arithmetic average and standard deviation of at least nine emission factors shall be determined.

(7) The owner or operator shall determine the Emissions Estimate Adjustment Factor (EEAF) as follows:

(a) If the correlation coefficient (R^2) of the regression analysis is greater than 0.50, the EEAF shall be $1+(1-R^2)$.

(b) If the correlation coefficient (R^2) is less than 0.50, the EEAF shall be:

$$EEAF = 1 + SD/EF_{avg}$$

Where:

SD = Standard Deviation

EF_{avg} = Average of the Emission Factors

(8) The owner or operator shall determine actual emissions for emission fee purposes using one of the following methods:

(a) If the regression analysis correlation coefficient is less than 0.50, the actual emissions shall be the average emission factor determined from at least nine test runs multiplied by the EEAF multiplied by the total production for the entire year, or

$AE = EF_{avg} \times EEAF \times P$

Where:

AE	=	Actual Emissions
EF_{avg}	=	Average of the Emission Factors
EEAF	=	Estimated Emissions Adjustment Factor
P	=	Total production for the year

(b) If the regression analysis correlation coefficient is greater than 0.50 the following calculations shall be performed:

(A) Determine the average emission factor (EF) for each production rate category (maximum = EF_{max}, normal = EF_{norm}, and minimum = EF_{min}).

(B) Determine the total annual production and operating hours, production time (PT_{tot}), for the calendar year.

(C) Determine the total hours operating within the maximum production rate category (PT_{max}). The maximum production rate category is any operation rate greater than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).

(D) Determine the total hours while operating within the normal production rate category (PT_{norm}). The normal production rate category is defined as any operating rate less than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2) and any operating rate greater than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).

(E) Determine the total hours while operating within the minimum production rate category (PT_{min}). The minimum production rate category is defined as any operating rate less than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).

(F) Actual emissions equals EEAF x ~~(~~(PT_{max}/PT_{tot}) x ~~X~~EF_{max} + (PT_{norm}/PT_{tot}) x ~~X~~EF_{norm} + (PT_{min}/PT_{tot}) x ~~X~~EF_{min}~~.~~)

(9) The owner or operator shall determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator shall apply 340-28-2720(9)(a) or 340-28-2720(9)(b) (c) and (d) in developing emission factors. The owner or operator shall apply the emission factor obtained to the total time the ~~assessable emission~~ device or activity~~unit~~ operated in these conditions.

(a) All emissions during startup and shutdown, and emissions greater than normal shall be assumed equivalent to operation without an air pollution control device, unless accurately demonstrated by the owner or operator and approved by the Department in accordance with OAR 340-28-2720(9)(b), (9)(c), (9)(d), and (9)(e). The emission factor plus the EEAF shall be adjusted by the air pollution control device collection efficiency as follows:

Actual emission factor =
(EF x EEAF)/(1 - PCDE)
Where:

EF	=	Emission Factor
EEAF	=	Emission Estimate Adjustment Factor
PCDE	=	Pollution Control Device Collection Efficiency Unless

otherwise approved by the Department, the pollution control device collection efficiencies used in this calculation shall be:

Particulate Matter:	
ESP or baghouse	0.90
High energy wet scrubber	0.80
Low energy wet scrubber	0.70
Cyclonic separator	0.50
Acid gases:	
Wet or dry scrubber	0.90
VOCs:	
Incinerator	0.98
Carbon absorber	0.95

(b) During process startups a Department approved source test shall be performed to determine an average startup factor. The average of at least three tests runs plus the standard deviation shall be used to determine actual emissions during startups.

(c) During process shutdowns a Department approved source test shall be performed to determine an emission factor for shutdowns. The average of at least three test runs plus the standard deviation shall be used to determine actual emissions during shutdowns.

(d) During routine maintenance activity the owner or operator shall:
  (A) Perform routine maintenance activity during source testing for verified emission factors, or
  (B) Determine emissions in accordance with Section (a) of this rule.

(e) The emission factor need not be adjusted if the owner or operator demonstrates to the Department that the pollutant emissions do not increase during startup and shutdown, and for conditions that are not accounted for ~~the~~ in the procedure(s) otherwise used to document actual emissions (e.g. NO_x emissions during an ESP failure).

(10) A verified emission factor developed pursuant to OAR 340-28-2560 through 340-28-2740 and approved by the Department can not be used if a process change occurs that would affect the accuracy of the verified emission factor.

(11) The owner or operator may elect to use verified emission factors for source categories if the Department determines the following criteria are met:

(a) The verified emission factor for a source category shall be based on verified emission factors from at least three individual sources within the source category,

(b) Verified emission factors from sources within a source category shall be developed in accordance with OAR 340-28-2720,

(c) The verified emission factors from the sources shall not differ from the mean by more than twenty percent, and

(d) The source category verified emission factor shall be the mean of the source verified emission factors plus the average of the source emission estimate adjustment factors.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & ef. 10-6-95

Housekeeping / Clarification

Introduction

340-027-0005 OAR 340-027-0010, 340-027-0015 and 340-027-0025 are effective within priority I and II air quality control regions (AQCR) as defined in **40 CFR Part 51, subpart H (1995)**~~designated in 40 CFR Part 52 subpart MM~~, when the AQCR contains a nonattainment area listed in **40 CFR Part 81**. All other rules in this Division are equally applicable to all areas of the state. Notwithstanding any other regulation or standard, this Division is designed to prevent the excessive accumulation of air contaminants during periods of atmospheric stagnation or at any other time, which if allowed to continue to accumulate unchecked could result in concentrations of these contaminants reaching levels which could cause significant harm to the health of persons. This Division establishes criteria for identifying and declaring air pollution episodes at levels below the level of significant harm and are adopted pursuant to the requirements of the **Federal Clean Air Act** as amended and **40 CFR Part 51.151**. Levels of significant harm for various pollutants listed in **40 CFR Part 51.151** are:

(1) For sulfur dioxide (SO_2) - 1.0 ppm, 24-hour average.
(2) For particulate matter (PM_{10}) - 600 micrograms per cubic meter, 24-hour average.
(3) For carbon monoxide (CO):
  (a) 50 ppm, 8-hour average.
  (b) 75 ppm, 4-hour average.
  (c) 125 ppm, 1-hour average.
(4) For ozone (O_3) - 0.6 ppm, 2-hour average.
(5) For nitrogen dioxide (NO2):
  (a) 2.0 ppm, 1-hour average.
  (b) 0.5 ppm, 24-hour average.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 37, f. 2-15-72, ef. 9-1-72; DEQ 18-1983, f. & ef. 10-24-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); AQ 1-1993, f. & ef. 3-9-93

Permit Required

340-28-1720

(1) No person may ~~shall~~ construct, install, establish, develop or operate any air contaminant source which is referred to in **Table 4**, appended hereto and incorporated herein by reference, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority.
(2) No person may ~~shall~~ construct, install, establish, or develop any major source, as defined by OAR 340-028-2110 that will be subject to the Oregon Title V Operating Permit

program without first obtaining an ACDP from the Department or Regional Authority. Any Oregon Title V Operating Permit program source required to have obtained an ACDP prior to construction shall:

(a) choose to become a synthetic minor source, OAR 340-028-1740, and remain in the ACDP program; or

(b) file a complete application to obtain the Oregon Title V Operating Permit within 12 months after initial startup.

(3) No person may ~~shall~~ modify any source covered by an ACDP under OAR 340-028-1700 through 340-028-1790 such that the emissions are significantly increased without first applying for and obtaining a permit modification.

(4) No person may ~~shall~~ modify any source required to be covered by an ACDP under OAR 340-028-1700 through 340-028-1790 such that the source becomes subject to the Oregon Title V Operating Permit program, OAR 340-028-2100 through 340-028-2320 without first applying for and obtaining a modified ACDP. Any Oregon Title V Operating Permit program source required to have obtained an ACDP prior to modification shall:

(a) choose to become a synthetic minor source, OAR 340-028-1740, and remain in the ACDP program;

(b) choose to remain a synthetic minor source, OAR 340-028-1740, and remain in the ACDP program; or

(c) file a complete application to obtain the Oregon Title V Operating Permit within 12 months after initial startup of the modification.

(5) No person may ~~shall~~ increase emissions above the PSEL or operate in excess of the enforceable condition to limit potential to emit and remain a synthetic minor source without first applying for and obtaining a modified ACDP.

(6) ~~No person shall modify any source covered by an ACDP under OAR 340-28-1700 through 340-28-1790 and not required to obtain a federal operating permit such that:~~

~~(a) The process equipment is substantially changed or added to; or~~

~~(b) The emissions are significantly changed without first notifying the Department.~~

If a source is covered by an ACDP under OAR 340-28-1700 through OAR 340-28-1790, but is not required to obtain an Oregon Title V Operating Permit, no person may, without first notifying the Department;

(a) Substantially change or add to the process equipment; or

(b) Modify the source in such a way that emissions are significantly changed.

(7) Any owner or operator may apply to the Department or Regional Authority for a special letter permit if operating a facility with no, or insignificant, air contaminant discharges. The determination of applicability of this special permit shall be made solely by the Department or Regional Authority having jurisdiction. If issued a special permit, the application processing fee and/or annual compliance determination fee, provided by OAR 340-028-1750, may be waived by the Department or Regional Authority.

(8) The Department may designate any source as a "Minimal Source" based upon the following criteria:

(a) Quantity and quality of emissions;

(b) Type of operation;

(c) Compliance with Department regulations; and

(d) Minimal impact on the air quality of the surrounding region. If a source is designated as a minimal source, the annual compliance determination fee, provided by OAR 340-028-1750, will be collected no less frequently than every five (5) years.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-020-0047.]

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

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.08; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-020-0155, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 22-1995, f. & ef. 10-6-95

The Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon

Definitions

340-031-0500 As used throughout the State Implementation Plan (SIP) and as specifically referenced in OAR 340, Divisions 20, 21, 22, 25, 28, 30, 31, and 34 and in Section 4 of the SIP:

. . .

~~(12) "Lakeview UGB" means the area within the bounds beginning at the northeast corner of Section 4, R20, T39S; thence west to the northwest corner of Section 4, R20E, T39S; thence south to the southwest corner of Section 9, R20E, T39S and the intersection with State Highway 66; thence west along State Highway 66 to the intersection with the western fork of the East Branch of Thomas Creek; thence southerly along the western fork of the East Branch of Thomas Creek to the intersection with the western boundary of Section 16, R20E, T39S; thence south along the western boundary of Section 16, R20E, T39S to the southwest corner of Section 16, R20E, T39S; thence east to the southeast corner of Section 16, R20E, T39S; thence south to the southwest corner of Section 22, R20E, T39S; thence east approximately 1/2 mile along the southern boundary of Section 22, R20E, T39S; thence on a line north to the intersection with the southern boundary of Section 15, R20E, T39S; thence east to the southeast corner of Section 15, R20E, R39S; thence north to the northeast corner of Section 15, R20E, T39S; thence further north approximately 1/4 mile along the eastern boundary of Section 10, R20E, T39S; thence west on a line to the intersection to the intersection with State Highway 395; thence north on a line approximately 1/4 mile; thence on a northwesterly line running parallel to State Highway 66 to the intersection with the southern boundary of Section 3, R20E, T39S and the private road in the same location; thence northwesterly along that private road approximately 1000 feet; thence due west approximately 300 feet; thence due north approximately 500 feet; thence on a line due west to the intersection with State Highway 395; thence northwesterly along State Highway 395 for approximately 1/3 mile; thence north on a line approximately 500 feet; thence northeasterly on a line of 12 degrees for approximately 1/5 mile; thence~~

~~northwesterly on a line of 108 degrees for approximately 500 feet; thence due east on a line to the intersection with the eastern boundary of Section 4, R20E, T39S; thence north to the northeast corner of Section 4, R20E, T39S (the point of beginning).~~

. . .

(22) "Portland Metropolitan Area Nonattainment Area for Total Suspended Particulate" are the areas not in attainment for the **Secondary 24 Hour TSP Standard** or not in attainment for the **Secondary Annual TSP Standard**.

(a) The nonattainment area within the Oregon portion of the Portland-Vancouver AQMA for the **Secondary 24 Hour TSP Standard** is legally defined as the areas within the bounds of the Universal Transverse Mercator (UTM) mapping and coordinate system, Zone 10 as follows:

. . .

(D) The area is bounded as follows: beginning at the point of intersection of the UTM easting coordinate 525,000 meters and the UTM northing coordinate 5,042,000 meters, extending thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 531,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,040,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 527,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,038,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 529,000 meters, then south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,036,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 533,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,038,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 535,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,036,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 533,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,030,000 meters, thence east along the last referenced coordinate to the intersection with the UTM easting coordinate 535,000 meters, thence south along the last referenced coordinate to the intersection with the UTM northing coordinate 5,028,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 533,000 meters, thence south along the last referenced coordinate to the intersection with UTM northing coordinate 5,022,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 531,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,026,000 meters, thence west along the last referenced coordinate to the

intersection with UTM easting coordinate 529,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate ~~5,029,000~~ 5,028,000 meters, thence west along the last referenced coordinate to the intersection with UTM easting coordinate 525,000 meters, thence north along the last referenced coordinate to the intersection with UTM northing coordinate 5,030,000 meters, thence east along the last referenced coordinate to the intersection with UTM easting coordinate 527,000, thence north along the last referenced coordinate to the intersection with the UTM northing coordinate 5,034,000 meters, thence west along the last referenced coordinate to the intersection with the UTM easting coordinate 525,000 meters, thence north along the last referenced coordinate to the point of beginning.

. . .

(25) "Salem Area Transportation Study" or "SATS" means the area within the bounds beginning at the intersection of U.S. Interstate Highway 5 (I-5) ~~and~~ with Battle Creek Road SE and Wiltsey Road, south along I-5 to the intersection with the western boundary of Section 24, T8S, R3W; thence due south on a line to the intersection with Delaney Road; thence easterly along Delaney Road to the intersection with Sunnyside Road; thence north along Sunnyside Road to the intersection with Hylo Road SE; thence west along Hylo Road SE to the intersection with Liberty Road; thence north along Liberty Road to the intersection with Cole Road; thence west along Cole Road to the intersection with Bates Road; thence northerly and easterly along Bates Road to the intersection with Jory Hill Road; thence west along Jory Hill Road to the intersection with Stone Hill Avenue; thence north along Stone Hill Avenue to the intersection with Vita Springs Road; thence westerly along Vita Springs Road to the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where the western boundary of Section 30, T7S, R3W intersects the Southern Pacific Railroad Line; thence westerly along the Southern Pacific Railroad Line to the intersection with State Highway 51; thence northeasterly along State Highway 51 to the intersection with Oak Grove Road; thence northerly along Oak Grove Road to the intersection with State Highway 22; thence west on State Highway 22 ~~Doaks Ferry Road and Dallas Highway intersect; thence west along Dallas Highway~~ to the intersection with Oak Grove Road; thence north along Oak Grove Road to the intersection with Orchard Heights Road; thence east and north along Orchard Heights Road to the intersection with Eagle Crest Drive; thence northerly along Eagle Crest Drive to the intersection with Hunt Road; thence north along Hunt Road to the intersection with Fourth Road; thence east along Fourth Road to the intersection with Spring Valley Road; thence north along Spring Valley to the intersection with Oak Knoll Road; thence east along Oak Knoll Road to the intersection with Wallace Road; thence south along Wallace Road to the intersection with Lincoln Road; thence east along Lincoln Road on a line to the intersection with the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Simon Street starts on the East Bank; thence east and south along Simon Street to the intersection with Salmon; thence east along Salmon to the intersection with Ravena Drive; thence southerly and easterly along Ravena Drive to the intersection with Wheatland Road; thence northerly

along Wheatland Road to the intersection with Brooklake Road; thence southeast along Brooklake Road to the intersection with 65th Avenue; thence south along 65th Avenue to the intersection with Labish Road; thence east along Labish Road to the intersection with the West Branch of the Little Pudding River; thence southerly along the West Branch of the Little Pudding River to the intersection with Sunnyview Road; thence east along Sunnyview Road to the intersection with 63rd Avenue; thence south along 63rd Avenue to the intersection with State Street; thence east along State Street to the intersection with 62nd Avenue; thence south along 62nd Avenue to the intersection with Deer Park Drive; thence southwest along Deer Park Drive to the intersection with Santiam Highway 22; thence southeast along Santiam Highway 22 to the point where it intersects the Salem-~~Keizer~~ Urban Growth Boundary (~~SKUGB~~ SUGB); thence following the southeast boundary of the ~~SKUGB~~ SUGB generally southerly and westerly ~~to the intersection with Markham Street; thence northwest along Markham Street to the intersection with Wiltsey Loop; thence southwest along Wiltsey Loop to the intersection with Coates Drive; thence northeast along Coates Drive~~ to the intersection with Wiltsey Road; thence west along Wiltsey Road to the intersection with I-5 (the point of beginning).

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 14-1995, f. & ef. 5-25-95

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Nonattainment Areas

340-031-0520 The following areas are designated as Nonattainment Areas:

(1) Carbon Monoxide Nonattainment Areas:
  (a) The Grants Pass Nonattainment Area for Carbon Monoxide is the Grants Pass CBD as defined in OAR 340-031-0500.
  (b) The Klamath Falls Nonattainment Area for Carbon Monoxide is the Klamath Falls UGB as defined in OAR 340-031-0500.
  (c) The Medford Nonattainment Area for Carbon Monoxide is the Medford-~~Ashland~~ UGB as defined in OAR 340-031-0500.
  (d) The Portland Nonattainment Area for Carbon Monoxide is the Portland Metropolitan Service District as referenced in OAR 340-031-0500.
  (e) The Salem Nonattainment Area for Carbon Monoxide is the Salem Area Transportation Study as defined in OAR 340-031-0500.

(2) Ozone Nonattainment Areas:
  (a) The Oregon portion of the Portland-Vancouver Interstate Nonattainment Area for Ozone is the Portland AQMA as defined in OAR 340-031-0500.
  (b) The Salem Nonattainment Area for Ozone is the Salem Area Transportation Study as defined in OAR 340-031-0500.

(3) PM_{10} Nonattainment Areas:
  (a) The Eugene Nonattainment Area for PM_{10} is the Eugene UGA as defined in OAR 340-031-0500.

(b) The Grants Pass Nonattainment Area for PM_{10} is the Grants Pass UGB as defined in OAR 340-031-0500.

(c) The Klamath Falls Nonattainment Area for PM_{10} is the Klamath Falls UGB as defined in OAR 340-031-0500.

(d) The LaGrande Nonattainment Area for PM_{10} is the LaGrande UGB as defined in OAR 340-031-0500.

(e) The Lakeview Nonattainment Area for PM_{10} is the Lakeview UGB as defined in OAR 340-031-0500.

(f) The Medford Nonattainment Area for PM_{10} is the Medford-Ashland AQMA as defined in OAR 340-031-0500.

(g) The Oakridge Nonattainment Area for PM_{10} is the Oakridge UGB as defined in OAR 340-031-0500.

(4) Total Suspended Particulate (TSP) Nonattainment Areas:

(a) The Eugene Nonattainment Area for TSP is the Eugene-Springfield AQMA as defined in OAR 340-031-0500.

(b) The Medford Nonattainment Area for TSP is the Medford-Ashland AQMA as defined in OAR 340-031-0500.

(c) The Portland Nonattainment Area for TSP includes areas within the Portland AQMA as set out and defined in OAR 340-031-0500.

NOTE: Total Suspended Particulate is now a state-enforceable standard only. The US EPA now enforces PM_{10} in the place of TSP. The Department has decided to retain TSP as an enforceable standard.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 14-1995, f. & ef. 5-25-95

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

Upsets and Breakdowns

340-028-1430

(1) For upsets or breakdowns caused by an emergency and resulting in emissions in excess of technology-based standards, the owner or operator may be entitled to an affirmative defense to enforcement if:
   (a) the Department is notified immediately of the emergency condition; and
   (b) the owner or operator fulfills requirements outlined in the Emergency Provision in OAR 340-028-1460.

(2) In the case of all other upsets and breakdowns, the following requirements apply:
   (a) For large sources, as defined by OAR 340-028-0110, the first onset per calendar day of any excess emissions event due to upset or breakdown, other than those described in section (1) of this rule, shall be reported to the Department immediately unless otherwise specified by permit condition. Based on the severity of the event, the Department will either require submittal of a written report pursuant to OAR 340-028-1440(1) and (2), or a recording of the event in the upset log as required in OAR 340-028-1440(3).
   (b) The owner or operator of a small source, as defined by OAR 340-028-0110, need not report excess emissions events due to upset or breakdown immediately unless otherwise required by: permit condition; written notice by the Department; subsection (1)(a) of this rule; or if the excess emission is of a nature that could endanger public health. Based on the severity of the event, the Department will either require submittal of a written report pursuant to OAR 340-028-1440(1) and (2), or a recording of the event in the upset log as required in OAR 340-028-1440(3).

(3) During any period of excess emissions due to upset or breakdown, the Department may require that an owner or operator immediately proceed to reduce or cease operation of the equipment or facility until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department would be taken upon consideration of the following factors:
   (a) Potential risk to the public or environment;
   (b) Whether shutdown could result in physical damage to the equipment or facility, or cause injury to employees;
   (c) Whether any Air Pollution Alert, Warning, Emergency, or yellow or red woodstove curtailment period exists; or
   (d) If continued excess emissions were determined by the Department to be avoidable.

(4) In the event of any on-going period of excess emissions due to upset or breakdown, the owner or operator shall cease operation of the equipment or facility no later than 48 hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time. The owner or operator need not cease operation if he or she can obtain Department's approval of procedures that will be used to minimize excess emissions until such time as the condition causing the excess emissions is corrected or

brought under control. Approval of these procedures shall be based on the following information supplied to the Department:

(a) The reasons why the condition(s) causing the excess emissions cannot be corrected or brought under control. Such reasons shall include but not be limited to equipment availability and difficulty of repair or installation;

(b) Information as required in OAR 340-028-1410(~~2~~4)(b), (c), and (d).

(5) Approval of the above procedures by the Department shall be based upon determination that said procedures are consistent with good pollution control practices, and will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The permittee shall record all excess emissions in the upset log as required in section (2) of this rule. At any time during the period of excess emissions the Department may require the owner or operator to cease operation of the equipment or facility, in accordance with OAR 340-028-1430(3). In addition, approval of these procedures shall not absolve the permittee from enforcement action if the approved procedures are not followed, or if excess emissions occur that are determined by the Department to be avoidable, pursuant to OAR 340-028-1450.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-020-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 42-1990, f. 12-13-90, cert.ef. 1-2-91; Renumbered from OAR 340-020-0370, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 24-1994, f. & ef. 10-28-94

Permit to Operate

340-032-240

(1) On and after the effective date of the program or at such earlier date as the Department may establish pursuant to OAR 340-028-2120, no owner or operator shall operate a new, existing, or modified major source of HAP emissions without applying for an operating permit as described below:

(a) The following types of HAP sources shall, within 12 months after initial startup of the construction or modification, comply with the Oregon Title V Operating Permit application procedures of OAR 340-028-2100 through 340-028-2320:

(A) New major sources as described in OAR 340-032-0230(1)(a);

(B) Existing sources operating under an ACDP as described in OAR 340-032-0230(1)(c);

(C) Existing sources previously unpermitted as described in OAR 340-032-0230(d);

(D) Existing synthetic minor sources operating under an ACDP as described in OAR 340-032-0230(1)(e)(B).

(b) Any existing major sources as described under OAR 340-032-0230(1)(b) shall:

(A) Immediately upon receiving its preconstruction notice of approval, comply with the operating permit procedures described under OAR 340-028-2230 Administrative Amendments, if the source has complied with the enhanced provisions of OAR 340-028-2290 and OAR 340-028-2310;

(B) Within 12 months of commencing operation comply with the permit application procedures under OAR 340-028-2250 when the modification qualifies as a minor modification or OAR 340-028-2260 when the modification qualifies as a significant modification; or

(C) At the time of permit renewal comply with the permit application procedures under OAR 340-028-2220(2) when the modification qualifies as an off permit change or OAR 340-028-2220(3) when the modification qualifies as a "Section 502(b)(10)" change.

(c) Any synthetic minor source as described in OAR 340-032-0230(1)(e)(A) shall, prior to commencing operation, apply for and obtain the required Oregon Title V Operating Permit according to the procedures of OAR 340-028-2100 through 340-028-2320.

(d) Any existing major source shall comply with the Oregon Title V Operating Permit application procedures of OAR 340-028-2100 through 340-028-2320 upon becoming subject to the Oregon Title V Operating Permit program.

(2) All Oregon Title V Operating Permit applicants shall include in the application:

(a) All emissions of HAP listed in **Table 1** of OAR 340-032-0130 in accordance with OAR 340-028-2120(3) Standard Application Form and Required Information, and OAR 340-028-2120(4) Quantifying Emissions;

(b) An estimate of the use of additional substances, listed in OAR 340, Chapter 135, Appendix 1 and in OAR 340-032-5400 **Table 3**, that are manufactured, processed, or used at the facility and that could reasonably be expected to be emitted from the source;

(A) The estimated annual manufacture, processing, or use of each chemical shall be reported within the following ranges: "Not Present"; "Insignificant Use" (less than 1,000 pounds); "1,001 - 10,000 pounds"; "10,001 - 20,000 pounds"; 20,001 - 50,000 pounds"; and "Over 50,000 pounds".

(B) The owner or operator shall provide estimates of the usage of these additional chemicals based on readily available information. The owner or operator is not required to estimate the "manufacture" of any chemical from combustion or manufacturing processes for which there are no verifiable emission factors, mass balance calculation methods, or for which no EPA approved testing, sampling, or monitoring method exists. The use of chemicals in the following categories are exempt from quantification:

(i) Aggregate insignificant emissions as defined under OAR 340-028-0110~~(5)~~ and categorically insignificant activities as defined under OAR 340-028-0110~~(15)~~;

(ii) Products and fuels for maintaining motor vehicles used onsite; or

(iii) Chemicals used in a manufactured item that are not released under normal circumstances of processing at the facility;

(C) Nothing in paragraphs (A) or (B) of this subsection shall require a source to conduct monitoring or testing solely for the purpose of estimating annual usage of the additional substances.

(3) Prior to the effective date of the program for a major source and at any time for an area source, no owner or operator shall operate a new, existing, or modified stationary source subject to OAR 340-032-5500 through 340-032-5600 or 340-032-5650 without first obtaining a permit pursuant to OAR 340-028-1700 through 340-028-1770.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef, 9-24-93; DEQ 18-1993, f. & ef. 11-4-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & ef. 10-6-95

Emission Standards for Airborne Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission

340-032-5585

(1) Applicability.

(a) This rule applies to any Oregon Title V Operating Permit source which is a major source under OAR 340-028-0110~~(45)~~ that is also subject to **40 CFR 61.100**.

(2) Requirements. Sources subject to this rule shall comply with **40 CFR Part 61, Subpart I, as adopted under OAR 340-032-5520.**

[Note: Other sources which are not major sources may be subject to **40 CFR Part 61, Subpart I** under authority retained by EPA.]

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist: DEQ 32-1994, f. & ef. 12-22-94; DEQ 22-1995, f. & ef.10-6-95

NOTICE OF PROPOSED RULEMAKING

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

Department of Environmental Quality AQ

OAR Chapter 340 -25, 27, 28, 31, 32

STATUTORY AUTHORITY: ORS 468.020, 468A.025

ADOPT:

AMEND: 340-025-0890 to 0905, 340-027-0005, 340-028-1410, 1720, 2610 to 2720, 340-031-0500, 0520, 340-032-0240, 5585

REPEAL:

RENUMBER:
(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER TO:
(prior approval from Secretary of State REQUIRED)

SUMMARY:

Crematory Incinerators, 340-025-0890 to 0905

Source testing

The revised rule would require sources to show compliance before regular operation, when there are odor or visible emissions problems, or when the Department requires it. Unlike the current rule, sources would be able to show compliance with emission requirements by submitting test results from an incinerator the Department agrees is comparable, or through a source test.

Training

The revision would also require that each source have a Department-approved training program on file on-site, along with certification by each employee operator of the incinerator that the employee has undergone and understood the training program.

Excess Emissions, 340-028-1410

The revised rule would require submission of written startup and shutdown procedures only from major sources, from sources in non-attainment or maintenance areas for the pollutant in question and from other sources at the Department's discretion.

Title V Fee Assessment, 340-028-2610 to 2720

The revision would clarify that sources can have the flexibility benefits of a facility-wide PSEL while choosing whether to pay fees on actual or calculate emissions for individual emissions units or parts of emissions units.

The revision would also include a number of more minor fee rule clarifications.

Housekeeping

The revision would make a number of minor housekeeping amendments.

LAST DATE FOR COMMENT: April 24, 1996

AGENCY RULES COORDINATOR:	Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL:	Ben Allen
ADDRESS:	Air Quality Division 811 S. W. 6th Avenue Portland, Oregon 97204
TELEPHONE:	(503) 229-6828 or Toll Free 1-800-452-4011

If any interested person wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a public hearing and submit this request along with any written comments to the above address. Request for public hearing must be recieved before the earliest date that the rule could become effective after the giving of notice in the Bulletin of the Secretary of State from 10 or more person sor an association having not less than 10 members. If sufficient requests are received to hold a public hearing, notice of the hearing shall be published in the Bulletin of the Secretary of State at least 14 days befor ethe hearing.

Benjamin M. Allen
Signature

Mar 18 96
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

Fiscal and Economic Impact Statement

Introduction

The proposed revisions would generally have no fiscal impact, with two exceptions. The crematory incinerator rule revision would save affected sources (about 50 sources) substantial testing costs, and the excess emissions rule revision would allow the Department to use resources more efficiently. Because the Title V Fee assessment revisions clarify the status quo, there would be no fiscal impact from those revisions.

General Public

Crematory Incinerators, 340-025-0890 to 0905

Because costs of sources with crematory incinerators would decrease, the public might pay lower costs for cremation-related expenses.

Small Business

Crematory Incinerators, 340-025-0890 to 0905

Virtually all crematory incinerators are run by small businesses. The cost of a source test is roughly $3,000 to $5,000. Many affected businesses would be able to avoid that cost by showing compliance with Department rules by means other than source testing.

Excess Emissions, 340-028-1410

Many small sources of emissions would no longer have to submit written startup/shutdown procedures, which could create small cost savings.

Large Business

Crematory Incinerators, 340-025-0890 to 0905

Some crematory incinerators are run by large businesses. The cost of a source test is roughly $3,000 to $5,000. Many affected businesses would be able to avoid that cost by showing compliance with Department rules by means other than source testing.

Excess Emissions, 340-028-1410

Many small sources of emissions would no longer have to submit written startup/shutdown procedures, which could create small cost savings.

Local Governments

Crematory Incinerators, 340-025-0890 to 0905

Four county governments (Multnomah, Washington, Clatsop, & Columbia) run crematory incinerators. The cost of a source test is roughly $3,000 to $5,000. Many affected sources would be able to avoid that cost by showing compliance with Department rules through a means other than source testing.

Excess Emissions, 340-028-1410

Many small sources of emissions would no longer have to submit written startup/shutdown procedures, which could create small cost savings.

State Agencies

Excess Emissions, 340-028-1410

The Department would be able to use resources more effectively by reducing time spent reviewing procedures to avoid excess emissions at startup and shutdown. The Department would only be required to review procedures from large sources (generally, greater than 100 tons of emissions per year), rather than all sources. There would be no change in revenue because of these revisions.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The following proposed rule revisions are intended to address various unrelated issues or problems discovered during the Title V permit application and issuance process. However, not all rules proposed for revision relate directly to the Title V program. Except for the Title V fee assessment revisions and revisions to Division 32, all proposed revisions are to rules included in the State of Oregon Clean Air Act Implementation Plan.

Crematory Incinerators, 340-025-0890 to 0905

Source testing

Current rules require all crematory incinerators to do costly source tests before commencing regular operation. The sources running crematory incinerators are often part of small operations, such as humane society incinerators, and the tests are burdensome. The Department has found that when crematory incinerators exceed emission limits, they also have problems with odor or visible emissions. The revised rule would require sources to show compliance before regular operation, when there are odor or visible emissions problems, or when the Department requires it. Unlike the current rule, sources would be able to show compliance with emission requirements by submitting test results from an incinerator the Department agrees is comparable, or through a source test.

Training

The revision would also require that each source have a Department-approved training program on file on-site, along with certification by each employee operator of the incinerator that the employee has undergone and understood the training program.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures, which the Department must then approve. For the many small sources, this is not a good use of the Department's limited resources. The revised rule would

require written procedures only from large sources ("major sources" as defined in OAR 340-028-0110(54)(a) - which emit at the Significant Emission Rate), from sources in non-attainment or maintenance areas for the pollutant in question and from other sources at the Department's discretion.

Title V Fee Assessment, 340-028-2610 to 2720

Title V sources can choose to have a facility-wide Plant Site Emission Limit (PSEL) instead of emission unit-specific emission limits. The current rules are not clear about how fees can be assessed for such sources. The revision would allow sources with facility-wide PSELs to pay fees based on a mix of actual emissions from some emissions units, and permitted emissions from other units. Permitted emissions are generally greater than actual emissions. The revision would clarify that sources can have the flexibility benefits of a facility-wide PSEL while choosing whether to pay fees on actual or calculate emissions for individual emissions units or parts of emissions units.

The revision would also include a number of more minor fee rule clarifications.

Housekeeping

- Air pollution emergencies, 340-027-0005

  The current rule refers to an outdated table of Priority I, II, and III areas in the Code of Federal Regulations. The revised rule would avoid the problem by referring to the federal definitions of Priority I, II, and III.

- [Air Contaminant Discharge] Permit required, 340-028-1720

  Paragraph (6) in the current rule is unclear. The revision would clarify the rule language.

- Nonattainment and maintenance area boundaries, 340-031-0500, 0520

  Some of the references and descriptions are incorrect.

  In 340-031-0500:

  There are two (12)s describing the Lakeview UGB. The second is a draft description included in the rule in error.

  There is a typographical error in (22)(a)(D).

  Paragraph (25) describes the Salem-Keizer Area Transportation Study Boundary, instead of the intended Salem Area Transportation Study (SATS) Boundary. However, non-attainment area requirements have been enforced within the SATS.

  In 340-031-0520:

  (1)(c) The Medford Nonattainment Area for Carbon Monoxide is the Medford-Ashland UGB as defined in OAR 340-031-0500.

  (3)(f) The Medford Nonattainment Area for PM10 is the Medford AQMA as defined in OAR 340-031-0500.

♦ Cross references, 340-032-0240, 5585
Because of a renumbering of 340-028-0110, some cross references to specific paragraphs would be incorrect. This problem is likely to recur, and the simplest solution is to remove the specific paragraph numbers in the references. Because 340-028-0110 is organized alphabetically, it would not be difficult to find the appropriate paragraphs.

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:

Oregon's Federal Operating Permit and Air Contaminant Discharge Permit programs which regulate air emissions from industrial sources.

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

Yes X No____ (if no, explain):

Current procedures require local governments to determine land use compatibility before a Notice of Construction is approved or an air permit is issued.

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

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

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

Gregg E. Fande — Division Representative

Intergovernmental Coord.

3/12/96 — Date

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

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

Crematory Incinerators, 340-025-0890 to 0905

There are no federal requirements specific to crematory incinerators

Excess Emissions, 340-028-1410

Federal rules do not require submission of written startup and shutdown procedures from sources of any size.

Title V Fee Assessment, 340-028-2610 to 2720

Federal rules require that the Title V permit program assess fees sufficient to support the program, but do not address whether fees may be assessed on a mix of actual and permitted emissions.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The revision would replace references to a table in the Code of Federal Regulations (CFR) with references to the definitions in federally adopted rules in the CFR which were used to make the table. The result would be more up-to-date.

- Nonattainment and maintenance area boundaries, 340-031-0500, 0520

  EPA requires boundaries for certain area classifications. EPA has accepted maps in the past. However, as regulations become more complex and affect a larger number of individuals and sources, EPA has requested that areas be defined with greater certainty. This revision corrects some of those complex descriptions.

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?

To the extent federal requirements apply, they do address issues of concern to Oregon. The revisions proposed here are generally to portions of Oregon's rules which differ from or exceed federal requirements.

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?

Crematory Incinerators, 340-025-0890 to 0905

Yes. The revisions would allow sources to show compliance with emission limits without source testing. This would lower costs, while still protecting the environment.

Excess Emissions, 340-028-1410

No.

Title V Fee Assessment, 340-028-2610 to 2720

Yes. The revisions would clarify that sources with plant-wide Plant Site Emission Limits can be assessed fees based on a mix of permitted and actual emissions from different units. The result is more flexibility for sources.

Housekeeping

- Air pollution emergencies, 340-027-0005

  Yes. The revisions would clarify which regions of the state fit a particular classification. The classification can determine source obligations.
- [Air Contaminant Discharge] Permit required, 340-028-1720

  Yes. The revision would clarify confusing language.
- Nonattainment and maintenance area boundaries, 340-031-0500, 0520

  Yes. The current boundary descriptions are incorrect. The revision would clear up confusion over the proper boundaries.
- Cross references, 340-032-0240, 5585

  No.

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

No.

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

Not applicable.

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

Crematory Incinerators, 340-025-0890 to 0905

The revision would lessen the requirements for existing crematory incinerators, while maintaining the requirements for new crematory incinerators.

Excess Emissions, 340-028-1410

No. The revision would lower the burden of compliance for many small sources, while maintaining it for large sources, which are of greater concern.

Title V Fee Assessment, 340-028-2610 to 2720

Yes.

Housekeeping

Not applicable.

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

Not applicable.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

The revisions would make Oregon's current procedural and reporting requirements more consistent with federal requirements.

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

Not applicable.

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

Crematory Incinerators, 340-025-0890 to 0905

Yes. The Department has found that when crematory incinerators exceed emission limits, they also have problems with odor or visible emissions. The new rule would not require source testing from existing incinerators unless there are such problems,

or when the Department requires it. The result would be savings to crematory incinerators, without detriment to the environment.

Excess Emissions, 340-028-1410

No.

Title V Fee Assessment, 340-028-2610 to 2720

No.

Housekeeping

Not applicable.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: March 15, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to amend rules regarding crematory incinerators, excess emissions, Title V permit program fee assessment, and housekeeping changes. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to amend rules.

This proposal would lessen the requirement for source testing of crematory incinerators, no longer require submission of startup and shutdown procedures from some small pollutant sources, allow Title V fee assessment based on a mix of permitted and actual emissions, and make housekeeping changes to other rules. Except for the Title V fee assessment revisions and housekeeping revisions to Division 32, all proposed revisions are to rules included in the State of Oregon Clean Air Act Implementation Plan.

The Department has the statutory authority to address these issues under ORS 468.020 and 468A.025.

What's in this Package?
Attachments to this memorandum provide details on the proposal as follows:

Attachment A	The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
Attachment B	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
Attachment C	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

Public Comment Period

You are invited to review these materials and present written comment on the proposed rule changes. Written comments must be presented to the Department by 5:00 p.m., April 24, 1996. In accordance with ORS 183.335(13), no comments can be accepted after this date, by either the EQC or the Department. Thus if you wish for your comments to be considered by the

Department in the development of these rules, your comments **must** be received prior to the close of the comment period. Interested parties are encouraged to present their comments as early as possible prior to the close of the comment period to ensure adequate review and evaluation of the comments presented. Please forward all comments to Department of Environmental Quality, Attn: Benjamin M. Allen, 811 S.W. 6th Avenue, Portland, Oregon, 97204 or hand deliver them to the Department of Environmental Quality, 811 S.W. 6th, 11th Floor, between 8:00 a.m. and 5:00 p.m.

Following close of the public comment period, the Department will prepare a report which summarizes the comments received. The Environmental Quality Commission (EQC) will receive a copy of this report and all written comments submitted.

If written comments indicating significant public interest or written requests from 10 persons, or an organization representing at least 10 persons, are received regarding this proposed rule, the Department will provide a public hearing. Requests for a hearing must be in writing and received by the Department by 5:00 p.m., April 24, 1996.

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

What Happens After the Public Comment Period Closes?

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is July 12, 1996. This date may be delayed if needed to provide additional time for evaluation and response to testimony received. You will be notified of the time and place for final EQC action if you present submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

In accordance with ORS 183.335(13), no comments can be accepted by either the Department or the EQC after the comment period has closed. Thus the EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department at the earliest possible date prior to the close of the comment period so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

The following proposed rule revisions are intended to address various unrelated issues or problems discovered during the Title V permit application and issuance process. However, not all rules proposed for revision relate directly to the Title V

program. Except for the Title V fee assessment revisions and revisions to Division 32, all proposed revisions are to rules included in the State of Oregon Clean Air Act Implementation Plan.

Crematory Incinerators, 340-025-0890 to 0905

Source testing

Current rules require all crematory incinerators to do costly source tests before commencing regular operation. The sources running crematory incinerators are often part of small operations, such as humane society incinerators, and the tests are burdensome. The Department has found that when crematory incinerators exceed emission limits, they also have problems with odor or visible emissions. The revised rule would require sources to show compliance before regular operation, when there are odor or visible emissions problems, or when the Department requires it. Unlike the current rule, sources would be able to show compliance with emission requirements by submitting test results from an incinerator the Department agrees is comparable, or through a source test.

Training

The revision would also require that each source have a Department-approved training program on file on-site, along with certification by each employee operator of the incinerator that the employee has undergone and understood the training program.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures, which the Department must then approve. For the many small sources, this is not a good use of the Department's limited resources. The revised rule would require written procedures only from large sources ("major sources" as defined in OAR 340-028-0110(54)(a) - which emit at the Significant Emission Rate), from sources in non-attainment or maintenance areas for the pollutant in question and from other sources at the Department's discretion.

Title V Fee Assessment, 340-028-2610 to 2720

Title V sources can choose to have a facility-wide Plant Site Emission Limit (PSEL) instead of emission unit-specific emission limits. The current rules are not clear about how fees can be assessed for such sources. The revision would allow sources with facility-wide PSELs to pay fees based on a mix of actual emissions from some emissions units, and permitted emissions from other units. Permitted emissions are generally greater than actual emissions. The revision would clarify that sources can have the flexibility benefits of a facility-wide PSEL while choosing whether to pay fees on actual or calculate emissions for individual emissions units or parts of

emissions units.
The revision would also include a number of more minor fee rule clarifications.

Housekeeping

- Air pollution emergencies, 340-027-0005
  The current rule refers to an outdated table of Priority I, II, and III areas in the Code of Federal Regulations. The revised rule would avoid the problem by referring to the federal definitions of Priority I, II, and III.

- [Air Contaminant Discharge] Permit required, 340-028-1720
  Paragraph (6) in the current rule is unclear. The revision would clarify the rule language.

- Nonattainment and maintenance area boundaries, 340-031-0500, 0520
  Some of the references and descriptions are incorrect.
  In 340-031-0500:
  There are two (12)s describing the Lakeview UGB. The second is a draft description included in the rule in error.
  There is a typographical error in (22)(a)(D).
  Paragraph (25) describes the Salem-Keizer Area Transportation Study Boundary, instead of the intended Salem Area Transportation Study (SATS) Boundary. However, non-attainment area requirements have been enforced within the SATS.
  In 340-031-0520:
  (1)(c) The Medford Nonattainment Area for Carbon Monoxide is the Medford-Ashland UGB as defined in OAR 340-031-0500.
  (3)(f) The Medford Nonattainment Area for PM10 is the Medford AQMA as defined in OAR 340-031-0500.

- Cross references, 340-032-0240, 5585
  Because of a renumbering of 340-028-0110, some cross references to specific paragraphs would be incorrect. This problem is likely to recur, and the simplest solution is to remove the specific paragraph numbers in the references. Because 340-028-0110 is organized alphabetically, it would not be difficult to find the appropriate paragraphs.

How was the rule developed?

As mentioned above, problems with these rules were discovered during implementation of the Title V permitting program. After each issue was identified, staff discussed problems with the current rules, and suggested revisions. Staff then reviewed potential revisions, and drafted proposed language.

The Air Quality Industrial Source Advisory Committee was advised of the proposed revisions at their meeting on February 20, 1996. The Department did not rely on any documents.

Whom does this rule affect (including the public, the regulated community, and other agencies), and how does it affect these groups?

Crematory Incinerators, 340-025-0890 to 0905

The revision would affect sources running crematory incinerators, including mortuaries, hospitals, and humane societies.

Excess Emissions, 340-028-1410

The revision would affect non-major emissions sources (generally, less than 100 tons per year of emissions).

Title V Fee Assessment, 340-028-2610 to 2720

The revision would affect sources holding Oregon Title V Operating Permits.

Housekeeping

- Air pollution emergencies, 340-027-0005
  The revision would affect all sources of air contaminants.
- [Air Contaminant Discharge] Permit required, 340-028-1720
  The revision would affect sources holding Air Contaminant Discharge Permits.
- Nonattainment and maintenance area boundaries, 340-031-0500, 0520
  The revision would affect sources in the Medford and Salem areas.
- Cross references, 340-032-0240, 5585
  The revision would affect all sources of air contaminants.

How will the rule be implemented?

After adoption, revisions to the State of Oregon Clean Air Act Implementation Plan would be submitted to EPA for approval.

Crematory Incinerators, 340-025-0890 to 0905

Staff would be informed of changes to the rules, as would the Lane Regional Air Pollution Authority. Sources would be notified of the changes, and their permits modified if necessary.

Excess Emissions, 340-028-1410

Written startup and shutdown procedures would no longer be required from most small sources. The Department would develop guidance on which small sources should be required to submit written procedures. Sources would be notified of the changes, and their permits modified if necessary.

Title V Fee Assessment, 340-028-2610 to 2720

The Department would ensure that Title V permit writers construct permits in a way that allows calculated permit emissions to be determined at a device or activity level when appropriate, and that the permit is structured in a way that allows the Department to determine appropriate fees. Previously issued Title V permits will be modified on renewal or during major modifications.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The Department would develop and maintain a current table of Priority I, II, and III areas based on the federal definitions.

Are there time constraints?

No.

Contact for more information:

If you would like more information on this rulemaking proposal, **would like to obtain a copy of the proposed rule language,** or would like to be added to the mailing list, please contact:

Benjamin M. Allen
811 SW 6th Ave., Portland, OR 97204-1390
(503) 229-6828

Public Comments Received

on

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

No Public Hearing was held. Comments were received through April 24, 1996; the Department's evaluation is given in Attachment D. The following comments were received:

1. Leticia Sanchez
   Waste Management Disposal Services of Oregon, Inc.
   April 24, 1996

2. Kathryn VanNatta
   Northwest Pulp and Paper Association
   April 24, 1996

3. Kevin Godbout
   Weyerhaeuser Company
   April 24, 1996

Department's Evaluation of Public Comment

on

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

The only comments received were related to the proposed changes in the Title V Fee Assessment rules.

Comment: (1)

The commenter supported what she considered to be the Department's proposal to eliminate double-counting of emission fees for Title V (when emissions can be classified as more than one pollutant - e.g. Hazardous Air Pollutants which are also Volatile Organic Compounds. The commenter cited the new paragraph OAR 340-028-2620(7).

(1)

The commenter suggested that the Department change the wording of OAR 340-028-2620(7) to eliminate not only "double-counting," but "multiple-counting" of pollutants regulated, for example, as Hazardous Air Pollutants, Volatile Organic Compounds, Ozone Depleting Substances, and under the accidental release program. The commenter suggested replacing paragraph (7) with the following language:

> (7) The Department shall assess emission fees only once for a regulated air pollutant which is accounted for in more than one of the categories of assessable emissions as that term is defined in OAR 340-028-0110. For example, the Department shall not assess emission fees on Hazardous Air Pollutants that are also Criteria Pollutants.

Response: The Department agrees that source should pay only once for pollutants which the source can demonstrate are multiply counted. Language to that effect, based on the above suggestion, has been added to OAR 340-028-2610(5), and the proposed OAR 340-028-2620(7) has been eliminated.

Comment: (2)

The commenter supported the proposed language allowing a "mix and match" method of paying Title V operating permit emission fees. The commenter (Northwest Pulp and Paper Association) said that the ability to pay fees based on either actual or permitted emissions is very important to most pulp and/or paper facilities, and the choice in payment method allows facilities to pay accurate fees, encourages flexibility, and rewards facilities that have state of the art emission monitoring equipment.

(3)

The commenter supported the proposed "mix and match" rule.

Response: The Department agrees with the comments.

Comment: (1)

The commenter suggested that the Department change the wording of OAR 340-028-2640(1) to clarify that sources with facility wide Plant Site Emission Limits could pay fees based on a mix of actual emissions from some emissions units, and permitted emissions from other units. The commenter suggested the following language:

> (1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions *or a combination of both* for the previous calendar year for each assessable emission and notify the Department in accordance with OAR 340-28-2660. [New language in italics.]

Response: The Department agrees with the suggestion, and will incorporate it.

Detailed Changes to the Original Rulemaking Proposal

for

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

The following changes to the proposal were made at the suggestion of commenters:

1) Rather than striking 2610(5) and replacing it with 2620(7), the Department proposes modifying 2610(5), and withdrawing 2620(7) from the proposal.

Pollutants Subject to Emission Fees
340-028-2610

. . .

(5) The Department shall assess emission fees only once for a regulated air pollutant that the permitee can demonstrate, using procedures approved by the Department, is accounted for in more than one category of assessable emissions (e.g., a Hazardous Air Pollutants that is also demonstrated to be a Criteria Pollutant).

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

Exclusions

340-28-2620

. . .

~~(7) The Department shall not assess emission fees on Hazardous Air Pollutants that are also Criteria Pollutants.~~

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & ef. 10-6-95

2) The Department proposes adding the following language to the rules

Election For Each Assessable Emission
340-28-2640

(1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions or a combination of both for the previous calendar year for each assessable emission and notify the Department in accordance with OAR 340-28-2660.

. . .

Advisory Committee

for

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

The Air Quality Industrial Source Advisory Committee was advised of the proposed revisions at their meeting on February 20, 1996.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Air Quality Industrial Rules (Crematory Incinerators, Excess Emissions, Title V Fee Assessment, Housekeeping)

Rule Implementation Plan

Summary of the Proposed Rule

Crematory Incinerators, 340-025-0890 to 0905

Current rules focus more on costly source tests than on operator training. The revision would allow sources to show compliance by means other than source testing, and would require greater documentation of training.

Excess Emissions, 340-028-1410

Current rules require all air pollutant sources to submit written startup and shutdown procedures. The revision would require written procedures only from large sources.

Title V Fee Assessment, 340-028-2610 to 2720

Current rules are not clear about how some Title V fees can be assessed. The revision would clarify allowable methods.

Housekeeping

The proposed rules include a number of minor revisions to rules which are outdated, unclear, or incorrect.

Proposed Effective Date of the Rule

Upon filing.

Proposal for Notification of Affected Persons

Crematory Incinerators, 340-025-0890 to 0905

Sources would be notified of the rule changes by letter.

Excess Emissions, 340-028-1410

Sources which submit written procedures which are no longer required would be notified of the rule changes.

Title V Fee Assessment, 340-028-2610 to 2720

No notification necessary.

Housekeeping

No notification necessary.

Proposed Implementing Actions

After adoption, revisions to the State of Oregon Clean Air Act Implementation Plan would be submitted to EPA for approval.

Crematory Incinerators, 340-025-0890 to 0905

Source testing

Sources would be required to show compliance with emission only before regular operation, when there are odor or visible emissions problems, or when the Department requires it. Sources would be able to show compliance with emission requirements by submitting test results from an incinerator the Department agrees is comparable, or through a source test.

Training

Inspectors would check to see that each source has a Department-approved training program on file on-site, along with certification by each employee operator of the incinerator that the employee has undergone and understood the training program.

Excess Emissions, 340-028-1410

Written startup and shutdown procedures would no longer be required from most small sources. The Department would develop guidance on which small sources should be required to submit written procedures. Source permits would be modified if necessary.

Title V Fee Assessment, 340-028-2610 to 2720

The Department would ensure that Title V permit writers construct permits in a way that allows calculated permit emissions to be determined at a device or activity level when appropriate, and that the permit is structured in a way that allows the Department to determine appropriate fees. Previously issued Title V permits would be modified on renewal or during major modifications.

Housekeeping

Not applicable, except:

- Air pollution emergencies, 340-027-0005

  The Department would develop and maintain a current table of Priority I, II, and III areas based on the federal definitions.

Proposed Training/Assistance Actions

Staff would be informed of changes to the rules, as would the Lane Regional Air Pollution Authority.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item J
July 12, 1996 Meeting

Title:

Proposed Rules for a Pollution Prevention Tax Credit Pilot Program

Summary:

The 1995 Oregon Legislature adopted the new Pollution Prevention Tax Credit program to test the effectiveness of using fiscal incentives to encourage businesses to install equipment or technologies which prevent pollution. The scope of the program is very limited, and is targeted toward three types of businesses which would be regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAPS): perchoroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, and halogenated solvent cleaners. If any of these businesses installs equipment which no longer produces emissions which would be regulated under these NESHAPS, then these costs qualify for the new tax credit. The pollution prevention tax credit pilot program includes both new and replacement equipment. The program is limited to $5.2 million in tax credits over a four year period, and limited to $75,000 per business location per year. The Department must determine that the processes or technologies do not qualify for pollution control tax credits as part of its evaluation.

The statute directs the Commission to set fees by rule to cover the costs of administering the program. The advisory committees recommended rules to clarify procedures for administering the program.

Department Recommendation:

It is recommended that the Commission adopt the rules regarding the Pollution Prevention Tax Credit Pilot Program as presented in Attachment A of the Department Staff Report.

Report Author | Division Administrator | Director

Marianne E. Fitzgerald

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: June 24, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item J, Proposed Rules for a Pollution Prevention Tax Credit Pilot Program, July 12, 1996 EQC Meeting

Background

On April 26, 1996, the Director authorized the Office of the Director to proceed to a rulemaking hearing on proposed rules which would establish a Pollution Prevention Tax Credit Pilot Program. This proposal would establish procedures to implement the Pollution Prevention Tax Credit Pilot Program adopted by the 1995 Oregon Legislature. The pilot program was developed to test the effectiveness of using fiscal incentives to encourage businesses to install equipment or technologies which prevent pollution. The program is a very small pilot targeted at perchlorethylene dry cleaners, chromium electroplaters and anodizers, and halogenated solvent users regulated under the Clean Air Act. The proposed procedures for applying for the tax credits include: identifying the types of businesses, technologies and costs which would qualify for the pollution prevention tax credits; allocating the $5.2 million in tax credits equitably among the three types of eligible businesses over the four year period; and establishing fees to cover the Department's cost of administering the program.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on May 1, 1996. 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 May 3, 1996. The Request for Fee Increase/Establishment (Form #333) was sent to the Department of Administrative Services on March 6, 1996 and approved on March 20, 1996.

A Public Hearing was held on June 3, 1996 at 1:30 p.m. in DEQ headquarters, Conference Room 10A, with Marianne Fitzgerald serving as Presiding Officer. The written comment period remained open through 5:00 pm on June 3. The Presiding Officer's Report (Attachment C) summarizes the one written comment received.

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

Department staff have evaluated the comment received and recommended that no changes need to be made to the initial rulemaking proposal.

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

Issue this Proposed Rulemaking Action is Intended to Address

The 1995 Oregon Legislature adopted a pilot Pollution Prevention Tax Credit program to test the effectiveness of using fiscal incentives to encourage businesses to install equipment or technologies which prevent pollution. The scope of the program is limited to three types of businesses which would have been regulated under certain National Emission Standards for Hazardous Air Pollutants (NESHAPS). Pollution Prevention Tax Credits are available if thee businesses install equipment which does not produce emissions which would be regulated under NESHAPS, and if the equipment is not eligible for pollution control tax credits. The program is limited to $5.2 million in tax credits over a four year period, and a maximum of $75,000 per business location per year. Rule adoption is needed to set fees to administer the program, and to adopt procedures for administering the program.

Some of the proposed procedures in this rulemaking package include:

- Allocation of the tax credits equally among the three types of targeted emission source categories over the four year pilot period. Although basically a first-come-first-served type of program, $433,333 will be set aside each year for all three source categories, and if the tax credits in one or more categories are not completely allocated by November 15, then they will be redistributed evenly to the remaining source categories for that year. Credits that remain unused for a given program year will be carried forward to the following year and distributed equally among the three source categories.

- Listing of eligible equipment. The advisory committee members and Department staff listed in advance as many types of equipment and costs which would likely be eligible in order to simplify the application review process.

- Documentation which would demonstrate whether an emission source is eligible for the tax credit program. The source must either be registered under Title III of the Clean Air Act, or install the equipment in lieu of processes which would be subject to the NESHAPS, in order to

be eligible. The source must also demonstrate that the new process or technology was installed in compliance with state, federal and local environmental regulations.

- Establishing fees to administer the program. A $100 nonrefundable filing fee and 1% refundable application processing fee is proposed.

- Combined application procedures which allows the Department to evaluate whether the equipment would be eligible for pollution control tax credits at the same time as it is evaluating whether the equipment is eligible for pollution prevention tax credits, thereby streamlining the process.

Relationship to Federal and Adjacent State Rules

This rule is unique to the State of Oregon, which has two similar tax credit programs: the Pollution Control Tax Credit (administered by DEQ) and the Business Energy Tax Credit (administered by the Oregon Dept. of Energy). DEQ considered both sets of rules when developing the rules for the pilot program, and received comments and advice from DEQ's tax credit program staff, the Oregon Department of Energy, the Oregon Department of Revenue, and the Attorney General's office. Whenever possible, existing rules were referenced.

Authority to Address the Issue

Statutory Authority: ORS 468.020

Statutes Implemented: House Bill 2255, B-Engrossed, codified in ORS 468A.095 through 468A.098

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

DEQ established a Tax Credit Advisory Committee in October, 1996 to address revisions to the tax credit program. At its first meeting, the Advisory Committee directed the Department to set up a Pollution Prevention Tax Credit Subcommittee to deal with specific issues related to this new program. The Department recruited members from all affected business sectors to serve on the subcommittee, as well as one member of the Advisory Committee to serve as liaison. Twelve people actively participated in the subcommittee meetings and over 60 persons were included on the mailing list and notified of all ten meetings where the pollution prevention tax credit program rules were discussed. DEQ staff kept the Tax Credit Advisory Committee fully apprised of the

recommendations of the subcommittee, and all issues were resolved at the committee level. At its March 12 meeting, the Tax Credit Advisory Committee supported the draft rules which were developed based upon recommendations made by the Pollution Prevention Tax Credit subcommittee. They recommended that DEQ staff begin rulemaking as soon as possible (rather than combining this rulemaking with proposed revisions to the Pollution Control Tax Credit rules) because the pilot program became effective January 1, 1996, and they had previously recommended that the agency not begin administering the program until the rules were rules adopted. Revisions to the Pollution Control Tax Credit program will be brought to the Commission at a later date under a separate rulemaking.

The advisory committee and subcommittee made recommendations on a number of procedural issues, such as: (1) determining which businesses are eligible; (2) determining what types of costs are eligible; (3) allocating the pilot program's resources equitably to all three business types; and (4) setting fees which cover the Department's costs in administering the program. Since the statute states that only processes or technologies which do not qualify for pollution control tax credits are eligible for pollution prevention tax credits, the pollution prevention subcommittee and tax credit advisory committee also recommended procedures for simplifying this analysis.

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

This rulemaking involved the establishment of a new pilot program, and all issues were resolved at the advisory committee meetings.

Summary of Significant Public Comment and Changes Proposed in Response

The proposed draft rules in this packet are identical to the rulemaking proposal presented for public hearing. Only one person presented testimony during the public comment period. Bob Westcott of Wesco Parts Cleaner served on both the Tax Credit Advisory Committee and the Pollution Prevention Tax Credit Subcommittee, and submitted written testimony in support of the proposed rules. He recommended that we pilot the program as proposed, and if unanticipated problems arise, make changes to the rules at a later date.

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

The program will be administered by DEQ's Air Quality Division. Several Air Quality Division staff were included on the advisory committee mailing list and provided valuable input on the draft rules as they were being developed.

The Air Quality Division staff will finalize the draft application form so that it streamlines application reviews, and will develop form letters and a tax credit tracking system, prior to rule adoption. Pollution Prevention Program staff have been keeping track of businesses who have requested a copy of the application form as soon as it becomes final, and will mail it to that list soon after rule adoption.

There are several timelines built into the rules. Some of these timelines are in the statutes, and some were recommended by the Tax Credit Advisory Committee. When DEQ receives a completed application form, it will be reviewed for completeness within 60 days of receipt of the application. The applicant must provide any additional information within 30 days of the Department's request. When all requested information is submitted, the application is considered complete and ready for processing. This date determines the date by which Commission action should occur (120 days) and the order in which tax credits will be allocated to the applicants. The Department will then review the completed application and make its recommendation to the Commission. The Commission shall certify the cost of technologies or processes if it finds that they were installed in accordance with the requirements of the rules, and if the installation results in eliminating emissions regulated under specific sections of the federal Clean Air Act. The Commission may also approve the project pending availability of funds, reject an application, or certify a lesser actual cost than was claimed in the application form.

The Pollution Prevention staff will develop a flyer for the program which will be distributed to all DEQ regional offices. Copies of the flyer, final rules and application forms will be sent to the air quality staff and hazardous waste technical assistance staff in all regional offices. The packet will also be sent to all equipment vendors and other interested persons on the rulemaking mailing list.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules regarding the Pollution Prevention Tax Credit Pilot Program as presented in Attachment A of the Department Staff Report.

Attachments

A. Rules Proposed for Adoption
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing and Written Comment Received
F. Advisory Committee Membership
G. Rule Implementation Plan
H. Draft Application Form

Reference Documents (available upon request)

- Letter from the Oregon Dept. of Justice to DEQ, dated March 20, 1996
- Letter from the Oregon Department of Revenue to DEQ, dated March 21, 1996
- Letter from the Oregon Department of Administrative Services to DEQ, dated March 21, 1996

Approved:

Section:

Division: Director's office

Report Prepared By: Marianne E. Fitzgerald

Phone: (503) 229-5946

Date Prepared: June 24, 1996

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6/24/96

Pollution Prevention Tax Credits
Draft Rules

Purpose
340-16-100

The 1995 Oregon Legislature established a pilot program to determine the desirability of a tax credit program which encourages businesses to utilize technologies or processes that prevent the creation of air pollutants. The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of pollution prevention tax credits. These rules are to be used to implement ORS 468A.095 through 468A.098.

Definitions
340-16-105

(1) Applicant: A person who applies for a pollution prevention tax credit under these rules. It includes a sole proprietor, partnership, limited partnership, joint venture, C corporation, S corporation, limited liability company, cooperative association, or non-profit corporation that files an Oregon tax return.

(2) Business Location: A stationary source of air emissions as defined in OAR 340-28-110.

(3) Commission: Environmental Quality Commission

(4) Cost: The capital equipment costs and expenses the Department finds are needed to acquire, erect, build, or install an emission prevention project under these rules.

(a) Costs may include:

A) certifiable capital and installation costs, including payments for fees to design or engineer the project,
(B) government fees associated with installation of the equipment,
(C) shipping, and
(D) materials and supplies needed to install the project.

(b) Tangible equipment costs shall be at least 50% of the total costs claimed for the emission prevention project.

(c) Costs may not include:

(A) interest and warranty charges,
(B) legal fees and court costs,
(C) patent searches,
(D) tax credit application and filing fees,
(E) costs to maintain, operate, or repair a project, including spare parts,
(F) costs to remove existing equipment which is being replaced by the emission prevention project,

(G) construction equipment needed to install the project, or
(H) land.

(d) If the emission prevention project is installed under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the tangible assets of the emission prevention project is the present value of the lease payments. The lease costs shall not include taxes, insurance, interest, and operating and maintenance costs. Payments to be made in the future shall be discounted to present value.

(5) Department: the Oregon Department of Environmental Quality

(6) Director: the Director of the Department of Environmental Quality

(7) Emission prevention project: production technologies or processes, or components of production technologies or processes, installed at a business location within Oregon which meet the criteria in OAR 340-16-110.

(8) Installed: the completion of erection, installation, modification, or construction of all elements of the emission prevention project which are essential to perform its purpose.

(9) Targeted Emission Source Categories: categories of sources that qualify for a pollution prevention tax credit under OAR 340-16-110:

(a) 40 CFR 63.320 to 63.325 (National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities);

(b) 40 CFR 63.340 to 63.347 (National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks); or

(c) 40 CFR 63.460 to 63.469 (National Emission Standards for Halogenated Solvent Cleaning).

Emission Prevention Projects Which Qualify for a Pollution Prevention Tax Credit
340-16-110

(1) Any person may apply for certification under OAR 340-16-115 of the cost of production technologies or processes installed at a business location within Oregon and producing emission levels and types not subject to regulation under Section 112 of the Clean Air Act of 1990 (P.L. 101-549) if:

(a) The technologies or processes are installed in replacement of technologies or processes that produce emission levels and types that are subject to, or are installed in lieu of systems that would produce emission levels and types subject to regulation under:

(A) 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions

standards for dry cleaning facilities);

(B) 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or

(C) 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning); and

(b) The technologies or processes are installed on or after January 1, 1996 and on or before December 31, 1999; and

(c) The cost of the technologies and processes does not qualify for certification under ORS 468.165 and 468.170. Subject to any applicable limits on credit amounts, the granting of a certification of a pollution control facility under ORS 468.165 and 468.170 shall not prevent an application under this section for the cost of technologies and processes not included in the pollution control facility.

(A) Pollution prevention tax credit applicants may submit a combined application form to determine whether the technologies or processes would qualify for a pollution control facility tax credit.

(B) If the applicant can clearly demonstrate that no portion of the project is eligible for pollution control tax credits, then the Department shall make its determination as part of its pollution prevention tax credit recommendation to the Environmental Quality Commission.

(C) If a project could potentially qualify for both pollution control and pollution prevention tax credits, and the applicant can clearly demonstrate that less than 10% of the cost claimed in the application, up to a maximum of $7500, may qualify for pollution control tax credits, then the Department shall make its determination as part of its pollution prevention tax credit recommendation to the Environmental Quality Commission.

(D) If a project could potentially qualify for both pollution control and pollution prevention tax credits, and the portions of the project which would qualify for pollution control tax credits and pollution prevention tax credits are easily separable and distinguishable, and they are not eligible for combined review under section (C) of this rule, then the projects shall be considered separate projects and shall be applied for separately accompanied by appropriate fees.

(E) If a project could potentially qualify for both pollution control and pollution prevention tax credits, and if the portions of the

project which would qualify for pollution control tax credits and pollution prevention tax credits are interrelated portions of a system and are not easily separable and distinguishable, then the applicant shall apply for the pollution control tax credit first to identify which portions of the project will be certified under pollution control tax credits prior to submitting an application for pollution prevention tax credits.

(2) Emission prevention projects may include, but are not limited to, the following process or technologies, or components of the process or technologies. Projects may also include the retrofit of existing equipment to accommodate use of alternative chemicals.

(a) Dry cleaning facilities:

(A) multiprocess wet cleaning systems;

(B) equipment using petroleum based solvents or other alternatives to perchlorethylene;

(C) large washing machines if the applicant can demonstrate that it was installed in lieu of solvent usage;

(D) equipment which results in perchloroethylene use of less than 140 gallons per year per facility and qualification as a small area source under 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities).

(b) Hard and decorative chromium electroplating and chromium anodizing tanks:

(A) equipment using replacement technologies for chrome, including but not limited to:

(i) very hard electroless nickel deposits

(ii) replacement of hard chromium with nickel/boron

(iii) equipment using ion beam processing alternatives

(B) chrome free conversion coating for aluminum

(C) zinc phosphates which replace chromates on steel for pre-paint applications, and other phosphates on aluminum which are used as a replacement for or instead of standard chromates as a pre-paint on aluminum base materials.

(D) equipment using trivalent chrome as a replacement for

hexavalent chrome

(E) equipment which results in emissions below the levels specified in 40 CFR 63.340 to 63.347 (National Emission Standards for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks).

(c) Halogenated solvent cleaning:

(A) vapor degreasers that use nonhalogenated solvents

(B) ultrasonic cleaners

(C) aqueous, nonaqueous or semiaqueous cleaning systems

(D) hot and cold caustic dip tanks

(E) equipment which results in emissions below the levels specified in 40 CFR 63.460 to 63.469 (National Emission Standards for Halogenated Solvent Cleaning).

(3) In order to qualify for a pollution prevention tax credit, the business location must:

(a) be registered under the Clean Air Act Title III National Emission Standards for Hazardous Air Pollutants, if it currently operates systems which would be regulated under the federal regulations referenced in section (1) of this rule; or

(b) Certify that the process or technology was installed in lieu of systems used by targeted emission source categories, as required by Section (1) of this rule.

Procedures for Processing Pollution Prevention Tax Credits
340-16-115

1) Filing of Application

(a) A written application for pollution prevention tax credit certification shall be made to the Department on a form provided by the Department. One original and one copy shall be submitted. The application shall include, but not be limited to, the following information:

(A) Identifying information, including company name and address, plant name and address if different from company's name, and telephone number and names of plant site contact persons.

(B) A description of the emission prevention project, and a statement explaining how the technologies or processes, including process components, used will prevent or eliminate the emissions regulated under 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities); 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning).

(C) A summary and accounting of the actual emission prevention project costs. Records of project costs, such as canceled checks, invoices and receipts, shall be retained by the business. Records must be maintained until the tax year in which the tax credits claimed are no longer subject to Department of Revenue audit.

(D) A statement verifying the date the project was installed.

(E) A statement that the project is in accord with local, state and federal environmental laws and regulations.

(F) If the project is leased, a copy of the lease.

(G) Information which will allow the Commission to determine whether the project is eligible for a pollution control tax credit.

(H) Other information the Director considers necessary to assure a project complies with these rules.

(I) Certification by a responsible official of truth, accuracy and completeness of the application and attachments.

(b) The application shall be submitted within one year of installation of the technologies or processes. Failure to submit a timely application shall make the cost of a technology or process ineligible for certification. The Commission may grant an extension of time, not exceeding one year, to submit an application when circumstances beyond the control of the applicant would make a timely submittal unreasonable.

(c) An application shall not be considered filed until it is complete and ready for processing. To be deemed complete, an applicant shall provide all information required in section (1)(a) of this rule, and the information shall be sufficient to determine whether the emission prevention project and associated costs qualify for certification and that the project is installed in accordance with federal, state and local environmental statutes, rules and standards. This means that all

requested information is furnished by the applicant, and the Department notifies the applicant in writing that the application is complete and ready for processing.

(d) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits, clearly identified, will not be accepted by the Department for filing and shall be returned to the applicant for completion.

(e) Within 60 days after the receipt of an application, the Department shall request any additional information that the applicant needs to submit in order for the application to be considered complete. The Department's request for additional information may be considered an automatic request for extension of time to file the application. The applicant shall submit the requested information within 30 days of the date when the Department requested the information unless the applicant requests in writing a reasonable amount of additional time to submit the requested information.

(2) Commission Action

(a) Notice of the Department's recommended action on the application shall be mailed to the applicant at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing. The Commission shall act on an application for certification before the 120th day after the filing of a complete application. The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission.

(b) Certification.

(A) The Commission shall certify the cost of technologies or processes for which an application has been made under this rule, if the Commission finds that the technologies or processes:

(i) were installed in accordance with the requirements of OAR 340-16-110.

(ii) further the intents and purposes of 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities); 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or 40 CFR 63.460 to 63.469 (national emission standards for

halogenated solvent cleaning).

(B) The action of the Commission shall include certification of the actual cost of the technologies or processes resulting in the elimination of emissions regulated under 40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities); 40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or 40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning). Each certificate shall bear a separate serial number for each such emission prevention project.

(C) The amount of the actual cost certified for all technologies or processes installed in any taxable year at a single business location shall not exceed $75,000.

(D) The Commission may certify the cost of more than one technology or process at a location under one certificate.

(E) The actual cost certified shall not exceed the applicant's own cash investment in the technologies or processes.

(F) No determination of the portion of the costs to be certified shall be made until a complete application is filed.

(G) A certificate under this rule is effective for purposes of tax relief in accordance with ORS 315.311 if the technologies or processes were installed on or after January 1, 1996 and on or before December 31, 1999.

(H) Certification of an emission prevention project qualifying under this rule shall be granted for a period of five consecutive years, beginning with the tax year of the person in which the technology or process is certified under this section.

(I) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief beginning with the tax year following the tax year of certification as provided in ORS 315.304, based on that partner's pro rata share of the certified cost of the technology or process as determined by the partner's pro rata share of the business that installed the technology or process.

(J) If the Commission approves for certification an emission prevention project but all funds have been allocated for that targeted group or calendar year in accordance with OAR 340-16-120, then the certification shall be delayed pending

availability of funds. The applicant will not need to resubmit an application.

(K) If the Commission is acting on several applications but there is only enough funding for some of the applications in accordance with OAR 340-16-120, the order in which the applications were filed as complete and ready for processing will determine the order in which tax credit certificates are issued.

(c) Rejection

(A) If the Department has allocated all funds for this pilot under ORS 468A.098(7), the Department may reject all applications made after exhaustion of funds, and all applications which were approved pending availability of funds.

(B) If the Department determines that the application is incomplete for processing and the applicant fails to submit requested information within 30 days of the date when the Department requested the information, the application will be rejected by the Department unless the applicant requests in writing additional time to submit the requested information.

(C) If the application is submitted after the one year period following installation and an extension request has not been filed prior to the end of the one year period following installation, the application will be rejected by the Department.

(D) If the Commission rejects an application for certification, or certifies a lesser actual cost of the technologies or processes than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.

(d) Appeal

If the application is rejected by the Commission for any reason other than achievement of the program limitation imposed under OAR 340-16-120, including the information furnished by the applicant as to the cost of the technologies or processes, or if the applicant is dissatisfied with the certification of the actual cost of the technology or process, the applicant may appeal the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.

Limitations and Rankings on Certified Costs
340-16-120

(1) The total actual cost certified for all projects completed on or after January 1, 1996 or on or before December 31, 1999, shall not exceed $5,200,000. Funds shall be allocated equally over the four year period except as provided in subsection (3) of this rule, and distributed equally to targeted emission source categories in accordance with subsection (2) of this rule.

(2) The Director may set aside $433,333 per year of costs certified for each of the targeted emission source categories. If the amount set aside for a targeted emission source category is not allocated to sources within that category by November 15 of each year, it may be used for other targeted emission source categories in the order in which the application was filed.

(3) Final certification shall be awarded first to targeted emission sources for which a set-aside has been established, then to other targeted emission sources, in the order in which the applications were filed as complete and ready for processing, until all funds are allotted for a calendar year. If the amount of set-aside is not allotted in a calendar year, it may be carried over and distributed equally to each of the targeted emissions source categories' annual set-aside to be used in the next calendar year until all funds are allotted.

Fees
340-16-125

(1) The following fees must accompany each application for a pollution prevention tax credit:

(a) Filing fee in the amount of $100. The filing fee is nonrefundable.

(b) Application processing fee in the amount of 1% of the cost claimed in the application, up to a maximum fee of $750. If the application is rejected or withdrawn at a later date, DEQ may refund the application processing fee.

(2) The applicant shall submit an amount equal to the sum of the filing fee and the application processing fee with each application, made payable to the Department of Environmental Quality. No application is considered complete until the filing fee and application processing fee are submitted.

(3) The fees shall not be considered by the Commission as part of the cost of the facility to be certified.

NOTICE OF PROPOSED RULEMAKING HEARING

Pollution Prevention Tax Credit Pilot Program

Department of Environmental Quality Office of the Director

OAR Chapter 340-16-100 through 340-16-130

DATE:	**TIME:**	**LOCATION:**
June 3, 1996	1:30 pm	DEQ Headquarters, Room 10A, 811 S.W. Sixth Ave, Portland

HEARINGS OFFICER(s): Marianne Fitzgerald

STATUTORY AUTHORITY: ORS 468.020
or **OTHER AUTHORITY:**
STATUTES IMPLEMENTED: ORS 468A.095 through 468A.098

ADOPT: OAR 340-16-100 through 340-16-130

☒ 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 1995 Oregon Legislature adopted a pilot Pollution Prevention Tax Credit program to test the effectiveness of using fiscal incentives to encourage businesses to install equipment or technologies which prevent pollution. The scope of the program is limited to three types of businesses which would have been regulated under certain National Emission Standards for Hazardous Air Pollutants (NESHAPS), if they install equipment which no longer produces emissions which would be regulated under NESHAPS. The program is limited to $5.2 million in tax credits over a four year period. The rules are needed to set fees to administer the program, and to adopt procedures which equitably allocate tax credits to the three types of eligible businesses.

LAST DATE FOR COMMENT: 5:00 pm, June 3, 1996

AGENCY RULES COORDINATOR: Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL: Marianne Fitzgerald, (503) 229-5946
ADDRESS: 811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: (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.

Susan M. Greco 4/15/96
Signature Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Pollution Prevention Tax Credit Pilot Program

Fiscal and Economic Impact Statement

Introduction

The proposed rule will have a positive fiscal impact on businesses who take advantage of the pollution prevention tax credit. If they install eligible equipment, they are entitled to a 50% tax credit on up to $75,000 of eligible equipment costs per business location per year over a five year period. In other words, a business would be able to reduce the amount of income taxes owed to the state by approximately $7,500 per year over five years based on an initial investment of $75,000 or more. The Department would review each proposal and make a recommendation to the Environmental Quality Commission, which can approve the proposal for either the requested amount or a different amount, reject it, or approve it pending availability of funds. There is a possibility that if funds are not available for the particular targeted emission category, the business may not get the tax credit, or they may not get it in the year in which they apply, due to the allocation procedures proposed in the rules.

The only negative fiscal impact is the amount of fees which are required to be submitted with the tax credit application. The fees are necessary to cover DEQ's costs to administer the program. The fees are proposed as a nonrefundable filing fee of $100 and a refundable application processing fee of 1% of the amount of the investment for which a tax credit is being sought (in other words, the maximum fee paid would be $850).

General Public

The general public would not be affected by the proposed rule, except that the tax credits will eliminate $5.2 million in taxes that would otherwise go to the state's General Fund.

Small Business

Small businesses will benefit the most from this pilot program. Approximately 400 dry cleaners, and approximately 50 electoplating shops, are registered in the State of Oregon. Many of these businesses are small businesses.

Large Business

Large businesses will also benefit if they qualify for the program. Some dry cleaners and electroplating shops may be considered large businesses, and some of the users of halogenated solvent cleaning systems are large businesses.

Local Governments

Local governments would not be affected by the proposed rule.

State Agencies

The DEQ was not allocated any FTE to administer this program. We propose to use existing staff to administer the program, or contract it out. The statutes authorize the EQC to establish fees based on the costs of administering the program.

DEQ has proposed a nonrefundable filing fee and a refundable application processing fee for processing the pollution prevention tax credits. This fee schedule is similar to the existing pollution control tax credit fee, and was recommended by the Department's Tax Credit Advisory Committee. Although the revenue generated by this fee will vary depending on the dollar value of the applications, we assume there will be enough applications for larger tax credits which will have higher fees to offset the smaller fees paid by the smaller tax credit applications, and overall will generate sufficient revenue to operate the program. The Tax Credit Advisory Committee discussed two other options for setting fees which were more closely tied to the estimated amount of time to process each application, but did not recommend them.

The methodology used to estimate expenditures is based on the amount of time to process each application. We have tried to simplify the application process by listing the typical types of equipment and associated costs which would qualify for a tax credit, and estimated that it would take approximately 5-7 hours to review each application. The proposed rules limit the amount of tax credits allocated each year, which will limit the number of applications we can accept.

We propose to use existing DEQ staff to process the applications. To determine the hourly cost to DEQ, we used an Environmental Engineer 3 salary range ($4011/month), and included 29.44% fringe benefits and 19.8% indirect costs, and divided the total by 173.3 hours/month = $35.89/hour. Overhead and administrative costs were factored in, resulting in an approximate rate of $50/hour. Seven hours per application times $50/hour equals $350 per application.

If we choose to use outside contractors to process the applications, our expenditures would be significantly higher. Recent bids from four engineering firms to process Pollution Control Tax Credit applications estimate anywhere from $65 to $100/hour to process these applications. Assuming $75/hour, times seven hours per application, equals $525 per application.

The methodology used to estimate revenue is based on the dollar value of the applications and the number of applications we expect to receive. Because this is a pilot program, and there is a wide range of eligible equipment, our estimates are based on estimates from vendors. We developed four scenarios to estimate revenues, and the highest estimate is $21,000 per year.

The proposed fee is based on one percent of the amount of money proposed for certification. If DEQ receives a lot of applications under $25,000, we may not receive enough revenue to cover expenses. If we receive a lot of applications over $25,000 (and we believe this is the more likely scenario), then we will have adequate revenue to administer the program.

The Department of Revenue estimates that the new pollution prevention tax credit program will only have a minimal impact on their operations, primarily in data entry and audit costs. They propose to fold these new requirements into their existing tax credit program using existing staff.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Pollution Prevention Tax Credit Pilot Program

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.**

The 1995 Legislature authorized this pilot pollution prevention tax credit program to test the effectiveness of establishing incentives for businesses to install equipment which prevents pollution. The rules are needed to establish an equitable process for allocating money to eligible businesses, and to establish fees to administer the program.

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

   Yes____ No___x_

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

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

      Yes____ No_____ (if no, explain):

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

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

The proposed rules apply to new and existing businesses and encourage the installation of equipment and technologies which prevent air emissions. They do not affect land use. They do enhance the quality of the air in the area affected.

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

Division _____ Intergovernmental Coord. _____ Date 4/4/96

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

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

No, this is a rule which is unique to the State of Oregon.

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

Not applicable.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

Not applicable.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

Yes: the proposed rules specify the types of businesses, equipment and costs which would be eligible for pollution prevention tax credits. This increases the amount of certainty when a business is deciding whether to apply for a pollution prevention tax credit. In addition, the fees are fixed at 1% of the cost of the equipment, which provides certainty when deciding whether the cost of applying is worth the benefit received (as opposed to using a fee which is linked directly to the amount of time needed to process each individual application). The statutes removed the return-on-investment restrictions in the current pollution control tax credit program in calculating pollution prevention tax credits for specific equipment, although DEQ must determine whether the applicant is eligible for a pollution control tax credit before determining eligibility for a pollution prevention tax credit.

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

Pollution Prevention Tax Credits are available for eligible equipment installed between January 1, 1996 and December 31, 1999. Businesses which have already installed equipment are anxious to submit the application form and be first in line for the tax credits because of the limitation on the amount of tax credits available.

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)

Yes: the proposed fee schedule of 1% of the costs claimed in the application levels the playing field so that all applicants pay a fee which is proportional to the amount of credit they will receive. The only inequity is in the $100 filing fee, which may be a burden on businesses with small dollar applications.

In addition, the proposed procedures for allocating tax credits and establishing priorities assure that the amount of tax credits will be distributed equitably among the three eligible types of businesses over the four year period, and assures that no one group will usurp all of the money in the early years of the program.

Under the existing pollution control tax credit programs, many types of equipment which enhance efficient use of resources and prevent the generation of pollution may not qualify for the tax credit because of return-on-ivestment calculations. This new pollution prevention tax credit pilot project allows investors in pollution prevention equipment to share in benefits currently received by investors in traditional pollution control technology which have little return on investment.

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

If the proposed rules are not enacted, the businesses would still be eligible for tax credits based upon the statutes, and DEQ would rely on the application form to resolve some procedural questions. Some of the equity procedures described in Question 7 may not take effect without the rules. The statute directs that the fees be established by rule.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

Not applicable.

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

Yes, the proposed rules specify several typical technologies which might qualify for tax credits. The list was developed based on input from the pollution prevention tax credit subcommittee, which included representatives of all affected types of businesses.

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

The purpose of the program is to encourage pollution prevention. The Pollution Prevention Tax Credit pilot is intended to encourage businesses to install equipment which reduces or eliminates certain air harmful air pollutants. It does not address the potential cross-media transfer of pollutants (for example, impacts to the local water quality from using an aqueous cleaning system as an alternative to halogenated solvent cleaning systems).

State of Oregon
Department of Environmental Quality **Memorandum**

Date: May 2, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Pollution Prevention Tax Credit Pilot Program

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules regarding a new pilot program for issuing tax credits for the cost of installing technologies or processes which prevent pollution. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would establish procedures to implement the Pollution Prevention Tax Credit Pilot Program adopted by the 1995 Oregon Legislature. The proposed rules establish procedures for applying for the tax credits, including allocating the $5.2 million in tax credits equitably among the three types of businesses who qualify over the four year period; identify the types of businesses, technologies and costs which would qualify for the tax credits; and establish fees to cover the Department's cost of administering the program.

The Department has the statutory authority to address this issue under ORS 468A.095 through 468A.098.

What's in this Package?

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

Attachment A:	The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
Attachment B:	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
Attachment C:	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
Attachment D:	The actual language of the proposed rule.
Attachment E:	The draft application form which would be used to apply for the tax credits.

Hearing Process Details

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

Date: Monday, June 3, 1996
Time: 1:30 p.m.
Place: DEQ Headquarters, Room 10A
811 S.W. Sixth Avenue, Portland

Deadline for Submittal of Written Comments: 5:00 p.m., June 3, 1996

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow adequate review and evaluation of the comments submitted.

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

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

What Happens After the Public Comment Period Closes

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is July 11-12, 1996. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented **during** the hearing process so that full consideration by the Department may occur before a final recommendation is made. In accordance with ORS 183.335(13), no comments can be accepted after the public comment period has closed by either the EQC or the Department. Thus the EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to

the Department prior to the close of the public comment period so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal
Why is there a need for the rule?

The 1995 Legislature authorized this pilot pollution prevention tax credit program to test the effectiveness of establishing incentives for businesses to install equipment which prevents air pollution. The rules are needed to establish an equitable process for allocating money to eligible businesses, and to establish fees to administer the program.

What is proposed?

The proposed rules are new rules which describe procedures for operating the pollution prevention tax credit pilot program. Some of the proposed procedures include the following:

- Allocation of the tax credits equally among the three types of targeted emission source categories over the four year pilot period.

- Listing of eligible equipment.

- Documentation needed to demonstrate whether an emission source is eligible for the tax credit program.

- Amount of fees, which are proposed as a $100 nonrefundable filing fee and 1% refundable application processing fee.

How was the rule developed?

The rule was developed based upon language and procedures found in the existing Pollution Control Tax Credit Program and the Department of Energy's Business Energy Tax Credit Program, and recommendations made by the Pollution Control Tax Credit Advisory Committee and the Pollution Prevention Tax Credit subcommittee. The main issues which were posed early in the process were: how do businesses qualify for the program, and what fees would be appropriate to administer the program. Other details, such as a listing of typical technologies and costs which would qualify, were included in order to simplify the application process. The issues were discussed by the committees at approximately 10 meetings between October, 1995 and April, 1996. Over 60 persons were included on the mailing list for all committee meetings, and over a dozen businesses representing all three business sectors affected by the program actively participated in developing the rules.

Interested persons are invited to comment on any portion of the proposed rule package. In particular, we would like comments on the proposed fee schedule, eligibility, and proposed procedures for filing an application.

DEQ considered the following documents in writing the proposed rules:

1. House Bill 2255, B-Engrossed, 1995 Oregon Legislature
2. Pollution Control Tax Credits statutes (ORS 468.150 through 468.190) and rules (OAR 340-16-005 through 340-16-050)
3. Reclaimed Plastic Product Tax Credit statutes (ORS 468.451 through 468.491) and rules (OAR 340-17-010 through 340-17-055)
4. Business Energy Tax Credits rules (OAR 330-90-105 through 330-90-150)
5. Letter from the Oregon Department of Justice to DEQ, dated March 20, 1996
6. Letter from the Oregon Department of Revenue to DEQ, dated March 21, 1996.
7. ORS 468

Whom does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

Businesses would benefit from the proposed rule if they qualify for the pollution prevention tax credit, and if they choose to invest in pollution prevention equipment. Most of the affected businesses are small businesses (dry cleaners, electroplaters), although some may be larger businesses (halogenated solvent users). Businesses would need to make the initial investment in the equipment, and apply for the tax credits (including application fees), but they would receive a benefit of up to $37,500 in tax credits over a five year period. There is a chance that businesses who qualify for a tax credit and are "approved pending availability of funds" may not receive the tax credit in the year they are approved due to the proposed procedure for allocating funds.

The public would not be affected by the rule, except that the tax credits will eliminate $5.2 million from the state's General Fund. They may benefit from cleaner air in the community surrounding the businesses who installed eligible equipment.

The only other agency affected by the rule is the Department of Revenue, which administers tax credits. The impact on their current tax credit program is minimal.

How will the rule be implemented

DEQ proposes to use existing staff to administer the program in its first year, to gain a better sense of the types of applications we can expect and the level of effort needed to review the

applications. The application processing procedures are very similar to the existing pollution control tax credit program, although we have simplified the process by specifying the types of businesses which would be eligible, and the types of equipment and costs which would be eligible. DEQ staff will be reviewing the applications to determine eligibility for both the pollution control and pollution prevention tax credits, and making recommendations to the Environmental Quality Commission. The Commission may approve the tax credit, approve the tax credit pending availability of funds, or deny the application.

DEQ will also need to keep track of the amount of tax credits which were approved, and allocate tax credits equitably to all eligible businesses, in accordance with the procedures in the rules. Although this allocation procedure adds administrative complexity to the program, the Pollution Prevention Subcommittee and Pollution Control Tax Credit Advisory Committee felt strongly that certain amounts of the pilot program money should be made available to all eligible businesses and not be usurped by one of the three types of eligible businesses.

Are there time constraints

The statutes specify that the tax credits are available for all eligible technologies installed between January 1, 1996 and December 31, 1999. Many businesses have already installed equipment which would qualify for tax credits. Because of the limited amount of funds available, businesses are anxious to apply for the tax credit as soon as possible. DEQ's advisory committee recommended that DEQ not accept applications until after the rules are adopted; therefore, it is in the program's best interest to adopt rules as quickly as possible and begin processing applications as soon as possible, so that businesses may qualify for the tax credits in the 1996 calendar year.

Contact for more information

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

Marianne Fitzgerald
Pollution Prevention Coordinator
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204
e-mail marianne.fitzgerald@state.or.us
phone (503) 229-5946, or toll-free, 1-800-452-4011
fax (503) 229-5850

State of Oregon

Department of Environmental Quality Memorandum

Date: June 11, 1996

To: Environmental Quality Commission

From: Marianne Fitzgerald

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: June 3, 1996, beginning at 1:30 p.m.
Hearing Location: DEQ, 811 S.W. Sixth Avenue, Portland, OR, Conference Room 10A

Title of Proposal: Proposed Pollution Prevention Tax Credit Pilot Program

The rulemaking hearing on the above titled proposal was convened at 1:30 p.m. No members of the public were in attendance, although two DEQ staff were present. The hearing was adjourned at 2:00 p.m.

Written Testimony

One person submitted written comments but did not present oral testimony:

Mr. Bob Wescott of Wesco Parts Cleaners submitted a written memo in support of the proposed rules. As a member of both the Tax Credit Advisory Committee and Pollution Prevention Tax Credit Subcommittee, Mr. Wescott concluded that the proposed rules provide the appropriate signals for businesses to reduce or eliminate emissions that are harmful to the environment. He mentioned that the committee made specific recommendations to address equity and eligibility questions, and fees for administering the program, with the understanding that this was a pilot program and may need to be changed in the future after we have more experience operating the program.

WESCO PARTS CLEANERS

P.O. BOX 426 CANBY, OREGON 97013
(503) 266-2028

Date: May 30, 1996

To: Oregon Environmental Quality Commission

From: Bob Westcott

Subject: Pollution Prevention Tax Credit Pilot Program (P2)

Having served on both the Pollution Control Tax Credit Advisory Committee and the P2 Sub-committee, I would like to share a few thoughts. ORS 183.335 gave general guidance as to how the P2 program should operate, but left it up the commission to adopt rules of implementation. The advisory committees and staff struggled with equity and eligibility questions.

Tax Credit Distribution

I believe that the rule as proposed addresses these questions fairly and would recommend adoption by the commission of the P2 rules, with the understanding that this is a pilot program and most likely will need change in the future. No one knows the relative need of P2 tax credits by each of the three types of targeted emission source categories. The P2 Advisory Committee felt strongly that initially the tax credits should be equally divided among the three categories.

Eligibility

It is my belief that the P2 tax credit application forms, as drafted, sufficiently screen applicants so as to determine eligibility for this program.

Fees

The committee struggled for balance between costs of administering this program, and keeping the barriers low so as to encourage potential applicants to apply. The $100 filing fee may be a burden for business with small projects. On balance it appears that to cover costs of review and administration by staff, the fee is nominal. If in the future it appears that this fee is a detriment, it might be necessary to review the funding method.

Conclusion

It is my belief that this pilot program will generate the appropriate signals for business and industry, i.e. install the methods and technology up front in their processes so as to reduce or eliminate emissions that are harmful to the environment.

DEQ Tax Credit Advisory Committee Members
October, 1995

Jim Aden
Willamette Industries
3800 First Interstate Tower
Portland, OR 97201

Bill Bree
Oregon Dept. of Economic Development
775 Summer Street S.E.
Salem, OR 97710

Max Brittingham
Oregon Reuse & Recycling Assn.
P.O. Box 2186
Salem, OR 97308

Jim Britton
Oregon Dept. of Agriculture
635 Capitol St. N.E.
Salem, OR 97310-0110

Paul Cosgrove
121 S.W. Salmon Suite 1400
Portland, OR 97204-2924

Jim Denham
Teledyne Wah Chang
P.O. Box 460
Albany, OR 97321

Brian Doherty
Western States Petroleum Assn
Miller Nash
111 S.W. 5th Suite 3500
Portland, OR 97204

John Jacobson
Sabroso Co.
36350 S.E. Industrial Way
Sandy, OR 97055

Jana Jarvis
Johnson Controls
P.O. Box 1230
Canby, OR 97013

Young Kim
Korean Dry Cleaners Assn.
12855 S.W. Canyon Road
Beaverton OR 97005

Ed Miska
PGE
121 S.W. Salmon St
#1-WTC-04-02
Portland, OR 97204

Dave Nelson
Oregon Seed Council
1193 Royvonne S., Suite 11
Salem, OR 97301

Don Schellenberg
Oregon Farm Bureau
1701 Liberty St. S. E.
Salem, OR 97302

Bob Westcott
Wesco Parts Cleaners Inc.
P.O. Box 426
Canby, OR 97013

DEQ Pollution Prevention Tax Credit Subcommittee Members

(note: The Tax Credit Advisory Committee appointed Bob Westcott as the liaison between the subcommittee and the main committee, and directed DEQ staff to invite affected persons to participate in the subcommittee. The following members were participants in one or more meetings between October 1995 and April 1996.)

Bob Westcott
Wesco Parts Cleaners
P.O. Box 426
Canby OR 97013

Joel Scoggin
Columbia Helicopters
P.O. Box 3500
Portland OR 97208

Mike Montgomery
American Electroplaters & Surface Finishers Society
East Side Plating
8400 S.E. 26th Place
Portland OR 97202

Gary Rehnberg
East Side Plating
8400 S.E. 26th Place
Portland OR 97202

Steve Manilla
Great Western Chemical
5540 N.W. Front Avenue
Portland OR 97210

Steve Young
Oregon Dry Cleaners Association
Plaza Dry Cleaners
803 NW 21st
Portland OR 97209

Robert Bennett
Northwest Leather
401 NE 28th Avenue
Portland OR 97232

Sid Leiken
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Roseburg OR 97470

Doc Halladay
Active Control Technology Inc
11100 SW Industrial Way
Tualatin OR 97062

Paul Troupe
Pacific Laundry Equipment, Inc.
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Portland, OR 97202

Maggie Pritchard
Management Applications Projects
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Portland, OR 97269

Mark Wiltz
Luhr Jensen
P.O. Box 297
Hood River OR 97031

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Rules for a Pollution Prevention Tax Credit Pilot Program

Rule Implementation Plan

Summary of the Proposed Rule

The 1995 Oregon Legislature adopted the new Pollution Prevention Tax Credit program to test the effectiveness of using fiscal incentives to encourage businesses to install equipment or technologies which prevent pollution. The scope of the program is very limited, and is targeted toward three types of businesses which would be regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAPS): perchoroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, and halogenated solvent cleaners. If any of these businesses installs equipment which no longer produces emissions which would be regulated under these NESHAPS, then these costs qualify for the new tax credit. The pollution prevention tax credit pilot program includes both new and replacement equipment. The program is limited to $5.2 million in tax credits over a four year period, and limited to $75,000 per business location per year. The Department must determine that the processes or technologies do not qualify for pollution control tax credits as part of its evaluation.

The statute directs the Commission to set fees by rule to cover the costs of administering the program. The advisory committees recommended rules to clarify procedures for administering the program.

Proposed Effective Date of the Rule

Upon filing with the Secretary of State. The EQC is expected to adopt the rule at their July 12, 1996 meeting

Proposal for Notification of Affected Persons

This rule establishes an incentive program to encourage businesses to install processes or technologies which prevent pollution. It is entirely voluntary. On May 3, 1996, copies of the proposed rule package were sent to all businesses who registered with EPA as required by the Clean Air Act. Copies were also sent to equipment vendors and others interested persons (approximately 700 persons total).

After the rules are adopted, the Department intends to send copies of an updated program flyer, the rules and the final application form to the advisory committee members, equipment vendors and others who have expressed an interest in this rule package.

Proposed Implementing Actions

DEQ has completed the draft application form, and internal procedures for processing applications. The final form will be mailed to interested persons as described above.

Proposed Training/Assistance Actions

Pollution Prevention Program staff have met several times with the Air Quality Division staff who will be responsible for implementing the rules. We have also met with the Waste Management and Cleanup staff who are working with the dry cleaners, who have in turn presented this information to the dry cleaners on their advisory committee. The draft rules were also presented to the Air Quality Small Business Compliance Advisory Panel. Presentations are scheduled with hazardous waste staff and air quality managers. Copies of the program flyer, adopted rules and final application form will be mailed to all regional office and technical assistance staff within DEQ.

For DEQ Use Only

Application No.	
Date Received	
Fee	$

Pollution Prevention Tax Credit Application Form

DRAFT

1. Official Name of Applicant (same as that used for tax purposes in Oregon. See note in Question 2 below)			
Street Address			
City	State	Zip	County
Mailing Address (if different from above)			
City	State	Zip	
IRS Employer Identification Number			
Tax Year begins		ends	
Primary Standard Industrial Code (SIC)			
Contact Person's Name and Title			
Contact Person's Phone #		Contact Person's Fax #	

2. **Is the applicant a:**

- ☐ sole proprietor
- ☐ C corporation
- ☐ S corporation
- ☐ limited liability company
- ☐ partnership
- ☐ limited partnership
- ☐ joint venture
- ☐ cooperative association
- ☐ non-profit corporation

Note: for a corporation, the official name is the name specified on the corporate charter. For a partnership or joint venture, the official name is the registered name of the partnership. For a non-profit corporation or a cooperative association organized under ORS Chapters 62 or 65, the credit is required to be applied against ad valorem taxes. In claiming relief against ad valorem taxes, the applicant must file a written claim with the county assessor on a form prescribed by the Department of Revenue (see ORS 307.420).

3. Is the equipment leased from a vendor? ☐ yes ☐ no

If yes, please include a copy of the lease agreement and a statement from the lessor authorizing the leesee to take any allowable pollution prevention tax credit on the facility. (reference: OAR 340-16-105 and 115)

4. Date Emission Prevention Technology or Process was Installed: (reference: OAR 340-16-105 and 115) _____

5. The emission prevention technology or process was installed ☐ in lieu of, or ☐ in replacement of, technology which would have been regulated under the following regulations (check all that apply): (reference: OAR 340-16-110)

	40 CFR 63.320 to 63.325 (national perchloroethylene air emissions standards for dry cleaning facilities);
	40 CFR 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks); or
	40 CFR 63.460 to 63.469 (national emission standards for halogenated solvent cleaning)

6. If this process or technology replaced an existing process or technogy, please describe the process which was being used before the pollution prevention equipment was installed.

_____

_____

_____

7. Has the technology or process previously been certified, or is there an application pending certification, for a pollution control tax credit from DEQ? ☐ yes ☐ no
Or a Business Energy Tax Credit from the Oregon Department of Energy? ☐ yes ☐ no

(a) Briefly describe the process or technology claimed for certification, and describe the complete function of the facility. (Use additional sheets if necessary)

_____

_____

(b) Was the principal purpose of the facility to comply with a requirement imposed by the Department, the federal Environmental Protection Agency, or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste, or to recycle or provide for the appropriate disposal of used oil? ☐ yes ☐ no (reference: OAR 340-16-025)

(c) Was the sole purpose of such use, erection, construction or installation to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil? ☐ yes ☐ no (reference: OAR 340-16-025)

8. Type of Emission Prevention Project (check all that apply): (reference: OAR 340-16-110)

a) Dry cleaning facilities:

	multiprocess wet cleaning systems
	equipment using petroleum based or other types of solvents type of solvent: _____
	large washing machines (please describe whether this is being used in lieu of solvent usage _____ _____
	other equipment which results in perchloroethylene use of less that 140 gallons per year per facility (please explain) _____ _____
	Other (please explain) _____ _____

b) Hard and decorative chromium anodizing tanks:

	equipment using replacement technologies for chrome, including but not limited to: ☐ very hard electroless nickel deposits ☐ replacement of hard chromium with nickel/boron ☐ equipment using ion beam processing alternatives
	chrome free conversion coating for aluminum:
	zinc phosphates which replace chromates on steel for pre-paint applications, and other phosphates on aluminum which are used as a replacement for or instead of standard chromates as a pre-paint on aluminum base materials
	equipment using trivalent chrome as a replacement for hexavalent chrome
	equipment which results in emissions below the levels specified in 40 CFR 63.340 to 63.347 (National Emission Standards for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks) (please explain) _____
	Other (please explain) _____

c) Halogenated solvent cleaning:

	vapor degreasers that use nonhalogenated solvents type of solvent: _____
	ultrasonic cleaners
	aqueous, nonaqueous or semiaqueous cleaning systems
	hot and cold caustic dip tanks
	equipment which results in emissions below the levels specified in 40 CFR 63.460 to 63.469 (National Emission Standards for Halogenated Solvent Cleaning) (please explain) _____
	Other (please explain) _____

9. Please explain how each process or technology claimed for pollution prevention tax credits will prevent or eliminate emissions regulated under the Clean Air Act, in accordance with OAR 340-16-110 and 115. (refer to #5 above) Use additional sheets if necessary.

_____

_____

_____

10. Please itemize actual costs associated with the installation of eligible technologies or processes (maximum $75,000 per year per facility) in accordance with the catagories listed in OAR 340-16-105(4). Documentation to support your claim, such as cancelled checks, invoices and receipts, must be retained by the business until the tax year in which credits claimed are no longer subject to Department of Revenue audit. (reference: OAR 340-16-115). Use additional sheets if necessary.

Equipment Costs: _____
Installation Costs: _____
Design and Engineering Fees: _____
Labor: _____
Other Costs: _____
TOTAL _____

11. Fees (reference: OAR 340-16-125):

Filing Fee	$100
Application Processing Fee: 1% of the total cost claimed in Question 9 to a maximum of $750.	
Total Fee Enclosed	

11. Has this facility registered with the U.S. Environmental Protection Agency as required by the Clean Air Act? (reference: OAR 340-16-110) ☐ yes ☐ no

If no, please check your answer to Question 9 to make sure it explains how this technology or process qualifies for a pollution prevention tax credit (a facility installed in lieu of a specific NESHAP regulated facility does not need to be registered with the EPA but the answer to Question 9 should explain the installation).

12. Was this emission prevention project installed in conformance with the following federal, state and local environmental regulations?

☐yes ☐no ☐N/A Clean Air Act (air permits)

☐yes ☐no ☐N/A Clean Water Act (state or local wastewater or stormwater permits, or permission from local sewerage agency)

☐yes ☐no ☐N/A Resource Conservation and Recovery Act (hazardous and solid waste)

If the emission prevention project requires a permit or other approval from a local, state or federal agency, please attach a copy of the permit application form or letter notifying the agency of the installation.

13. If the pollution prevention tax credit was not available, would you have installed the project anyway? ☐yes ☐no

14. Do you have any additional comments on the pollution prevention tax credit program?

_____

_____

_____

15. I hereby certify that I have completed this application to the best of my ability, and that the information provided herein and in all the attachments is true and correct to the best of my knowledge, and that the technologies or processes described in this application were installed in replacement of, or in lieu of, processes which produced emissions regulated under the Clean Air Act as described in ORS 468A.096.

_____

Signature of Responsible Official

_____

Print Name Title Date

15. Please list all attachments to this application form:

_____

_____

_____

_____

_____

For Office Use Only
Reference: OAR 340-16-115

Information	Date Requested	Date Due	Date Received
Application Form *(Applicant must submit application within one year of installation)*	N/A	N/A	_____
Additional Information *(DEQ must request within 60 days of initial receipt of the application, and applicant must respond within 30 days of date requested)*	_____	_____	_____
Extension (optional) *(Extension for submitting applications must be requested within one year of installation and may not be granted for more than one year)*	_____	_____	_____
Application Considered Final *(Must be finalized within one year of installation unless an extension was granted)*	_____	_____	_____

DEQ or EQC Action, Findings, Reasons — Date
(EQC must act within 120 days of application considered final)

- ☐ Rejected (funds not available) _____
- ☐ Disapproved _____
  Reason: _____
- ☐ Approved, funds available _____
- ☐ Approved, pending availability of funds _____
  - ☐ Funds released _____
- ☐ Amount approved $_____

Note: Applications will be reviewed for completeness in the order in which they are received. If the EQC is acting upon more than one application, and there is only enough funding for some of the applications in accordance with OAR 340-16-120, then the order in which the applications were considered final will determine the order in which tax credit certificates are issued.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item K
July 12,1996 Meeting

Title:

Changes to Hazardous Waste Rules

Summary:

The Department is proposing to make changes to Oregon's Hazardous Waste Rules in five areas:

1. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 through March 31, 1996. The Department must adopt all federal hazardous waste regulations inorder to retain authorization to implement the federal hazardous waste program in Oregon.

2. Adoption of Federal Universal Waste Rules and Amendments. To streamline the regulatory approach for managing certain hazardous wastes, EPA promulgated the Universal Waste Rule, and the Department is proposing to adopt this rule with modifications.

3. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a basis for Regulating Pesticides Wastes. This rule change will clarify regulations related to pesticide residues and pesticide wastes.

4. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures. This rule change will allow the Department adequate time to equitably address a claimant's request for a trade secret claim.

5. Miscellaneous Changes and Technical Corrections. These changes include adding "blister agents" as hazardous waste, creating non-specific hazardous waste listings to address residues from the treatment of nerve agents and blister agents, and clarify record keeping for Small Quantity Generators

Department Recommendation:

It is recommended that the Commission adopt the proposed rules and rule amendments regarding Oregon Administrative Rules 340 Division 100, 101, 102, 109 and the addition of a new Division 113 to address recent changes in federal hazardous waste rules as presented in Attachment A of the Department Staff Report.

Report Author | Division Administrator | Director

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

State of Oregon
Department of Environmental Quality Memorandum

Date: June 24, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item K: Hazardous Waste Rule Amendments, EQC Meeting July 12, 1996

BACKGROUND

On March 13, 1996, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on several proposed changes to Oregon's hazardous waste rules. The proposed changes would amend Oregon Administrative Rules 340 Divisions 100, 101, 102, and 109 and add a new Division 113 to address recent changes in federal hazardous waste rules which were designed to streamline management of hazardous waste.

Pursuant to the authorization, a hearing notice was published in the Secretary of State's Bulletin on April 1, 1996. On March 20, 1996, the Hearing Notice and informational materials were mailed to the mailing lists of approximately 650 people who asked to be notified of rulemaking actions, known by the Department to be potentially affected by or interested in the proposed rulemaking.

A Public Hearing was held on April 22, 1996 with John Taylor, DEQ Western Region, serving as Presiding Officer. Written comment was received through 5 p.m., April 25, 1996. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. Department staff have evaluated the comments received and made modifications to the initial rulemaking proposal. See Attachment D.

The modified proposal being presented to the Commission for adoption contains the following five major areas of rulemaking:

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

II. Adoption of Federal Universal Waste Rule and Amendments

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures

V. Miscellaneous Changes and Technical Corrections

SUMMARY OF RULEMAKING ISSUES

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

The Department must adopt all federal hazardous waste regulations in order to retain authorization from the U.S. Environmental Protection Agency (EPA) to implement the federal hazardous waste program in Oregon. The Department proposes to adopt new federal used oil and other minor rules which will make the state rules current with the federal rules through March 31, 1996.

II. Adoption of Federal Universal Waste Rule and Amendments

The EPA promulgated the Universal Waste Rule (UWR) in May, 1995, to provide a streamlined regulatory approach for managing certain hazardous wastes classified as universal wastes. Oregon proposes to adopt the federal UWR with several modifications including:

- Addition of mercury-containing lamps (fluorescent light tubes) to the list of universal wastes.
- Amend universal waste Handler provisions.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

This rulemaking will clarify regulations addressing pesticide residues, provide for alternative management approaches for pesticide residues and "waste pesticides," and remove regulatory redundancy regarding pesticide residues. It will:

- Revise the definition of "pesticide residue."
- Eliminate the aquatic toxicity screening test for pesticide residues.
- Allow for management of pesticide residues under the universal waste rule.
- Allow for disposal at a solid waste landfill provided certain treatment provisions are met.
- Eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticide wastes.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation

These rule changes are needed to provide the Department with an adequate amount of time to address a claimant's request for a trade secret claim and to provide the Department with a process for treating all parties equally.

V. Miscellaneous Changes and Technical Corrections

The Department is proposing to add "blister agents" (e.g., mustard agent) and residues from the treating, testing and demilitarization of nerve and blister agents (such as those at the Umatilla Army Depot) as hazardous wastes.

At the time of the original listing of P999 (nerve agents), blister agents were considered by the Department to be included in the nerve agent listing. Since that listing the Department has learned from the U.S. Department of Defense that mustard agents are classified as blister agent, not nerve agent. In order to ensure adequate regulatory control over mustard agents that are destined for disposal and to deal with spill response and cleanups, the Department is adding the specific listing of P998 (blister agents) to the hazardous waste listings.

In addition, with the treatment process being proposed at the Umatilla Army Depot, the treatment residues would be regulated as hazardous waste by application of the "contained in policy." However, to further clarify the Department's regulatory authority over the treatment residues from both nerve and blister agents, the Department is adding the non-specific hazardous waste listings (F999 and F998) to address these residues from the treating, testing and demilitarization of nerve and blister agents.

The Department also proposes rule language to clarify that small quantity hazardous waste generators (SQG) must keep reports, such as exception and annual reports, for 3 years.

RELATIONSHIP TO FEDERAL AND ADJACENT STATE RULES

Comparison with the federal rules

Adoption of the federal used oil, universal waste and other minor rules will make the Oregon regulations equivalent to the federal regulations. Oregon is also proposing to use the flexibility in the universal waste rules to classify mercury-containing lamps as universal waste, thereby reducing the management requirements associated with the current classification as hazardous wastes. EPA has not reclassified mercury-containing lamps as a universal waste.

Also proposed for adoption today, are requirements for off-site Handlers of universal waste that are more stringent than the federal UWR. These requirements would require anyone collecting universal waste from another Handler, in amounts in excess of 1000 kg, to do the following:

- notify,
- accumulate universal wastes for six months only and then ship only to destination facilities, and
- report on waste received and shipped.

These more stringent requirements are discussed in Attachment B4, Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements, for the rule as proposed for public hearing. This attachment was revised to reflect the changes MADE in rule languages a result of public hearing comments. The revised version is included as Attachment B6, Addendum to Attachment B4 Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements. In addition, the Department is committed to review the need for more stringent requirements for off-site Handlers two years after the adoption of the rule.

The classification of blister agent and treatment residues of blister and nerve agent as hazardous wastes is more stringent then the federal hazardous waste rules which does not cover these wastes.

Today's proposed rule does not change Oregon's more stringent classification of pesticide residue as hazardous waste. However, this rules allows for more flexible management of pesticide residue under the universal waste management standards.

Trade secret provisions and the clarification of record keeping requirements for small quantity generators are not part of the federal hazardous waste program. These rules are being proposed to make compliance with Oregon hazardous waste rules clearer and easier.

Comparison with adjacent states.

Washington
The State of Washington, Department of Ecology (DOE) is currently evaluating whether or not it will adopt the universal waste rule. The DOE may add mercury-containing lamps to the list of universal wastes.

Idaho
The State of Idaho adopted the universal waste rule in April 1996. They did not add mercury-containing lamps as universal waste.

Utah
The State of Utah has adopted the universal waste rule. Its rule adoption added mercury-containing lamps as universal waste.

California
The State of California is evaluating adoption of the federal universal waste rule. Its timeline for adoption is the summer of 1997.

AUTHORITY TO ADDRESS THE ISSUE

The rules are being proposed for adoption under the statutory authority the Environmental Quality Commission (EQC) has in ORS 466.020, which requires the Commission to adopt rules to establish minimum requirements for the treatment, storage, disposal and recycling of hazardous waste.

PROCESS FOR DEVELOPMENT OF THE RULEMAKING PROPOSAL (INCLUDING ADVISORY COMMITTEE AND ALTERNATIVES CONSIDERED)

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 through March 31, 1996

The used oil and hazardous waste rules proposed for adoption are identical to those promulgated by the federal government and therefore were not discussed by advisory committee.

II. Adoption of Federal Universal Waste Rule and Amendments

The Department established the Hazardous Waste Reduction and Special Waste Advisory Group in the Fall of 1995 to discuss the adoption of the federal universal waste rule (UWR). This group met three times and discussed:

- whether to adopt the UWR in its entirety or only portions of it;
- whether to add to the list of wastes currently identified as universal waste under the federal rule; and
- whether to change any of the requirements that affect Handlers of universal wastes.

The Advisory Group recommended that the Department:

- adopt the federal UWR;
- add mercury-containing lamps to the list of universal wastes; and
- have additional requirements for Handlers of universal wastes.

The Department presented the Advisory Group's recommendations to the "Unwanted Pesticide Collection Group." This Group was formed to explore the feasibility of industry-run pesticide collection activities and was comprised of pesticide dealers, growers and representatives from the Department of Agriculture. This Group's input was considered important because pesticides are included as universal wastes under the federal rule.

DEQ staff incorporated input from both the Advisory Group and the Unwanted Pesticide Collection Group in developing the rule proposal as submitted for public comment.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

The Department convened an Aquatic Toxicity technical workgroup to evaluate the existing hazardous waste rule regulating pesticide residues. This workgroup met four times in 1994 and 1995, and submitted a series of recommendations. More recently, the Pesticides Waste Advisory Group was asked to review the workgroup recommendations and make recommendations regarding pesticide residue waste management. The Advisory Group met three times in 1995, and generally supported the proposed rule amendments.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation

The proposed revisions to the trade secret rule were reviewed by the Hazardous Waste/Toxics Use Reduction Advisory Committee which supported adoption of the revisions.

V. Miscellaneous Changes and Technical Corrections

The proposals for the addition of blister agents and the treatment residues derived from blister and nerve agents to the hazardous waste listings, and for recordkeeping clarifications were presented for public hearing without prior committee review.

SUMMARY OF RULEMAKING PROPOSAL PRESENTED FOR PUBLIC HEARING AND DISCUSSION OF SIGNIFICANT ISSUES INVOLVED.

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

In general, the federal regulations being proposed for adoption either are currently in effect in Oregon or are substantially equivalent to existing Oregon rules.

II. Adoption of Federal Universal Waste Rule and Amendments

Included in this rulemaking is the federal universal waste rule (UWR). The EPA promulgated the UWR in May, 1995, to provide a streamlined regulatory approach for managing certain hazardous wastes classified as universal wastes. The reduced regulatory framework is intended to encourage proper collection and facilitate the proper management, including recycling, of these universal wastes. The Department also proposed several modifications to the federal UWR.

Summary of Federal Universal Waste Rule

Universal wastes are hazardous wastes that are generated in a wide variety of settings, including industry, construction, institutions, office buildings, and homes. The types of hazardous wastes included in this rulemaking as federal universal waste are:

- Batteries;
- Pesticides collected in a federal government recall, voluntary recalls by registrants, or waste pesticide collection programs; and
- Mercury thermostats.

The federal rule makes it easier for the generators of these universal wastes, called "Handlers," to manage them appropriately. In the UWR, the term " Handler" refers both to generators of universal wastes and to those who accept universal wastes from generators. Universal wastes do not count towards generator status, nor do they need to be transported using a manifest and a

licensed hazardous waste transporters. The length of time that the generators can accumulate universal wastes on-site is significantly longer than the accumulation time limits for hazardous waste.

Locations that accept universal wastes from off-site and act as accumulation points are also referred to as "Handlers" in the rule. These locations are not required to obtain a hazardous waste facility permit, which allows for easier collection and accumulation of wastes. Handlers who accept universal waste from off-site could include solid waste transfer stations, household hazardous waste collection events and facilities, conditionally exempt generator hazardous waste collection events and facilities, retail outlets, and distributors of products identified as universal waste. Universal wastes ultimately must be managed at either licensed hazardous waste disposal facilities or hazardous waste recycling facilities, which are referred to in the rule as "destination facilities."

Proposed State Amendments to the Federal Universal Waste Rule

Addition of Mercury-Containing Lamps (fluorescent light tubes) to the List of Universal Wastes

The Department proposed adding mercury-containing lamps (i.e., fluorescent light tubes, mercury and sodium vapor lamps) as a universal waste under the universal waste rule.

Mercury-containing lamps are widely used throughout Oregon in office buildings, industry, businesses, institutions and residences. The mercury content of these lamps can cause them to be classified as a hazardous waste upon disposal. The proposal will reduce hazardous waste management requirements for lamps and is expected to support the efforts of many existing and planned energy conservation programs, which encourage the installation of energy efficient lighting.

Fluorescent light tubes and other mercury-containing lamps fit the criteria outlined in the UWR's petition process as they are generated by a wide variety of generators, and are not specific to a certain type of industry. Inclusion in the UWR would encourage proper collection and management of the tubes, and would take the tubes out of municipal solid waste management systems. These are the dual goals of the UWR.

The federal UWR currently allows some limited on-site treatment options for batteries and mercury thermostats. The circumstances under which treatment can occur are specifically outlined in the rule. The Department recognizes that some generator/Handlers of fluorescent light tubes may want to have an on-site tube crushing treatment option, either as a way to reduce storage space or to facilitate transportation. Fluorescent tube crushing will be allowed under the proposed state UWR with some specific guidelines and requirements.

Amend Universal Waste Handler Provisions

The federal universal waste rule describes generators and off-site collection facilities of universal wastes as "Handlers." All Handlers must manage universal waste in an environmentally sound manner, and are prohibited from on-site treatment of universal waste, except in very specific circumstances. The federal rule has two categories of Handlers, based on a total accumulation amount of universal waste. Handlers accumulating less than 5,000 kg (11,000 pounds) of universal waste are Small Quantity Handlers (SQH) and are not required to notify the Department of their universal waste handling activity, keep any records, and have minimal employee training requirements. Handlers accumulating over 5,000 kg of universal waste on-site are Large Quantity Handlers (LQH) and must notify the Department, keep records of universal waste shipments, and have increased employee training requirements.

Under the federal UWR, Handlers (both on-site and off-site collection sites) accumulating more than 5,000 kilograms of universal waste at any time are required to follow the federal requirements for Large Quantity Handlers (LQH). The Department proposed that Handlers (both on-site and off-site collection sites) accumulating more than 1,000 kg comply with the LQH requirements. Comments received during the public comment period stated that there was no demonstrated need to require an off-site SQH to comply with the LQH requirements. The Department agrees in part and portions of the proposal have been deleted.

However, the Department still has concerns about the amount of wastes allowed to accumulate at off-site Handler locations (i.e., those who receive universal wastes from other Handlers of universal waste) and about proper management of those wastes. Therefore, the Department is proposing to require off-site Handlers accumulating more than 1,000 kg to comply with the following:

- notification of off-site Handler activity,
- 6 months accumulation limit with approved extensions, and shipment only to a destination facility, and
- reporting on waste receipt and waste shipments.

These proposed requirements for off-site Handlers are more stringent than the federal UWR which has no specific requirements for off-site Small Quantity Handlers. The Department's proposed requirements are more stringent in the following ways. Under the federal UWR:

- Off-site Handlers collecting 1,000 kg or more do not notify (only LQHs are required to notify).
- Off-site Handlers collecting 1,000 kg or more have up to 1 year to accumulate universal wastes and then may ship them to an intermediate Handler.

- Off-site Handlers collecting 1,000 kg or more do not report on any universal waste movement.

The Department is committed to review the need for these additional more stringent requirements for off-site Handlers two years after the adoption of the rule.

In addition, the Department proposed specific requirements for pesticide collection programs collecting pesticides and pesticide residues from off-site. With this pesticide collection program structure in place, the Department believes more pesticides and pesticide residues will be collected and managed under universal waste management standards.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

Currently, pesticide wastes are regulated in two ways in the State of Oregon. First, pesticide wastes are regulated by federal hazardous waste rules known as the "P" and "U" lists, which are pure unused pesticides or pesticide wastes. Second, Oregon has identified by statute "pesticide residues" as hazardous waste, and the Department has adopted rules to implement this statute.

The regulated community has expressed confusion over the regulations that govern hazardous waste pesticide residues and has requested regulatory flexibility in the management of those wastes. Today's rulemaking clarifies regulations that deal with pesticide residues and provides for alternative management.

Amends the Definition of Pesticide Residue

The proposed rule defines a pesticide residue more narrowly than is currently the case, by excluding material the Department believes was inadvertently captured in the current definition. Under the current regulations, materials that are waste-like, but are used according to pesticide label directions, and materials destined for disposal (such as treated seeds, carpets, and soils) that have had pesticides legally applied to them could be considered hazardous waste pesticide residues. The proposed rule specifically excludes such material from the definition of pesticide residue. Also the Department is proposing to add language that clarifies the types of activities that generate pesticide residues and what constitutes beneficial uses as it applies to pesticide reuse.

Eliminates the Aquatic Toxicity Screening Test for Determining if Pesticide Residue is a Hazardous Waste

Under state law, all pesticide residues are by definition hazardous waste unless declassified by administrative rule. The aquatic toxicity test is currently used as a screen to establish which pesticide residues are declassified. Those that pass are declassified. Those that fail remain

hazardous waste. The proposed rule eliminates the aquatic toxicity test as the primary means for determining if a pesticide residue is a hazardous waste.

In place of the aquatic toxicity test, the proposed rule identifies pesticide residue hazardous waste as:

- mixtures containing "P" and "U" listed pesticides,
- residue that no longer exhibit any of the pesticide toxicity characteristics, and
- any pesticide residue specifically defined by rule.

Management of Pesticide Residues Under the Universal Waste Rule

The Department proposes that hazardous waste pesticide residues that meet certain proposed regulatory conditions may be managed according to the universal waste management standards. Adoption of the UWR will allow the Department to regulate pesticide residues in an effective, streamlined and environmentally sound manner, and will remove the need for the current more prescriptive pesticide residue management regulation. Pesticide residues are state-only wastes, so they are not classified as federal universal wastes; this proposal, though, creates the same flexible management option for pesticide residues as exists under the federal scheme for other widely generated wastes.

Elimination of the "Three and Ten Percent Rule as a Basis for Regulating Pesticide Residues

To eliminate regulatory redundancy, the Department proposes to eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticide mixtures. Currently, mixtures containing pesticides which appear on the federal "P" and "U" list are regulated by the Three and Ten Percent Rule (OAR 340-101-033 (2)) and the aquatic toxicity rule. These pesticide residues would instead be regulated under the proposed pesticide residue regulations which replace the aquatic toxicity rule.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation

The Department proposes changes to the trade secret rule that will clarify the trade secret claim substantiation response time period, provide for time extensions to the claim substantiation response time period, and require the claim substantiation to accompany any trade secret claim made during a permit modification request. These rule changes are needed so the Department has an adequate amount of time to address a claimant's request for a trade secret claim and to provide the Department with a process for treating all parties equally.

The proposed rule defines the current 15 day claim substantiation response time period to be 15 "working" days, with the potential to extend that time to an additional 30 consecutive days at either the claimant's request or the Department's initiative.

The proposed rule also requires that the claims substantiation accompany the permit modification submission when trade secrets are claimed during the permit modification process.

V. Miscellaneous Changes and Technical Corrections

Add Blister Agent and Treatment Residues as State-Only Hazardous Waste

The proposed rule would add blister agents and residues from the treating, testing, and demilitarization of nerve and blister agents to the list of hazardous wastes. The Department seeks all available regulatory tools to ensure that the nerve agent destruction at the Umatilla Army Depot is done in an environmentally sound manner. These additional listings will clarify and affirm the Department's regulatory authority for treating, storing, disposing and spill response for nerve agents, blister agents and treatment residues from these agents.

Clarify Existing Small Quantity Generator Exception Reporting Regulation

Proposed rule language is needed to clarify that small quantity hazardous waste generators (SQG) must keep exception and other reports for three years. Currently, there is confusion about whether an SQG should retain reports.

SUMMARY OF SIGNIFICANT PUBLIC COMMENT AND CHANGES PROPOSED IN RESPONSE

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

One comment was received in support of the adoption of the federal hazardous waste and used oil regulations. No changes were proposed based on the comment.

II. Adoption of Federal Universal Waste Rule and Amendments

Four commenters supported the Department's adoption of the universal waste rule. The most significant comment on the universal waste rule focused on the additional requirements the Department proposed for off-site Handlers of universal waste and the lowering of the quantity definition for the large quantity Handler category. Comments focused on the lack of need for such regulation, that such regulation will be more stringent than the federal universal waste rule, and that it might impede collection of universal wastes. Based on the comments received, the Department amended its proposal for off-site Handlers to require compliance with the federally

defined categories of Handler requirements. However, the Department retained the more stringent additional requirements for notification, six month accumulation, shipment to only destination facilities and reporting on waste received and shipped off-site for off-site Handlers of 1000 kg or more.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

Two commenters asked for clarification on how the new rule language would work with existing regulations. Changes were made to the pesticide treated wood rule, OAR 340-101-040, in response to the comments received.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures

No comments were received.

V. Miscellaneous Changes and Technical Corrections

One commentor proposed rule language to aid in clarifying small quantity hazardous waste generator reporting requirements. The Department added the proposed language to the proposed rule. No comments were received on the addition of blister agent and the treatment residues derived from blister and nerve agents as state-only hazardous waste.

SUMMARY OF HOW THE PROPOSED RULE WILL WORK AND HOW IT WILL BE IMPLEMENTED

The universal waste rule will reduce regulatory requirements associated with certain types of hazardous waste and allow more time in which to manage them. The pesticide residue rule clarifies the definition of pesticide residue. New management options in Division 109 will provide more flexible management options including more time in which to manage pesticide residues. In addition , the need for the more stringent off-site handler provisions will be evaluated two years after the adoption of the rule.

The Department plans to educate its own staff and then complete outreach to all hazardous waste generators registered with the Department, giving them information on how the universal waste management regulations apply to them. See Attachment F. The Department will use trade associations and industry groups to present information and will host a series of workshops on proper hazardous waste management which will include the new rule provisions.

RECOMMENDATION FOR COMMISSION ACTION

It is recommended that the Commission adopt the proposed rules and rule amendments regarding Oregon Administrative Rules 340 Divisions 100, 101, 102, 109 and the addition of a new Division 113 to address recent changes in federal hazardous waste rules 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. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
   6. Addendum to Attachment B4 Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements

C. Presiding Officer's Report on Public Hearing

D. Department's Evaluation of Public Comment and Detailed Changes to Original Rulemaking Proposal Made in Response to Public Comment

E. Advisory Committee Membership and Report
   1. Hazardous Waste Reduction and Special Waste Advisory Group
   2. 1994 Aquatic Toxicity Technical Work Group and 1995 Pesticides Waste Advisory Group
   3. 1994 Hazardous Waste/Toxic Use Reduction Advisory Committee

F. Rule Implementation Plan

Reference Documents (available upon request)

- Written Comments Received
- Code of Federal Regulations (CFR) Parts 260 to 279
- Summary of federal regulations considered for adoption

- Oregon Revised Statutes ORS 466
- Oregon Administrative Rules (OAR) Division 100 to 109
- Factsheet on the Federal Universal Waste Rule

Approved:

Section:

Division:

Report Prepared By: Elaine Glendening
Phone: 229-6015
Date Prepared: June 24, 1996

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5/31/96

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

In the Matter of Amending and Correcting OAR 340, Divisions 100, 101, 102, 109, and adding Division 113)) Proposed Amendments, Adoptions, Deletions and Corrections

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

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

Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations
340-100-002

(1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 108, 109, 111, 113 and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, 273 and Subpart A of Part 124 promulgated through March 31~~April 1~~, 1995~~6~~ are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215.[1]

As specified in the Federal Register, the effective date of the 40 CFR Parts are as follows: ~~[Federal Register Vol. 60, February 9, 1995, 40 CFR Parts 261, 271 and 302, effective August 9, 1995; and]~~ Federal Register, Vol. 60, November 13, 1995, ~~December 6, 1994,~~ 40 CFR Parts 260, 262, 264, 265, 270 and 271, effective October 6, 1996 as amended.~~, December 6, 1995 as amended~~.

(2) Except as otherwise modified or specified by OAR Chapter 340, Division 111, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal

[1] Note: On March 3, 1992, in 57 Federal Register 7628, EPA promulgated a re-adoption of 40 CFR 261.3, the mixture and derived-from rules, because the rules had been vacated as a result of federal litigation. The EQC did not adopt this amendment at that time because the State had independently and legally adopted mixture and derived-from rules under state law in 1984, and has indicated its intent to maintain the mixture and derived-from rules with each annual rulemaking update.

Regulations, Part 279 promulgated through ~~July~~ March 31, 199~~3~~6, except the administrative stay to the used oil mixture rule, 40 CFR 279.10(b)(2), published in the Federal Register (FR) Vol. 60, No. 209, pg. 55202[2], are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

2. Rule 340-100-003 is proposed to be amended as follows:

PUBLIC DISCLOSURE AND CONFIDENTIALITY.
340-100-003

(1) The provisions of this rule replace the provisions of 40 CFR 260.2.

(2) All records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations are open for public inspection and copying except as provided in sections (3) to (7) of this rule. Provided however, that nothing in this rule is intended to alter any exemption from public disclosure or public inspection provided by any provision of ORS Chapter 192 or other Oregon law.

(3) (a) Records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations may be claimed as trade secret by the submitted in accordance with ORS 192.410 through 192.505 and 466.090.

(b) The Department shall designate a Document Control Officer for the purpose of receiving, managing, and securing confidential information. The following information shall be secured by the Document Control officer:

(A) claimed trade secret information until the claim is withdrawn by the submitter, determined not to be confidential under section (6) of this rule, or invalidated;~~,~~

(B) information determined to be trade secret;~~,~~ and

(C) any other information determined by court order or other process to be confidential.

(c) All Uniform Hazardous Waste Manifest information submitted on any required report pursuant to the hazardous waste statutes, rules, and regulations is publicly available and is not subject to trade secret confidentiality claims.

(d) Claims of confidentially for the name and address of any permit applicant or pemittee will be denied.

[2] Note: On January 19, 1996, the District of Columbia Circuit Court vacated EPA's administrative stay of the "used oil mixture rule," issued by EPA, which in effect voided the mixture stay.

(4) The following procedures shall be followed when a claim of trade secret is made:

(a) Each individual page of any submission that contains the claimed trade secret information must be clearly marked as "trade secret," "confidential," "confidential business information," or equivalent. If no claim by appropriate marking is made at the time of submission, the submitter may not afterwards make a claim of trade secret.

(b) A late submission of the trade secret substantiation will invalidate the trade secret claim. Written substantiation in accordance with paragraph 4(d) of this rule:

(A) Must accompany any information submitted pursuant to OAR 340-102-012, 340-102-041, 340-104-075, 340-105-010, 340-105-013, 340-105-014, 340-105-020, 340-105-021, 40 CFR 262.12, 264.11, 265.11 or 270.42, or

(B) For all other information submitted to the Department, written substantiation must be provided pursuant to subsection 5 of this rule.

(c)Trade secret information must meet the following criteria:

(A) Not the subject of a patent;

(B) Only known to a limited number of individuals within an organization;

(C) Used in a business which the organization conducts;

(D) Of potential or actual commercial value; and

(E) Capable of providing the user with a business advantage over competitors not having the information.

(d) Written substantiation of trade secret claims shall address the following:

(A) Identify which portions of information are claimed trade secret.

(B) Identify how long confidential treatment is desired for this information.

(C) Identify any pertinent patent information.

(D) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others.

(E) Describe the nature of the use of the information in business.

(F) Describe why the information is considered to be commercially valuable.

(G) Describe how the information provides a business advantage over competitors.

(H) If any of the information has been provided to other government agencies, identify which one(s).

(I) Include any other information that supports a claim of trade secret.

(e) A public version of the document containing the claimed trade secret information must be submitted at the time the trade secret substantiation is required as provided in subsection (4)(b)(A) and subsection (5)(a) of this rule.

(5)(a) Written trade secret substantiation as required under subsection (4)(b)(B) and a public version of the information as required by subsection (4)(e) shall be provided within 15 working days of receipt of any Department request for trade secret substantiation or the public version of the information. The Department may extend the time, either at the Department's initiative or the claimant's request, up to an additional 30 consecutive days in order to provide the substantiation and public version, if the complexity or volume of the claimed trade secret information is such that additional time is required for the claimant to complete the response. The Department shall request the written trade secret substantiation or the public information version if:

(A) a public records request is received which would reasonably include the information, if the information were not declared as trade secret, or

(B) it is likely that the Department eventually will be requested to disclose the information at some future time and thus have to determine whether the information is entitled to trade secret confidentiality. This includes information that relates to any permit, corrective action, or potential violation information.

(6) When evaluating a trade secret claim the Department shall review all information in its possession relating to the trade secret claim to determine whether the trade secret claim meets the requirements for trade secret as specified in paragraphs 4(c) and 4(d) of this rule. The Department shall provide written notification of any final trade secret decision and the reason for it to the person submitting the trade secret claim within 10 working days of the decision date.

(a) If the Department or the Attorney General determines that the information meets the requirements for trade secret, the information shall be maintained as confidential.

(b) If the Department determines that the information does not meet the requirements for trade secret, the Department shall request a review by the Attorney General. If the Attorney General determines that the information does not meet the requirements for trade secret, the Department may make the information available to the public no sooner than 5 working days after the date of the written notification to the person submitting the trade secret claim.

(c) A person claiming information as trade secret may request the Department to make a trade secret determination. The person must submit the written substantiation in accordance with paragraph 4(d) of this rule and the public version in accordance with paragraph 4(e) of this rule. The Department shall make the determination within 30 days after receiving the request, written substantiation, and the public version.

(7) Records, reports, and information submitted pursuant to these rules shall be made available to the Environmental Protection Agency (EPA) upon request. If the records, reports, or information has been submitted under a claim of confidentiality, the state shall make that claim of confidentiality to EPA for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. (Note: It is suggested that claims of trade secret be restricted to that information considered absolutely necessary and that such information be clearly separated from the remainder of the submission.)

3. Rule 340-100-010 is proposed to be amended as follows:

Definitions
340-100-010

(1) The definitions of terms contained in this rule modify, or are in addition to, the definitions contained in 40 CFR 260.10.

(2) When used in Divisions 100 to 110 and 120 of this chapter, the following terms have the meanings given below:

(a) "Administrator" means:

(A) The "Department", except as specified in paragraph (2)(a)(B) or (C) of this rule;

(B) The "Commission", when used in 40 CFR 261.10 and 261.11; or

(C) The Administrator of the U.S. Environmental Protection Agency, when used in 40 CFR 262.50.

(b) "Aquatic LC_{50} (median aquatic lethal concentration)" means that concentration of a substance which is expected in a specific time to kill 50 percent of an indigenous aquatic test population (i.e., fish, insects or other aquatic organisms). Aquatic LC_{50} is expressed in milligrams of the substance per liter of water;

(c) "Beneficiation of Ores and Minerals" means the upgrading of ores and minerals by purely physical processes (e.g., crushing, screening, settling, flotation, dewatering and drying) with the addition of other chemical products only to the extent that they are a non-hazardous aid to the physical process (such as flocculants and deflocculants added to a froth-flotation process);

(d) "Collection". See "Storage";

(e) "Commission" means the Environmental Quality Commission;

(f) "Department" means the Department of Environmental Quality except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: The adoption of rules and issuance of orders thereon

pursuant to ORS 466.020, 466.075 and 466.510; the making of findings to support declassification of hazardous wastes pursuant to ORS 466.015(3); the issuance of exemptions pursuant to ORS 466.095(2); the issuance of disposal site permits pursuant to ORS 466.140(2); and the holding of hearings pursuant to ORS 466.130, 466.140(2), 466.170, 466.185, and 466.190;

(g) "Director" means:

(A) The "Department", except as specified in paragraph (2)(g)(B) of this rule; or

(B) The "permitting body", as defined in section (2) of this rule, when used in 40 CFR 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17.

(h) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste or hazardous substance into or on any land or water so that the hazardous waste or hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700;

(i) "EPA" or "Environmental Protection Agency" means the Department of Environmental Quality;

(j) "EPA Form 8700-12" means EPA Form 8700-12 as modified by the Department;

(k) "Existing Hazardous Waste Management (HWM) Facility" or "Existing Facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, or is in existence on the effective date of statutory or regulatory changes under Oregon law that render the facility subject to the requirement to have a permit. A facility has commenced construction if:

(A) The owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either

(B) (i) A continuous on-site, physical construction program has begun; or

(ii) The owner or operator has entered into contractual obligations — which cannot be canceled or modified without substantial loss — for physical construction of the facility to be completed within a reasonable time.

(l) "Extraction of Ores and Minerals" means the process of mining and removing ores and minerals from the earth;

(m) "Generator" means the person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste;

(n) "Hazardous Substance" means any substance intended for use which may also be identified as hazardous pursuant to Division 101;

(o) "Hazardous Waste" means a hazardous waste as defined in 40 CFR 261.3;

(p) "Identification Number" means the number assigned by DEQ~~EPA~~ to each generator, transporter, and treatment, storage and disposal facility;

(q) "License". See "Permit";

(r) "Management Facility" means a hazardous waste treatment, storage or disposal facility;

(s) "Off-site" means any site which is not on-site;

(t) "Oxidizer" means any substance such as a chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily or otherwise acts to stimulate the combustion of organic matter (see 40 CFR 173.151);

(u) "Permitting Body" means:

(A) The Department of Environmental Quality, when the activity or action pertains to hazardous waste storage or treatment facility permits; or

(B) The Environmental Quality Commission, when the activity or action pertains to hazardous waste disposal facility permits.

(v) "Permit" or "License" means the control document that contains the requirements of ORS Chapter 466 and OAR Chapter 340, Divisions 104 to 106 and 120. Permit includes permit-by-rule and emergency permit. Permit does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit;

(w) "RCRA" or "Resource Conservation and Recovery Act", when used to refer to a federal law, means Oregon law;

(x) "RCRA Permit" means Oregon hazardous waste management facility permit;

(y) "Regional Administrator" means:

(A) The "Department", except as specified in paragraph (2)(y)(B) or (C) of this rule;

(B) The "permitting body", as defined in section (2) of this rule when used in 40 CFR 124.5, 124.6, 124.8, 124.10, 124.12, 124.14, 124.15 and 124.17;

(C) The "Commission", when used in 40 CFR 260.30 through 260.41.

(z) "Residue" means solid waste as defined in 40 CFR 261.2;

(aa) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity;

(bb) "Spill" means unauthorized disposal;

(cc) "Storage" or "Collection" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(dd) "Waste Management Unit" means a contiguous area of land on or in which waste is placed. A waste management unit is the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Usually this is due to the fact that each waste management unit is subject to a uniform set of management practices (e.g., one liner and leachate collection and removal system). The provisions in the OAR Chapter 340, Division 104 regulations (principally the technical standards in Subparts K-N of 40 CFR Part 264) establish requirements that are to be implemented on a unit-by-unit basis.

(3) When used in Divisions 100 to 106 and 108 to 109 and 113 of this chapter, the following terms have the meanings given below:

(a~~1~~) "Aeration" means a specific treatment for decontaminating an empty volatile substance container consisting of removing the closure and placing the container in an inverted position for at least 24 hours.

(b~~2~~) "Beneficial Use" means the return of ~~a~~ unused pesticide product (e.g., pesticide equipment rinsings, excess spray mixture) ~~residue~~ or empty pesticide container(s) without processing to the economic mainstream, as a substitute for raw materials in an industrial process or as a commercial product (e.g., melting a container for scrap metal).

(c~~3~~) "Department" means the Department of Environmental Quality.

(d4) "Empty Container" means a container from which:

(A~~a~~) All the contents have been removed that can be removed using the practices commonly employed to remove materials from that type of container; and

(B~~b~~)(i~~A~~) No more than one inch of residue remains on the bottom of the container; or

(ii~~B~~) No more than three percent of the total capacity of the container remains in the container if the container is less than or equal to 110 gallons in size; or

(iii~~C~~) No more than 0.3% of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size; or

(iv~~D~~) If the material is a compressed gas, the pressure in the container is atmospheric.

(e~~5~~) "Household Use" means use by the home or dwelling owner in or around households (including single and multiple residences, hotels and motels).

(f~~6~~) "Jet Rinsing" means a specific treatment for an empty container using the following procedure:

(Aa) A nozzle is inserted into the container, or the empty container is inverted over a nozzle such that all interior surfaces of the container can be rinsed; and

(Bb) The container is thoroughly rinsed using an appropriate solvent.

(g7) "Multiple Rinsing" means a specific treatment for an empty container repeating the following procedure a minimum of three times:

(Aa) An appropriate solvent is placed in the container in an amount equal to at least 10% of the container volume; and

(Bb) The container is agitated to rinse all interior surfaces; and

(Cc) The container is opened and drained, allowing at least 30 seconds after drips start.

(h8) "Pesticide" means any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling, or mitigating of insects, fungi, weeds, rodents, or predatory animals; including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006.

(i9) "Pesticide Equipment" means any equipment, machinery or device used in the pesticide manufacture, repackaging, formulation, bulking and mixing, use, cleaning up spills, or preparation for use or application of pesticides, including but not limited to aircraft, ground spraying equipment, hoppers, tanks, booms and hoses.

(j10) "Pesticide Residue" is a hazardous waste that is generated from pesticide operations and pesticide management, such as, from pesticide use (except household use), manufacturing, repackaging, formulation, bulking and mixing, and spills. Pesticide residue includes, but is not limited to, unused commercial pesticides, tank or container bottoms or sludges, pesticide spray mixture, container rinsings and pesticide equipment washings, and substances generated from pesticide treatment, recycling, disposal, and rinsing spray and pesticide equipment. Pesticide residue does not include pesticide-containing materials that are used according to label instructions, and substances such as, but not limited to treated soil, treated wood, foodstuff, water, vegetation, and treated seeds where pesticides were applied according to label instructions ~~substances produced by the use of pesticides including, but not limited to unused commercial pesticides or spray mixtures, container rinsings and pesticide equipment washings.~~

(k11) "Public-Use Airport" means an airport open to the flying public which may or may not be attended or have service available.

(l12) "Reuse" means the return of a commodity to the economic mainstream for use in the same kind of application as before without change in its identity (e.g., a container used to repackage a pesticide formulation).

4. Rule 340-101-001 is proposed to be amended as follows:

Purpose and Scope
340-101-001

(1) The purpose of this Division is to identify those residues which are subject to regulation as hazardous wastes under Divisions 100 to 106, 108, 109, 111 and 113 of this Chapter.

(2) Persons must also consult 40 CFR Parts 124, 260 to 266, 268, ~~and~~ 270, 273 and 279, which are incorporated by reference in OAR 340-100-002, to determine all applicable hazardous waste management requirements.

5. Rule 340-101-033 is proposed to be amended as follows:

Additional Hazardous Wastes
340-101-033

(1) (a) This section applies to residues that have been determined not to be hazardous waste under 40 CFR 261, Subparts C and D.

(b) This section does not apply to residues that have been identified as hazardous waste under 40 CFR 261, Subparts C and D.

(2) Except as provided in section (4) of this rule, ~~The~~ the residues identified in subsections (2)(a) and (2)(b) of this rule are hazardous wastes and are added to and made a part of the list of hazardous wastes in 40 CFR 261.33.

(a) Any residue, including but not limited to manufacturing process wastes and unused chemicals that has either:

(~~a~~A) A three percent or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(e)~~,~~; ~~except those substances or mixtures of substances containing only those toxic contaminants listed in 40 CFR 261.24 in Table 1 or~~

(~~b~~B) A ten percent or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(f)~~,~~; or ~~except U075 (Dichlorodifluoro methane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled, and except those substances or mixtures of substances containing only those toxic contaminants listed in 40 CFR 261.24 in Table 1.~~

(~~3~~b) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water, of either:

(~~a~~A) A residue identified in subsection (2)(a)(A) of this rule; or

(~~b~~B) A residue identified in subsection (2)(a)(B) of this rule~~;~~.

(3~~c~~) A residue identified as a hazardous waste in subsections (2)(a) or (2)(b) of this rule, ~~as a hazardous waste~~ and not excluded under section (4) of this rule, has the hazardous waste letters "OR" followed by the corresponding hazardous waste number(s) in 40 CFR 261.33(e) and (f).

(4) The following residues are not additional hazardous wastes under section (2) of this rule:

(a) mixtures of pesticides identified in section (2) of this rule that are listed in 40 CFR 261.33(e) and (f);

(b) those substances or mixtures of substances with individual constituents only listed in both 40 CFR 261.24, Table 1, and 40 CFR 261.33(e) and (f); and

(c) U075 (Dichlorodifluoro-methane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled.

NOTE: Pesticide mixtures excluded in Section (4)(a) of this rule are regulated as pesticide residue in Section (6) of this rule.

(5~~4~~) The wastes identified in subsections (2)(a)(A) and 2 (b~~3~~)(A~~a~~) of this rule are identified as acutely hazardous wastes (H) and are subject to the small quantity exclusion defined in 40 CFR 261.5(e).

~~NOTE: Sections (2) of this rule shall be applied to a manufacturing process waste only in the event it is not identified elsewhere in this Division, but prior to application of section (5) of this rule.~~

(6~~5~~) Any pesticide residue, except residue listed in Table 1 of 40 CFR 261.24 and which passes the evaluation requirement of 40 CFR 261.24(a), is a hazardous waste and is added to and made a part of the list of hazardous waste in 40 CFR 261.31 until it is first managed in accordance with the standards in OAR 340-109-010(2)(a).

~~(a)Pursuant to "Department of Environmental Quality Hazardous Waste Aquatic Toxicity Testing Procedures", if a representative sample of the residue exhibits a 96 hour aquatic LC_{50} equal to or less than 250 mg/l, except for residues listed in Table 1 of 40 CFR261.24 which pass the evaluation requirement of 40 CFR261.24(a)pesticide residue, or pesticide manufacturing residue is a toxic hazardous waste.~~

~~(b) A pesticide residue or pesticide manufacturing residue identified in subsection (5)(a) of this rule but not in 40 CFR 261.24 or listed elsewhere in Subpart D of 40 CFR Part 261, has the Hazardous Waste Number of X001 and is added to and made a part of list of hazardous wastes in 40 CFR 261.31, until a representative sample of the residue no longer exhibits an LC_{50} equal to or less than 250 mg/l.~~

(~~7~~6) ~~(a)~~ The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates identified in subsection (~~7~~6)(a) and ~~7~~6(b) of this rule are added to and made a part of the list in 40 CFR 261.33(e);

(a) P998. . .Blister agents (such as Mustard agent)

(b) P999. . .Nerve agents (such as GB (Sarin) and VX).

(~~8~~7) Hazardous waste identified in ~~this section is not subject to 40 CFR Part 268~~ subsection (8)(a) and (b) of this rule are added to and made part of the list in 40 CFR 261.31.

(a) F998. . .Residues from demilitarization, treatment, and testing of blister agents (such as Mustard agent).

(b) F999. . .Residues from demilitarization, treatment, and testing of nerve agents (such as GB(Sarin) and VX).

(~~9~~8) Except as otherwise specified in OAR 340-109-010 (4)(b) hazardous waste identified in this rule is not subject to 40 CFR Part 268.

6. Rule 340-101-040 is proposed to be amended as follows:

Wastes Requiring Special Management
340-101-040

(1) Abrasive Blast Waste Containing Pesticides. Abrasive blast waste which contains pesticides that do not meet the criteria specified in 40 CFR Part 261, Subpart C, ~~and are~~ is not a federal hazardous waste for any other reason, ~~and meet the criteria identified in OAR 340-101-033 (5)(a)~~ and fails the "Department of Environmental Quality Aquatic Toxicity Test," whereby a representative sample of a pesticide residue exhibits a 96-hour aquatic toxicity LC_{50} equal to or less than 250 mg/l, are not subject to OAR Chapter 340, Divisions 100 to 106, 108 , and 109 provided:

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

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

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

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

(2) Pesticide Treated Wood. Spent treated wood that is used or reused for a purpose for which the material would be treated is exempt from ~~this part~~ OAR 340-101-040(2) ~~and from OAR 340-101-033(5)(a).~~ Waste resulting from the use of newly pesticide-treated wood~~,~~ (including scrap lumber, shavings and sawdust; waste resulting from shaping pesticide-treated wood, such as sawdust, shavings and chips; and treated wood removed from service) that does not meet the criteria specified in 40 CFR Part 261, Subpart C; and is not a federal hazardous waste for any other reason; and~~,~~ is ~~are~~ not otherwise excluded by 40 CFR 261.4(b)(9), ~~but meet the criteria identified in 340-101-033 (5)(a);~~and is not pesticide residue as defined in OAR 340-100-010 (3)(j) is not subject to Divisions 100 to 106, 108 and 109 provided:

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

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

7. Rule 340-102-010 is proposed to be amended as follows:

Purpose, Scope and Applicability
340-102-010

(1) The purpose of this Division is to establish standards for generators of hazardous waste.

(2) Persons must also consult 40 CFR Parts 124, 260 to 266, 268, 270, 273 and 279 which are incorporated by reference in OAR 340-100-002, to determine all applicable hazardous waste management requirements.

(3) ~~In addition to the provisions of 40 CFR 262.10, a~~ Any person identified in section (4) of this rule ~~who produces a pesticide residue, excluding unused commercial pesticide, that is hazardous soley by application of OAR 340-101-033(5)~~ is exempt from compliance with Divisions 100 to 106 provided such person complies with the requirements of Division 109.

(4) Exemptions under section (3) of this rule: Any person who produces an unwanted pesticide residue other than unused commercial chemical product pesticide from:

(a) pesticide manufacturing, repackaging, formulating, bulking, mixing, application, use, and cleaning up spilled material;

(b) agricultural pest control (for example, on crops, livestock, Christmas trees, commercial nursery plants or grassland);

(c) industrial pest control (for example, in warehouses, grain elevators, tank farms or rail yards);

(d) structural pest control (for example, in human dwellings);

(e) ornamental and turf pest control (for example, on ornamental trees, shrubs, flowers or turf);

(f) forest pest control;

(g) recreational pest control (for example, in parks or golf courses);

(h) governmental (for example, for clearing a right-of-way, or vector, predator, and aquatic pest control);

(i) seed treatment;

(j) pesticide demonstration and research; or

(k) wood treatment (for example, lumber, poles, ties and other wood products).

8. Rule 340-102-040 is proposed to be amended as follows:

Recordkeeping
340-102-040

(1) The provisions of section (2) of this rule replace the requirements of 40 CFR 262.40(b).

(2) A generator must keep a copy of reports submitted to the Department under OAR 340-102-041 and under 40 CFR 262.42(b) for a period of at least three years from the due date of the report.

(3) The record retention requirement of section (2) of this rule applies to the provisions of 40 CFR 262.44.

9. Rule 340-109-001 is proposed to be amended as follows:

Purpose and Applicability

340-109-001

(1) The purpose of this Division is to specify procedures for managing pesticide residues and empty pesticide containers ~~produced by the use of pesticides~~.

(2) The requirements of this Division apply to any person who produces:

(a) pesticide residue or empty pesticide containers if such residue or empty containers are not subject to regulation under Divisions 100 to 106;

(b) federal non-spill pesticide wastes that no longer exhibit the characteristic of pesticide toxicity under 40 CFR 261.24 (a), but do not meet the land disposal treatment standards in 40 CFR 268.40 for that waste;

(c) residue excluded in OAR 340-101-033(2)(a) which contain pesticides listed in 40 CFR 261.33 (e) and (f);

(d) any pesticide residue defined in OAR 340-100-010(3) (j); or

(e) pesticide residues identified in OAR 340-101-033(6)

(3) Pesticide residues and empty pesticide containers may alternatively be managed under Divisions 100 to 106.

(4) Pesticide residues or empty pesticide containers produced from household use are not regulated under this Division.

(5) Pesticide residues managed under this Division are not subject to regulation under OAR 340, Division 100 to 106 while being managed according to this Division and the universal waste management provisions in OAR 340 Division 113 and 40 CFR Part 273.

10. Rule 340-109-002 is proposed to be deleted as follows:

Definitions
340-109-002

~~Definitions~~ [ed. note: definitions have been moved to OAR 340-100-010]

~~340-109-002 As used in these rules unless otherwise specified:~~

~~(1) "Aeration" means a specific treatment for decontaminating an empty volatile substance container consisting of removing the closure and placing the container in an inverted position for at least 24 hours.~~

~~(2) "Beneficial Use" means the return of a residue or empty pesticide container without processing to the economic mainstream as a substitute for raw materials in an industrial process or as a commercial product (e.g., melting a container for scrap metal).~~

~~(3) "Department" means the Department of Environmental Quality.~~

~~(4) "Empty Container" means a container from which:~~

(a) All the contents have been removed that can be removed using the practices commonly employed to remove materials from that type of container; and

(b)(A) No more than one inch of residue remains on the bottom of the container; or

(B) No more than three percent of the total capacity of the container remains in the container if the container is less than or equal to 110 gallons in size; or

(C) No more than 0.3% of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size; or

(D) If the material is a compressed gas, the pressure in the container is atmospheric.

(5) "Household Use" means use in or around households (including single and multiple residences, hotels and motels).

(6) "Jet Rinsing" means a specific treatment for an empty container using the following procedure:

(a) A nozzle is inserted into the container, or the empty container is inverted over a nozzle such that all interior surfaces of the container can be rinsed; and

(b) The container is thoroughly rinsed using an appropriate solvent.

(7) "Multiple Rinsing" means a specific treatment for an empty container repeating the following procedure a minimum of three times:

(a) An appropriate solvent is placed in the container in an amount equal to at least 10% of the container volume; and

(b) The container is agitated to rinse all interior surfaces; and

(c) The container is opened and drained, allowing at least 30 seconds after drips start.

(8) "Pesticide" means any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling, or mitigating of insects, fungi, weeds, rodents, or predatory animals; including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006.

(9) "Pesticide Equipment" means any equipment, machinery or device used in the preparation for use or application of pesticides, including but not limited to aircraft, ground spraying equipment, hoppers, tanks, booms and hoses.

(10) "Pesticide Residue" means substances produced by the use of pesticides including, but not limited to unused commercial pesticides or spray mixtures, container rinsings and pesticide equipment washings.

(11) "Public Use Airport" means an airport open to the flying public which may or may not be attended or have service available.

~~(12) "Reuse" means the return of a commodity to the economic mainstream for use in the same kind of application as before without change in its identity (e.g., a container used to repackage a pesticide formulation).~~

11. Rule 340-109-010 is proposed to be amended as follows:

Pesticide Residue Waste Management
340-109-010

(1) A person producing pesticide-containing material ~~residue~~from any pesticide operation or pesticide management shall make every effort to beneficially use or reuse such material ~~residue~~to the extent permissible under federal and state law. Persons accumulating pesticide-containing material for use or reuse, shall contain these materials according to industry standards for containing commercial pesticides for use or reuse, and the container shall be labeled as to its contents and marked with the EPA Registration Number(s) for the pesticide(s).

(2) A person producing pesticide residue at a public-use airport, pesticide dealership or other permanent base of operation, and who does not beneficially use or reuse such residue, must manage the pesticide residue:

(a) ~~according~~ according to the universal waste management standards in 40 CFR Part 273 and OAR 340 Division 113, and standards in this Division, whereby such residues are designated "waste pesticide." A waste pesticide designation occurs only when the owner or manager of the residue:

(A) contains the wastes, and

(B) labels the container with the words "waste pesticide," and~~pesticide"~~

(C) marks the container(s) with the date the wastes are created, and

(D) manages the contained wastes according to the universal waste management standards in 40 CFR Part 273 and OAR 340 Division 113; or

(b) under a ~~in a facility having a~~ Water Pollution Control Facility (WPCF) permit issued pursuant to OAR ~~Chapter~~ 340 Division 14; or

(c) as otherwise authorized by the Department. Such management shall be in conformance with the following performance standards:

(A~~a~~) Containment by any one or combination of: physical means (e.g., natural or man-made liners), chemical means (e.g., adsorption-absorption layers), or other equivalent means;

(B~~b~~) Detoxification by any one or combination of: physical means (e.g., solar radiation), chemical means (e.g., hydrolysis), biological means (e.g., microbial degradation), or other equivalent means;

(Ce) Volume reduction by any one or combination of: evaporation, evapo-transpiration, use for new product makeup, or other equivalent means; and

(Dd) Protection of groundwater and surface waters by any one or combination of: system design, construction materials, or a groundwater monitoring program.

(3) Pesticide residue managed other than as specified in this Division, or by the Department remains a hazardous waste and is subject to OAR 340, Divisions 100 to 106 and 108.

(4) Waste pesticide may be managed in:

(a) a RCRA Subtitle C hazardous waste facility meeting the requirements of Division 100 to 106 and 108; or

(b) a permitted RCRA Subtitle D facility meeting the requirements of OAR 340 Division 94 provided either the applicable land disposal concentration-based standards in 40 CFR 268.40 are met for waste pesticide containing any pesticide active ingredient(s) listed in 40 CFR 261.33 (e) and (f), or if standards do not exist, the wastes do not fail the "Department of Environmental Quality Aquatic Toxicity Test," whereby a representative sample of a pesticide residue exhibits a 96-hour aquatic toxicity LC_{50} equal to or less than 250 mg/l; or

(c) a facility having a Water Pollution Control Facility (WPCF) permit issued pursuant to OAR 340, Division 14; or

(d) as otherwise authorized by the Department. Such management shall be in conformance with the following performance standards:

(A) Containment by any one or combination of: physical means (e.g., natural or man-made liners), chemical means (e.g., adsorption-absorption layers), or other equivalent means, and

(B) Detoxification by any one or combination of: physical means (e.g., solar radiation), chemical means (e.g., hydrolysis), biological means (e.g., microbial degradation), or other equivalent means, and

(C) Volume reduction by any one or combination of: evaporation, evapo-transpiration, use for new product makeup, or other equivalent means, and

(D) Protection of groundwater and surface waters by any one or combination of: system design, construction materials, or a groundwater monitoring program.

(53)A person producing pesticide residue at a temporary base of operation, and who does not beneficially use or reuse such residue, must manage such residue either:

(a) At a permitted facility or site participating in a pesticide collection program; or

(b) By spraying on the ground, provided:

(A) The residue is sprayed under pressure through a nozzle which is moving at a sufficient rate of speed so as not to saturate the ground with waste;

(B) The person doing the spraying owns or controls the management of the ground, or receives permission from the manager, owner, or controller of the ground;

(C) The spray site location will not endanger surface water or groundwater, or pose a hazard to humans, wildlife (game and non-game animals) or domestic animals; and

(D) If applied to agriculture land, the pesticide residue will not result in excessive or prohibited residuals in current or subsequent crops.

(64) A person who spills pesticide residue shall:

(a) Report spills in excess of 200 pounds (approximately 25 gallons) to the Oregon Emergency Management Division (telephone 800-452-0311); and

(b) Clean up such spill in accordance with ~~rule~~OAR 340-108-010.

12. Division 113 is proposed to be added as follows:

Oregon Universal Waste Rule
OAR 340, Division 113

Division 113
Universal Waste Management

340-113-000 Purpose and Scope
340-113-010 Applicability
340-113-020 Definitions
340-113-030 Standards for Small and Large Quantity Handlers of Universal Waste
340-113-040 Standards for Off-site Collection Sites
340-113-050 Standards for Destination Facilities
340-113-060 Petitions to Include Additional Universal Wastes
340-113-070 Pesticide Collection Programs
(Statutory Authority: ORS Ch. 183, 459, 466, 468, Adopted XX/XX/XX, Effective XX/XX/XX)

Purpose and Scope
340-113-000

(1) The purpose of the Division is to establish universal waste management standards for handlers, transporters and destination facilities of universal wastes.

(2) Persons must consult 40 CFR Part 273, which is incorporated by reference in OAR 340-100-102, and associated Federal Register preambles, in addition to Division 113 of these rules to determine all applicable universal waste management requirements.

(3) Two years from the effective date of this rule, the Department will review state established universal waste handler management standards for the purpose of determining if management standards are adequate for the protection of human health and the environment. At that time, a proposal may be presented to the Environmental Quality Commission with a recommendation to change accumulation limits, recordkeeping requirements, impose financial assurance requirements or other regulatory changes depending on the outcome of the study.

Applicability
340-113-010

(1) In addition to provisions under 40 CFR 273.1, the following wastes are subject to universal waste management standards:

(a) Waste pesticides as defined in OAR 340-109-010(2)(b), and pesticide residues as defined in OAR 340-100-010, that are collected and managed as part of any pesticide collection program that has notified the Department.

(b)Mercury-containing lamps as defined in OAR 340-113-020(3).

(2) The requirements of this Division and 40 CFR, Part 273 do not apply to persons managing:

(a) Mercury-containing lamps that are not yet wastes under 40 CFR, Part 261;

(b) Mercury-containing lamps that are not hazardous waste (i.e., the lamps do not exhibit the characteristics identified in 40 CFR part 261, subpart C); or

(c) Mercury-containing lamps that are hazardous waste and managed in compliance with applicable hazardous waste regulations in 40 CFR Parts 260-266 and 268.

(3) A mercury containing lamp becomes a waste on the date it is discarded.

(4) (a) Mercury-containing lamps are added to the universal waste provisions of 40 CFR 264.1(g)(11), 265.1(c)(14), 268.1(f) and 270.1(c)(2)(viii) that have been incorporated by reference under OAR 340-100-102.

(b) mercury containing lamps

Definitions
340-113-020

The definitions of terms contained in this rule modify, or are in addition to, the definitions contained in 40 CFR 273.6, 40 CFR 260.10, and OAR 340-100-010. When used in Divisions 109 and 113 of this chapter, the following terms have the meanings below:

(1) "Destination Facility" means a facility that treats, disposes of, or recycles universal waste. Facilities treating universal waste as allowed under 40 CFR 273.13, 273.33 or OAR 340-113-030(5) are not considered to be destination facilities for purposes of this rule. A facility at which universal waste is only accumulated, is not a destination facility for purposes of managing universal waste.

(2) "Electric Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common electric lamps include, but not limited to incandescent, fluorescent, high intensity discharge, and neon lamps.

(3) "Mercury Containing Lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp.

(4) "Off-site Collection Site" means a site that receives and accumulates universal waste from off-site.

(5) "Pesticide Collection Program" means a pesticide collection program that has notified the Department of activity as required in OAR 340-113-070 and has received acknowledgment from the Department of Environmental Quality that such notification information is complete.

(6) "Universal Waste" means any waste that is a universal waste listed in 40 CFR 273.1 and OAR 340-113-010 and subject to the universal waste requirements of 40 CFR Part 273 and OAR 340 Division 113.

Standards for Small and Large Quantity Handlers of Universal Waste
340-113-030

(1) The standards in this rule apply to small quantity handlers of universal waste as defined in 40 CFR 273.6. The standards in this rule modify or are in addition to provisions in 40 CFR Part 273 Subpart B.

(2) The standards in this rule apply to large quantity handlers of universal waste as defined in 40 CFR 273.6. The standards in this rule modify or are in addition to provisions in 40 CFR Part 273, Subpart C.

(3) Treatment Prohibition. (a) In addition to the provisions in 40 CFR 273.11 and 40 CFR 273.31, handlers of universal waste shall not treat universal waste, except as allowed the applicable portions of in 40 CFR 273.13, 40 CFR 273.33 and OAR 340-113-030(5) (mercury-containing lamps).

(4) Universal Waste Management for Mercury-Containing Lamps. Handlers of universal waste must manage universal waste mercury-containing lamps in a way that prevents releases of any universal waste or components of a universal waste to the environment by:

(a) Minimizing lamp breakage;

(b) Containing any lamps that show evidence of leakage, spillage or damage that could cause leakage. A container for lamps must be closed, structurally sound, compatible with the contents of the lamp, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions; and,

(c) Determining whether the material resulting from any release is hazardous waste and if so, the handler manage it as a hazardous waste;

(5) Universal Waste Treatment for Mercury-Containing Lamps. Handlers of universal waste may treat mercury containing lamps for the purpose of volume reduction at the site where they were generated provided the handler:

(a) Crushes the lamps in a controlled unit that does not allow releases of mercury or other hazardous constituents to the environment;

(b)Ensures that mercury cleanup equipment is readily available to immediately transfer any material recovered from a spill or leak to a container that meets the requirements of 40 CFR 262.34;

(c)Immediately transfers any material resulting from spills or leaks from uncontained broken mercury containing lamps to a container that meets the requirements of 40 CFR 262.34;

(d)Ensures that the area in which the lamps are crushed is well-ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(e) Ensures that employees crushing lamps are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers; and,

(f) Stores crushed lamps in closed, non-leaking containers that are in good condition (e.g., no severe rusting, apparent structural defects or deterioration), suitable to prevent releases during storage, handling, and transportation.

(6) (a) Labeling/Marking for Mercury Containing Lamps. In addition to the requirements in 40 CFR 273.14, universal waste mercury containing lamps (i.e. each lamp) or a

container in which the lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste- Mercury-Containing Lamp(s)" or "Waste Mercury Containing Lamp(s)" or "Used Mercury Containing Lamp(s)".

Standards for Off-Site Collection Sites
340-113-040

(1) Applicability. (a) In addition to the applicable provisions of 40 CFR 273, Subparts B and C, and OAR 340-113-030, the standards of this section apply to owners and operators of off-site collection sites as defined in OAR 340-113-020(4), accumulating more than 1,000 kilograms of universal waste at any one time..

(2) Notification. (a) Pesticide collection programs are not subject to notification requirements in 40 CFR 273.32 and 340-113-040(2)(b), but instead must comply with requirements of OAR 340-113-070.

(b) Owners or operators of off-site collection sites accumulating more than 1,000 kilograms of non-pesticide universal waste (batteries, mercury thermostats, and mercury-containing lamps) at any time must:

(A) Follow 40 CFR 273.32 (notification requirements for large quantity handlers) with the following exception:

(i) The notification requirement of 40 CFR 273.32(b)(5) is replaced with (B)(v) below.

(B) Off-site handlers must include at a minimum the following with their notification:

(i) Schedule of collection activity (i.e., daily, monthly, etc.);

(ii) An explanation of how the collection site will meet the applicable requirements for off-site handlers accumulating more than 1,000 kilograms of universal waste;

(iii) Names and addresses of all off-site collection sites that will manage the universal wastes prior to shipment to a destination facility;

(iv) Names and addresses of destination facilities that have agreed to accept the universal wastes collected by the off-site handler;

(v) Maximum quantity of universal waste by type that will be accumulated at the collection site;

(vi) Any additional information requested by the Department; and,

(vii) Certification statement that the information submitted to the Department is correct and the off-site collection site is operating in compliance with the universal waste rule.

(c) Once the notification information has been submitted to the Department, a letter will be sent to the off-site handler acknowledging the receipt of the completed notification form.

(3) Accumulation time limits. (a) For off-site collection sites accumulating more than 1,000 kilograms of universal waste, the provisions in 40 CFR 273.15(a) and (b) and 273.35(a) and (b) are deleted and replaced with Section (3)(b) of this rule.

(b) Off-site collection sites may accumulate universal waste for no more than six months from the date the waste was first shipped to the first off-site collection site, unless the handler has received written approval from the Department extending the accumulation time (Note: Extensions may be granted if the handler can demonstrate that additional time is needed to facilitate proper recovery, treatment or disposal of the waste.)

(4) Tracking universal waste shipments. (a) Off-site collection sites collection sites accumulating more than 1,000 kilograms of universal waste, must follow the tracking requirements in 40 CFR 273.39 with the following exception:

(A) Off-site collection sites accumulating more than 1,000 kilograms, but not more than 5,000 kilograms of universal waste at any time, are not required to record the name and address of the originating universal waste handler (generator).

(b)In addition to the provisions in 40 CFR 273.39 (a) an off-site collection site accumulating more than 1,000 kilograms of universal waste must also record the date the universal waste was received by the initial off-site handler.

(5) Reporting. Off-site collection sites accumulating more than 1,000 kilograms of universal waste at any time shall report to the Department by March 1 of each year, on forms provided by the Department. At a minimum, the following information shall be submitted for the previous calendar year:

(a) The DEQ identification number, name and address of the universal waste handler;

(b) Total quantity of each type of universal waste received; and,

(c) Locations of universal waste handlers and destination facilities waste was shipped to.

Standards for Destination Facilities
340-113-050

(1) Applicability. In addition to the provisions in 40 CFR 273.60, for purposes of this rule, a destination facility can include:

(a) A permitted hazardous waste facility or a hazardous waste recycling facility; or

(b) A facility that has obtained a solid waste management permit for the sole purpose of reclaiming mercury containing lamps.

(2) Reporting. All destination facilities that receive universal waste from off-site shall report to the Department by March 1 of each year, on forms provided by the Department. The following information shall be submitted for the previous calendar year:

(a) The DEQ identification number, name and address of the universal waste destination facility;

(b) Total amount of each type of universal waste received;

(c) The manner in which each type of universal waste was managed at the destination facility; and,

(d) Locations of universal waste handlers and destination facilities waste was shipped to.

Petitions to Include Other Wastes under OAR-340-113
340-113-060

(1) When reviewing a petition to include additional hazardous wastes as universal wastes the Department will consider the factors listed in 40 CFR 273.81

(2) (a) In addition to adding new wastes in the universal waste rule, the petition process may be used to remove wastes from the rule.

(b) Factors to be considered by the Department when reviewing a petition to remove a waste from the universal waste rule include but not be limited to the following:

(A) The collection and proper management of the waste has not been enhanced by being classified as a universal waste;

(B) Environmental or public health impact from the management of the waste as a universal waste is greater than management as a hazardous waste; and,

(C) The waste is no longer a hazardous waste.

Pesticide Collection Programs
340-113-070

(1) In addition to this section, pesticide collection programs accumulating more than 1,000 kilograms of pesticide waste at any time must also comply with the applicable requirements of OAR 340-113-040 (standards for off-site collection sites).

(2) Pesticide collection programs may be operated by federal, state or local municipal entities as well as persons in private industry..

(3) Prior to initial collection of any unused pesticides or pesticide residues, the collection program sponsors must submit, in writing, to the Department, a summary of how the collection program will be operated. Information, at a minimum, shall include:

(a) Name of the person(s)who will be responsible for the operation of the pesticide collection program;

(b) Location(s) of collection site(s);

(c) A description of how the pesticide collection program will operate to comply with the applicable universal waste rule requirements;

(d) Type(s) of pesticides to be collected;

(e) Schedule of collection activity (i.e., annually, quarterly, as needed, etc.);

(f) Names and locations of all off-site handlers or destination facilities which will receive the waste pesticides collected by the program;

(g) Measures to be taken to insure safety of the public and employees or volunteers working for the pesticide collection program;

(h) Measures to be taken to prevent spills or releases of materials collected and a plan to respond to a spill or release if one occurs;

(i) A description of how difficult-to-manage waste pesticides will be managed (i.e., dioxin-containing pesticides (federal waste codes F020-F023 and F026-F028), mercury-containing pesticides or unknown waste pesticides);

(j) Any additional information that is needed to assure that adequate provisions have been taken to protect the public health, safety and the environment; and,

(k) A signed certification statement from the person responsible for the operation of the collection program that it will be operated in compliance with the universal waste rule and in the manner described in the operating information provided in the submitted notification.

(4) Before accepting waste from off-site, pesticide collection programs shall receive acknowledgment from the Department indicating that a complete application has been received.

(5) Pesticide collection programs, in addition to submitting the information required in section 3, shall comply with all applicable universal waste handler requirements.

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340-Divisions 100,101,102,109, and 113

DATE:	**TIME:**	**LOCATION:**	
April 22, 1996	1pm to 2:30pm	Division of State Lands 775 Summer Street NE	Land Board Room Salem, OR 97310

HEARINGS OFFICER(s): John Taylor

STATUTORY AUTHORITY: ORS 466.020, ORS 192, ORS 646
or **OTHER AUTHORITY:**
STATUTES IMPLEMENTED:

ADOPT: OAR 340-113-000, 340-113-010, 340-113-020, 340-113-030, 340-113-040, 340-113-050, 340-113-060, 340-113-070, 340-113-080

AMEND: OAR 340-100-002, 340-100-003, 340-100-010, 340-101-001, 340-101-033, 340-101-040, 340-102-010, 340-102-040, 340-109-001, 340-109-002, 340-109-010

REPEAL:

RENUMBER: (prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER:

☒ 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:

Rulemaking Proposal to amend Oregon Administrative Rules to adopt by reference federal hazardous waste and used oil regulations, from April 1, 1993 through March 31, 1996, including the Universal Waste Rule and amendments to state hazardous waste regulations

LAST DATE FOR COMMENT: received by 5pm, April 25,1996

AGENCY RULES COORDINATOR:	Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL:	Elaine Glendening
ADDRESS:	811 S. W. 6th Avenue Portland, Oregon 97204
TELEPHONE:	503-229-6015/1-800-452-4011

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

_____ _____

Signature Date

Agenda Item K
Attachment B2
July 12, 1996

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for amendments of Oregon Hazardous Waste Rules

Fiscal and Economic Impact Statement

Introduction

This rulemaking incorporates several parts of the Department's Hazardous Waste Rules.

I. Adoption of Federal Hazardous Waste Regulations from April 1, 1993 through March 31, 1996, including amendments to the Used Oil Rules (Part 279).

In general, the federal regulations being proposed for adoption either are currently in effect in Oregon or are substantially equivalent to existing Oregon regulations. Therefore, there will be no fiscal or economic impacts stemming from their adoption.

II. Adoption of Federal Universal Waste Rule and Amendments

The Universal Waste Rule is less stringent than existing requirements for managing hazardous waste and EPA estimates that the it may result in a nationwide annual savings of approximately $76 million (see Federal Register (FR) Vol. 60, no. 91, pg. 25538, May 11, 1995). This estimate assumes that all generators of waste newly classified as Universal Waste are currently managing it as hazardous waste. Generators of such wastes will be allowed the option of managing their wastes either under the Universal Waste Rule or the traditional hazardous waste requirements.

Proposed state amendments to the Universal Waste Rule.

Add mercury-containing lamps. The Department is proposing to amend the Universal Waste Rule requirements (in new Division 113) to include mercury-containing lamps (e.g., fluorescent, high pressure sodium vapor lamps) as a Universal Waste. Including mercury-containing lamps as a Universal Waste will provide generators of the lamps an alternate management method that is less restrictive than managing the lamps as hazardous waste. EPA estimates a large or small quantity hazardous waste generator of lamps could save $300.00 per year (see FR Vol. 59, no. 143, pg. 38298, July 27, 1994) by managing them as

a Universal Waste. Cost savings from the Universal Waste Rule occur from reduced costs for transportation, employee training, maintenance of a contingency plan, hazardous waste manifesting and recordkeeping, and Land Disposal Restriction notification.

Additional Universal Waste handler requirements. The Department is proposing additional requirements for Universal Waste handlers that impose stricter management standards, notification, recordkeeping, and reporting requirements than the federal rule on collection sites accumulating more than 1,000 kilograms of Universal Waste and handlers accumulating more than 5,000 kilograms of Universal Waste. These requirements are less stringent that those currently applied for managing the wastes under the hazardous waste regulations.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides.

Revise the definition of "pesticide residue". The proposed regulation defines a pesticide residue more narrowly than is currently the case, to exclude material the Department believes was inadvertently captured in the current definition. The proposed regulation excludes such material from the definition of pesticide residue. Since disposal at a solid waste landfill is much less costly than disposal at a hazardous waste landfill, this amendment should lower costs.

Eliminate the aquatic toxicity screening test for pesticide residues. The Department is proposing to eliminate the aquatic toxicity test as a screening tool to determine if a pesticide residue is a hazardous waste. The proposed amendment allows pesticide residues that meet certain proposed regulatory conditions to be managed as if they were non-hazardous wastes. Management of these residues under the Universal Waste management system or as a solid waste would reduce the level of regulation compared to hazardous waste management standards, leading to reduction in costs.

Eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticide waste. The Department is proposing to delete the "Three and Ten Percent Rule" as a basis for regulating pesticide wastes. Currently, pesticide residues that are not federal hazardous wastes are state hazardous wastes if they have active ingredients that are listed on the federal "P" and "U" lists (40 CFR 261.33 (e & f) in concentrations respectively greater than three and ten percent. The proposed amendment eliminates potential duplicative regulation of the same pesticide wastes and instead allows pesticide residues that meet certain proposed regulatory conditions to be managed as waste pesticides. Management of these

wastes under the Universal Waste management system or as a solid waste would reduce the level of regulation, leading to reduction in costs.

IV. Changes to the Hazardous Waste Trade Secret Rule for Trade Secret Claims Substantiation Procedures.

Amend the time period needed to review and process trade secret claims. The Department is proposing to increase the time period for reviewing and processing trade secret claims. The Department believes that this amendment will have no economic effect.

Include trade secret claims substantiations with permit modification submission when trade secrets are claimed in permit modifications. The Department believes that it makes sense to have the claim substantiation process be the same as for permit applications. The Department believes that this amendment will speed processing times and will have no economic effect.

V. Miscellaneous Changes and Technical Corrections

The Department is proposing to add changes and technical corrections to the hazardous waste rules:

Add blister agents and nerve and blister agent treatment residues as State-Only Hazardous Waste. The Department is proposing to add "blister agents" (e.g., mustard agent),and residues from the treating, testing and demilitarization of nerve and blister agents to the list of hazardous wastes. Adding the wastes will strengthen existing state rules regarding chemical weapon waste management and releases. This amendment is needed to ensure proper management of these wastes and will have an impact on the Umatilla Army Depot where the wastes are generated. There will be no economic impact to other entities from this rule amendment.

Clarify existing Small Quantity Generator Exception Report Retention Requirement. The Department proposes rule language to clarify that small quantity hazardous waste generators (SQG) must keep exception and other reports for 3 years, as required by federal rules. Currently there is confusion about whether there a SQG should or should not retain exception reports. The Department believes there will be minimal economic impact to generators from this rule amendment.

General Public Impact

The proposed regulations do not directly affect the general public.

Small and Large Businesses, Local Government, and State Agency Impacts

I. Adoption of Federal Hazardous Waste Regulations from April 1, 1993 through March 31, 1996, including amendments to the Used Oil Rules (Part 279). In general, the federal regulations being proposed for adoption either are currently in effect in Oregon or are substantially equivalent to existing Oregon regulations. Therefore, there will be no fiscal or economic impacts stemming from their adoption.

II. Adoption of Federal Universal Waste Rule and Amendments. No significant adverse fiscal and economic impacts on small or large businesses, local governments or state agencies have been identified. Adoption of the Universal Waste Rule will reduce costs for those who generate wastes such as batteries, mercury thermostats, pesticides, and mercury-containing lamps, due to reduced management requirements for these wastes. Cost savings derived from the adoption of the Universal Waste Rule will be realized in the areas of transportation, employee training, maintenance of a contingency plan, hazardous waste manifesting and recordkeeping, and Land Disposal Restriction Notification requirements. Actual cost savings for generators of universal waste will vary and be dependent on the types and amounts of hazardous waste generated. For example, an operator of an office building undergoing a lighting fixture change-out producing waste mercury containing lamp and no other hazardous wastes will see greater cost savings than a manufacturing facility that generates large amounts of hazardous waste and few waste universal waste batteries. In this example, the office building will not have the emergency preparedness, reporting and recordkeeping requirements that the manufacturing facility would have because they generated a large volume of universal waste and no other hazardous waste. The manufacturing facility could not enjoy this benefit because they do not generate enough universal waste to lower their generator category, which is based on how much hazardous waste is generated in a month. Although proposed state management requirements for off-site Universal Waste collection sites will increase notification, reporting and recordkeeping requirements, the requirements and subsequent compliance costs to businesses are less than if they were subject to the current hazardous waste regulations.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes. No significant adverse fiscal and economic impacts on small and large businesses, local governments or state agencies have been identified. The Department is proposing to change the definition of a

pesticide residue to more narrowly define what is a pesticide residue, to exclude materials the Department believes was inadvertently captured in the current definition. Excluding these waste from the pesticide residue definition will allow them to be managed as a solid waste. Since disposal of these excluded materials at a solid waste landfill is much less costly than disposal at a hazardous waste landfill, costs should be substantially lower by this rule amendment. The proposed amendment will also reduce management and disposal costs by allowing additional flexibility for management of waste. Amendment of the state pesticide regulations will also reduce compliance costs by eliminating redundant requirements (Three and Ten percent rule).

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures. No significant adverse fiscal and economic impacts on small and large businesses, local governments or state agencies have been identified.

V. Miscellaneous Changes and Technical Corrections.

Add blister agents and residues from the treating, testing and demilitarization of nerve and blister agents as state-only hazardous wastes. The proposed regulations will not affect small or large businesses, local governments, or state agencies.

Clarify existing Small Quantity Generator Exception Reporting Requirement. The Department believes that there will be little or no economic impact to small or large businesses, local governments, or state agencies with this rule amendment.

Other Agencies

Adding blister agents and residues from the treating, testing and demilitarization of nerve and blister agents as a hazardous waste is not expected to increase hazardous waste management costs for the Umatilla Army Depot because the facility's proposed hazardous waste Treatment, Storage and Disposal permit requires that these waste be managed as hazardous waste.

Assumptions

Rules proposed in this package, with the exception of adding blister agents and residues from the treating, testing and demilitarization of nerve and blister agents as a hazardous waste, are designed to eliminate perceived rule redundancy, reduce regulatory requirements and provide consistency with existing hazardous waste regulations. The Department believes that no significant adverse and economic impacts will arise from the proposed amendments.

Agenda Item K
Attachment B3
July 12, 1996

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for the amendment of hazardous waste rules.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

In the interest of maintaining equivalency with the federal Resource Conservation and Recovery Act (RCRA) hazardous waste program, the Department continues to adopt federal regulations by reference. Part of this current rulemaking process is to adopt all federal hazardous waste rules promulgated from April 1, 1995 through March 31, 1996, and used oil rules promulgated from April 1, 1993 through March 31,1996. Included is the Universal Waste Rule, which lessens the regulatory burden for hazardous waste generators who have batteries, recalled pesticides or mercury-containing thermostats.

II. Adoption of Federal Universal Waste Rule and Amendments

This amendment is needed to allow the Department regulatory flexibility to deal with additional materials as Universal Wastes. The Department is proposing to add as a Universal Waste spent fluorescent light tubes and other mercury containing lamps. The Department is amending the Universal Waste Rule to add requirements for offsite handlers of Universal Waste to ensure that the waste is properly managed once it is sent to a collection site.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

This rulemaking clarifies regulations that deal with pesticide residues and provides for alternative management. The proposed regulation defines a pesticide residue more

narrowly than is currently the case, to exclude material the Department believes was inadvertently captured in the current definition. In addition, the proposed rule eliminates the screening test (aquatic toxicity test) which is currently applied to pesticide residues to determine whether they remain hazardous.

To eliminate regulatory redundancy, the Department proposes to eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticides. Currently, mixtures containing pesticides appearing on the federal "P" and "U" list are regulated by the Three and Ten Percent Rule (OAR 340-101-033 (2)). These pesticide residues would instead be regulated under the proposed pesticide residue regulations.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures

The Department proposes changes to the trade secret rule that will clarify the trade secret claim substantiation response time, provide for time extensions to the claim substantiation response time, provide for claimant review of the Department's final claim determination, and require the claim substantiation to accompany any trade secret claims in permit modifications requests. This proposal also requires that when trade secrets are claimed in permit modifications, the claims substantiation must accompany the permit modification submission.

V. Miscellaneous Changes and Technical Corrections

Adding Blister Agent and Treatment Residues as State-Only Hazardous Waste.
Addition of Blister Agents, such as mustard gas, stored at the Umatilla Army Depot, as a state-only hazardous waste is needed to ensure that these hazardous materials are managed in an environmentally sound manner. In addition, residues from the treating, testing , and demilitarization of nerve and blister agent are proposed for regulation as state-only hazardous wastes to ensure their proper management.

Clarifying Existing Small Quantity Generator Exception Reporting Regulation.
Proposed rule language is needed to clarify that small quantity hazardous waste generators (SQG) must keep exception reports for 3 years. Currently there is no directive in the rules for SQG's to retain exception reports. This proposed rule aligns with other hazardous waste generator requirements.

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

Yes____ No__X_

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

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

Yes____ No_____ (if no, explain):

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

The following criteria are 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 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.

The Department has determined that the proposed rules would not significantly impact land use. The proposed rules do not change any of the requirements for siting and permitting a hazardous waste and PCB treatment or disposal facility, which is the DEQ land use action regulation..

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

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

N/A

Division Intergovernmental Coord. Date

Agenda Item K
Attachment B4
July 12, 1996

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

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

The Federal regulations that are applicable in this situation are:

CFR Parts 260 to 270, which address hazardous waste and its management both by the hazardous waste and the facilities that, treat store or dispose of it.
Part 279, which addresses used oil management.
Part 273, which addresses management of certain hazardous wastes as universal wastes.

The State of Oregon has been authorized by the federal Environmental Protection Agency (EPA) to implement the federal hazardous waste program in Oregon. The Legislature has directed the Department to seek authorization to avoid having different federal and state requirements affect hazardous waste generators and hazardous waste Treatment Storage and Disposal (TSD) facilities in Oregon and to have the Department, not EPA, implementing hazardous waste regulation in Oregon.

Previously, the Environmental Quality Commission (EQC) has adopted federal rules relating to hazardous waste management. To maintain authorization, the EQC must periodically adopt new or changed federal rules. That is what is now being proposed.

Specifically, the proposed rule changes concerning adoption of the federal hazardous waste regulations will make the state and federal requirements the same. The proposed rule changes concerning universal waste and the addition of mercury containing lamps and off-site handler requirements are similar to but not exactly the same as the federal rules.

Below is a summary of what the proposed federal regulations considered for adoption do:

- Clarify the hazardous waste organic air emission final rule
- Clarify temperature requirement for pH measurements for hazardous waste testing of corrosivity
- Provide streamlined regulations for the collection and management of universal wastes
- Delist as a hazardous waste Conversion System Inc.'s electric arc furnace dust that has been treated by a specific chemical stabilization process
- Delist as a hazardous wastes certain US Department of Energy specific wastes generated by treatment at Hanford WA facility

- Remove from the rules, sections, pertaining to solid waste, hazardous waste, oil discharges and EPA's Superfund program that are no longer legally in effect.
- Add a test method for determining the biodegradability for sorbent used to solidify containerized liquid hazardous waste for disposal in hazardous waste landfills
- Change the regulatory status of listing of carbamate production intermediates as hazardous waste
- Issue a stay for hazardous waste organic emission regulations for tanks and containers that manage HW generated from organic peroxide production.
- Correct Part 261 language which grants final conditional to Envinite Corp.
- Provide earlier opportunities for public involvement in the hazardous waste facility permitting process, and expands public access to information
- Clarify used oil regulations as they apply to petroleum pipelines and used oil processors refining
- Correct minor errors in Federal Registers on April 17, 1995 and February 9, 1995
- Exclude from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry.

The proposed rules relating to pesticide residues, addition of blister agent and treatment residues as hazardous waste and clarification of small quantity generator report retention are not directly applicable to the federal rules.

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

The federal requirements are performance based.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

The federal requirements generally address issues that are of concern to Oregon. Proper management of used oil is important to Oregon, and the federal rules which clarify used oil exemptions will strengthen Oregon's used oil regulations.

The federal universal waste rule helps meet Oregon's desire to manage hazardous waste in a manner that promotes more efficient collection, storage and recycling. During the federal rule adoption process, the Department provided comments to expand the list of universal waste being proposed EPA to include waste mercury-containing lamps (e.g., fluorescent light tubes). The final federal rule did not include mercury-continuing lamps and the Department is proposing to add them.

Federal rules do not regulate blister agents as hazardous waste. With the destruction of these wastes now being pursued at the Umatilla Army Depot, the Department is proposing that blister agents be included under the definition of hazardous waste in Oregon. The Department is also proposing to add treatment residues from nerve and blister agents as hazardous waste. This will give the Department more tools to ensure nerve agent destruction and residue disposal is done in an environmental protective manner.

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?

Universal Waste Rule

With the adoption of a universal waste rule in Oregon, the regulated community will have a more cost effective alternative to managing certain hazardous wastes that meet the definition of universal waste. The EPA promulgated the federal universal waste rule in May 1995 to provide a streamlined regulatory approach that can be used to manage certain hazardous wastes. The reduced regulatory framework is intended to encourage proper collection and facilitate the proper management, including recycling, of universal waste.

Currently, the following hazardous wastes are included in the federal universal waste rule:

- Batteries
- Pesticides collected in federal and voluntary recalls and approved state collection programs
- Mercury thermostats

In addition to the above wastes, the Department is proposing to add mercury-containing lamps and waste pesticide residues to the universal waste rule.

Fluorescent tubes are widely generated throughout Oregon in office buildings, industry, businesses, institutions and by homeowners. The mercury content of these lamps can cause them to be classified as a hazardous waste. If included in the universal waste rule, the reduced hazardous waste management requirements for lamps is expected to support the efforts of many existing and planned energy conservation programs to install energy efficient lighting. Increased

collection of universal waste pesticides in Oregon will be encouraged because of reduced regulatory burden including simplified waste management, notification, recordkeeping, training and reporting requirements.

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

Yes, the Environmental Quality Commission must regularly adopt new and modified federal hazardous waste rules to maintain authorization for the hazardous waste program in Oregon.

The universal waste rule is being proposed for adoption now because it helps hazardous waste generators in Oregon to better manage their waste.

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

Not applicable.

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

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

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

More stringent rules are not being proposed except for adding blister agents, and nerve and blister agent treatment residues to the state hazardous waste definition. The Department does not expect the Umatilla Army Depot to experience more costs because of adding these wastes to the list of state hazardous wastes.

9. Do the proposed requirements 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?

Universal Waste Handlers

The Department is proposing to add additional notification, reporting and recordkeeping requirements for large quantity universal waste "handlers" (both generators and off-site collectors) accumulating more than 5,000 kilograms of universal waste at any one time. The Department is proposing that small quantity universal waste handlers collecting universal waste from off-site handlers and accumulating more than 1,000 kilograms of universal waste at any one time be subject to large quantity handler requirements. These handlers would be required to notify the Department of universal waste activity, and to have increased record keeping and training requirements.

The Department is concerned about the amount of wastes accumulated at locations that would not be required to notify the Department under the federal rule. Currently, persons collecting these types of hazardous wastes are required to be a permitted hazardous waste facility or a hazardous waste recycler that has notified the Department of its activity. The Department believes that the federal rule is inadequate to ensure that off-site collection of universal waste is properly managed. Without notification, reporting and recordkeeping information from off-site collection handlers, the Department believes that it will have no way of monitoring that waste is being properly managed. Lack of notification, recordkeeping and reporting responsibility may invite some collectors to abandon waste, especially if the markets for materials that can be reclaimed from universal waste experience instability and become valueless. This may cause off-site handlers to be unable to properly dispose of the universal waste. Abandonment and illegal disposal of universal waste impact the environment and public health.

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

Not applicable.

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

Yes. The rules being proposed contribute to the prevention of pollution, address a potential problem and represent a more cost-effective environmental gain. For example, the management flexibility contained in the universal waste rule represents a more cost effective approach for

generators while providing a realistic opportunity for generators to manage their waste in compliance with the law. The addition of blister agent and nerve agent to the hazardous waste list ensure, that the Department can regulate nerve agent destruction appropriately. In general, regulating hazardous waste management creates an incentive to eliminate or reduce the generation of hazardous waste.

Agenda Item K
Attachment B5
July 12, 1996.

State of Oregon
Department of Environmental Quality Memorandum

Date: March 22, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements amending Oregon Hazardous Administrative Rules

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new federal hazardous waste rules and amend state hazardous waste regulations. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt rules.

This rulemaking proposal would incorporate changes made necessary by changes in Federal regulation or would incorporate changes to existing state regulation necessary to improve and clarify hazardous waste program implementation. This proposal includes:

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

- Used oil rules.
- Other federal rules.

II. Adoption of Federal Universal Waste Rule and Amendments

- Addition of mercury-containing lamps (fluorescent light tubes) to the list of universal wastes.
- Amend universal waste handler provisions.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

- Revise the definition of "pesticide residue".
- Eliminate the aquatic toxicity screening test for pesticide residues.
- Allow for management of pesticide residues under the universal waste rule.
- Allow for disposal at solid waste landfill provided certain treatment provisions are met.
- Eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticide wastes.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures

- Adds more time for review and processing of trade secret claims.
- Requires claim substantiation to accompany any trade secret claim in permit modification request.

V. Miscellaneous Changes and Technical Corrections

- Add blister agent and the treatment residues derived from blister and nerve agents as hazardous waste
- Clarify existing Small Quantity Generator exception reporting regulation.

Note: The body of the Memo uses the above numbering system to refer to the various parts of this rulemaking.

What's in this Package?

Background on Developing the Rulemaking Proposal

- What is Being Proposed
- Why is There a Need for the Rule
- How the Rules Were Developed
- Who is Affected by the Rule
- How the Rule Relates to Federal Requirement
- How the Rule will be Implemented

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

Attachment A	The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335).
Attachment B	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
Attachment C	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
Attachment D	The actual language of the proposed rule (amendments).

Hearing Process Details

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

Date: April 22, 1996
Time: 1pm to 2:30pm
Place: Division of State Lands
Land Board Room
775 Summer Street NE
Salem, OR 97310

Or please submit written comments to:

Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204
Attn: Elaine Glendening

Deadline for submittal of Written Comments: 5 pm, April 25, 1996

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are submitted as early as possible to allow an adequate period of time for review and evaluation of the comments.

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

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

What Happens After the Public Comment Period Closes

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is May 17, 1996. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented **during** the hearing process so that full consideration by the Department may occur before a final recommendation is made. In accordance with ORS 183.335(13), no comments can be accepted after the public comment period has closed by either the EQC or the Department. Thus the EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department prior to the close of the public comment period so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

What is Being Proposed

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

In general, the federal regulations being proposed for adoption either are currently in effect in Oregon or are substantially equivalent to existing Oregon regulations.

II. Adoption of Federal Universal Waste Rule and Amendments

Included in this rule making is the federal universal waste rule (UWR). The EPA promulgated the UWR in May 1995 to provide a streamlined regulatory approach for managing certain hazardous wastes classified as universal wastes. The reduced regulatory framework is intended to encourage proper collection and facilitate the proper management, including recycling, of these universal wastes.

Universal wastes are hazardous wastes that are generated in a wide variety of settings, including industry, construction, institutions, office buildings, and homes. The types of hazardous wastes to be included in this rulemaking as federal universal waste are:

- Batteries;
- Pesticides collected in a federal government recall; voluntary recalls by registrants; or waste pesticide collection programs; and
- Mercury thermostats

The federal rule makes it easier for the generators of these universal wastes, called "handlers", to manage them appropriately. In the UWR the term " handler " refers to both generators of universal wastes and those who accept universal wastes from generators. Universal wastes do not count towards generator status, nor do they need to be transported using a manifest by licensed hazardous waste transporters. The length of time that the generators can accumulate universal wastes on-site is significantly longer than the accumulation time limits for hazardous waste.

Locations that accept universal wastes from off-site and act as accumulation points are also referred to as "handlers" in the rule. These locations are not required to obtain a hazardous waste facility permit, which allows for easier collection and accumulation of wastes. It is expected that handlers who accept universal waste from off-site will include solid waste transfer stations, household hazardous waste and conditionally exempt generator hazardous waste collection events and facilities, retail outlets, and distributors of products covered under the rule. Universal wastes eventually must be managed at either licensed hazardous waste disposal facilities or hazardous waste recycling facilities, which are referred to in the rule as "destination facilities".

State Amendments to the Federal Universal Waste Rule

Addition of Mercury-Containing Lamps (fluorescent light tubes) to the List of Universal Wastes

The Department is proposing to add mercury-containing lamps (i.e.: fluorescent light tubes, mercury and sodium vapor lamps) as a universal waste to the universal waste rule.

Mercury-containing lamps are widely generated throughout Oregon in office buildings, industry, businesses, institutions and by homeowners. The mercury content of these lamps can cause them to be classified as a hazardous waste. The proposal will reduce hazardous waste management requirements for lamps and is expected to support the efforts of many existing and planned energy conservation programs, which encourage the installation of energy efficient lighting.

Fluorescent light tubes and other mercury containing lamps fit the criteria outlined in the UWR's petition process as they are generated by a wide variety of generators, and are not specific to a certain type of industry. Inclusion in the UWR would encourage proper collection and management of the tubes, and take the tubes out of municipal solid waste management systems. Compliance with the hazardous waste program would be improved, as generators of tubes would fall into a less complex system.

The federal UWR currently allows some limited treatment options for batteries and mercury thermostats. The circumstances under which treatment can occur are specifically outlined in the

rule. The Department recognizes that some generator/handlers of fluorescent light tubes may want to have an on-site tube crushing option, either as a way to reduce storage space or to facilitate transportation. Fluorescent tube crushing will be allowed under the proposed state UWR with some specific guidelines and requirements.

Amend Universal Waste Handler Provisions

The federal universal waste rule describes generators of universal wastes as "handlers". All handlers must manage universal waste in an environmentally sound manner, and are prohibited from on-site treatment of universal waste, except in very specific circumstances. The federal rule has two categories of handlers, based on a total accumulation amount of universal waste. Handlers accumulating less than 5,000 kg (11,000) pounds of universal waste are not required to notify the Department of their universal waste handling activity, are not required to keep any records, and have minimal employee training requirements. Handlers accumulating over 5,000 kg of universal waste on-site must notify the Department, keep records of universal waste shipments, and have increased employee training requirements.

The Department is concerned about the amount of wastes allowed to accumulate at off-site locations and is proposing to amend the federal UWR to add requirements for off-site handlers of universal waste to ensure that the waste is properly managed once it is sent to a collection site. The Department is proposing to lower the 5000 kg cut off for off-site handlers to 1000 kg. In addition, the Department is proposing specific requirements for pesticide collection programs collecting pesticides and pesticide residues from off-site. With this pesticide collection program structure in place, the Department believes more pesticides and pesticide residues will be able to be collected and managed under universal waste management standards.

Handlers (both on-site and off-site collection sites) accumulating more than 5,000 kilograms of universal waste at any time are required to follow the federal requirements. The Department is proposing additional notification and reporting requirements for off-site collection sites in order to monitor the management of universal waste at these larger facilities.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

Currently, pesticide wastes are regulated in two ways in the State of Oregon. First pesticide wastes are regulated by federal hazardous waste rules known as the "P" and "U" lists, which are pure unused pesticides or pesticide wastes. Second, Oregon has identified by statute "pesticide residues" as hazardous waste. The Department has adopted rules to implement the statute.

The regulated community has expressed confusion over regulations that govern hazardous waste pesticide residues and has requested regulatory flexibility in the management of those wastes. This rulemaking clarifies regulations that deal with pesticide residues and provides for alternative management.

Amends the Definition of Pesticide Residue

The proposed rule defines a pesticide residue more narrowly than is currently the case, by excluding material the Department believes was inadvertently captured in the current definition. Under the current rule, materials that are waste-like but are used according to pesticide label directions, and materials destined for disposal (such as treated seeds, carpets, and soils) that have had pesticides legally applied could be considered hazardous waste pesticide residues. The proposed rule specifically excludes such material from the definition of pesticide residue. Also the Department is proposing to add language that clarifies the types of activities that generate pesticide residues and, what constitutes beneficial uses as it applies to pesticide reuse.

Eliminates the Aquatic Toxicity Screening test for Determining if Pesticide Residue is a Hazardous Waste

Under state law, all pesticide residues are by definition hazardous waste unless declassified by administrative rule. The aquatic toxicity test is currently used as a screen to establish which pesticide residues are declassified. Those that pass are declassified. Those that fail remain hazardous waste. The proposed rule eliminates the aquatic toxicity test as the primary means for determining if a pesticide residue is a hazardous waste.

In place of the aquatic toxicity test, the proposed rule identifies pesticide residue hazardous waste as:

- mixtures containing "P" and "U" listed pesticides
- residue that no longer exhibit any of the pesticide toxicity characteristics ,and
- any pesticide residue specifically defined by rule.

Management of Pesticide Residues Under the Universal Waste Rule

The Department proposes that hazardous waste pesticide residues that meet certain proposed regulatory conditions may be managed according to the universal waste management standards. Adoption of the (UWR) will allow the Department to regulate pesticide residues in an effective, streamlined and environmentally sound manner, and will remove the need for the more prescriptive pesticide residue management regulation.

Elimination of the "Three and Ten Percent Rule as a Basis for Regulating Pesticide Residues

To eliminate regulatory redundancy, the Department proposes to eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticide mixtures. Currently, mixtures containing pesticides appearing on the federal "P" and "U" list are regulated by the Three and Ten Percent Rule (OAR 340-101-033 (2)) and the aquatic toxicity rule. These pesticide residues would instead be regulated under the proposed pesticide residue regulations which replace the aquatic toxicity rule.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation

The Department proposes changes to the trade secret rule that will clarify the trade secret claim substantiation response time period, provide for time extensions to the claim substantiation response time period, and require the claim substantiation to accompany any trade secret claims in permit modifications requests.

These rule changes are needed so the Department has an adequate amount of time to address a claimant's request for a trade secret claim and to provide the Department with a process for treating all parties equally.

The proposed rule defines the current 15 day claim substantiation response time period to be 15 "working" days, with the potential to extend that time to an additional 30 working days at either the claimant's request or the Department's initiative.

The proposed rule also requires that when trade secrets are claimed during the permit modification process, the claims substantiation must accompany the permit modification submission.

V. Miscellaneous Changes and Technical Corrections

Add Blister Agent and Treatment Residues as State-Only Hazardous Waste

The proposed rule would add blister agents and residues from the treating, testing , and demilitarization of nerve and blister agents to the list of hazardous waste. The Department wants all available regulatory tools to ensure the nerve agent destruction at the Umatilla Army Depot is done in an environmentally sound manner.

Clarify Existing Small Quantity Generator Exception Reporting Regulation

Proposed rule language is needed to clarify that small quantity hazardous waste generators (SQG) must keep exception and other reports for 3 years. Currently, there is confusion about whether a SQG should or should not retain reports.

Why is there a need for the rule

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

The Department must adopt all federal hazardous waste regulations to retain authorization from the U.S. Environmental Protection Agency (EPA) to implement the federal hazardous waste program in Oregon. States are required to adopt clusters of federal regulatory changes within one year after their promulgation by the EPA. The Department has already adopted federal hazardous waste regulations through April 1, 1995, and used oil regulations through April 1, 1993 and proposes to adopt new federal rules which will make the state rules current with the federal rules through March 31, 1996.

II. Adoption of Federal Universal Waste Rule and Amendments

Included in this rulemaking is the adoption of the federal universal waste rule (UWR). The EPA promulgated the Universal Waste Rule in May 1995 to provide a streamlined regulatory approach for managing certain hazardous wastes classified as universal wastes. The federal rules do not apply in Oregon until adopted by the state.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

This rulemaking is needed to clarify regulations that deal with pesticide residues and to provide for alternative management approaches for pesticide residues and waste pesticides. The "Three and Ten Percent Rule" as a basis for regulating pesticides eliminates a regulatory redundancy with state hazardous waste rules.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation

These rule changes are needed to have an adequate amount of time to address a claimant's request for a trade secret claim and to provide the Department with a process for treating all parties equally.

V. Miscellaneous Changes and Technical Corrections

The Department is proposing to add "blister agents" (e.g., mustard agent) and residues from the treating, testing and demilitarization of nerve and blister agents as hazardous wastes.

At the time of the original listing of nerve agents (P999) blister agents were considered by the Department to be included in the nerve agent listing. Since that listing the Department has learned from the Department of Defense that mustard agents are classified as blister agent and not nerve agent.

In order to ensure proper regulatory control over mustard agents that are destine for disposal and to deal with spill response and cleanups, the Department is adding the specific listing of P998

(Blister agents) to the list of hazardous waste. This addition reaffirms the Department's regulatory authority over this waste.

In addition, with the treatment process being proposed at the Umatilla Army Depot, the waste residues would be regulated as hazardous waste by application of the "contained in policy". To further clarify the Department's regulatory authority over the treatment residues from both nerve and blister agents, the Department is adding the non-specific hazardous waste listings (F999 and F998) to address residues from the treating, testing and demilitarization of nerve and blister agents.

These additional listings will clarify and affirm the Department's regulatory authority for treating, storing, disposing and spill response for nerve agents, blister agents and treatment residues from these agents.

The Department proposes rule language is needed to clarify that small quantity hazardous waste generators (SQG) must keep reports, such as exception and annual reports, for 3 years.

How were the rules developed

Documents relied upon in developing these proposed rules include:

1. 40 Code of Federal Regulations (CFR) Parts 260 to 279
2. Summary of federal regulations considered for adoption
3. Oregon Revised Statutes ORS 466
4. Oregon Administrative Rules (OAR) Division 100 to 109
5. Proposed changes to Division 100, 101, 102, 109 and addition of 113
6. Universal Waste Rule factsheet
7. Comparison of federal universal waste and proposed state universal waste requirements
8. Waste Reduction and Special Waste Advisory Group Recommendations for adoption of Universal Waste Rule and additions to state-only rules
9. Pesticide Waste Advisory Group Recommendations on proposed amendments to the Pesticide Residue Waste Rules
10. Unwanted Pesticide Collection Group January 18, 1996 minutes
11. Hazardous Waste and Toxics Use Reduction Advisory Committee recommendations 1994

I. Adoption of Federal Hazardous Waste and Used Oil Regulations from April 1, 1993 through March 31, 1996

The used oil and hazardous waste rules proposed for adoption have already been adopted by the federal government.

II. Adoption of Federal Universal Waste Rule and Amendments

The Department established the Hazardous Waste Reduction and Special Waste Advisory Group in the fall of 1995 to discuss the adoption of the federal universal waste rule. This group met three times and discussed whether to adopt the UWR in its entirety or only portions of it, whether to add to the list of wastes currently identified as universal waste under the federal rule, and whether to change any of the requirements that effect handlers of universal

Proposed adoption of federal the regulations will affect generators and hazardous waste facilities in Oregon. In general, the federal regulations being proposed for adoption either are currently in effect in Oregon or are substantially equivalent to existing Oregon regulations. The federal rules proposed for adoption are primarily clarifications or technical corrections to existing regulations Oregon has previously adopted.

II. Adoption of Federal Universal Waste Rule and Amendments

Proposed adoption of the federal universal waste rule with state amendments will affect generators and facilities accepting waste batteries (excluding lead acid batteries), mercury thermostats, waste pesticides and mercury-containing lamps. The proposed rule is designed to encourage the proper management of these hazardous wastes by permitting generators to manage them as a universal waste with specific management requirements that are less stringent that the current federal hazardous waste regulations.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a basis for Regulating Pesticide Wastes

Proposed changes to the state pesticide rules will affect generators of pesticide wastes. The proposed rule will:

- Clarify what is pesticide residue;
- Eliminate the aquatic toxicity screening for determining pesticide residue hazardous waste;
- Allow for management of pesticide waste under the universal waste rule;
- Allow for disposal as a solid waste provided certain conditions are met; and
- Eliminate the "Three and Ten Percent Rule" as a basis for regulating pesticide wastes.

The proposal will reduce applicable regulations and allow greater flexibility in the way pesticide wastes are managed.

IV. Changes to Hazardous Waste Trade Secret Claim Substantiation Procedures

The proposed rule will affect persons reporting hazardous waste activity making a trade secret claim. The proposed rule adds more time for review and processing of trade secret claims and requires claim substantiation to accompany trade secret claim in permit modification request. The proposed changes should have no measurable effect on persons making a trade secret claim.

V. Miscellaneous Changes and Technical Corrections

The Department is proposing to add "blister agents" (e.g., mustard agent), and the treatment residues derived from blister and nerve agents as state-only hazardous waste. Adoption of this regulation will affect only the Umatilla Army Depot. Because the proposed facility permit requires these to be managed as a hazardous waste, the Department believes there will be no impact from this rule amendment.

The Department is also proposing to clarify the existing small quantity generator exception

wastes. The group recommended that the Department adopt the federal UWR and add mercury-containing lamps to the list of Universal Wastes. The group also recommended additional requirements for off-site handlers of universal waste.

The Department also received UWR input from the Pesticide Waste Advisory Group. This group met once to discuss the Waste Advisory Group's universal waste rule recommendations and expressed strong concern regarding the proposed handler requirements. Based on the comments received from this group, the Department modified some Advisory Group recommendations for the UWR.

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

The Department convened an Aquatic Toxicity Technical Work Group to evaluate the hazardous waste rule regulating pesticide residues. Under this rule, any pesticide residue that fails the aquatic toxicity tests is subject to full hazardous waste regulation. This workgroup met three times in 1994 and once in 1995, and submitted a series of recommendations. The Pesticides Waste Advisory Group was specifically tasked to review the workgroup recommendations and to make recommendations regarding rule amendment for pesticide residue waste management. The advisory group met three times in October and November, 1995, and generally supported amendments to the regulations.

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation

The proposed revisions to the trade secret rule were reviewed by the Hazardous Waste/Toxics Use Reduction Advisory Committee of 1994 and the committee supported adoption of the revisions.

V. Miscellaneous Changes and Technical Corrections

The proposal for the addition of blister agents and the treatment residues derived from blister and nerve agents as hazardous waste was proposed by staff in anticipation of nerve agent destruction at the Umatilla Army Depot. The proposed additions to the list of hazardous waste have not been reviewed by a committee.

The proposal to clarify in rule a three-year recordkeeping requirement for all exception reports from small quantity generators was proposed by staff because the current rule is unclear. The proposed revision has not been reviewed by a committee.

How does this rule affect including the public, regulated community or other agencies?

The proposed rules do not affect the general public. The proposed rules do affect hazardous waste generators, which include businesses and governmental units.

I. Adoption of the Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996.

report retention requirement. The rule change will affect small quantity generators preparing exception and annual reports and clarifies that copies of reports need to be retained for at least three years. This is not a new requirement but a clarification to an existing federal recordkeeping requirement.

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

The state of Oregon has been authorized by the U.S. EPA to implement the federal hazardous waste program. To maintain federal authorization, the Environmental Quality Commission must periodically adopt new or changed federal rules. Proposed state changes to federal and state rules are intended to address specific issues that are of concern in Oregon. For a more complete discussion refer to Attachment C.

How will the rule be implemented

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

Are there time constraints

The Department is seeking to keep its adoption of federal rules current, and to ensure continued federal authorization for the hazardous waste program. Failure to adopt by reference the federal hazardous waste and used oil rules could jeopardize the Department's authorization to conduct the hazardous waste program in Oregon.

Contact for more information

If you would like more information on this rulemaking proposal, copies of any of the documents relied upon, or would like to be added to the mailing list, please contact:

Elaine Glendening
DEQ
811 SW 6th Avenue
Portland, OR 97204
(503)229-6015
or toll free 1-800-452-4011

Agenda Item K
Attachment B6
July 12, 1996

Addendum to Attachment B4 Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

Attachment B6 is an addendum to Attachment B4 titled "Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements." The purpose of this attachment is to discuss changes to the universal waste rule since the public comment period closed on April 25, 1996. This Attachment should be reviewed in conjunction with Attachment B4.

Items 1-8, 10-11

No change from original proposal. See Attachment B4.

9. Do the proposed requirements 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?

Off-Site Universal Waste Handlers

Universal waste handlers accumulating universal waste from off-site are defined as "off-site collection sites." The Department initially proposed prior to the public comment period that all off-site collection sites accumulating more than 1,000 kilograms of universal waste comply with the large quantity universal waste handler management standards, including notification, recordkeeping and increased training requirements. Based on comments received during the comment period, the Department has deleted the requirement that these off-site handlers comply with the full range of large quantity handler requirements.

However, the Department continues to propose the following more stringent requirements for off-site handlers accumulating more than 1,000 kilograms of universal waste:

1. Notification. Off-site handlers accumulating more than 1,000 kilograms would be required to notify the Department of their activity before they exceeded 1,000 kilograms of universal waste. Off-site handler notification should include the following information:
    - The universal waste handler's name and mailing address;*
    - The name and business telephone number of the person at the site who should be contacted regarding management activities;*
    - The address or physical location of the management activities;*
    - A list of the types of universal waste managed at the site;*

- A statement indicating that the handler is accumulating more than 1,000 kilograms (5,000 kilograms in the federal rule) of universal waste at one time and the types of universal waste the handler is accumulating above this quantity;*
- Schedule of collection activities;
- An explanation of how the site will meet applicable requirements;
- Names and addresses of sites that will manage the universal waste prior to shipment to the destination facility;
- Names and addresses of destination facilities that waste will be shipped to;
- Maximum quantity of universal waste by type that will be accumulated at the site; and
- Certification statement that information submitted to the Department is correct and the site will be operated in compliance with universal waste rule requirements.

*Information that <u>all</u> large quantity universal waste handlers (accumulate ≥5,000 kilograms of universal waste) must include under the federal notification requirement.

2. <u>Reporting.</u> The Department continues to propose that off-site handlers accumulating more than 1,000 kilograms of universal waste annually submit to DEQ the following information:
   - Identification number, name and address of the universal waste handler;
   - Total quantity of universal waste received; and
   - Locations of universal waste handlers and destination facilities to which the waste was shipped.

3. <u>Recordkeeping.</u> The Department continues to propose that off-site handlers accumulating more than 1,000 kilograms of universal waste continue to follow the federal tracking requirements of 40 CFR 273.39 which include retention of the following information:
   - The quantity of each type of universal waste received;
   - The date of receipt of the shipment of universal waste;
   - The name and address of the universal waste handler, destination facility or foreign destination to whom the universal waste was sent;

- The quantity of each waste shipped off-site; and
- The date the shipment of universal waste left the facility.

In addition, the Department proposal that all pesticide collection programs collecting pesticides from off-site notify the Department of their activity, regardless of how much they collect. This has not changed from the original proposed rule.

4. Six Month Accumulation Limit. The Department continues to propose a six month accumulation limit for off-site handlers accumulating more than 1,000 kilograms of universal waste from the time it is received to the time that it is received at the destination facility. The proposal also allows longer accumulation times when the off-site handler can demonstrate that it is needed to accumulate sufficient amounts to economically ship the waste to the destination facility. The federal universal waste rule allows up to one year of universal waste accumulation at each handler. The Department believes that the federal limit may encourage abuse of the universal waste provisions by allowing universal waste to be shipped from site to site never being shipped to a destination facility. Based on the Department's experience with regulated hazardous waste generators, it believes that an accumulation limit, such as is proposed, will ensure that the waste is treated or disposed in a timely manner, thereby reducing the possibility of releases into the environment.

   The Department proposed these additional requirements for off-site handlers because it believes that the federal rule is inadequate to ensure that off-site collection of universal waste is properly managed. The Department is concerned that under the federal rule, large quantities of wastes will be accumulated at locations that would not be required to notify the Department of these activities. Currently, persons collecting these types of hazardous wastes are required to be a permitted hazardous waste facility or a hazardous waste recycler that has notified the Department of its activity. Without notification, reporting and recordkeeping information from off-site collection handlers, the Department believes that it will have no way of monitoring that waste is being properly managed. Lack of notification, recordkeeping and reporting responsibility may invite some collectors to abandon waste especially if the markets for materials that can be reclaimed from universal waste experience instability and become valueless. This may limit the proper disposal options for off-site handlers of the universal waste. Abandonment and illegal disposal of universal waste impact the environment and public health. The Department believes that the notification, reporting and recordkeeping requirements that the proposal requires should provide sufficient oversight to prevent improper disposal of universal waste

Agenda Item K
Attachment C
July 12, 1996

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 29, 1996

To: Environmental Quality Commission

From: John Taylor

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: April 22, 1996, beginning at 1 pm
Hearing Location: Division of State Lands, Land Board Room, Salem, OR

Title of Proposal: Adoption of federal used oil amendments and hazardous waste regulations, including universal waste rule with state amendments, changes to state-only pesticide rule, changes to hazardous waste trade secret rule and miscellaneous changes and technical correction to state hazardous waste regulations.

The rulemaking hearing on the above titled proposal was convened at 1pm. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Nine people were in attendance,
They were: Richard Kosesan, Oregon Agricultural Chemicals and Fertilizers Association
Kathryn Van Nattx, NW Pulp and Paper Association
Chris Kirby , OR Dept. of Agriculture
Mike Gordon, SJO Consulting
Gary Calaba, ORDEQ
Rick Volpel, ORDEQ
Bruce Lumper, ORDEQ
John Taylor, ORDEQ
Elaine Glendening, ORDEQ

One person, Mr. Richard Kosesan representing the Oregon Association of Chemical and Fertilizer Association signed up to give testimony. The association also submitted their comments in writing.

Prior to receiving testimony, John Taylor briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

Summary of Oral Testimony

,
Mr. Kosesan stated he had 5 areas of concern with the proposed universal waste rules.

1. He did not support lowering the 5000 kg level to 1000 kg for Large quantity universal waste handlers. He said he could find no justification for it and stated the Department should keep the 5,000 kg limit for large quantity universal waste handlers.

2. He did not support lowering the accumulation time for all universal waste handlers from 1 year to 6 months.

3. He said the state proposed universal waste rules for training were broader than the federal UW rules.

4. He said the proposed rules as written were confusing in terms of, must all pesticide collection programs notify or only those that collect over 1,000 kgs? Does OAR 340-113-070 apply only to large quantity universal waste handlers? and why did the Department develop separate requirements for the collection of pesticide wastes ?

5. He stated he did not think the Special Wastes and Waste Reduction Advisory committee was properly configured to make recommendations on adoption of the universal waste rule because it did not have any members of the pesticide use community .

Written Testimony

The following commenters submitted written comments but did not present oral testimony:

1. National Electrical Manufacturers Association , Letter dated 4/19/96
2. Pacific Gas Transmission Company, Letter dated 4/23/96
3. Weyerhaeuser, Letter dated 4/24/96
4. Enviropole, Inc., Letter dated 4/25/96
5. Rechargeable Battery Recycling Corporation, Letter dated 4/25/96
6. Portable Rechargeable Battery Association , Letter dated 4/25/96

7 Northwest Pulp and Paper, Letter dated 4/25/96

There was no further testimony and the hearing was closed at 1:45 pm.

Following this the Department staff discussed the proposed rules with the audience and how the rules would work. Meeting disbanded at 3 pm..

State of Oregon
Department of Environmental Quality Memorandum

Date: July 12, 1996

To: **Environmental Quality Commission**

From: **Anne Price, Manager, Hazardous Waste Policy and Program Development**

Subject: **Presentation of Public Comments Received on the Original Rulemaking Proposal and the Department Response**

The Department received one oral comment and eight written sets of comments regarding the Department's original proposal: to adopt the federal used oil amendments and hazardous waste regulations, including universal waste rule with state amendments; to modify the state-only pesticide rule; to clarify the hazardous waste trade secret rule; and to adopt miscellaneous changes and technical corrections to current state hazardous waste regulations. Each comment and the Department's response is presented below.

ADOPTION OF THE FEDERAL USED OIL AND HAZARDOUS WASTE REGULATIONS BY REFERENCE ENACTED BETWEEN APRIL 1, 1993 AND MARCH 31, 1996.

The Department proposed to adopt, by reference, the federal used oil and hazardous waste regulations promulgated between April 1, 1993 and March 31, 1996.

1. **Comment:** Pacific Gas Transmission Company (PGT) supported the adoption of the federal used oil and hazardous waste regulations as proposed.

   Department Response: The Department offers no response to this comment.

ADOPTION OF THE FEDERAL UNIVERSAL WASTE RULE WITH STATE MODIFICATIONS

The Department proposed to adopt, by reference, federal universal waste regulations pertaining to the management of hazardous wastes defined as "universal wastes," as published in 40 CFR Part 273. The Department proposed additional management requirements for persons collecting universal waste from off-site (handlers) generators. During the public comment period, the Department received one oral comment and eight written sets of comments on the proposed universal waste rule adoption. The following is a discussion of the comments received.

Stringency and Consistency with the Federal Universal Waste Rule

2. **Comment:** The Portable Rechargeable Battery Association (PRBA) and the Rechargeable Battery Recycling Corporation (RBRC) supported the Department's proposal to adopt the federal universal waste rule.

   Department Response: The Department offers no response to this comment.

3. **Comment:** The Portable Rechargeable Battery Association (PRBA) and the Rechargeable Battery Recycling Corporation (RBRC) objected to the Department's proposal for additional requirements that were more stringent than the federal universal waste rule. They stated that the Department had no justification for doing so and that such a rule might interfere with collection and recycling of universal waste batteries. In particular PRBA and RBRC stated it could harm their collection activities at retail locations, because they view additional requirements as creating inconsistency from state to state for battery collection and recycling.

   Department Response: The Department does view collection of batteries at retail locations as off-site handling of universal waste. The Department believes that space at retail locations is at a premium. Therefore, collected batteries would be expeditiously moved off-site to either another off-site handler for consolidation or to a reclamation facility such that the amount of batteries collected would rarely exceed 1,000 kilograms (2,200 pound or 1 metric ton of waste batteries). It should be noted that parties that wish to collect materials that are hazardous waste may do so using other avenues such as the household hazardous waste collection events or facilities, and conditionally exempt hazardous waste events or facilities, instead of collecting under the universal waste rule. Currently, facilities that receive hazardous waste are subject to RCRA permits if they trigger the hazardous waste storage requirements. The federal universal waste rule did not alter this requirement for facilities that store universal waste.

   The Department believes that the economic value of a UW in the secondary materials market is unpredictable. Any collection activity that fails to factor in charges for hazardous waste disposal of universal wastes and relies on the value of the reclaimed material to mange the waste could result in abandonment, releases of hazardous constituents and cleanup of collection sites at taxpayers expense when the value of the secondary material does not exceed the costs of handling, transportation, and either reclamation or the cost of disposal as a hazardous waste.

   The Department has experience with fluorescent tubes, used tires and batteries that have been collected, not marketed and subsequently disposed and abandoned. Concerning fluorescent tubes, recently the Department learned from the Multnomah county sheriff's office of an individual offering collection services for fluorescent tube for reclamation when the individual failed to pay rent at a self storage facility. This individual had in excess of 50,000 pounds of mercury containing tubes that are now awaiting proper management. The Department had no knowledge of this activity prior to the call from the sheriff office.

It is this kind of scenario the Department hopes to address through OAR 340-113-040. The Hazardous Waste Reduction and Special Waste Advisory Group that assisted in the development of the universal waste rule believed that off-site universal waste handlers should have additional requirements in order to protect generators of universal wastes and the public from abandonment of these materials. Group members also expressed concern about universal waste generator's liability in regard to having unregistered off-site universal waste handlers. The Department believes these requirements are needed as hazardous waste begins to be managed under this relaxed universal waste management system to ensure that environmental releases are minimized and the wastes are being properly managed. In addition to the federal universal waste regulations, OAR 340-113-040 requires three additional management requirements for off site handlers accumulating more than 1,000 kg. of universal waste. The additional requirements include:

- notification of off-site handler activity (federal rule requires notification for handlers accumulating more than 5,000 kilograms of universal waste);
- 6 months accumulation limit with approved extensions (federal rule has limit of one year with extensions) with shipment only to a destination facility (shipment to another off-site handler is not allowed); and,
- reporting of waste receipt and waste shipments (federal rule has no reporting requirements).

The Department believes notification of off-site UW handler activity is critical because the Department needs to know who and how many businesses are involved in this activity.

The Department believes a 6 month accumulation time limit for universal waste collected by off-site handlers is reasonable. This period of time should allow any off-site handler sufficient time to consolidate or collect enough universal waste to utilize economies of scale when shipping and processing the materials. The Department believes this requirement will stimulate movement of universal waste materials toward proper disposal, instead of allowing them to accumulate and run the risk of abandonment. On-site universal waste handlers will have more time to accumulate universal wastes (12 months). The Department believes that on-site handlers will provide more oversight since the liability link is most clear when the waste is managed on-site, thereby resulting in a potentially greater sense of personal ownership of the waste.

And finally, reporting is necessary for the Department to learn how well the new universal waste regulations are being implemented. The Department would like to determine whether generators are sending universal wastes directly to destination facilities or are utilizing off-site handlers to collect the waste prior to final disposal or recycling.

The Department will review these more stringent handling requirements at the end of two years. If it appears that the system is working well and materials are being transferred for disposal or recycling, then the department is committed to reviewing the need for these additional requirements.

Universal Waste Handler Classification

4. **Comment:** The Oregon Agricultural Chemical and Fertilizers Association (OACFA) and Weyerheuser Corporation commented that they oppose the Department's proposal to reduce the regulatory threshold for large handlers of universal waste from 5,000 kilograms to 1,000 kilograms such that large handlers and small handlers would be regulated to the same degree.

   Department Response: Based primarily on comments from the pesticide user community, the Department modified their original rule proposal (prior to public hearing) to not include the lowered regulatory threshold of 1,000 kilograms for on-site generators of universal waste. (See Attachment E, Advisory Committee Membership and Report)

   The Department originally proposed (see 340-113-040(1)(b)) that off-site collection sites accumulating more than 1,000 kilograms of universal waste be required to comply with the large quantity universal waste handler (LQH) requirements of 40 CFR Part 273, Subpart C.

   Additional review of the small and large quantity handler requirements indicates that there is little difference between the requirements for each category of handler. A comparison of the different levels of requirements for on-site LQH and SQH are as follows:

Small Quantity Handler (SQH)	Large Quantity Handler (LQH)
Defined as a handler that accumulates less than 5,000 kg of universal waste	Defined as a handler that accumulates 5,000 kg or more of universal waste
Treating or disposal of universal waste prohibited, must manage wastes so as to prevent releases	Treating or disposal of universal waste prohibited, must manage wastes so as to prevent releases
Notification not required	Must notify Department of universal waste activity
Label containers or individual items	Label containers or individual items
One year accumulation time limit from date generated or received	One year accumulation time limit from date generated or received
Inform employees about proper handling and emergency procedures	Ensure employees are familiar with waste handling and emergency procedures
Can only ship off-site to other handlers or destination facilities	Can only ship off-site to other handlers or destination facilities
No recordkeeping requirements	Must keep records of shipments received and/or shipments sent off-site

Because of the management differences are so slight, the Department agrees with the commentors and proposes to delete the requirement under OAR 340-113-040(1)(b) requiring off-site collection sites accumulating more than 1,000 kilograms of universal waste to comply with the federal large quantity handler requirements.

Based on comments received, the following changes are proposed for OAR 340-113-040 (added language is underlined, deleted is lined out):

Standards for Off-site Collection Sites
340-113-040

(1) Applicability. (a) In addition to the applicable provisions of ~~in~~ -40 CFR 273, Subparts B and C, and OAR 340-113-030, the standards of this section apply to owners and operators of off-site collection sites as defined in OAR 340-113-020(4) accumulating more than 1,000 kilograms of universal waste at any one time.

~~(b) Off-site collection sites accumulating less than 1,000 kilograms at any time must comply with the applicable handler requirements of 40 CFR 273, Subpart B, OAR 340-113-030, and the accumulation limits in (3) of this section.~~

~~(c) Off-site collection sites accumulating more than 1,000 kilograms but not more than 5,000 kilograms of universal waste at any time are required to follow large quantity handler requirements in 40 CFR 273, Subpart C and OAR 340-113-030 with the following exception:~~

~~(A) Owners or operators of off-site collection sites are not required to record the name and address of the originating universal waste handler (40 CFR 279.39(1)).~~

5. **Comment:** The OACFA commented that the notification process for off-site collection site handlers is contradictory and needs clarification.

   Department Response The Department agrees with the Association's comments and has clarified the notification requirements for off-site collection sites accumulating universal waste and pesticide collection programs by amending OAR 340-113-040(2) with the following changes:

Standards for Off-Site Collection Sites
340-113-040

...(2) Notification. (a) Pesticide collection programs are not subject to notification requirements in 40 CFR 273.32 and 340-113-0540(~~3~~2)(b), but instead must comply with requirements of OAR 340-113-070.

(b) ~~In addition to notification requirements for large quantity handlers in 40 CFR 279.32, O~~owners or operators of off-site collection sites accumulating more than 1,000 kilograms of non-pesticide universal waste (batteries, mercury thermostats and mercury containing lamps) at any time must:

(A) Follow requirements of 40 CFR 273.32 (notification requirements for large quantity handlers) with the following exception:

(i) The notification requirement of 40 CFR 273.32(b)(5) is replaced with (B)(v) below.

(B) Off-site handlers must include at a minimum the following with their notification::

(i) Schedule of collection activity (i.e., daily, monthly, etc.).;

(ii) An explanation of how the collection site will meet the applicable requirements for off-site handlers accumulating more than 1,000 kilograms of universal waste;

(iii) Names and addresses of all off-site ~~handlers~~ collection sites that will manage the universal wastes prior to shipment to a destination facility;

(iv) Names and addresses of destination facilities that have agreed to accept the universal wastes collected by the off-site handler;

(v) Maximum quantity of universal waste by type that will be accumulated at the collection site;

(vi) Any additional information requested by the Department; and,

(vii) Certification statement that the information submitted to the Department is correct and the off-site collection site is operating in compliance with the universal waste rule.

(c) Once the notification information has been submitted to the Department, a letter will be sent to the off-site handler acknowledging the receipt of the completed notification form.

6. **Comment:** The OACFA commented that lowering the regulatory threshold for off-site collection sites from 5,000 kilograms of universal waste to 1,000 kilograms will cause those parties collecting relatively small amounts of universal waste to be subject to extended training requirements.

Department Response: The Department believes that the difference between "informing all employees who handle universal waste" (small quantity handler training requirement) and "ensuring that all employees are thoroughly familiar with proper waste handling and emergency relative to their responsibilities" (large quantity handler training requirement) is small. The Department believes that each universal waste handler, regardless of their size, should have appropriate training for persons responsible for managing universal waste. The amount and type of training depends on the types and quantities of waste that are accumulated and managed. For example, a facility handling only mercury-containing thermostats will have less-involved training standards than a facility handling a wide range of pesticide wastes. Because the Department believes that the difference in training requirements between the two handler classes is small, it agrees to delete the proposed state

change to handler training requirements (see proposed change in Comment No. 3 , page 2) However, the Department expects that handler training be sufficient for all handlers to properly manage universal waste so as to prevent releases, and to ensure proper response and cleanup of all releases if they should occur.

7. **Comment:** The OACFA commented that OAR 340-113-040(3) reduces the storage limit for small quantity handlers which accumulate universal waste from off-site by specifically deleting the federal requirement, 40 CFR 273.15, but does not delete the same federal (40 CFR 273.35) requirement for large quantity handers.

   Department Response: The Department agrees with this comment and has modified the rule to add the reference for large quantity handlers in OAR 340-113-040(3) as follows:

   Standards for Off-Site Collection Sites
   340-113-040

   ... (3) Accumulation time limits. (a) For off-site collection sites accumulating more than 1,000 kilograms of universal waste, the provisions in 40 CFR 273.15(a) and 273.35(a) are deleted and replaced with Section (3)(b) of this rule.

8. **Comment:** The OACFA commented that the proposed OAR 340-113-040(2) referenced 340-113-050(3)(b) which does not exist.

   Department Response: The Department concurs with the comment and has revised the incorrect citation to 340-113-040(2) as demonstrated in Comment No. 4, page 4.

9. **Comment:** The OACFA asserts that because of the off-site handler provision concerns discussed in Comment No. 6 , page 7, the Department should amend the proposed accumulation standards for off-site collection sites to reflect the applicable federal requirements.

   Department Response: The Department believes that it has amended the rule to correct the concerns expressed by the OACFA for off-site handlers of universal waste noted. However, the Department is not proposing to amend the proposed accumulation limit for universal waste handlers accumulating more than 1,000 kilograms of universal waste received from off-site. The Department believes strongly that facilities collecting more than 1,000 kilograms of universal waste from off-site should be held to a shorter accumulation time limit. The Department believes that in most cases, six months is an adequate amount of time to allow for collection from the original handler and shipment to the destination facility. Facilities accumulating universal waste from off-site are allowed to accumulate for longer than six months if the off-site handler has received written approval from the Department. If a collection site requires more than six months to store the universal waste before it is shipped off-site, the operator should be able to justify to the Department why additional time is needed to ship the waste to a destination facility.

Advisory Group Structure and Process

10. **Comment:** The OACFA commented that the Department did not include a member of the agricultural pesticide user community in its Waste Reduction and Special Waste Advisory Group whose primary purpose was to review the implementation of the universal waste rule. The Association states that by not including a member of the pesticide user community in the Advisory Group, the Department did not meet the intent of ORS 183.025.

    Department Response: The Department disagrees with this comment. ORS 183.025(2) states the following:

    > "The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and the drafting of rule. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt, amend or repeal a rule. The agency may appoint an advisory committee that will represent the interests of persons likely affected by the rule, or use any other methods of obtaining public views that will assist the agency in drafting the rule."

    The Department used the formal advisory group to review the federal universal waste rule and make recommendations for possible state amendments to the rule. Once the group recommendations were drafted (prior to the public hearing), the Department presented them to members of the Unwanted Pesticide Collection Group which included representatives from the agricultural pesticide use community. The pesticide group was formed to explore the feasibility of industry-run pesticide collection activities, and their input was considered important to the rule development. ORS 183.025 encourages agencies to either appoint an advisory committee or use any other means of obtaining public views that will assist the agency in drafting the rule. The Department believes that it indeed met the spirit of the law seeking input from the pesticide group.

    The Department noted the Unwanted Pesticide Collection Group's concerns, and, based on what the Department believed to be the major issues of concern, amended the original recommendations with general concurrence from the Waste Reduction and Special Waste Advisory Group. Specifically, the following changes were made to the proposed rule language, prior to the public hearing:

    - Raised the proposed handler limit for on-site handlers (generators) of universal waste from 1,000 kilograms back to the federal 5,000 kg UW limit;
    - Raised the accumulation time limit for on-site universal waste handlers from the proposed six month to the federal limit of one year for all generators of universal waste;
    - Extended the accumulation time limit for off-site handlers from six months to an indefinite period when they have received authorization from the Department; and

- Removed the requirement that off-site handlers accumulating more than 1,000 kilograms, but less than 5,000 kg of universal waste, must record the names and addresses of persons sending waste to them.

As a result of the Group's comments and changes to the proposed recommendations, the Department proposed a review of the more stringent state universal rule requirements two years after implementation. The Department may propose changes to the rule pending the results of this review.

Additional Universal Wastes

11. **Comment:** Pacific Gas Transmission requested that the Department consider adding additional wastes to the list of universal wastes. Specifically they requested the Department consider adding waste aerosol cans, other mercury-containing devices, electronic components, PCB-containing components and oil-contaminated solids.

    Department Response: The Department does not intend to add additional hazardous wastes to the list of universal wastes at this time. The Department has existing policies for the management of waste aerosol cans, contaminated rags, and sand blasting wastes that are designed to promote the proper management of those wastes. Oil-contaminated soils and PCB-containing equipment are infrequently considered to be hazardous waste and are unlikely to be subject to the Department's hazardous waste regulations. The Department will consider adding new wastes once the universal waste rule is adopted by the state.

12. **Comment:** Weyerhaeuser commented that they supported the inclusion of mercury-containing lamps in the universal waste rule and encouraged the Department to quickly petition EPA to gain authorization to minimize potential federal enforcement of what may be perceived as a less stringent regulation (compared with the federal RCRA requirements for mercury-containing lamps).

    Department Response: The Department considers use of the flexibility of the federally-adopted UW rule to address more waste streams than are currently addressed by EPA to be an action that is broader in scope and not less stringent than the federal EPA. The Department has worked closely with EPA throughout this rulemaking and has been assured that the direction the Department is taking by including mercury-containing lamps under the universal waste umbrella is precisely the direction EPA anticipated in promulgating the UW rule.

13. **Comment:** Weyerhaeuser requested the Department clarify, either through the rule or staff report, the potential regulatory complexities associated with transporting and disposing universal waste outside the state of Oregon.

Department Response: The Department believes that this issue has been discussed fully in the preamble of the federal rule. See 60 Fed. Reg. 25537, under the heading "3. Interstate Transportation".

14. **Comment:** Weyerhaeuser recommended that the Department include in OAR 340-113-020 and 340-113-050 the statement that a RCRA-permitted hazardous waste facility can also be considered a destination facility.

Department Response: The Department agrees with this recommendation and has included a reference to the RCRA-permitted hazardous waste facility in OAR 340-113-050 as follows:

Standards for Destination Facilities
340-113-050

(1) Applicability. In addition to the provisions in 40 CFR 273.60, for purposes of this rule, a destination facility can include:

(a) a permitted hazardous waste facility or a hazardous waste recycling facility; or,.

~~(a)~~ (b) -a facility that has obtained a solid waste management permit for the sole purpose of reclaiming mercury containing lamps ~~is a universal waste destination facility~~.

15. **Comment:** The Northwest Pulp and Paper Association requested that the Department clarify that it is not the Department's intent to increase a hazardous waste generator's regulatory status as a result of adding mercury-containing lamps to the list of universal wastes.

Department Response: Adding mercury-containing lamps to the list of universal waste will not increase a hazardous waste generator's regulatory status. Hazardous waste generators are not required to count universal wastes toward their generator status (see 40 CFR 261.5(6)). In addition, generators of mercury-containing lamps may determine that their lamps do not exhibit a hazardous waste characteristic and thereby manage them as solid waste. Adding mercury-containing lamps to the list of universal wastes may, in some cases, actually have the effect of lowering a hazardous waste generator's status by removing the lamps from waste streams that are required to be counted.

16. **Comment:** The Northwest Pulp and Paper Association requested that the Department formulate a clearly defined implementation path including outreach to the regulated community for all aspects of the hazardous waste rule package. The Association offered to work with the Department to develop an outreach program.

Department Response: As with past rule adoptions, the Department will inform persons affected by the rule adoption through workshops, trade association presentations, and factsheets. The Department relies on associations such as the Northwest Pulp and Paper Association for assistance in developing technical assistance materials for their members and

welcomes their suggestions. The Department has also developed a proposed rule implementation plan (see Attachment F).

17. **Comment:** The National Electrical Manufacturers Association approves of the Department's proposal to allow the crushing of fluorescent light tubes as a way to manage waste mercury-containing lamps.

    Department Response: The Department offers no response to this comment.

AMENDMENT OF STATE WASTE PESTICIDE RULES

The Department proposed to amend existing state regulations for the management of pesticide waste by revising the definition of pesticide residue, eliminating the aquatic toxicity screening test for pesticide residues, allowing for the management of pesticide residues under the universal waste rule and eliminating the "Three and Ten Percent Rule" for pesticide residues. The following comments were received regarding the proposed pesticide rule changes.

18. **Comment:** Weyerheuser supports the management of state waste pesticides under the universal waste management structure.

    Department Response: The Department offers no response to this comment.

19. **Comment:** Weyerheuser supports the proposed change to the definition of "pesticide residue" and requests clarification as to how pesticide-treated wood would be managed when disposed.

    Department Response: Wood that has been treated with pesticides that have been applied according to label instructions are not considered "pesticide residues" under the proposed state rule OAR 340-100-010(3)(j) when they become wastes. Pesticide wastes that are determined not to be a federal hazardous waste and, therefore, do not meeting the definition of "pesticide residue", may be managed as a solid waste. Residues that are generated during the wood treating process or treated-wood products that have not been treated according to label instructions are pesticide residues and thus hazardous wastes. Wood waste that is determined to be a hazardous waste under the federal hazardous waste identification criteria must be managed as a hazardous waste in Oregon. Treated wood that is not a pesticide residue under 340-100-010(3)(j) is required to meet the existing disposal requirements of OAR 340-101-040 which incorporates the solid waste regulation 340-93-190(1)(g).

    The Department has amended the language of 340-101-040 to clarify under what conditions pesticide-treated wood may go to a Subtitle D landfill, as follows:

Wastes Requiring Special Management
340-101-040

...(2) Pesticide Treated Wood. Spent treated wood that is used or reused for a purpose for which the material would be treated is exempt from ~~this part~~ OAR 340-101-040(2) ~~and from OAR 340-101-033 (5)(a)~~. Waste resulting from the use of newly pesticide-treated wood, ~~(~~including scrap lumber, shavings and sawdust; waste resulting from shaping pesticide-treated wood, such as sawdust, shavings and chips; and treated wood removed from service~~)~~ that do not meet the criteria specified in 40 CFR Part 261, Subpart C~~;~~ ~~and~~ are not a federal hazardous waste for any other reason; and~~,~~ are not otherwise excluded by 40 CFR 261.4(b)(9),~~but meet the criteria identified in OAR340-101-033(5)(a);~~ and are not pesticide residue as defined in OAR 340-100-010 (3)(j) are not subject to Divisions 100 to 106 and 108 to 109 provided:

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

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

20. **Comment:** Weyerheuser supports the elimination of the aquatic toxicity test as the means of determining whether a pesticide residue is a hazardous waste. The Company feels that it unclear why the Department is proposing to keep the aquatic toxicity and applicable land disposal treatment standards test as a screen for the disposal of pesticide residues in solid waste landfills. The Company suggests that the Department eliminate this reference and allow for the disposal of pesticide residues as solid wastes if they are not federal hazardous wastes.

Department Response: Although pesticide residues, as defined in OAR 340-100-010(3)(j), are not federal hazardous wastes, they are defined by ORS 466.005(7)(a) as state hazardous waste. At the time this legislation was passed it was recognized by the State Legislature that although there were indeed certain pesticides that were federally-defined as listed or characteristic hazardous wastes, the list was small and did not include pesticide wastes and mixtures of pesticide wastes that could impact the environment if mismanaged or disposed of incorrectly. The Department originally developed the aquatic toxicity test as a screen to evaluate the potential impact of pesticides in the aquatic environment, where pesticides would most likely ultimately have an impact when disposed. Since the development of the aquatic toxicity test, EPA has established Land Disposal Restriction (LDR) standards for hazardous wastes that will be land disposed. The Department believes that the LDR treatment standards are a much better screening tool to use for deciding if disposal of the

waste pesticide in a solid waste Subtitle D land disposal facility is appropriate. The proposed requirement is unique in the sense that it applies to all pesticide waste as defined in the rule whether they contain a single active ingredient or are a mixture of more than one active ingredient.

21. **Comment:** Enviropole recommended that the pesticide residue definition in OAR 340-100-010(3)(j) be modified to exclude treatment chemicals being returned to a process, thus clarifying that drippage from treated wood would not be counted as a hazardous waste provided it was being returned to the treatment process.

    Department Response: Persons specified in OAR 340-102-010(4) producing pesticide residue as defined in OAR 340-101-010(3)(j) are exempted from compliance with the hazardous waste provisions of Divisions 100-106 provided they comply with the requirements of Division 109. The proposed provision OAR 340-109-010(1) states

    > " A person producing a pesticide-containing material from any pesticide operation or pesticide management shall make every effort to beneficially use or reuse such material to the extent permissible under federal law. Persons accumulating pesticide-containing material for reuse, shall contain these materials according to industry standards for containing commercial pesticides for use, and the container shall be labeled as to its contents and marked with the EPA Registration Number(s) for the pesticide(s)."

    This provision clarifies that persons managing pesticide-containing materials for re-use are not managing the material as a waste.

22. **Comment:** Enviropole commented that by deleting the aquatic toxicity test and presuming that all pesticide residues are hazardous, the Department seems to broaden the universe of state-only pesticide residues.

    Department Response: Existing ORS 466.005(7)(a) defines all pesticide residues as hazardous waste. This state statute has not changed. By removing the aquatic toxicity test as a tool that was used to declassify pesticide residues from being a hazardous waste, the universe of pesticide residues may be larger. However, the Department believes that by re-defining pesticide residue will exclude other materials which have been properly treated with pesticides such as soil, carpet and wood will be excluded from being considered a pesticide residue. Materials that are unused pesticide product, pesticide mixtures and pesticide spill residue will continue to remain pesticide residue when they become a waste and subject to management under the proposed provisions in Division 109. Pesticide residues managed properly under Division 109 are not hazardous waste and may be disposed of in solid waste disposal facility if they meet LDR treatment for the active ingredients or if no treatment standards exist, the residues pass the aquatic toxicity screening test.

23. **Comment:** Enviropole questioned if the Department intended to regulate as hazardous waste even those pesticide residues which would have passed the aquatic toxicity test under the existing rule.

    Department Response: The Department does indeed intend to regulate these materials as hazardous waste. Because of ORS 466.005(7)(a), all pesticide residues are considered hazardous waste. The pesticide residue rule proposal allows additional management options which include:

    - management under the universal waste system as "waste pesticide" with Subtitle D disposal provided, the "waste pesticide" is below the applicable LDR treatment standard or if no treatment standard exists, passes the aquatic toxicity test;
    - management as a hazardous waste; and
    - management in a wastewater treatment unit.

    The Department realizes that some pesticide residue that may have passed the aquatic test may fail the LDR treatment standards. Based on the relatively small number of pesticide active ingredients that have treatment standards, this number is expected to be small.

24. **Comment:** Enviropole suggests that pesticide residues which do not fail the federal hazardous waste listings or toxicity test (TCLP) and which are managed in accordance with the universal waste standards should be presumed to be non-hazardous.

    Department Response: Under the proposed pesticide rule, pesticide residues containing only active ingredients that are present in the table in 40 CFR 261.24 and are determined not to be federal hazardous wastes do not need to be evaluated as a pesticide residue. Because of ORS 466.005(7), all other pesticide residues are considered hazardous waste. Pesticide residues subject to the provisions of OAR 340-101-033 and managed under the provisions of OAR 340-109-010 (2)(a) become waste pesticides. These waste pesticides are not considered to be hazardous waste, but rather special wastes subject to special management requirements These special management requirements include management of waste pesticides in Subtitle D landfills if the special wastes met certain criteria (i.e., the land disposal treatment standard for the constituent present or pass the aquatic toxicity test if no LDR standard exists).

    Pesticide residue is identified as a hazardous waste under 340-101-033 and if not managed according to Division 109 provisions remains a hazardous waste.

25. **Comment:** Enviropole requested clarification regarding if is the Department's intent to exempt pesticide residues whose sole active ingredient is listed on Table 1 of 40 CFR 261.24 and which pass the TCLP test.

    Department Response: Pesticides that are listed in Table 1 of 40 CFR 261.24 and pass the TCLP for the active ingredients they contain are not hazardous waste and do not further evaluation as a state-only hazardous waste as required by OAR 340-101-033.

26. **Comment:** Enviropole requested clarification regarding how pesticide treated wood was to be managed when disposed.

    Department Response: See Department Response to Comment No. 18, page 11 above.

27. **Comment:** The proposed rule (see OAR 340-102-010(3)) states that generators of pesticide residue are exempt from compliance with Divisions 100-106 (state hazardous waste requirements) provided they comply with the requirements of Division 109 and 40 CFR 262.10. Enviropole requested clarification regarding the significance of 40 CFR 262.10, which invokes federal hazardous waste generator requirements, if they are managing the waste under OAR 340, Division 109.

    Department Response: It was not the Department's intent to require generators of pesticide residue to comply with the standards of 262.10 if they are managing it under Division 109. The Department has deleted the reference to 262.10 from OAR 340-109-010(2)(b) as follows:

    Purpose, Scope and Applicability
    340-102-010

    ...(3) ~~In addition to the provisions of 40 CFR 262.10, a~~ Any person identified in section (4) of this rule ~~who produces a pesticide residue, excluding unused commercial pesticide, that is hazardous solely by~~ application ***~~of OAR 340-101-033(5)~~ is exempt from compliance with Divisions 100 to 106 provided such person complies with the requirements of Division 109 ~~and the provisions of 40 CFR 262.10.~~***

28. **Comment:** Enviropole requested clarification regarding the meaning of the phrase "contain the wastes" as found in OAR 340-109-010(2)(b). Does the phrase require pesticide materials to be accumulated in containers as applied in the hazardous waste rule requirements?

    Department Response: The requirements under OAR 340-109-010(2)(b) are not meant to require pesticide wastes to meet the federal hazardous container requirements found in Subpart I of 40 CFR, Part 265. OAR 340-109-010(2)(B) requires that the waste is contained, labeled with the words "waste pesticide," and marked with the date that the wastes are created. This provision only applies to wastes that are subject to the management requirements under Division 109 and does not apply to those pesticide wastes that are determined to be federal hazardous wastes and are managed under the universal waste rule.

29. **Comment:** Enviropole requested clarification regarding if it was the Department's intent to allow facilities managing state-only pesticide residues in accordance with the universal waste standards to be exempt from regulation under state and federal hazardous waste regulation.

    Department Response: Materials meeting the definition of pesticide residues and managed under Division 109 are, as described in 340-102-010(3) exempt from the hazardous waste management requirements in Divisions 100 to 106 provided they comply with Division 109.

ADOPTION OF MISCELLANEOUS STATE RULE AMENDMENTS.

Amendment of Hazardous Waste Trade Secret Rule for Trade Secret Substantiation Procedures

No comments regarding the amendment of the Department's proposed hazardous waste trade secret rule for trade secret substantiation procedures were received during the comment period.

Miscellaneous Changes and Technical Corrections

30. **Comment:** Pacific Gas Transmission Company recommended that the Department, in order to clarify the proposed amendment to the small quantity generator exception reporting requirements, add the following (recommended additions are underlined):

Recordkeeping
340-102-040

(1) The provisions of section (2) of this rule replace the requirements of 40 CFR 262.40(b).

(2) A generator must keep a copy of reports submitted to the department under 340-102-041 of this rule and under 40 CFR 262.42(b) for a period of at least three years from the due date of the report.

Department Response: The Department agrees with the recommendation and has made the change to the proposed regulation OAR 340-102-040 as follows:

Recordkeeping
340-102-040

(1) The provisions of section (2) of this rule replace the requirements of 40 CFR 262.40(b).

(2) A generator must keep a copy of reports submitted to the Department under 340-102-041 of this rule and under 40 CFR 262.42(b) for a period of at least three years from the due date of the report.

(3) The record retention requirement of section (2) of this rule applies to the provisions of 40 CFR 262.44.

WESCO

March 13, 1996

Mr. Langdon Marsh, Director
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1390

Re: Waste Reduction and Special Waste Advisory Group
Recommendations to the Department

Dear Lang:

Attached are recommendations on several proposed rule concepts reviewed by the Waste Reduction and Special Waste Advisory Group during November and December of last year. The Department established the Advisory Group to evaluate the new federal Universal Waste Rule, which streamlines the collection and management of certain hazardous wastes, namely batteries, pesticides and mercury thermostats, and to provide comments on these rules to the Department. Represented on the Advisory Group were small and large businesses, consultants, academic institutions, environmental interest groups and other interested parties. In addition the meetings of the Advisory Group were open to the public, and members of the public commented at the meetings.

The Advisory Group's work involved review of the Universal Waste Rule and extensive discussion of ways in which the rule needed to be modified. One major modification will be the recommendation to include mercury containing lamps as a universal waste. The Advisory Group spent an entire meeting listening to presentations by light manufacturers, light recyclers and utilities.

One significant issue that the Advisory Group did not reach unanimous agreement on was the lowering of the Federal Small Quantity Universal Waste Handler accumulation limit from 5,000 to 1,000 kilograms. The general consensus of the Advisory Group was that handlers managing larger amounts of Universal Waste should have stronger reporting and training requirements than required by the federal rule.

The Department presented the Advisory Group's proposed recommendations for state adoption of the Universal Waste Rule to the Unwanted Pesticide Collection Group (Pesticide Group). The Pesticide Group was formed to explore the feasibility of industry-run pesticide collection activities, and their input was considered important to the Universal Waste Rule development

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because of the waste pesticide collection component to the Universal Waste Rule. The Pesticide Group expressed concerns to the Department about lowering the handler limit to 1,000 kilograms, and recommended that the federal 5,000 kilogram limit be retained for generators of universal waste. Because of lack of unanimous agreement by the Advisory Group, concerns presented by the Pesticide Group, and the lack of information regarding the environmental impact of lowering the generator handler limit, staff proposed that accumulation limits for generators be left at the federal limit.

Overall, the Advisory Group believes that the proposed recommendations reflected in the attachment are protective of human health and the environment. The recommendations support the State's environmental goals while considering the economic concerns of persons and businesses who will be regulated by these rules if they are adopted. The Department proposes to review the state amendments to the Universal Waste Rule in two years to determine if handler limits are adequate to protect the environment and as a result of the review, may propose changes to the rule.

I have enjoyed serving as Chair of the Waste Reduction and Special Waste Advisory Group for this phase of the Advisory Group's work and appreciate very much the opportunity. I also want to acknowledge the effective support provided by the Department to the Advisory Group which helped the Advisory Group in developing its recommendations over a brief two-month period of time. Please let me know if you have any questions about the attached recommendations.

Very truly yours,

Bob Westcott

cc: Mary Wahl, DEQ
Members, Waste Reduction and Special Waste Advisory Group
Members, Pesticide Waste Advisory Group

Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

February 16, 1996

Waste Reduction and Special Waste Advisory
Group Members

Dear Advisory Group Member,

This is in regards to the Waste Reduction and Special Waste Advisory Group (Advisory Group) recommendations on the Universal Waste Rule the Department is proposing to adopt in May 1996.

The recommendations, as drafted by the Department, included an Advisory Group recommendation to lower the Universal Waste accumulation level for a Large Quantity Universal Waste Handler from 5,000 kilograms to 1,000 kilograms. Since the last Advisory Group meeting, additional information has become available during a discussion of the Advisory Group's Universal Waste Rule (UWR) recommendations with the Pesticide Collection Group. The Pesticide Collection Group was formed last year to provide input to the Department regarding the collection of recalled, banned and off-specification pesticides which are regulated under the UWR. As a result of discussing the Advisory Group's recommendations with the Pesticide Collection Group, many of members of the group expressed strong concerns that some of the changes to the UWR proposed by staff and recommended by the Advisory Group would discourage the collection of recalled, banned and off-specification pesticides. Specifically, the Pesticide Collection Group felt that farmers would be discouraged from participating in UWR collection events if they were required to notify the Department that they had accumulated more than 1,000 kilograms of Universal Waste (UW) pesticides, or the collection site accumulating less that 5,000 kilograms of waste pesticides were required to maintain records of who shipped waste to them. The federal UWR instead requires these record keeping requirements for handlers accumulating more that 5,000 kilograms of UW. The Department understands the Pesticide Groups concerns. As the preamble to the rule makes clear, one of the goals of the rule is to promote the collection of hazardous wastes that are currently often managed in non-hazardous waste management systems. It is not the Department's intent to discourage the proper collection and management of these wastes due to unnecessary regulation.

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To address the Pesticide Collection Group concerns, Department staff propose to raise the Advisory Group recommendation of 1,000 kilogram accumulation limit for large quantity handlers of Universal Waste to the federal level of 5,000 kilograms. Staff further propose that *off-site collection-handler collectors* of Universal Waste accumulating more than 1,000 kilograms of Universal Waste be required to follow the Large Quantity Universal Waste handler requirements as recommended by the Advisory Group with the exception that generator names and addresses would not be required to be maintained by the collection facility. The federal UWR requires all handlers accumulating 5,000 kilograms or more of Universal Waste to follow Large Quantity Universal Waste handler management standards which include keeping names and addresses of handlers delivering waste to them.

The Department will propose a two year study period for review of the Universal Waste handler limits for the purpose of determining if the limits are adequate for the protection of human health and the environment. The results of the study will be presented to the Environmental Quality Commission with a possible proposal to change the accumulation limits, recordkeeping requirements or impose financial assurance requirements on collection facilities depending on the outcome of the study.

The purpose of this letter is to inform you of proposed staff changes to the draft Universal Waste Rule. Because the proposed changes vary from the original Advisory Group recommendations, the Department request your comments. Please contact Rick Volpel at 229-6753 by February 26, 1996 if you have questions or comments regarding these proposed changes.

Sincerely,

Gary Calaba, Interim Manager
Hazardous Waste Policy
and Program Development

cc: Brett McKnight, DEQ-ER
Chuck Clinton, DEQ-NWR
Gil Hargreaves, DEQ-WR

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1. Adoption of The Universal Waste Rule

Background

The EPA promulgated the Universal Waste Rule in May 1995 which provides a streamlined regulatory approach that can be used to manage certain hazardous wastes classified as universal wastes. The reduced regulatory framework is intended to encourage proper collection and facilitate the proper management, including recycling, of these universal wastes. The current hazardous waste regulatory scheme has not encouraged the proper collection, transportation and management of these universal hazardous wastes.

Universal wastes are hazardous wastes that defined in the rule are generated in a wide variety of settings, including industry, construction, institutions, office buildings, and homes. Universal wastes are often managed in non-hazardous waste management systems, such as solid waste landfills. Universal wastes generated by regulated hazardous waste generators often look the same as those generated by small businesses and homeowners, and are difficult to distinguish when disposed at solid waste management facilities. The rule emphasizes management based on the wastestream rather than the source of the waste.

The EPA has included three types of universal wastes: batteries, mercury thermostats and unused pesticides collected under recalls or pesticide collection programs. Oregon has the option of adopting the Universal Waste Rule without the wastes currently listed, including just one or two of universal waste, or including all three universal wastes. The types of batteries most likely to be managed under the rule are nickel-cadmium rechargeable batteries. To a lesser extent, other types of batteries that could also be managed under the rule are mercury oxide and lithium batteries.

The federal rule makes it easier for generators of these universal waste, called "handlers", to manage them appropriately. Universal wastes do not count towards generator status, they do not need to be transported by licensed hazardous waste transporters, and the length of time that generators can accumulate universal wastes on-site is significantly longer than the accumulation time limits for hazardous waste. A longer accumulation time provides a better chance to accumulate quantities of material that are more economical to ship and manage. Locations that accept universal wastes from off-site and act as accumulation points are also referred to as "handlers" in the rule. These locations are not required to obtain a hazardous waste facility permit, which allows for easier collection and accumulation of these wastes. It is expected that handlers who accept universal waste from off-site will include solid waste transfer stations, household hazardous waste and conditionally exempt generator hazardous waste collection events and facilities, retail outlets, and distributors of materials covered under the rule. Universal wastes eventually must be managed at either licensed hazardous waste disposal facilities or hazardous waste recycling facilities, which are referred to in the rule as "destination facilities".

The federal rule includes a petition process that allows EPA or individual states to add hazardous wastes to the universal waste management structure. The process requires an evaluation as to whether a specific hazardous waste is appropriate for inclusion in the rule. States adopting the Universal Waste Rule have the option of adopting the petition process. Adopting the petition process will give Oregon flexibility in including appropriate hazardous wastes to be managed under a more streamlined management approach.

The criteria used for evaluating whether a hazardous waste is added to the Universal Waste Rule are listed below:

- the waste is a federal hazardous waste;
- the waste is not exclusive to a particular industry;
- the waste is generated by a large number of generators (e.g. more than 1,000 nationally)
- the waste is frequently generated in small quantities;
- collection systems would ensure close stewardship;
- risk posed by accumulation and transport is relatively low;
- regulation of the waste as a Universal Waste will divert the waste from non-hazardous waste management systems; and
- regulation of the waste as a universal waste will improve implementation of the hazardous waste program.

Any "person" can petition the Department to add additional hazardous wastes to the Universal Waste Rule. A person is defined as an individual, industry association, government agency or business. It is unknown how resource intensive evaluating petitions will be or how many petitions the Department will receive. The Department proposes a $1,000 petition review fee to account for staff review time and to discourage frivolous petitions. The Department believes that the fee can be adjusted once it gains experience with the petition process.

The petition process has been developed to allow states and EPA to add additional hazardous wastes to the Universal Waste Rule. The Department recognizes that hazardous wastes may be added to this reduced regulatory scheme that at some later time are considered inappropriate for management as a universal waste. The petition process should be modified to allow an evaluation of an existing Universal and removal from the Universal Rule if it is determined to be managed more appropriately as a hazardous or solid waste.

Recommendation

The Advisory Group recommends that the Department propose adoption of the of the federal Universal Waste Rule to the Environmental Quality Commission, and include the three universal wastes that are currently listed in the federal rule. The Department should propose to adopt the rule's petition process, and modify the petition process so it can be used to remove wastes from the Universal Waste Rule, as well as add wastes. There is general agreement by the committee that a fee be charged for petitions. One committee member expressed concern that the petition fee may restrict non-profit organizations from the petition process. Another member suggested that the Department provide more data to justify the petition fee.

2. Adding Fluorescent Light Tubes And Other Mercury Containing Lamps To The Universal Waste Rule.

Background

Mercury containing fluorescent light tubes are widely generated by office building, institutions, industry, small businesses and homeowners. The mercury content of these lamps can classify them as a hazardous waste. When a building undergoes a lamp change out as part of an energy conservation effort, the quantity of tubes can make an office building a regulated hazardous waste generator. Under normal circumstances this building would not have any contact with Oregon's hazardous waste program. Fluorescent light tubes are often disposed in solid waste landfills because the generators of these lamps are not familiar with the hazardous waste regulations. Including fluorescent light tubes in the Universal Waste Rule would by reducing the regulatory burden felt by the generators, transporters and collectors of the tubes, encourage the proper management of these tubes, either in a hazardous waste landfill or by a fluorescent tube recycler.

Fluorescent light tubes and other mercury containing lamps fit the criteria outlined in the Universal Waste Rules' petition process - they are generated by a wide variety of generators, and are not specific to a certain type of industry. Inclusion in the Universal Waste Rule would encourage proper collection and management of the tubes, and take the tubes out of municipal solid waste management systems. Compliance with the hazardous waste program would be improved, as generators of tubes would fall into a less complex system. If fluorescent light tubes are included in the Universal Waste Rule, disposal in non-hazardous waste management systems, such as MSW incinerators and Subtitle D landfills will be prohibited by those who would normally be regulated as a hazardous waste generator of the tubes.

Management of the waste fluorescent tubes under the Universal Waste Rule would be optional for Conditionally Exempt Hazardous Waste and Household Hazardous Waste generators.
The federal Universal Waste Rule currently allows some limited treatment options for batteries and mercury thermostats. The circumstances under which treatment can occur are specifically outlined in the rule. The Department recognizes that some generator/handlers of fluorescent light tubes may want to have an on-site tube crushing option, either as a way to reduce storage space or to facilitate transportation. Fluorescent tube crushing will be allowed under the proposed state Universal Waste Rule, with some specific guidelines and requirements.

Tube crushing will be allowed if done in a closed container and in such a way to prevent releases of mercury to the environment. Only handlers who generate fluorescent light tubes will be allowed to crush tubes. Handlers who accumulate tubes from off-site will not be allowed to crush tubes they collect without being recognized as a hazardous waste reclaimer by the Department . Off-site handlers will be allowed to accumulate closed containers of crushed lamps.

Recommendation

The Advisory Group recommends that fluorescent light tubes and mercury containing lamps should be included in the proposed state Universal Waste Rule. Crushing of fluorescent lamps will be allowed under very specific circumstances, and only handlers who generate fluorescent tubes will be permitted to crush lamps at the site of generation. Handlers who accumulate tubes from off-site will NOT be allowed to crush tubes without Department approval. The crushing activity will be performed in closed containers, with any releases to the environment in compliance with OSHA and air emission requirements. The committee was in general agreement limiting crushing of fluorescent tubes by on-site generators. One member expressed concerned with the restriction that off-site handlers would not be able to crush tubes and recommended that the Department keep options open for them especially if new treatment technologies are developed.

3. Universal Waste Handler Classifications.

Background

The federal Universal Waste Rule describes generators of universal wastes as "Handlers". All handlers must manage universal waste in an environmentally sound manner, and are prohibited from on-site treatment of universal waste, except in very specific circumstances. The federal rule has two categories of handlers, based on a total accumulation amount of universal waste. Any handler who accumulates less than 5,000 kg (11,000) pounds of universal waste is considered a Small Quantity Universal Waste Handler. Small Quantity Handlers are not required to notify the Department of their universal waste handling activity, are not required to keep any records and have minimal employee training requirements. Large Quantity Handlers are categorized as those locations accumulating over 5,000 kg of universal waste on-site. Large Quantity Handlers must notify the Department, must keep records of universal waste shipments, and have increased employee training requirements. The table below summarizes the standards for both small quantity and large quantity handlers.

Small Quantity Handler	Large Quantity Handler
Accumulates less than 5,000 kg of universal waste	Accumulates 5,000 kg or more of universal waste
Treating or disposal of universal waste prohibited, must manage wastes so as to prevent releases	Treating or disposal of universal waste prohibited, must manage wastes so as to prevent releases
Notification not required	Must notify Department of universal waste activity
Label containers or individual items	Label containers or individual items
One year accumulation time limit from date generated or received	One year accumulation time limit from date generated or received
Inform employees about proper handling and emergency procedures	Ensure employees are familiar with waste handling and emergency procedures
Can only ship off-site to other handlers or destination facilities	Can only ship off-site to other handlers or destination facilities
No recordkeeping requirements	Must keep records of shipments received and/or shipments sent off-site

The amount of wastes accumulated at locations that are not required to notify the Department is a concern. According to current hazardous waste regulations, generators who either generate over 220 pounds of hazardous waste per month or accumulate over 2,200 pounds of hazardous waste are required to notify as a small quantity

hazardous waste generator, so the Department is aware of the hazardous waste generating activity at the site. The 2,200 pound accumulation limit now included in the regulations provides a reasonable on-site accumulation amount of universal waste to impose notification and recordkeeping requirements for handlers of universal wastes. The regulated community has some familiarity with the 2,200 pound on-site accumulation limit triggering additional requirements, such as notification.

The Department proposes to keep the designation of Small and Large Quantity Handlers, but change the on-site accumulation amounts that define each type of handler. In the proposed state Universal Waste Rule, Small Quantity Handlers would be defined as handlers accumulating less than 2,200 pounds of universal wastes. Large Quantity Handlers would be defined as handlers accumulating more than 2,200 pounds of universal waste. Handlers would follow the current requirements listed in the federal Universal Waste Rule for each category of handler.

Recommendation

The Advisory Committee recommends that the on-site accumulation limits that define small and large quantity handlers who generate universal waste be the following: Any handler who generates universal waste, and accumulates under 2,200 pounds of universal waste shall be considered a small quantity handler, and must comply with small quantity handler requirements. Any handler who generates universal waste, and accumulates over 2,200 pounds of universal waste shall be considered a large quantity handler, and comply with large quantity handler requirements. The handler requirements will be those currently outlined in the federal Universal Waste Rule. The Committee was in general agreement regarding this recommendation and felt that off-site handlers collecting Universal waste from generator handlers needed stronger Department oversight than the generator handlers. One group member disagreed with changing the accumulation limits from the federal rule. One member recommended that the Committee not recommend specific accumulation pound limits and let the Department recommend accumulation limits.

4. Off-Site Handler Requirements

Background

The Universal Waste Rule includes two types of handlers: "Generator " handlers who generate universal wastes and "Off-site " handlers who accept universal waste from off-site. Off-site handlers are governed by the same on-site accumulation limits as generator handlers. One of the most significant streamlined requirements in the Universal Waste Rule is the ability to accept universal waste from all categories of hazardous waste generators without first obtaining a hazardous waste facility permit. In comparison, Department solid waste management regulations require solid waste transfer facilities to obtain solid waste management permits. The Department assumes that reduced regulations for handlers who operate as "off-site accumulation points" will increase the amount of waste properly collected and managed. However, limited Department oversight of these facilities presents a potential for mismanagement of accumulated wastes.

The Department proposes that off-site handlers will be classified by the same accumulation quantity limits for generator handlers. An off-site handler accumulating less than 2,200 pounds of universal waste shall be considered a small quantity handler, and must comply with all the small quantity handler requirements in the federal Universal Waste Rule, with the following proposed change:

- Universal waste from generator handlers can be accumulated at off-site small quantity handlers for no more than six months from the date it is first shipped to the first off-site handler before it is shipped to the destination facility. The six month time limit is not per off-site handler, but is the total amount of time all off-site handlers can accumulate universal waste prior to shipment to a destination facility.

Off-site handlers who at any time accumulate over 2,200 pounds of universal waste will be considered an off-site large quantity handler of universal waste and must comply with the requirements in the federal Universal Waste Rule.

The Department proposes adding the following requirements for off-site large quantity handlers of universal waste:

- Prior to accumulating universal waste, large quantity handlers will be required to submit the following information to the Department, on forms provided by the Department:
    - Location of collection site (s);
    - Schedule of collection activity (i.e. daily, monthly, etc.);
    - Types of universal wastes that will be collected;
    - An explanation of how the collection program will meet the applicable requirements for off-site large quantity handlers of universal waste;
    - Names and address of additional off-site handlers who will manage the universal wastes prior to shipment to a destination facility;
    - Names and address of destination facilities that have agreed to accept the universal wastes collected by the handler; and
    - Certification statement that the large quantity handler will operate in accordance with the operating information submitted to the Department and in compliance with the Universal Waste Rule.
- Annual reports will be required for large quantity off-site handlers. The reports will summarize the federal recordkeeping requirements for Large Quantity Handlers and will report on how much of each type of universal waste was received during the year, the amount of each type of universal waste that was shipped off-site during the year , and the name of subsequent handlers or destination facilities that received the universal waste.
- Universal waste from generator handlers can be accumulated at off-site large quantity handlers for no more than six months from the date it is first shipped to the first off-site handler before it is shipped to the destination facility. The six month time limit is not per off-site handler, but is the total amount of time all off-site handlers can accumulate universal waste prior to shipment to a destination facility.

Recommendation

The Advisory Group recommends that the Department propose to have an accumulation amount that defines off-site small and large quantity handlers to 2,200 pounds. The advisory group also recommends that the Department modify the off-site universal waste handler requirements so that accumulation time is limited to 6 months, and that large quantity handlers must report annually to the Department, submit operating information to the Department, and certify that they will operate in compliance with the Universal Waste Rule. Two Committee members commented that the six month accumulation limit may be too short for some types of waste and suggested that additional accumulation time be allowed up to one year.

5. Reporting Requirements For Oregon Destination Facilities:

Background

In the federal Universal Waste Rule, destination facilities are the final treatment or disposal facilities of universal wastes. These destination facilities are either designated hazardous waste recycling, treatment or disposal facilities. The federal Universal Waste Rule requires destination facilities to keep records of shipments received and shipped off-site, but does not require these facilities to report to the Department. These facilities already report annually on hazardous waste received and managed, and could also report on universal waste received and managed using the same reporting procedures.

Recommendation

The advisory group recommends that destination facilities report annually to the Department on the types and amounts of universal wastes received and shipped off-site. One member commented that the destination reporting period be aligned the with current hazardous waste reporting schedule.

6. Department Approval Of Pesticide Collection Programs

Background

The federal Universal Waste Rule includes pesticides that are collected in one of three ways: either through a pesticide recall instituted by the EPA , a recall instituted by the pesticide registrant and unused pesticides collected in a pesticide collection program. Pesticide collection programs could be sponsored by either public and private entities, with the understanding that the applicable management standards in the Universal Waste Rule are met. The implementation of the Universal Waste Rule will allow for easier collection of large amounts of pesticides, and the Department would like to ensure that these wastes are handled properly. Again, the federal Universal Waste Rule allows these wastes to be managed under much less stricter requirements than Oregon solid waste management requirements.. The Department feels that some additional oversight of these collection programs, beyond the management requirements in the Universal Waste Rule are appropriate. The Department will request information on how a pesticide collection program will operate , and will ask the collection program sponsor to "certify" that they will operate according to their "operational plan" and in compliance with the Universal Waste Rule.

The type of information requested, listed below, is similar to information submitted to the Department by local municipalities wishing to hold a household hazardous waste collection event:

- Name of sponsor;
- Location of collection site (s);
- Schedule of collection activity;
- An explanation of how the collection program will meet the applicable requirements for off-site handlers of universal waste;
- An explanation of how the collection program will handle dioxin and mercury containing pesticides;
- Names and address of other off-site handlers who will manage the pesticides prior to shipment to a destination facility; and,
- Names and address of destination facilities that have agreed to accept the pesticides.

Pesticide collection programs will be required to report annually to the Department on the amounts and types of pesticides collected.

The above requirements will apply to collections of pesticides under EPA recalls and registrant initiated recalls, as well as pesticide collection programs collecting unused pesticides.

In addition to the unused pesticide products included in the federal rule, the Department also proposes to manage state-only hazardous waste pesticide residues in accordance with Universal Waste Rule standards for pesticide management. These wastes are generated by the same handlers who would generate universal wastes pesticides. The streamlined management standards offered by the Universal Waste Rule provide a mechanism for easier collection and proper management of these wastes.

Recommendation

The Advisory Group recommends that the Department propose to establish facility and management standards require approval of all pesticide collection programs prior to the start up of the collection program. All pesticide collection programs subject to regulation under the Universal Waste Rule will be required to certify that the event will operate in compliance with information submitted to the Department, as well as in compliance with the Universal Waste Rule. Pesticide collection program will be required to report to the Department on an annual basis. The reports will include the type and amounts of pesticides collected, and final destination facilities.

AGENDA ITEM K
ATTACHMENT E1
JULY 12, 1996

Oregon
Department
of Agriculture

February 26, 1996

Gary Calaba
HW Section
DEQ
811 SW 6th Ave.
Portland, OR 97204

RECEIVED
MAR 04 1996
Waste Management & Cleanup Division
Department of Environmental Quality

"UNWANTED" PESTICIDE COLLECTIONS

The most recent meeting of the "unwanted" pesticides collection group was held January 18, 1996. A summary of that meeting is enclosed for your information. Since that meeting, I have shared with Oregon Department of Environmental Quality (DEQ) staff the concerns of the industry representatives attending the meeting. Those concerns centered on how the proposed Oregon modifications to the federal Universal Waste Rule (UWR) might adversely impact an industry-run "unwanted" pesticide collection program. I understand that DEQ has taken these concerns into consideration as part of the rule-making process.

DEQ is expecting to have a draft of the proposed rule completed in mid March. A copy of that draft will be provided directly to you by DEQ. Should you wish to have another meeting of the group, including Oregon Department of Agriculture (ODA) and/or DEQ staff, following your review of the latest draft, please contact me.

My present telephone number is (503) 931-0615. Owing to recent flooding, the ODA Building in Salem will not be available for meetings for an extended period of time. Alternate meeting sites may be available in the near future.

C. K. Kirby
Christopher K. Kirby by DLP
Assistant Administrator
Plant Division
(503)931-0615
FAX:(503)373-7441

Attachments: Summary of 1/18/96 meeting
DEQ Universal Waste Advisory Committee membership list

John A. Kitzhaber
Governor

635 Capitol Street NE
Salem, OR 97310-0110

MEETING: "UNWANTED" PESTICIDES COLLECTIONS

Room 44, ODA Building, Salem, OR
Tuesday, 18 January 1996, 9 AM - Noon

MEETING SUMMARY

1. **Introduction:** Self-introductions by attendees (see attached listing). Chris Kirby, ODA, served as chair of the meeting.

2. **State Agency Resources:** In response to discussion during the last meeting (12/19/95), DEQ and ODA representatives provided information concerning what resources their agencies may have that could be used to support the startup and/or implementation of an industry-run unwanted pesticides collection program.

   a. **(DEQ) Hazardous Waste Disposal Fee Fund:** Mitch West of DEQ presented a financial history of this fund. Revenues are generated from disposal fees at the Arlington facility. By law, expenditures are limited to providing (1) funding for hazardous waste clean-ups, and (2) technical assistance for hazardous waste disposal problems. Because of a change in fee structure and a drop-off in amounts of materials delivered for disposal, revenues are coming more in line with, or even a little less than, expenditures. Forecasted balance of the fund for 1996 is about $245,000.

   From the discussion:

   - DEQ does not anticipate an increase in disposals/revenues as a result of the Universal Waste Rule.
   - Funds in this account can be used for pesticide waste disposal directly, but cannot be used to operate a "grant program" to fund entities that are setting up and conducting unwanted pesticides collection events/sites. New legislative authority would be needed for this latter purpose.

   b. **(DEQ) Toxic Use Reduction Program:** Although the agricultural pesticide industry pays funds into this program, the funds cannot be used to support unwanted pesticide collections. These funds are specifically dedicated to other activities, such as providing technical assistance for reducing quantities of toxic wastes generated by individual manufacturing facilities.

   c. **(DEQ) Bruce Lumper:** Bruce's temporary position with DEQ (0.25 FTE) currently is expected to terminate on 14 May 1996. Until that time, Bruce's experience and expertise in the realm of waste pesticide collections (e.g., collection site setup, contracting with hazardous waste contractors, etc.) will be available as a public resource.

   d. **ODA.** No resources are available for pesticide collection activities.

3. **Universal Waste Rule (UWR) Update.** Kim Cox of DEQ updated the meeting attendees on progress toward state adoption of the UWR. A "Waste Reduction and Special Waste Advisory Group" ("Advisory Group" hereinafter), which has been formed to assist DEQ in this process, has developed a set of six (6) recommendations for DEQ to consider in its adoption of the state UWR. These recommendations, distributed at the meeting, involve several changes from the federal requirements.

From the discussion:

- Meeting attendees expressed serious concern that the agricultural pesticide industry, whose products are one of only four types of materials to be addressed in the UWR, is not represented on the Advisory Group. (The four types of materials addressed in, or to be addressed in, the UWR are pesticides, batteries, mercury thermostats, and fluorescent light tubes.) From the pesticide industry's perspective, therefore, the Advisory Group lacks balance, and credibility as well.

  DEQ committed to providing attendees a listing of the Advisory Group membership.

- Meeting attendees from the agricultural pesticide industry expressed significant concerns about three major changes from the federal UWR that the Advisory Group has recommended:

  (1) Change from the federal limit of 5,000 kg (11,000 lb.) of universal waste that delineates between small and large quantity handlers down to a recommended 1,000 kg (2,200 lb.) limit for Oregon. The 1,000 kg limit is proposed so that DEQ would have information about additional handler locations and types of universal waste managed.

  (2) Change from the federal time limit of 12 months during which wastes received from off-site may be accumulated before being shipped to a destination facility, down to a recommended 6-month limit for Oregon. This applies to both small quantity and large quantity "off-site handlers." Handlers who only generate waste on-site (i.e., "generator-handlers") can accumulate these wastes for up to 12 months (both federal UWR and recommended for Oregon).

  (3) The federal UWR (theoretically) allows transfers of wastes from one off-site handler to other off-site handlers for an unlimited period of time, as long as the waste is not accumulated at any one site for longer than 12 months. The recommendation for Oregon is that transfers from one off-site handler to other off-site handlers not be allowed and that shipments from all off-site handlers must be sent directly to a destination facility within a 6-month time limit.

  The major concern of the meeting attendees centered on the requirement that large quantity handlers (having universal waste accumulations greater than the "limit" above) being required to keep records and report to DEQ about

shipments received and/or sent off-site. Meeting attendees argued that the majority of the "unwanted" pesticides currently in storage and in need of disposal are in quantities in the range of 1,000 kg to 5,000 kg. The attendees contended that many entities, particularly growers, that currently possess these materials would shy away from participation in collection programs. The reason for this concern is that, under the current Advisory Group recommendations, growers disposing of 2,200 lbs. (1,000 kg) or more would be designated large quantity handlers and thus would forfeit their anonymity because of the record keeping and reporting requirements. (The belief is that loss of anonymity equates to increased grower cleanup liability for their disposed pesticides.)

Concerns about (2) and (3) above, while less serious than those about (1), were also thought by the agricultural pesticide industry meeting attendees to have the effect of discouraging participation in "unwanted" pesticide collections.

The overall sense of the agricultural pesticide industry meeting attendees was that, unless these proposed recommendations by the Advisory Group -- (1), (2), and (3), above -- were dropped or at least modified, there no longer would be an incentive for the industry to develop an unwanted pesticides collection/ disposal program. The agricultural pesticide industry meeting attendees felt that the proposed changes in the UWR would largely negate EPA's intent, which is to ease regulations in order to encourage proper disposal of these materials.

4. **What's Next?**

- The draft rules for the Oregon UWR, based upon Advisory Group recommendations, are slated to be completed and available for public comment in April 1996. Adoption of the final rules could occur as early as May 1996.

- The agricultural pesticide industry meeting attendees indicated that they would look for program start-up funding, but not move forward with actual program planning until their concerns about the UWR changes have been addressed.

- Chris Kirby, ODA, chair of the meeting, agreed that he would discuss with DEQ the concerns of the meeting attendees regarding the proposed changes in the UWR. He also agreed to provide the group with a summary of the meeting proceedings and give further direction to the group regarding program planning, future meetings, etc., based upon his discussions with DEQ.

Summary prepared by David Priebe and Chris Kirby, Oregon Department of Agriculture - Plant Division.

Attachment: Meeting attendees list.

ODA/DEQ/INDUSTRY MEETING - UNWANTED PESTICIDE COLLECTIONS

Thursday, January 18, 1996

NAME	ASSOCIATION OR AFFILIATION	ADDRESS	TELEPHONE
CHRIS KIRBY	OREGON DEPT. OF AGRICULTURE	635 CAPITOL STREET NE SALEM OR 97310-0110	503 986-4635
Pete Test	Oregon Farm Bureau Federation	1701 Liberty St. SE Salem, OR 97302	503 399-1701
TERRY WITT	OFS	567 UNION ST. 97301	370-8092
Mike Leupitz	Leupitz Pest Control	2333 State St. 97301	362-8100
Wayne Withee	ore. seed council Simplot	1590 Steiwer Rd. Jefferson Or 97352	541-369-2826
MARK P. HANSEN	WILBUR-ELLIS Co.	P.O. Box 8838 Portland, Ore. 97208	503-227-3825
GREG EGO	INTERSTATE PROFESSIONAL APPLICATORS ASSOCIATION RASMUSSEN SPRAY SERVICE	P.O. Box 13262 SALEM OR 97309	503-363-7205
JERRY HARCHENKO	OREGON AGRICULTURAL AVIATION ASSN	6736 WACONDA RD NE, SALEM, OR 97305	503 393-7401
RICHARD KOSESAN	ODA	1270 CHEMEKETA ST NE SALEM OR 97301	370 7024
Colleen Johansen	DART Trucking Co	6500 Apollo Rd - West Linn OR 97068	503 655-3634
LONNIE ANDERSON	OR. PEST CNTL. ASSOC.	c/o TERMINIX INT'L 10011 S.E. DIVISION, STE. 303, PORTLAND 97266	503 257-9133
David Priebe	OR Dept. of Agriculture	635 Capitol ST NE Salem, OR 97310	(503) 986-4656
Bruce Lumper	DEQ	811 SW 6th Ave, PORTLAND, OR 97204	(503) 229-5278
KIM COX	DEQ	"	503 2296590
Mitch West	DEQ	"	(503) 229-5428
Mike Dewey	OWGL / OPC	960 Liberty ST S. Salem 97302	503-581-2845

AGENDA ITEM K
ATTACHMENT E1
JULY 12, 1996

12812 N.E. WHITAKER WAY
PORTLAND, OREGON 97230

MILLER PAINT CO.
SINCE 1890

(503) 255-0190 • Fax: (503) 255-0192
MANUFACTURERS Wholesale – Retail

January 4, 1996

Mr. Roy W. Brower
Hazardous Waste Policy & Program Development
Oregon Dept. of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

Dear Mr. Brower:

I wholeheartedly agree with the adoption by Oregon of the new E.P.A. Universal Waste Rule, including petitioning for the addition of fluorescent tubes. Unfortunately, I was unable to attend all of the meetings on this subject, so am left with an unanswered question regarding fluorescent tubes:

Most of the users of these tubes are unaware of their hazardous material classification. Since any person who owns a worn-out fluorescent tube will now be classified as a **"handler"**, does this mean that all businesses and homeowners needing to dispose of such a device must insure that it go via another **"off-site handler"** to a proper **"destination facility"**?

Second, I strongly disagree with the modification of any federal regulation by state or local governments, such as changing the 11,000 lb accumulation limit which defines small quantity to a 220 lb per month or 2,200 lb accumulation limit. Such tinkering with federal regulations by as many as 50 states creates a regulatory nightmare for multi-state businesses which is totally unjustified and unnecessary.

Yours truly,

John P. Buckinger
President
MILLER PAINT COMPANY, INC.

CABLE HUSTON BENEDICT & HAAGENSEN
ATTORNEYS AT LAW
SUITE 2000
1001 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1136

TELEPHONE (503) 224-3092
FACSIMILE (503) 224-3176

DONALD A. HAAGENSEN

January 5, 1996

Mr. Langdon Marsh, Director
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

RE: Pesticide Waste Advisory Group
Recommendations to the Department

Dear Lang:

Attached are recommendations on several proposed rule concepts developed by the Pesticide Waste Advisory Group during October and November. The Department established the Group to evaluate certain current rules addressing the management of pesticide waste residues and to provide recommendations on these rules to the Department. Represented on the Group were pesticide and chemical manufacturers, consultants, academic institutions, and other interested parties. Although an extensive effort was made to encourage participation on the Group by environmental interest groups, no such participation occurred. All of the Group meetings were open to the public, and members of the public commented at the meetings.

The Group's work involved review of the work of a previous Pesticide Waste Technical Workgroup on similar issues, extensive discussion of the current law, and detailed evaluation of concepts that could be implemented to revise the law. Although the meetings were contentious at times, that degree of involvement is usually a good sign that the issues being considered truly have import and that they are being fully aired. Any rules eventually adopted by the Commission should benefit from this aspect of the public process.

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

CABLE HUSTON BENEDICT & HAAGENSEN

One member of the Group chose to submit separate comments which appear to support certain of the recommendations and to oppose all or part of other recommendations. The comments are attached to the recommendations.

I have enjoyed serving as Chair of the Pesticide Waste Advisory Group for this phase of the Group's work and appreciate very much the opportunity. I also want to acknowledge the effective support provided by the Department to the Group which helped the Group in developing the recommendations over a brief two-month period of time. Please let me know if you have any questions about the attached recommendations.

Very truly yours,

don

Donald A. Haagensen

DAH/dms
c: Mary Wahl, DEQ
Members, Pesticide Waste Advisory Group
Members, Waste Reduction and Special Waste Advisory Group

PESTICIDE WASTE ADVISORY GROUP

RECOMMENDATIONS ON
PROPOSED AMENDMENTS TO THE PESTICIDE RESIDUE WASTE RULES
December 1995

INTRODUCTION

In 1994, the Department of Environmental Quality (Department) convened an Aquatic Toxicity Technical Workgroup (Workgroup) to evaluate the state-only hazardous waste rule regulating pesticide residues through an Aquatic Toxicity Test.[1] This evaluation was conducted in response to a request by members of a standing advisory committee, the Hazardous Waste/Toxics Use Reduction Advisory Committee. The Workgroup was charged with determining if the Aquatic Toxicity Test (the Department's screening tool used to determine whether a pesticide residue is a state-only hazardous waste and subject to Oregon's hazardous waste regulations) is the appropriate procedure to "declassify" pesticide residues as hazardous waste, exploring other options for declassifying pesticide residues, and considering management options for pesticide residue hazardous waste. The Workgroup met three times in 1994 and once in 1995. A list of Workgroup members is provided in Attachment 1.

An integral part of the Workgroup's discussions centered around the definition of pesticide residue hazardous waste and its relationship to the Aquatic Toxicity Test. As defined in Oregon Revised Statutes (ORS) 466.005(7)(a), hazardous waste includes discarded, useless or unwanted pesticide residues unless declassified by the Environmental Quality Commission.[2]

Any pesticide residues meeting the definition in ORS 466.005(7) that cannot be declassified by passing the Aquatic Toxicity Test are state-only hazardous waste. The Workgroup believed that the Department's interpretation of the definition of pesticide residue was potentially too inclusive, for example, materials such as chlorinated drinking water, residential carpets treated with fungicides, and treated soil, would potentially require management as hazardous waste if they failed the Aquatic Toxicity Test. The Workgroup believed that such materials did not need to be subject to Oregon's Hazardous Waste regulations.

The Workgroup also discussed the potential use of enforceable Best Management Practices (BMPs) as a tool for declassifying the management of pesticide residues as hazardous waste, in a manner similar to that established for sandblast grit from shipbuilding operations and certain, discarded treated wood.

During its final meeting in July, 1995, the Workgroup developed a number of recommendations to the Hazardous Waste/Toxics Use Reduction Advisory Committee and

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[1] The Aquatic Toxicity Test is established in OAR 340-101-033(5).

[2] ORS 466.005(7)(a) states: "Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015(3): (a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing destroying, repelling or mitigating of insects, fungi, weeds, rodenticide or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocide and rodenticides."

ultimately the Department. The Workgroup recommended that the Committee and the Department:

- Clarify that the definition of pesticide residue excludes materials where the pesticide was legally applied, such as food wastes and crop remnants with pesticide contamination.
- Review and revise the Workgroup's "working document" on pesticide waste management.
- Evaluate BMPs as a tool for allowing declassification of pesticide residues from the definition of hazardous waste.

Because of a proliferation of issues needing advisory committee consideration, the Department restructured the Hazardous Waste/Toxics Use Reduction Advisory Committee, into three Advisory Groups: Pesticide Waste Advisory Group (a list of members is provided in Attachment 2), Waste Reduction and Special Waste Advisory Group and the Fee Advisory Group. The Department established the Pesticide Waste Advisory Group (Advisory Group) to review the work of the Aquatic Toxicity Technical Workgroup and to make recommendations regarding rule amendments for pesticide residue waste management. The Advisory Group met three times in October and November, 1995, and developed recommended rule concepts that redefined and clarified the appropriate types of pesticide residue waste subject and not ject to hazardous waste regulation. Based on a suggestion of Department staff to the Advisory Group, the Advisory Group recommended that the Department adopt a process designating as non-hazardous state-only pesticide residue hazardous waste through the use of Universal Waste Rule concepts recently adopted by the Environmental Protection Agency (EPA).

The Workgroup and Advisory Group consisted of representatives from pesticide and chemical manufacturers, consultants, waste management companies, academic institutions, and other interested parties. A concerted effort was made by the Department and members of both groups to obtain participation by environmental and public interest groups, but none occurred, (environmental groups were on the list for all mailings of the Workgroup and Advisory Group). All meetings of the Workgroup and Advisory Group were open meetings, and public comment was provided at the meetings. After detailed examination of the current pesticide residue waste regulatory program and the work performed by the Workgroup, the Advisory Group (except for one member) agreed on the recommendations below regarding the current pesticide residue waste rules. The Advisory Group (except for one member) strongly encourages the Department to draft proposed rules implementing these recommendations and carry those proposed rules forward through the formal rulemaking process. The individual position of one member of the Advisory Group is attached as Attachment 7 (along with written materials filed by other members of the Advisory Group). The one member appears to support Recommendations 1 and 2 below and to oppose all or part of Recommendations 3 and 4 ow.

RECOMMENDATIONS

1. DEFINITION OF PESTICIDE RESIDUE

Background

Under Oregon law in OAR 340-109-002(8), a pesticide is "any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling, or mitigating of insects, fungi, weeds, rodents, or predatory animals; including but not limited to, defoliants, desiccants, fungicides, herbicides, insecticides, and nematocides as defined by ORS 634.006." Under OAR 340-109-002(10), a "pesticide residue" is defined as substances produced by the use of pesticides including, but not limited to unused commercial pesticides or spray mixtures, container rinsings and pesticide equipment washings." Finally, ORS 466.005(7) provides that "pesticide residues" are classified as state-only hazardous waste unless declassified by the Commission under ORS 466.015(3).

According to Oregon hazardous waste management rules (OAR Chapter 340, Division 101), any substance meeting the definition of a pesticide residue, which is not specifically addressed the federal hazardous waste program (See Attachment 3, Pesticide Residue Hazardous Waste Determination Protocol) must be evaluated pursuant to an Aquatic Toxicity Test[3] to determine if the pesticide residue is classified a state-only hazardous waste, subject to regulation under the Oregon state-authorized hazardous waste management program. If the pesticide residue passes the test, it is declassified as a hazardous waste.

Because the statutory and regulatory definitions of "pesticide residue" are broad, the current universe of substances potentially meeting the definition and potentially subject to hazardous waste regulation includes many materials not appropriately managed under the hazardous waste requirements such as, discarded soils, seeds, water, and carpets, which contain residues of legally applied pesticides.

The Advisory Group concluded that materials containing pesticides that were legally applied in accordance with detailed requirements accompanying the pesticide product were already regulated by procedures established by other federal and state agencies.[4] Management of these pesticide residues as hazardous wastes is duplicative if any of the residues fail the Aquatic Toxicity Test. Lower concentrations of pesticides are generally found in materials to which pesticides were legally applied, than in wastes.

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[3] Under OAR 340-100-010(2)(b) and 340-101-033(5), the aquatic toxicity bioassay test consists of placing 250 milligrams of a presentative sample of the residue in a liter of water containing 20 water fleas (*Daphnia magna*) and counting the number of fleas that die after 96 hours. If 10 or more fleas die, then the residue has failed the test and is a state-only hazardous waste.

[4] For example, the Oregon Department of Agriculture, U.S. Department of Agriculture, and the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

Recommendation

The Advisory Group recommends that the Department not include certain materials which contain pesticides within the definition of "pesticide residue," such as discarded contaminated soils, wood, foodstuffs, water, vegetation, and treated seeds where pesticides were legally applied.

If this recommendation is followed and implemented by rule, the substances remaining within the definition of pesticide residue would be substances generated from pesticide operations (except household use), such as manufacturing, repackaging, formulation or bulking, mixing, spills, and use, including substances from waste management (e.g., treatment, recycling, disposal, container and spray equipment rinsing, etc.).

The Advisory Group recommends that the Department clarify the regulation of pesticide residues and pesticide residue wastes by reviewing and consolidating or streamlining the applicable provisions in OAR Chapter 340, Divisions 100, 101 and 109 including the definitions.

Consistent with Oregon's regulatory program for hazardous waste, household pesticide r lue wastes would be excluded from the definition of pesticide residue subject to Department regulation and could continue to be collected at household collection events.

2. USE OF PESTICIDE RESIDUE

Background

Currently, the Department's pesticide residue regulatory program under OAR Chapter 340, Division 109, allows the use of some pesticide residues, particularly residues from rinsing the interior surfaces of pesticide containers and pesticide mixing and application equipment, provided that the use follows the label directions for the pesticide concerned. Certain Advisory Group members expressed concern that the existing rules might be unclear on whether or not this material would be classified as a hazardous waste.

Recommendation

The Advisory Group recommends that the rules applicable to pesticide residues be clarified to ensure that materials produced from certain pesticide operations, such as rinsewaters, are not classified as pesticide residue when they are used or reused, provided the use or reuse is according to the pesticide label instructions, and if stored before use or reuse, the rinsewater is stored as a pesticide product according to industry standards.

3. PROPOSED WASTE CLASSIFICATION AND MANAGEMENT REQUIREMENTS FOR PESTICIDE RESIDUE WASTE

Background

Currently, a substance containing a pesticide that meets the definition of pesticide residue and fails the Aquatic Toxicity Test is a state-only hazardous waste and is subject to hazardous waste management standards, as adopted in the Oregon state-authorized hazardous waste management program. These standards include managing wastes in tanks or containers no longer than a specified time period (e.g., 90 days), notifying and reporting to the Department regarding waste generation activity, manifesting waste using the state-only hazardous waste code X001, and paying hazardous waste generator fees.

Approximately 7,000 private pesticide applicators, and 6,500 commercial applicators including residential, silviculture, agricultural and governmental pest control applicators may be subject to pesticide residue management standards when discarding pesticide residue wastes. In 1993 pesticide residue wastes reported to the Department constituted 28 tons, or .07% of the total 37,790 tons of hazardous waste reported generated in Oregon and managed off the site generation. In 1994 residue waste reported to the Department was 1,647 tons, or 1.70% of the 97,505 total tons of hazardous waste reported generated in Oregon and managed off the site of generation.

Recently, the EPA promulgated the federal Universal Waste Rule[5] which creates streamlined hazardous waste management regulations for certain federal hazardous wastes that are widely generated and amenable to collection and diversion from the solid and hazardous waste streams. Included in those universal wastes are recalled pesticides. The federal rule is intended to create less restrictive regulation for certain hazardous waste than the current federal hazardous waste management regulations while still encouraging the proper collection, recycling and disposal of the waste. For instance, paperwork requirements are reduced for certain generators and transporters, collection and recycling opportunities are increased, and permitting and other requirements are reduced or eliminated.

Federal hazardous waste regulations had made it difficult to establish collection, recycling, and disposal programs for banned and unused pesticides because many generators of pesticides have been reluctant to comply with the full federal requirements. The federal Universal Waste Rule establishes fewer requirements to encourage safe accumulation of these wastes and yet assures proper final disposition at hazardous waste facilities.

[5] The Department is considering adopting the federal Universal Waste Rule with assistance of the Waste Reduction and Special Waste Advisory Group.

Recommendation[6]

The Advisory Group recommends that all pesticide residue defined as state-only hazardous waste under ORS 466.005(7) be managed as non-hazardous waste according to the management standards in the federal Universal Waste Rule when adopted in Oregon and remain non-hazardous while meeting these standards. Under ORS 466.015(3) the Commission may declassify pesticide residues from classification as hazardous wastes if the pesticide residues "have been properly treated or decontaminated or contain a sufficiently low concentration of hazardous materials so that such substances are no longer hazardous."

The Aquatic Toxicity Test would no longer be used to determine if a pesticide residue is declassified as hazardous. Rather, the Advisory Group recommends that the Commission designate all pesticide residue hazardous wastes as non-hazardous if the wastes are managed in accordance with the management standards of the Universal Waste Rule. A non-hazardous waste designation would occur when the generator of a state-only pesticide residue hazardous waste records the date that the waste is first generated and is being managed in an environmentally sound manner according to the management standards in the Universal Waste Rule. A non-hazardous waste designation would continue as long as the waste was b g managed according to the management standards in the rule.[7] Pesticide residue being managed outside these standards would remain state-only hazardous waste pursuant to ORS 466.005(7) and would continue to be subject to the Oregon hazardous waste requirements.

The universe of pesticide residue which would meet the definition of pesticide residue and which would be non-hazardous wastes when managed according to the standards in the Universal Waste Rule would include:

- Those wastes that have been historically subject to the Aquatic Toxicity Test.
- Wastes containing pesticides on the "P" and "U" lists which are currently only regulated because they fall under Oregon's 3% and 10% rules in OAR 340-101-033(2).
- Non-spill pesticide residues that are toxic[8] federal hazardous waste which no longer exhibit the toxicity characteristic and which will be properly treated in the Universal Waste Rule program.

The Universal Waste Rule allows state-only pesticide residues and federal pesticide residue hazardous waste which is decharacterized under the TCLP (i.e., treated to remove the characteristic which makes the waste hazardous) to be collected with reduced hazardous

[6] A flow chart depicting this Recommendation is provided in Attachment 4.

[7] eptual language that could be used to implement this recommendation is: "Pesticide residue which is managed in accordance with C 340-xxx-xxx [the Oregon adoption of the federal universal waste rule] is declassified as a state-only hazardous waste."

[8] Toxicity is determined by the federal Toxicity Characteristic Leaching Procedure (TCLP) identified in 40 CFR 261.24, Table 1 as adopted in Oregon in OAR 340-100-002(1).

waste requirements (i.e., without manifesting, counting waste toward generator status, and paying hazardous waste fees). Ultimate management would still occur in a facility that is protective of human health and the environment.

Provided there is an established federal treatment standard or technology, the federal land disposal restrictions as adopted under Oregon's state-authorized hazardous waste management program would apply to all state-only pesticide residue wastes containing "P" or "U" listed pesticides. If no standard or technology exists for the pesticide, the current Aquatic Toxicity Test would serve as the screen prior to the disposal of a pesticide residue waste. Dilution of a waste would not be an acceptable treatment technology to either meet the standards or pass the Test. Pesticide constituents that either meet an applicable treatment standard or technology, or that pass the Aquatic Toxicity Test if no treatment standard or technology applies, could be disposed in the lined portion of an approved solid waste disposal Subtitle D facility. If a state-only pesticide residue waste did not meet the appropriate land disposal restriction standard or technology, or if the waste could not pass the Aquatic Toxicity Test and the waste was not treated so it would pass the test, the waste could be disposed in a permitted hazardous waste disposal Subtitle C hazardous waste management facility. State-only pesticide residues need not be evaluated or treated prior to disposal at a Subtitle C facility.

Federal law allows a federal non-spill TCLP pesticide hazardous waste to be disposed in a Subtitle D facility if the waste has been properly treated to remove both the toxicity characteristic and to meet the federal land disposal restrictions (40 CFR 268.9(d)). If the waste was treated to meet land disposal restrictions but not treated to remove the toxicity characteristic, the waste could still be disposed in a Subtitle C facility.

4. CURRENT 3% AND 10% STATE-ONLY HAZARDOUS WASTE CONTAINING PESTICIDE RESIDUE

Background

The 3% and 10% rules found in OAR 340-101-033(2) regulate a group of state-only hazardous wastes not included in the federal hazardous waste rules. Under OAR 340-101-033(2), any residues, manufacturing process wastes or unused chemicals (including pesticide active ingredients) that have either a total of 3% or greater concentration of any substance or mixture of substances identified as "P" listed chemicals, or a total of 10% or greater concentration of any substance or mixture of substances identified as "U" listed chemicals under the federal hazardous waste program (contained in 40 CFR 261.33 (e) and (f)) are classified as state-only hazardous wastes. Currently, such residues or wastes containing a "P" or "U" listed pesticide would potentially be subject to dual evaluation as state-only hazardous waste both under the 3% and 10% rules and the Aquatic Toxicity Test for pesticide residue wastes.

Recommendation

The Advisory Group recommends that the Department eliminate this dual regulation by deleting from regulation under the 3% and 10% rules in OAR 340-101-033(2) the pesticides from the state's "P" and "U" lists to the extent those pesticide active ingredients are managed according to the standards in the federal Universal Waste Rule when adopted in Oregon. Implementation of this recommendation would mean that pesticide residue wastes containing active ingredients on the "P" and "U" lists would no longer be subject to the state's 3% and 10% rules. Attachment 5 is a draft list of the chemicals from the "P" and "U" lists that do not contain pesticide active ingredients, and which would continue to be regulated under the state-only 3% and 10% rules.

NOTE: The Advisory Group considered and evaluated numerous examples of pesticide residue wastes in its development of the above recommendations. The Advisory Group decided to include examples as part of its recommendation package to provide additional clarification and explanation for the recommendations (See Attachment 6).

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ATTACHMENT 2

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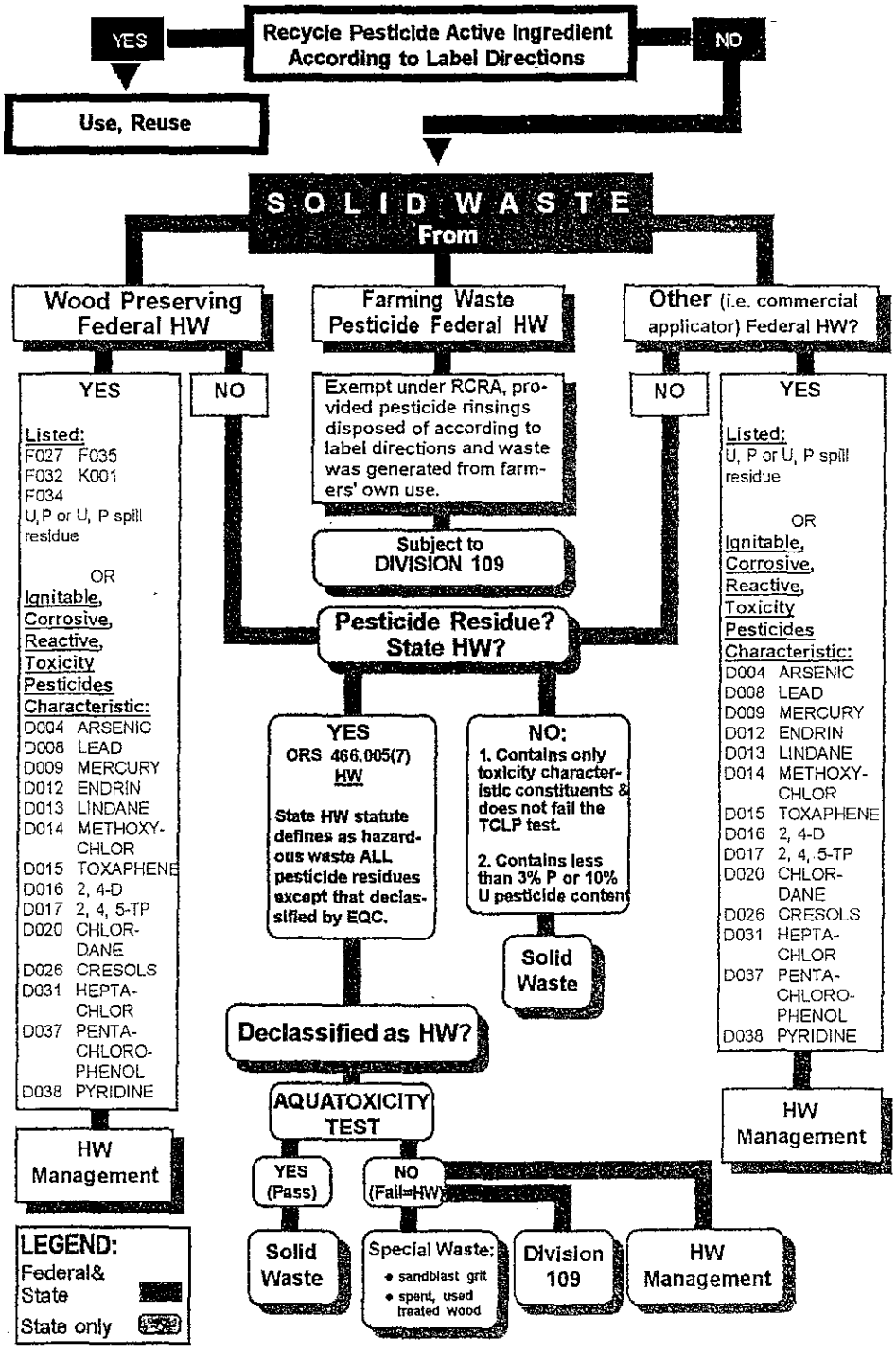
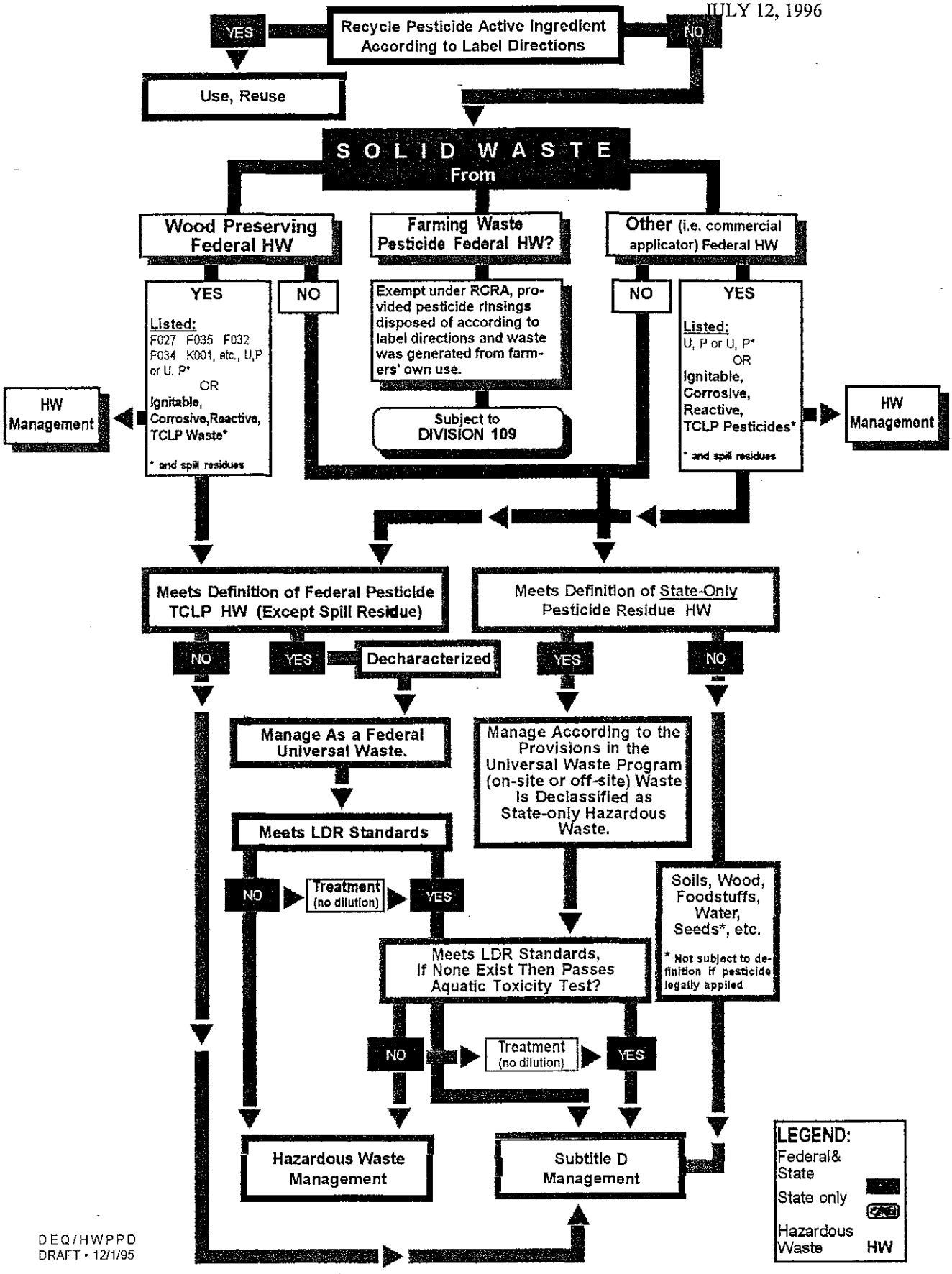
PESTICIDE RESIDUE HAZARDOUS WASTE DETERMINATION PROTOCOL

(Current Regulatory Scheme)



PESTICIDE RESIDUE HAZARDOUS WASTE DETERMINATION PROTOCOL

(Proposd Regulatory Scheme)



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ATTACHMENT 5

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

AS number	RCRA listing	Chemical Name
92-87-5	U021	[1,1'-Biphenyl]-4,4'-diamine
91-94-1	U073	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
119-90-4	U091	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
119-93-7	U095	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
630-20-6	U208	1,1,1,2-Tetrachloroethane
55-63-0	P081	1,2,3-Propanetriol, trinitrate (R)
95-94-3	U207	1,2,4,5-Tetrachlorobenzene
117-84-0	U107	1,2-Benzenedicarboxylic acid, dioctyl ester
51-43-4	P042	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
181-07-2	U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts
156-60-5	U079	1,2-Dichloroethylene
540-73-8	U099	1,2-Dimethylhydrazine
122-66-7	U109	1,2-Diphenylhydrazine
91-80-5	U155	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
1120-71-4	U193	1,2-Oxathiolane, 2,2-dioxide
75-55-8	P067	1,2-Propylenimine
1464-53-5	U085	1,2:3,4-Diepoxybutane (I,T)
99-35-4	U234	1,3,5-Trinitrobenzene (R,T)
123-63-7	U182	1,3,5-Trioxane, 2,4,6-trimethyl-
120-58-1	U141	1,3-Benzodioxole, 5-(1-propenyl)-
94-58-6	U090	1,3-Benzodioxole, 5-propyl-
7-68-3	U128	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
85-44-9	U190	1,3-Isobenzofurandione
504-60-9	U186	1,3-Pentadiene (I)
1120-71-4	U193	1,3-Propane sultone
465-73-6	P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa- chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
764-41-0	U074	1,4-Dichloro-2-butene (I,T)
123-91-1	U108	1,4-Diethyleneoxide
123-91-1	U108	1,4-Dioxane
130-15-4	U166	1,4-Naphthalenedione
130-15-4	U166	1,4-Naphthoquinone
5344-82-1	P026	1-(o-Chlorophenyl)thiourea
591-08-2	P002	1-Acetyl-2-thiourea
924-16-3	U172	1-Butanamine, N-butyl-N-nitroso-
71-36-3	U031	1-Butanol (I)
504-60-9	U186	1-Methylbutadiene (I)
134-32-7	U167	1-Naphthalenamine
107-10-8	U194	1-Propanamine (I,T)
621-64-7	U111	1-Propanamine, N-nitroso-N-propyl-
142-84-7	U110	1-Propanamine, N-propyl- (I)
126-72-7	U235	1-Propanol, 2,3-dibromo-, phosphate (3:1)
1888-71-7	U243	1-Propene, 1,1,2,3,3,3-hexachloro-
1464-53-5	U085	2,2'-Bioxirane
3-90-2	See F027	2,3,4,6-Tetrachlorophenol
66-75-1	U237	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2- chloroethyl)amino]-
194-75-7	U240	2,4-D, salts & esters

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS Number	RCRA listing	Chemical Name
120-83-2	U081	2,4-Dichlorophenol
121-14-2	U105	2,4-Dinitrotoluene
108-31-6	U147	2,5-Furandione
87-65-0	U082	2,6-Dichlorophenol
606-20-2	U106	2,6-Dinitrotoluene
72-57-1	U236	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'- dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
172-20-8	P051	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta, 7aalpha)-, & metabolites
53-96-3	U005	2-Acetylaminofluorene
1338-23-4	U160	2-Butanone, peroxide (R,T)
764-41-0	U074	2-Butene, 1,4-dichloro- (I,T)
303-34-4	U143	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy- 2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]- 2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
110-75-8	U042	2-Chloroethyl vinyl ether
75-86-5	P069	2-Methyllactonitrile
91-59-8	U168	2-Naphthalenamine
109-06-8	U191	2-Picoline
[illegible]31-2	P017	2-Propanone, 1-bromo-
[illegible]6-1	U007	2-Propenamide
126-98-7	U152	2-Propenenitrile, 2-methyl- (I,T)
79-10-7	U008	2-Propenoic acid (I)
97-63-2	U118	2-Propenoic acid, 2-methyl-, ethyl ester
80-62-6	U162	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
140-88-5	U113	2-Propenoic acid, ethyl ester (I)
50-18-0	U058	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
181-81-2	U248	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less
181-81-2	P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
2763-96-4	P007	3(2H)-Isoxazolone, 5-(aminomethyl)-
91-94-1	U073	3,3'-Dichlorobenzidine
119-90-4	U091	3,3'-Dimethoxybenzidine
119-93-7	U095	3,3'-Dimethylbenzidine
542-76-7	P027	3-Chloropropionitrile
56-49-5	U157	3-Methylcholanthrene
56-04-2	U164	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
101-14-4	U158	4,4'-Methylenebis(2-chloroaniline)
1534-52-1	P047	4,6-Dinitro-o-cresol, & salts
101-55-3	U030	4-Bromophenyl phenyl ether
[illegible]5-93-3	U049	4-Chloro-o-toluidine, hydrochloride

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS number	RCRA listing	Chemical Name
20830-81-3	U059	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
2763-96-4	P007	5-(Aminomethyl)-3-isoxazolol
99-55-8	U181	5-Nitro-o-toluidine
57-97-6	U094	7,12-Dimethylbenz[a]anthracene
107-20-0	P023	Acetaldehyde, chloro-
75-87-6	U034	Acetaldehyde, trichloro-
62-44-2	U187	Acetamide, N-(4-ethoxyphenyl)-
591-08-2	P002	Acetamide, N-(aminothioxomethyl)-
53-96-3	U005	Acetamide, N-9H-fluoren-2-yl-
194-75-7	U240	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
563-68-8	U214	Acetic acid, thallium(1+) salt
75-05-8	U003	Acetonitrile (I,T)
75-36-5	U006	Acetyl chloride (C,R,T)
79-06-1	U007	Acrylamide
79-10-7	U008	Acrylic acid (I)
80-15-9	U096	alpha,alpha-Dimethylbenzylhydroperoxide (R)
122-09-8	P046	alpha,alpha-Dimethylphenethylamine
134-32-7	U167	alpha-Naphthylamine
131-74-8	P009	Ammonium picrate (R)
03-55-6	P119	Ammonium vanadate
506-61-6	P099	Argentate(1-), bis(cyano-C)-, potassium
692-42-2	P038	Arsine, diethyl-
696-28-6	P036	Arsonous dichloride, phenyl-
115-02-6	U015	Azaserine
151-56-4	P054	Aziridine
75-55-8	P067	Aziridine, 2-methyl-
50-07-7	U010	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-
542-62-1	P013	Barium cyanide
56-55-3	U018	Benz[a]anthracene
57-97-6	U094	Benz[a]anthracene, 7,12-dimethyl-
225-51-4	U016	Benz[c]acridine
56-49-5	U157	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
98-87-3	U017	Benzal chloride
95-53-4	U328	Benzenamine, 2-methyl-
636-21-5	U222	Benzenamine, 2-methyl-, hydrochloride
99-55-8	U181	Benzenamine, 2-methyl-5-nitro-
101-14-4	U158	Benzenamine, 4,4'-methylenebis[2-chloro-
3165-93-3	U049	Benzenamine, 4-chloro-2-methyl-, hydrochloride
106-49-0	U353	Benzenamine, 4-methyl-
100-01-6	P077	Benzenamine, 4-nitro-
-11-7	U093	Benzenamine, N,N-dimethyl-4-(phenylazo)-
98-82-8	U055	Benzene, (1-methylethyl)- (I)
100-44-7	P028	Benzene, (chloromethyl)-

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS Number	RCRA listing	Chemical Name
100-44-7	P028	Benzene, (chloromethyl)-
98-87-3	U017	Benzene, (dichloromethyl)-
98-07-7	U023	Benzene, (trichloromethyl)-
95-94-3	U207	Benzene, 1,2,4,5-tetrachloro-
99-35-4	U234	Benzene, 1,3,5-trinitro-
541-73-1	U071	Benzene, 1,3-dichloro-
26471-62-5	U223	Benzene, 1,3-diisocyanatomethyl- (R,T)
101-55-3	U030	Benzene, 1-bromo-4-phenoxy-
121-14-2	U105	Benzene, 1-methyl-2,4-dinitro-
606-20-2	U106	Benzene, 2-methyl-1,3-dinitro-
608-93-5	U183	Benzene, pentachloro-
305-03-3	U035	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
25376-45-8	U221	Benzenediamine, ar-methyl-
122-09-8	P046	Benzeneethanamine, alpha,alpha-dimethyl-
98-09-9	U020	Benzenesulfonic acid chloride (C,R)
98-09-9	U020	Benzenesulfonyl chloride (C,R)
108-98-5	P014	Benzenethiol
92-87-5	U021	Benzidine
50-32-8	U022	Benzo[a]pyrene
189-55-9	U064	Benzo[rst]pentaphene
98-07-7	U023	Benzotrichloride (C,R,T)
[illegible]44-7	P028	Benzyl chloride
[illegible]0-41-7	P015	Beryllium
91-58-7	U047	beta-Chloronaphthalene
91-59-8	U168	beta-Naphthylamine
598-31-2	P017	Bromoacetone
75-25-2	U225	Bromoform
357-57-3	P018	Brucine
13765-19-0	U032	Calcium chromate
51-79-6	U238	Carbamic acid, ethyl ester
615-53-2	U178	Carbamic acid, methylnitroso-, ethyl ester
79-44-7	U097	Carbamic chloride, dimethyl-
1111-54-6	U114	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters
353-50-4	U033	Carbon oxyfluoride (R,T)
6533-73-9	U215	Carbonic acid, dithallium(1+) salt
75-44-5	P095	Carbonic dichloride
353-50-4	U033	Carbonic difluoride
79-22-1	U156	Carbonochloridic acid, methyl ester (I,T)
75-87-6	U034	Chloral
305-03-3	U035	Chlorambucil
494-03-1	U026	Chlornaphazin
107-20-0	P023	Chloroacetaldehyde
107-30-2	U046	Chloromethyl methyl ether
13765-19-0	U032	Chromic acid H2CrO4, calcium salt
[illegible]01-9	U050	Chrysene
[illegible]-92-3	P029	Copper cyanide
544-92-3	P029	Copper cyanide Cu(CN)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS Number	RCRA listing	Chemical Name
98-82-8	U055	Cumene (I)
	P030	Cyanides (soluble cyanide salts), not otherwise specified
	P030	Cyanides (soluble cyanide salts), not otherwise specified
460-19-5	P031	Cyanogen
506-68-3	U246	Cyanogen bromide (CN)Br
50-18-0	U058	Cyclophosphamide
18883-66-4	U206	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)- carbonyl]amino]-
20830-81-3	U059	Daunomycin
117-84-0	U107	Di-n-octyl phthalate
621-64-7	U111	Di-n-propylnitrosamine
53-70-3	U063	Dibenz[a,h]anthracene
189-55-9	U064	Dibenzo[a,i]pyrene
108-60-1	U027	Dichloroisopropyl ether
111-91-1	U024	Dichloromethoxy ethane
542-88-1	P016	Dichloromethyl ether
696-28-6	P036	Dichlorophenylarsine
311-45-5	P041	Diethyl-p-nitrophenyl phosphate
692-42-2	P038	Diethylarsine
56-53-1	U089	Diethylstilbesterol
94-58-6	U090	Dihydrosafrole
77-78-1	U103	Dimethyl sulfate
124-40-3	U092	Dimethylamine (I)
79-44-7	U097	Dimethylcarbamoyl chloride
142-84-7	U110	Dipropylamine (I)
51-43-4	P042	Epinephrine
55-18-5	U174	Ethanamine, N-ethyl-N-nitroso-
111-91-1	U024	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
60-29-7	U117	Ethane, 1,1'-oxybis-(I)
630-20-6	U208	Ethane, 1,1,1,2-tetrachloro-
75-34-3	U076	Ethane, 1,1-dichloro-
460-19-5	P031	Ethanedinitrile
62-55-5	U218	Ethanethioamide
1116-54-7	U173	Ethanol, 2,2'-(nitrosoimino)bis-
110-80-5	U359	Ethanol, 2-ethoxy-
110-75-8	U042	Ethene, (2-chloroethoxy)-
156-60-5	U079	Ethene, 1,2-dichloro-, (E)-
75-01-4	U043	Ethene, chloro-
140-88-5	U113	Ethyl acrylate (I)
51-79-6	U238	Ethyl carbamate (urethane)
107-12-0	P101	Ethyl cyanide
60-29-7	U117	Ethyl ether (I)
97-63-2	U118	Ethyl methacrylate
62-50-0	U119	Ethyl methanesulfonate
110-80-5	U359	Ethylene glycol monoethyl ether
111-54-6	U114	Ethylenebisdithiocarbamic acid, salts & esters
151-56-4	P054	Ethyleneimine
75-34-3	U076	Ethylidene dichloride

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS Number	RCRA listing	Chemical Name
206-44-0	U120	Fluoranthene
7782-41-4	P056	Fluorine
628-86-4	P065	Fulminic acid, mercury(2+) salt (R,T)
110-00-9	U124	Furan (I)
109-99-9	U213	Furan, tetrahydro-(I)
110-00-9	U124	Furfuran (I)
18883-66-4	U206	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
765-34-4	U126	Glycidylaldehyde
70-25-7	U163	Guanidine, N-methyl-N'-nitro-N-nitroso-
87-68-3	U128	Hexachlorobutadiene
1888-71-7	U243	Hexachloropropene
757-58-4	P062	Hexaethyl tetraphosphate
302-01-2	U133	Hydrazine (R,T)
1615-80-1	U086	Hydrazine, 1,2-diethyl-
540-73-8	U099	Hydrazine, 1,2-dimethyl-
122-66-7	U109	Hydrazine, 1,2-diphenyl-
60-34-4	P068	Hydrazine, methyl-
79-19-6	P116	Hydrazinecarbothioamide
7783-06-4	U135	Hydrogen sulfide
7783-06-4	U135	Hydrogen sulfide H2S
80-15-9	U096	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
[illegible]39-5	U137	Indeno[1,2,3-cd]pyrene
[illegible]-73-6	P060	Isodrin
120-58-1	U141	Isosafrole
148-82-3	U150	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
115-02-6	U015	L-Serine, diazoacetate (ester)
303-34-4	U143	Lasiocarpine
7446-27-7	U145	Lead phosphate
1335-32-6	U146	Lead subacetate
1335-32-6	U146	Lead, bis(acetato-O)tetrahydroxytri-
541-73-1	U071	m-Dichlorobenzene
108-31-6	U147	Maleic anhydride
109-77-3	U149	Malononitrile
148-82-3	U150	Melphalan
628-86-4	P065	Mercury fulminate (R,T)
126-98-7	U152	Methacrylonitrile (I, T)
124-40-3	U092	Methanamine, N-methyl- (I)
62-75-9	P082	Methanamine, N-methyl-N-nitroso-
107-30-2	U046	Methane, chloromethoxy-
74-95-3	U068	Methane, dibromo-
74-88-4	U138	Methane, iodo-
624-83-9	P064	Methane, isocyanato-
542-88-1	P016	Methane, oxybis[chloro-
509-14-8	P112	Methane, tetranitro- (R)
[illegible]25-2	U225	Methane, tribromo-
[illegible]50-0	U119	Methanesulfonic acid, ethyl ester
74-93-1	U153	Methanethiol (I, T)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS number	RCRA listing	Chemical Name
75-70-7	P118	Methanethiol, trichloro-
91-80-5	U155	Methapyrilene
79-22-1	U156	Methyl chlorocarbonate (I,T)
1338-23-4	U160	Methyl ethyl ketone peroxide (R,T)
60-34-4	P068	Methyl hydrazine
74-88-4	U138	Methyl iodide
624-83-9	P064	Methyl isocyanate
80-62-6	U162	Methyl methacrylate (I,T)
74-95-3	U068	Methylene bromide
56-04-2	U164	Methylthiouracil
50-07-7	U010	Mitomycin C
70-25-7	U163	MNNG
1615-80-1	U086	N,N'-Diethylhydrazine
71-36-3	U031	n-Butyl alcohol (I)
759-73-9	U176	N-Nitroso-N-ethylurea
684-93-5	U177	N-Nitroso-N-methylurea
615-53-2	U178	N-Nitroso-N-methylurethane
924-16-3	U172	N-Nitrosodi-n-butylamine
1116-54-7	U173	N-Nitrosodiethanolamine
55-18-5	U174	N-Nitrosodiethylamine
62-75-9	P082	N-Nitrosodimethylamine
549-40-0	P084	N-Nitrosomethylvinylamine
100-75-4	U179	N-Nitrosopiperidine
930-55-2	U180	N-Nitrosopyrrolidine
107-10-8	U194	n-Propylamine (I,T)
494-03-1	U026	Naphthalenamine, N,N'-bis(2-chloroethyl)-
91-58-7	U047	Naphthalene, 2-chloro-
13463-39-3	P073	Nickel carbonyl
13463-39-3	P073	Nickel carbonyl Ni(CO)4, (T-4)-
557-19-7	P074	Nickel cyanide
557-19-7	P074	Nickel cynaide Ni(CN)2
154-11-5	P075	Nicotine, & salts
10102-45-1	U217	Nitric acid, thallium(1+) salt
10102-43-9	P076	Nitric oxide
10102-44-0	P078	Nitrogen dioxide
10102-43-9	P076	Nitrogen oxide NO
10102-44-0	P078	Nitrogen oxide NO2
55-63-0	P081	Nitroglycerine (R)
3288-58-2	U087	O,O-Diethyl S-methyl dithiophosphate
95-53-4	U328	o-Toluidine
636-21-5	U222	o-Toluidine hydrochloride
20816-12-0	P087	Osmium oxide OsO4, (T-4)-
20816-12-0	P087	Osmium tetroxide
765-34-4	U126	Oxiranecarboxyaldehyde
60-11-7	U093	p-Dimethylaminoazobenzene
100-01-6	P077	p-Nitroaniline
106-49-0	U353	p-Toluidine

DEPARTMENT OF ENVIRONMENTAL QUALITY
Non-Pesticide P and U List Members

CAS Number	RCRA listing	Chemical Name
123-63-7	U182	Paraldehyde
608-93-5	U183	Pentachlorobenzene
62-44-2	U187	Phenacetin
58-90-2	See F027	Phenol, 2,3,4,6-tetrachloro-
131-74-8	P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)
120-83-2	U081	Phenol, 2,4-dichloro-
87-65-0	U082	Phenol, 2,6-dichloro-
1534-52-1	P047	Phenol, 2-methyl-4,6-dinitro-, & salts
56-53-1	U089	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
103-85-5	P093	Phenylthiourea
75-44-5	P095	Phosgene
311-45-5	P041	Phosphoric acid, diethyl 4-nitrophenyl ester
7446-27-7	U145	Phosphoric acid, lead(2+) salt (2:3)
3288-58-2	U087	Phosphorodithioic acid, O,O-diethyl S-methyl ester
1314-80-3	U189	Phosphorus sulfide (R)
85-44-9	U190	Phthalic anhydride
100-75-4	U179	Piperidine, 1-nitroso-
78-00-2	P110	Plumbane, tetraethyl-
506-61-6	P099	Potassium silver cyanide
108-60-1	U027	Propane, 2,2'-oxybis[2-chloro-
109-77-3	U149	Propanedinitrile
107-12-0	P101	Propanenitrile
75-86-5	P069	Propanenitrile, 2-hydroxy-2-methyl-
542-76-7	P027	Propanenitrile, 3-chloro-
109-06-8	U191	Pyridine, 2-methyl-
154-11-5	P075	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
930-55-2	U180	Pyrrolidine, 1-nitroso-
181-07-2	U202	Saccharin, & salts
7783-00-8	U204	Selenious acid
7783-00-8	U204	Selenium dioxide
630-10-4	P103	Selenourea
506-64-9	P104	Silver cyanide
506-64-9	P104	Silver cyanide Ag(CN)
18883-66-4	U206	Streptozotocin
157-24-9	P108	Strychnidin-10-one, & salts
357-57-3	P018	Strychnidin-10-one, 2,3-dimethoxy-
157-24-9	P108	Strychnine, & salts
1314-80-3	U189	Sulfur phosphide (R)
77-78-1	U103	Sulfuric acid, dimethyl ester
78-00-2	P110	Tetraethyl lead
109-99-9	U213	Tetrahydrofuran (I)
509-14-8	P112	Tetranitromethane (R)
757-58-4	P062	Tetraphosphoric acid, hexaethyl ester
1314-32-5	P113	Thallic oxide
7791-12-0	U216	Thallium chloride TlCl
1314-32-5	P113	Thallium oxide Tl2O3
563-68-8	U214	Thallium(I) acetate

ATTACHMENT 6. EXAMPLES OF PESTICIDE RESIDUE WASTE CLASSIFICATION AND MANAGEMENT REQUIREMENTS UNDER THE CURRENT RULES AS COMPARED TO MANAGEMENT PURSUANT TO THE ABOVE RECOMMENDATIONS

Example 1. Discarded substances containing pesticides which were legally applied such as treated seeds, carpet, soil, water and plants.

Current Regulation: Such substances are defined as pesticide residues and are subject to bioassay testing if discarded, and classification as a state-only hazardous waste if the test is failed.

Recommended Regulation: Such substances would no be considered a pesticide residue and could be managed as solid waste. No treatment would be required before disposal.

Example 2. Rinsewater from rinsing the interior surfaces of containers and spray or pesticide mixing equipment.

Current Regulation: If this rinsewater is used or reused according to label directions for the pesticide concerned, then it is not by definition a pesticide residue and is not subject to the bioassay test to determine if it is hazardous waste. If the rinsewater is discarded and it is not a federal pesticide waste, then it is a pesticide residue subject to the state-only Aquatic Toxicity Test. If the residue fails the test, it is classified as a state-only hazardous waste (X001) and must be containerized by the generator. It can be stored for up to 90 days, must be disposed in a permitted hazardous waste disposal facility (Subtitle C facility), and reported to the Department. Generator fees would also be assessed.

Recommended Regulation: If the rinsewater is used according to label directions for the pesticide concerned, then it is not by definition a pesticide residue and therefore is not a state-only pesticide residue hazardous waste. If the rinsewater is discarded and it is not a federal pesticide waste, then the waste becomes a state-only pesticide residue hazardous waste subject to hazardous waste regulations, until declassified when it first is managed according to the requirements in the Universal Waste Rule. These requirements allow collection of wastes at an authorized facility, either on or off-site, and storage for an extended period of time. If land disposal restriction standards can be met[1], disposal in the lined portion of an approved solid waste landfill (Subtitle D facility) may occur. The handler would not be a hazardous waste generator, would not need to count the wastes, and would not need to pay fees or report to the Department. If the waste was a federal pesticide waste, the land disposal restriction standards would have to be met before any land disposal. If the waste was not a federal pesticide waste, then the land disposal restrictions for the constituents of concern would have to be met before the waste could be disposed in a Subtitle D facility but would not have to be met for disposal in a Subtitle C facility.

Example 3. Contaminated soil from cleaning up a spilled pesticide.

Current Regulation: If the contaminated soil is not a federal pesticide hazardous waste, then the soil is subject to the bioassay test. If the soil fails the test, then the soil is a state-only

[1]Assume the residue is wastewater containing Aldrin, an insecticide. The land disposal restriction standard is .021 milligrams per liter, and the residue would need to meet that concentration or a lower concentration before it could be disposed in a Subtitle D facility.

hazardous waste and hazardous waste rules would apply. Current rules require meeting all generator requirements and potentially treatment, storage and disposal facility requirements. For example, if clean closure does not occur (i.e., contaminated soil is not removed to certain specified low levels for the pesticide constituents), the site would be permitted as a landfill closed in place.

Recommended Regulation: If the contaminated soil is not a federal hazardous waste, then it could be managed under the provisions in the universal waste rule program. Disposal in a Subtitle D landfill could occur provided the land disposal restriction standards were met, where applicable and the toxicity characteristic removed by treatment if the waste was a federal TCLP waste. If no land disposal restriction standard exists, the soil would be subject to bioassay testing. If the soil fails the test, the soil would need to be treated so that it no longer failed the test before it could be disposed in a Subtitle D facility or disposed in a Subtitle C facility if not treated.

Attachment 7

AGENDA ITEM K
ATTACHMENT E2
JULY 12, 1996

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December 17, 1995

VIA FACSIMILE

Roy Brower
Hazardous Waste Policy and Program Development
Department of Environmental Quality
811 SW Sixth Ave., 8th Floor
Portland, Oregon 97204

Re: Recommendations of the Pesticide Waste Advisory Group

Dear Roy:

First of all, I want to thank the Department for the time extension provided to me to submit these comments on the proposed Recommendations of the Pesticide Waste Advisory Group to the Environmental Quality Commission. Unfortunately, their submittal was delayed by the recent inclimate weather, power outages and hardware malfunctions. Enclosed are my thoughts and comments regarding the proposed Recommendations, which are separated into three principal categories:

1. General impressions on the Department's utilization of this particular Advisory Group,

2. Specific concerns with the Draft December x, 1995 letter from the Group Chair, and

3. Specific concerns with the "Pesticide Waste Advisory Group Recommendations" document.

Although, based upon the Department's actions and comments during the Advisory Group meetings, I have little hope that as a result of these comments the Department will reconsider its proposed position. Nonetheless, I must as a matter of principle, conscience and legal correctness submit them to you.

I. GENERAL COMMENTS REGARDING THE ADVISORY GROUP PROCESS:

It was my understanding, in accepting the Director's request to participate in the Pesticide Waste Advisory Group, that the Department was truly seeking good faith input into the proposed administrative rule making process from representatives of interested/knowledgeable parties. Further, that the Department intended to give good faith consideration to comments/suggestions from Group members inorder to craft a meaningful proposal from the Advisory Group deliberations. This understanding was reinforced by the Director's October 9, 1995 remarks to the Group wherein Director Marsh stated that in invoking the Advisory Group process, the Department was looking at "duplicative state rules where there is no real value for a more stringent state rule" (emphasis added), that the final recommendations of the Advisory Group should pass the EQC's 12 Step Evaluation, and that the state would be more stringent than the federal rules "only when it was truly justified to protect human health or the environment."

After attending all the Advisory Group's meeting and fully participating in the process, it ny impression, much to my disappointment, that the Department had no intention of implementing the Director's stated objectives with this Advisory Group. But rather, the Department appears to have merely wanted a assemble a group of recognized individuals from within the industrial/environmental community to give perfunctory approval to the Department's predetermined agenda for the Group. The process appears to have been designed to give the appearance of public/industry input without actually doing so. The Department appeared indifferent to input that went beyond the scope of the Department's pre-established agenda. Further, when good faith comments were offered by Group members that exceeded the Department's agenda, I believe it is fair to characterize the Department's attitude towards those comments as one of indifference or even active opposition. Lastly, the Department's knowing and intentional curtailment of the Advisory Group's participation in its recommendations to the **"concept stage"** of what is proposed to be a convoluted, complex, and very confusing rule (*See,* Attachment 4) fails to take advantage of the expertise within the Advisory Group in drafting a workable rule and garnering support for the Department's proposal.

The Oregon Aquatic Toxicity/pesticide residue rule (Hazardous Waste Code X001) is the outgrowth of legislation which was originally passed by 1971 Oregon Legislature (1971 Oregon Laws Chapter 699), twenty four years ago, a year after the first Earth Day, and prior to the advent of modern environmental regulations. It occurred five years prior to the passage of RCRA and almost a decade before the promulgation of the initial federal hazardous waste rules. It utilizes a laboratory testing protocol that was developed for industrial wastewaters and that has n unscientifically appropriated to the hazardous waste program in an attempt to access the hazardous characteristics of a broad spectrum of substances. There is no demonstrated cause and effect between the death of test organisms and toxicity. In light of today's complex hazardous waste management scenario, this rule has simply outlived its practical usefulness. However, maintaining the rule, as proposed, will continue to require the regulated community to spend significant time, money and associated resources in determining its applicability to waste streams little, if any, real benefit to the environment.

According to DEQ supplied data, from 1990 through 1994, the XOO1 hazardous waste code accounted for a yearly average of 0.49% of the total annual hazardous waste generated in Oregon (1991 - 0.07%, 1992 - 0.13%, 1993 - 0.07% and 1994 - 1.70%), excluding the high volume industrial wastewaters. This X001 waste stream includes, but is not limited to, residues of legally applied pesticides, scrap wood sash or other wood products treated to prevent discoloration from sap stain fungus or cut bits and pieces treated wood trimmings, food cannery wastes, or soils from areas where pesticides have been legally applied. Yet, to bolster its argument for the continued need for this rule the Department cites only the 1994 volumes of 1.70% which were at least an order of magnitude greater than the next highest yearly total and over 300% higher than the four year average. See, Draft Recommendations, Page 5, First Paragraph. Further, the Department's proposal to exempt waste materials and soils containing "legally applied pesticides," coupled with the current exemption of most treated wood wastes from this rule, further diminishes its usefulness or it need. When asked, the Department has been unable to provide to the Advisory Group with examples of specific waste streams or estimated waste volumes that will still be subject to this rule. Just as we no longer generate most written documents with typewriters, but rather use computers or word processors, we no longer need the state only aquatics toxicity rule.

Since 1971, literally hundreds of pages of environmental statutes/regulations governing hazardous waste management at the federal and in state levels have been adopted in Oregon. Today's, intensive hazardous waste management program, which has been accurately characterized as being more complex than the Internal Revenue Code, brings within its jurisdiction greater than 99% of all the hazardous waste generated within the state, without the use of the Aquatic Toxicity rule. In light of such an all encompassing program. one must seriously question the continued need to retain the Oregon state only aquatics toxicity rule. Yet, the Department precluded the Advisory Group from having a good faith deliberation of this important threshold question. The ongoing necessity of rule was simply assumed and the remainder of the time was spent in trying to further "carve out" Department proffered exemptions to the rule.

Once again, I respectfully ask the Department to apply the Director's October 9th stated objectives, and apply the EQC's 12 Step Evaluation to the ongoing need for this state only rule. In light of the above, it is my sincere belief that if such an evaluation were completed the continued codification of the aquatics toxicity rule could not sustain such a good faith evaluation. Once that determination is made, the issues of ORS 466.015 (3) are readily resolvable..

II CHAIRMAN"S COVER LETTER

Based upon my preceding comments, I would recommend that the Chair's cover letter be amended to omit implications that the attached "Recommendations" are those of the Advisory Group. A more accurate representation is that the Recommendations are those which the Department presented to the Advisory Group and which were reviewed by the Advisory Group.

The Advisory Group did not have the opportunity to formulate a set of Recommendations that reflected its position and, to the best of my knowledge; did not vote to approve the Recommendations . Further, the terminal sentence of the third paragraph, Page 1 should be struck. For the reasons noted above, the Recommendations do not "support the goals of the Department," as outlined by the Director in his comments to the Advisory Group.

III. THE DEAPRTMENT"S RECOMMENDATIONS

1. For the reasons previously noted, the title of the "RECOMMENDATIONS" White Paper should be amended to read: "RECOMMENDATIONS OF THE DEQ STAFF TO THE PESTICIDE WASTE ADVISORY GROUP ON THE PROPOSED AMENDMENTS TO THE PESTICIDE RESIDUE RULES."

2. The "Recommendations" are difficult to follow and to understand. Further, the Recommendations presume that the reader has an understanding of the hazardous wastes rules and the intricacies of the Aquatics Toxicity rule that is unrealistic. As an environmental attorney, with some recognized expertise in RCRA, I have a hard time understanding the recommendations, especially Page 6; which also inaccurately reflects current law. Therefore, if the Department decides to submit this proposal to the EQC, the Recommendations White Paper should be re-written to be readily understandable and factually/legally accurate.

3. Recommendations, Page 2, Second Paragraph, Second and Third sentences inaccurately implies that the Advisory Group "developed the recommended rule concepts." Further, it implies that the Group recommended to the Department rather than the Department strongly insisted that the Group adopt "a declassification process for state-only pesticide process waste through the use of the Universal Waste Rule..." The Recommendation should be re-written to accurately reflect what actually occurred.

4. One positive aspect of the proposed recommendation is the Department recognizing that the residues of legally applied residues are not a hazardous waste. However, rather than utilize the Department's proposed and contortous method of acknowledging this fact, a definition for *pesticide residue* could simply be inserted in OAR 340-101-010 to specifically exclude "residues from legally applied pesticides."

5. Recommendations, Page 2, Last Paragraph, last two sentences inaccurately implies that the Advisory Group "agreed" upon the proposed Recommendations and "strongly encourages" the drafting of proposed rules to implement these Recommendations. If the Department disagrees with this assessment, another meeting of the Group should be called to resolve the issue.

6. Recommendations, Page 3 - Definition of Pesticide Residue

The Background portion of this section implies a legal consistency within the statutes and administrative rules that does not exist. For instance:

- OAR 340-109-002(8) is a definition which only applies to OAR Chapter 340 Division 109 regulating the "Management of Pesticide Wastes." The introductory clause to OAR 340-109-002 states, "As used in these rules unless otherwise specified:," the clause "these rules" apply only to OAR Chapter 340 Division 109.

- Pursuant to OAR 340-100-001(2), the hazardous waste management program encompasses OAR 340-Divisions 100 to 110 and 120. However, the definitions governing these rules are found at 40 CFR §260.10 and OAR 340-100-010. *See,* OAR 340-100-010(2). Therefore, an definitions relating to pesticides or pesticide residues should be included in OAR 340-100-002(8) and not require to the regulated community to search throughout the rules to understand their defined terms.

- ORS Chapter 634 pertains to Pesticide Control and is administered by the Department of Agriculture, not the DEQ. There is nothing therein indicating a legislative intent that its provisions be used to regulate hazardous waste.

- ORS Chapters 465 and 466 regulate the management of Hazardous Waste in Oregon. There is nothing therein, including the definition of *Hazardous Waste* at ORS 466.005(7), that indicates at legislative intent to incorporate ORS Chapter 634.

- ORS 466.005(7) does not contain the terms *pesticide* or *pesticide residue,* as stated by the Department. The Department's oft stated argument that ORS 466.005(7)(a) "provides that 'pesticide residue ' are classified as state-only hazardous waste unless declassified by the Commission under ORS 466.015(3)" simply is not substantiated by a careful reading of the statute. The applicable part, ORS 466.005(7)(a) states:

> (7) "Hazardous waste" ... Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):
> (a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

The terms *materials* and *residues* are found in the statute; however, the terms *pesticide* or *pesticide residue,* cited by the Department, are not. Inasmuch as the federal hazardous waste regulations include in the 40 CFR Part 261 Subpart C, listings which include defoliants, desiccants, fungicides, herbicides, insecticides,

nematocides and rodenticides in the D, P and U lists, the objectives of ORS 466.005(7)(a) are met, even if the Aquatics Toxicity Rule is rescinded.

- For the reasons set forth above, I suggest that Department carefully reconsider and probably delete most of this "Definition of Pesticide Residue" section. It must be remembered that there is a significant difference between an administrative rule definition and a statutory definition. The Department has much greater leeway to amend and correct the former than the latter. These distinction's should not become blurred, as is the apparant case.

7. Recommendations, Page 6, Last Paragraph, states that "Provided there is an established federal treatment standard or technology, the federal lands disposal restrictions (LDRs) as adopted under Oregon's state-authorized hazardous waste management program **would apply to state-only pesticide residue wastes containing 'P' or 'U' listed pesticides.**" (Parenthetical and Emphasis Added). It is my understanding, based upon OAR 340-101-033(7)1 that these state only waste are not subject to the 40 CFR Part 268 LDRs. Therefore, all the discussion regarding these state-only hazardous wastes needing comply with federal LDRs must be deleted. This includes the final paragraph on page 6.

For the various reasons set forth above, I do not believe that this set of proposed Recommendations is ready for submittal to the EQC and I do not believe that regulations crafted upon the Attachment 4 Flow Chart are understandable or workable. The Advisory Group's work is not done and we should continue to meet until there is a recommendation from the Group that actually works. Even if such a recommendation requires the Advisory Group to go beyond the "Concept Stage." Thank you once again for the opportunity to comment on the Draft Recommendations. If you have questions or concerns regarding these comments please call.

Sincerely,

James C. Brown

cc: Gary Calaba, DEQ
Don Haagensen, Pesticide Advisory Group Chair
Jim Whitty, AOI

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1 (7) Hazardous waste identified in this section is not subject to 40 CFR Part 268

The Chas. H. Lilly Company

January 4, 1996

Mr. Gary Calaba
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

RE: **Recommendations on Proposed Amendments to Pesticide Residue Waste Rules**

Dear Mr. Calaba,

Thank you for transmitting (on January 3) the Final Draft version of the above referenced document. I have read the document and believe the Final Draft to be an accurate and concise description of both the background work and the consensus reached by the Advisory Group. Thus, I concur with the Recommendations as presented in the Final Draft.

The Chas. H. Lilly Co. appreciates the diligence with which the Department of Environmental Quality has conducted the Advisory Group meetings. Although some members may hold divergent opinions about the issues, I believe there is unanimous agreement that all viewpoints were given a fair hearing.

Sincerely,
The Chas. H. Lilly Co.

Nick Williams

Nick Williams
Environmental Compliance Manager

AGENDA ITEM K
ATTACHMENT E3
JULY 12, 1996

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

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March 13, 1995

RECEIVED
MAR 15 1995
Waste Management & Cleanup Division
Department of Environmental Quality

VIA HAND DELIVERY

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

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

Dear Lydia:

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

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

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

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

Very truly yours,

Donald A. Haagensen

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

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

March 1995

INTRODUCTION

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

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

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

RECOMMENDATIONS

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

Background

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

Recommendation

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

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

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

Background

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

Recommendation

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

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

Background

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

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

Recommendation

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

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

Background

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

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

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

Recommendation

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

DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE/TOXICS USE REDUCTION
ADVISORY COMMITTEE MEETING
March 2, 1995

COMMITTEE MEMBERS PRESENT:
Don Haagensen, (Chair) Cable, Huston, Benedict, Haagensen and Ferris
Richard Matrass, Safety-Kleen
Jim Spear, Williams Control
Robert Westcott, Wesco Parts Cleaners
Jim Whitty, Associated Oregon Industries

DEQ STAFF:
Roy W. Brower; Gary Calaba; Sandy Gurkewitz

The meeting began at 1:05 PM. Two areas of rulemaking were addressed: adoption of federal rules enacted between July 1, 1993 and April 1, 1995 by reference and proposed changes to state rules to be deleted or requiring clarification.

ADOPTION OF FEDERAL RULES BY REFERENCE

Gary Calaba provided handouts (attached) and a brief overview of federal rules to be adopted which included: guidelines for burners and industrial furnaces (BIFs); revision to toxicity characteristic leaching procedure (TCLP) testing methods; establishment of health-based BIF levels for Beville mining residue; decision not to list chlorophenolic formulations from woodtreaters who surface treat; increased amount of contaminated media from treatability studies exempted from Subtitle C hazardous waste regulations; technical amendment to treatment, storage and disposal facility recordkeeping; correction to beryllium hazardous waste listing; and conditional exemption of K061, K062, and F006 hazardous wastes from RCRA regulation.

Calaba then explained the pressing need for a rulemaking at this time so that DEQ can permanently adopt the federal Universal Treatment Standards (UTS). Temporary adoption of this rule expires on June 16, 1995. To provide for contuity of regulation, UTS standards must be in place permanently by this date. A public hearing is scheduled for April 24 with an EQC meeting on May 19. The Committee recommended adoption of the federal rules as presented by staff.

PROPOSED CHANGES TO STATE RULES:

1. Amend the Oregon rules that adopt into state rule, the U.S. EPA Hazardous Waste *(Oregon Administrative Rules* (OAR) 340-100-002). A number of housekeeping measures to update OAR language were proposed (see Appendix A, page 7 of attachment) to allow adoption of the most recent federal rules. Redundant language was also deleted. In addition, a footnote was added to OAR 340-100-002 to clarify Oregon's position on the federal mixture and derived-from rules which were vacated by the Courts for administrative reasons in 1991 and reissued by EPA in 1992.

Committee members were concerned that because the mixture and derived-from rules state that once a waste always a waste, legitimate hazardous waste re-use and recycling might be

discouraged. Because technology has changed, the rule might not be as applicable as originally intended. Staff informed the committee that there is movement in the EPA, for certain wastes, to move wastes out of this cycle, some of which will be addressed in the Universal Waste Rule.

2. Amend Oregon's hazardous waste trade secret designation procedures (OAR 340-100-003) to:

(a) clarify that confidentiality for hazardous waste permit modifications must be made at the time of submission by referencing the *Code of Federal Regulations* (CFR) - 40 CFR 270.42 in OAR 340-100-003(4)(b). Inclusion of this reference was recommended by the Advisory Committee last year and inadvertently left out.

(b) add language to sections (5) and (6) that allows DEQ to extend the due date for CBI substantiation and describes a process for a claimant to request reconsideration of a confidentiality claim (see pages 10 and 11 of the attachment).

The Committee agreed with the proposed changes, and provided some editing for clarification. The Committee recommended striking from (5)(a), the last sentence "The time may be extended either on the Department's initiative or at the claimant's request" because it was redundant. They also proposed adding (6)(a) & (b) to (6)(d)(C) which provides recourse for the claimant if they do not agree with the Attorney General's decision. The also recommended adding language to encourage the option of meeting with the Department in the Comment section and change wording asking for "appeal" to "request for reconsideration".

3. Amend Sandblast Grit Rules (OAR 340-101-040(1)(a)) by including a comment section to reflect that the Best Pollution Prevention Practices (BPPs) are guidance only, and delete references in the rule describing BPPs as enforceable. The Committee agreed with staff and recommended minor wording changes.

4. Delete OAR 340-102-042(Exception Reporting) and special requirements for small quantity hazardous waste generators (340-102-044) thereby deleting requirements that are more stringent than federal requirements. The Committee agreed with this proposal.

5. Other rule revisions corrected outdated or erroneous citations.

The meeting adjourned at 3:00 PM.

2. Rule 340-100-003 is proposed to be amended as follows:

PUBLIC DISCLOSURE AND CONFIDENTIALITY.

340-100-003

(1) The provisions of this rule replace the provisions of 40 CFR 260.2.

(2) All records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations are open for public inspection and copying except as provided in sections (3) to (7) of this rule. Provided however, that nothing in this rule is intended to alter any exemption from public disclosure or public inspection provided by any provision of ORS Chapter 192 or other Oregon law.

(3) (a) Records, reports, and information submitted pursuant to the hazardous waste statutes, rules, and regulations may be claimed as trade secret by the submitter in accordance with ORS 192.410 through 192.505 and 466.090.

(b) The Department shall designate a Document Control Officer for the purpose of receiving, managing, and securing confidential information. The following information shall be secured by the Document Control officer:

A) claimed trade secret information until the claim is withdrawn by the submitter, determined not to be confidential under section (6) of this rule, or invalidated,

B) information determined to be trade secret, and

C) any other information determined by court order or other process to be confidential.

(c) All Uniform Hazardous Waste Manifest information submitted on any required report pursuant to the hazardous waste statutes, rules, and regulations is publicly available and is not subject to trade secret confidentiality claims.

(d) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

(4) The following procedures shall be followed when a claim of trade secret is made:

(a) Each individual page of any submission that contains the claimed trade secret

information must be clearly marked as "trade secret," "confidential," "confidential business information," or equivalent. If no claim by appropriate marking is made at the time of submission, the submitter may not afterwards make a claim of trade secret.

(b) Written substantiation in accordance with paragraph 4(d) of this rule:

A) Must accompany any information submitted pursuant to OAR 340-102-012, 340-102-041, 340-104-075, 340-105-010, 340-105-013, 340-105-014, 340-105-020, 340-105-021, 40 CFR 262.12, 264.11, *270.42* or 265.11 or

B) For all other information submitted to the Department, written substantiation must be provided pursuant to subsection 5 of this rule.

A late submission of the trade secret substantiation will invalidate the trade secret claim.

(c) Trade secret information must meet the following criteria:

(A) Not the subject of a patent;

(B) Only known to a limited number of individuals within an organization;

(C) Used in a business which the organization conducts;

(D) Of potential or actual commercial value; and

(E) Capable of providing the user with a business advantage over competitors not having the information.

(d) Written substantiation of trade secret claims shall address the following:

(A) Identify which portions of information are claimed trade secret.

(B) Identify how long confidential treatment is desired for this information.

(C) Identify any pertinent patent information.

(D) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken

to guard against undesired disclosure of the information to others.

(E) Describe the nature of the use of the information in business.

(F) Describe why the information is considered to be commercially valuable.

(G) Describe how the information provides a business advantage over competitors.

(H) If any of the information has been provided to other government agencies, identify which one(s).

(I) Include any other information that supports a claim of trade secret.

(e) A public version of the document containing the claimed trade secret information must be submitted at the time the trade secret substantiation is required as provided in subsection 4 (b)(A) and subsection 5 (a) of this rule.

(5) (a) Written trade secret substantiation as required under subsection 4 (b)(B) and a public version of the information as required by subsection 4 (e) shall be provided within 15 *working* days of receipt of any Department request for trade secret substantiation or the public version of the information. *The Department may extend the time up to an additional 30 days to provide the substantiation and public version if the complexity or volume of the claimed trade secret information is such that the additional time is required for the claimant to prepare the responses. The time may be extended either on the Department's initiative or at the claimant's request.* The Department shall request the written trade secret substantiation or the public information version if:

(A) a public records request is received which would reasonably include the information, if the information were not declared as trade secret, or

(B) it is likely that the Department eventually will be requested to disclose the information at some future time and thus have to determine whether the information is entitled to trade secret confidentiality. This includes information that relates to any permit, corrective action, or potential violation information.

(b) A late submission of the written trade secret substantiation will invalidate the

trade secret claim.

(6) When evaluating a trade secret claim the Department shall review all information in its possession relating to the trade secret claim to determine whether the trade secret claim meets the requirements for trade secret as specified in paragraphs 4(c) and 4(d) of this rule. The Department shall provide written notification of any final trade secret decision and the reason for it to the person submitting the trade secret claim within 10 working days of the decision date.

(a) If the Department or the Attorney General determines that the information meets the requirements for trade secret, the information shall be maintained as confidential.

(b) If the Department determines that the information does not meet the requirements for trade secret, the Department shall request a review by the Attorney General. If the Attorney General determines that the information does not meet the requirements for trade secret, the Department may make the information available to the public no sooner than 5 working days after the date of the written notification to the person submitting the trade secret claim.

(c) A person claiming information as trade secret may request the Department to make a trade secret determination. The person must submit the written substantiation in accordance with paragraph 4(d) of this rule and the public version in accordance with paragraph 4(e) of this rule. The Department shall make the determination within 30 days after receiving the request, written substantiation, and the public version.

(d) If the claimant disagrees with the Department's decision, the claimant may file a request for reconsideration with the Department. If the reconsideration request is received prior to public release of the claimed trade secret information, the claimed trade secret information shall be kept confidential until the Department has made a final determination and the claimant properly notified in accordance with Section (6) of this rule. In addition to the requirement of Section (6) of this rule, the following shall govern the reconsideration request process:

(A) The reasons for the reconsideration request must be provided in writing to the Department no later than 10 working days following the Department's receipt of the reconsideration request.

(B) The Department may take reasonable time to clarify the request and the

reasons therefor.

(C) The Department shall make its determination and shall submit such determination to the Attorney General for review. When the Attorney General notifies the Department of its concurrence, the determination will be final.

(7) Records, reports, and information submitted pursuant to these rules shall be made available to the Environmental Protection Agency (EPA) upon request. If the records, reports, or information has been submitted under a claim of confidentiality, the state shall make that claim of confidentiality to EPA for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.

(Comment: It is suggested that claims of trade secret be restricted to that information considered absolutely necessary and that such information be clearly separated from the remainder of the submission.)

3. Rule 340-100-011 is proposed to be amended as follows:

References

340-100-011

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

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

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

(2) The references listed in section (1) of this rule and in 40 CFR 260.11 are available for inspection at the Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, OR 97204. These materials are incorporated as they exist on *April 1* ~~July 1~~, 1990*5*.

4. Appendix 1 of Rule 340-101-040 is proposed to be amended as follows:

Wastes Requiring Special Management

340-101-040

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for amendments of Oregon Hazardous Waste Rules

RULE IMPLEMENTATION PLAN

Summary of the proposed rule

This rulemaking addresses five main areas:

I. Adoption of Federal Used Oil and Hazardous Waste Regulations from April 1, 1993 Through March 31, 1996

II. Adoption of Federal Universal Waste Rule and Amendments

III. Changes to the State-Only Pesticide Residue Aquatic Toxicity Rule and Elimination of the "Three and Ten Percent Rule" as a Basis for Regulating Pesticides Wastes

IV. Changes to Hazardous Waste Trade Secret Rule for Trade Secret Claim Substantiation Procedures

V. Miscellaneous Changes and Technical Corrections

Proposed effective date of the rule

Upon filing.

Proposal for notification of affected persons

The major parties to be notified will be those affected by the universal waste rule and the pesticide residue rule. The following efforts are to be undertaken:

1 The Department will mail factsheets to all large quantity and small quantity hazardous waste generators concerning the new management options available for universal wastes which include: batteries, mercury thermostats, recalled pesticides plus mercury-containing lamps.

2. The Department will prepare and distribute a factsheet on management of pesticide residues under the universal waste rule.

3 The Department will communicate the new regulatory developments to the following organizations at their annual conferences or in another appropriate forum:

- Oregon Nurseryman's Association
- Agricultural extension agents

- Registered pesticide applicators
- County weed control departments

Proposed Implementing Actions

The major implementation work will focus on the universal waste rule and the pesticide residue rule. The following are efforts to be undertaken:

1. Staff training.

   The Department will train its regulatory and technical assistance staff on the requirements associated with universal waste for small and large quantity on-site handlers, off-site handlers, and destination facilities. Issues to be discussed will include: what is considered treatment for each type of material, how will notification be handled, how will these facilities be inspected, how to coordinate the headquarters and regional efforts on reporting back to the commission on the success in implementing the universal waste rule and pesticide rules.

2. Technical assistance materials.

   The Department will prepare factsheets on each of the universal waste materials to give guidance on how to manage the materials under the new rules, how to contact service providers, and what alternatives are available. The Department will target mailings to hazardous waste generators that are likely generators of universal waste.

3. Evaluation plan.

   Headquarters staff will compile summary information on all reported universal waste information and the businesses that are submitting it. The Department has committed to review the need for more stringent requirements for off-site Handlers two years after the adoption of the rule The Department will also compile information on the number and quantity of pesticides collected through pesticide collection programs in operation since the rules went into effect. This information, including field notes and observations of the regional and headquarters staff, will be used to evaluate the progress of the universal waste rules in meeting the goals of increased regulatory flexibility while protecting human health and the environment. A summary of this information will provide the basis for recommendations, if any, to the EQC on revisions to the universal waste rule.

Proposed Training/Assistance Actions

The Department will prepare a series of workshops in Fall of 1996 to address basic hazardous waste issues and to introduce the new regulations on universal waste to the

regulated community. These workshops will be conducted in each of DEQ's three regions. The Department also will provide training on these regulatory changes through incorporation into the Department's existing hazardous waste technical assistance and toxic use reduction efforts.

The Department will prepare information sessions regarding these regulations for presentation at the September 1996 Responsible Environmental Management Conference.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item L
July 12, 1996 Meeting

Title:

ON-SITE SEWAGE SYSTEM TEMPORARY RULE

Summary:

Persons who construct, install or pump septage from on-site sewage disposal systems must be licensed annually. Applicants for licenses after July 1, 1996 must submit proof that they and their employees involved in the construction or installation of on-site sewage disposal systems have either passed a test or attended a DEQ approved training course on the on-site program rules. Another requirement involves submission of detailed origin-destination records from pumpers. The Department believes that imposition of these requirements by the deadline currently set out in rule raises equity issues and is both unreasonably burdensome and costly.

Department Recommendation:

The Department recommends that the Commission approve the temporary rule as presented in Attachment A of this report to reduce three on-site sewage system licensing requirements.

Report Author | Division Administrator | Director

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

State of Oregon
Department of Environmental Quality Memorandum

Date: June 6, 1996

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item L, On-Site Sewage System Temporary Rule, EQC Meeting July 12, 1996

Background

This temporary rule amends three provisions of the on-site program rules approved by the Commission in October of 1994. All three provisions relate to what small businesses must submit with their license applications to construct, install or pump septage from on-site sewage disposal systems.

Change # 1 would delay from July 1, 1996 to January 1, 1997 imposition of a deadline for 1,200 on-site license applicants to submit proof that they have met certification requirements by passing a test or attending a DEQ approved training course on the on-site program rules.

Change #2 would narrow the scope of the certification requirement to cover license applicants and persons supervising construction or installation of on-site systems rather than license applicants and all employees working on the construction or installation of on-site systems.

Change #3 would reduce the amount of paperwork that must accompany a septage pumper's license renewal application from 12 months of detailed origin-destination pumping records to summary information prepared on a form supplied by the Department.

No Public Hearing has been held on the proposed temporary rule, but it has been reviewed by a trade association representing some of the people affected by the rule. The board of directors of this group, the Oregon On-site Wastewater Association (O2WA), sent the Department a letter endorsing one of the proposed changes and opposing another. They are silent on the third change proposed. A copy of this letter is enclosed as Attachment C.

The temporary rule proposal has also been reviewed and discussed by the On-site Sewage Systems Technical Review Committee (TRC), a standing committee of experts required by rule to advise the Department on rules, approval of innovative systems and other matters which may improve the program. Membership on this nine person committee includes academic experts, tank manufacturers,

installers, engineers, as well as sanitarians and supervising sanitarians from the Department and two counties. By unanimous vote at their June 26, 1996 meeting, the TRC recommended approval of the three rule changes proposed by staff.

Amended rule language is enclosed as Attachment A. Legally, several findings and statements are required to support approval of a temporary rule. They include the following. The Department has prepared a Statement of Need and Emergency Justification for the Commission to approve a temporary rule which is enclosed as Attachment B. A Housing Cost Impact Statement is also required. It has been prepared and is incorporated in the body of this report under the heading of "Relationship to Federal and Adjacent State Rules".

Department staff evaluated comments received . The comments are enclosed as Attachment C. Based upon that evaluation, the Department does not propose any change to the temporary rule proposal. The rationale for this position is summarized below.

The following sections summarize the rulemaking proposal, the process for its development including alternatives considered, 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.

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

No public hearing was held on the temporary rule proposal to change the three provisions of rule, as follows:

Change #1--The deadline by which on-site license applicants must demonstrate compliance with licensee and worker certification requirements would change from July 1, 1996 to January 1, 1997;

Change #2 -- The scope of on-site certification requirements would be narrowed from license applicants and all employees involved in construction or installation of on-site systems to license applicants and all persons involved in the field supervision of construction or installation of on-site systems; and

Change #3 -- A requirement for each pumper to submit 12 months of detailed origin/destination pumping records with each on-site license renewal application would be changed to require that such records be kept, but that only an annual summary be submitted on a form provided by the Department.

Relationship to Federal and Adjacent State Rules

Federal rules do not directly affect the on-site program, however other state law and rule affects what may be done. ORS 183.335(5) requires temporary rule proposals to include a housing cost impact statement to estimate the effect of a proposed rule on the cost of developing a 6,000 square foot parcel including construction of a 1,200 square foot detached single family dwelling on that parcel. Statute requires that this statement be prepared according to rules prescribing a form adopted by the State Housing Council. No rules have been adopted and no form has been specified by the State Housing Council for this requirement. This report attempts to meet the intent of this requirement in the following narrative.

Approval of the proposed temporary rule will have no impact on the cost of a 6,000 square foot parcel of land or the cost of constructing a 1,200 square foot detached single family dwelling on that parcel. However, failure to approve the temporary rule proposal may have an impact on the cost of a developable parcel of land and housing to be built upon it in rural areas not served by municipal sewers. While it is difficult to accurately quantify the potential impact, it would likely come in the following two forms.

First, without approval of the temporary rule, a significant number of the 1,200 businesses which construct, install and pump septic systems may not be able to be licensed in Oregon. Given the demand for new construction, a significant reduction in the supply of businesses able to provide on-site construction, installation or pumping services may increase the price charged. Second, even if the reduced number of installers do not raise prices, builders and homeowners would likely encounter delays in getting systems installed. Delay would translate into cost increases due to the need to pay construction loan interest over a longer period of time.

Authority to Address the Issue

ORS 454.625 and ORS 468.020 confer upon the Commission broad authority to adopt rules necessary to protect the quality of public waters of the state, public health and the general welfare. The Commission relied upon this authority in adopting the current rules, and it would rely upon the same authority in the adoption of a temporary rule.

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

As it became increasingly clear that efforts to deliver the certification test to the regulated community would fall short of providing a reasonable opportunity for all affected people to comply with the requirement by the July 1, 1996 deadline, the Department's regional and headquarters on-site staff began to discuss and consider alternative means of coping with this problem. These discussions were

expanded to include representatives of the regulated community. O2WA indicated support for amending the rule to narrow the scope of requirements to applicants and field supervisors, but disagreed with the Department's proposal to extend the compliance deadline. The issue was also discussed with the Department's Technical Review Committee in a special meeting held for that purpose.

Summary of Significant Public Comment and Changes Proposed in Response

The Oregon On Site Wastewater Association (O2WA) is a trade association with just under 200 members consisting of installers, engineers, manufacturers, soil scientists, regulators and pumpers. Its Board of Directors unanimously supports the Department's proposal to narrow the scope of the certification requirements, but unanimously opposes extending the deadline for compliance with the on-site program certification requirements. They are silent on the third proposal for change. O2WA concludes that the Department's rationale for delaying the deadline is specious, without merit and may harm the public. O2WA's letter argues four points which are presented below together with the Department's response to each, as follows:

O2WA Point #1 -- The Department has had 18 months to implement the requirement; that should have been enough time.

DEQ Response -- The Department understands O2WA's disappointment in our inability to implement the certification program by the rule deadline. However, the key issue is whether or not it is fair to impose a deadline on people who would be harmed if they lost their licenses but may have had neither a reasonable notice of the requirement nor a reasonable opportunity to comply. Several facts lead the Department to conclude that imposing the deadline is unfair, as follows:

1. Until recently, the certification requirement was publicized only by printing the rule in the Secretary of State's Bulletin,

2. No DEQ approved training course has been developed, and

3. The test has only been offered eight times to a total of 336 people at seven locations. 170 (51%) have received passing grades of at least 70% correct answers.

O2WA Point #2 -- With a testing program now under way, the process should continue and the compliance deadline should be met.

DEQ Response -- The Department agrees with O2WA's second point that the testing process should continue now that it is started. Each of the 11 community colleges and each of the 28 county and DEQ on-site program offices has been asked to offer the test. Some have agreed, and we continue to identify additional sites, sending out test packets to proctors and grading exams as quickly as resources allow.

We will continue this effort irrespective of what happens to this rule proposal. However, the facts are that the test has only been given seven times to 336 people (three times at Umpqua Community College, and once each in Crook County, Curry Counties, Mt. Hood Community College, and Oregon Coast Community College). This leaves 96% of the people subject to this requirement out of compliance with less than a month to go until the deadline. Given the average test size of 28 applicants, another 137 test sessions would be required to test those who have not yet passed the test (assuming a 100% pass rate, when it has actually run 51%).

It is clear that no matter what is done, there will not be enough test sessions geographically dispersed throughout the state to be able to say that everyone subject to the certification requirement has been given reasonable notice of the requirement and a reasonable opportunity to comply. Therefore, the Department recommends continuing the testing and certification process, but without imposing an unreasonable compliance deadline.

O2WA Point #3 -- If people can't pass an open-book test on the on-site rules, they shouldn't be installing septic systems where they may harm the environment, public health or their customer's pocket book.

DEQ Response -- The Department is not concerned about protecting those individuals who knew they had to pass the test, took it and failed. However, we are concerned about those who have not been afforded a reasonable opportunity to know about or take the test. Further, some of the educational and testing experts we asked to give the test raised concerns about the validity of our testing instrument.

The test is a 100 question, multiple choice examination that was developed by a committee of O2WA board members, county and DEQ staff. Those who have worked with the test think that it is a fair measure of an applicant's ability to use the rules. However, a couple of community colleges refused to administer the test because it has not been evaluated for required reading level, nor has it been validated or normalized for the target population. They expressed concern about the legal liability arising out of using a test which may be culturally biased. Tests have not yet been prepared for people for whom English is not their first language, and it does not appear that accommodations have been offered or made for person with disabilities.

Lastly, there is the issue of protecting public health and the environment. While it is desirable to have knowledgeable licensees, the on-site pumping, construction and installation programs are closely regulated and inspected to be adequately protective. That is, while it is desirable for constructors and installers to know the on-site program rules, inspectors do know them and will require that systems be constructed in accordance with those rules.

O2WA point #4 -- No economic dislocation will occur, because installers who can't pass the test will simply put their back hoes and dump trucks to some other use.

DEQ Response -- The Department finds the O2WA's fourth point much too dismissive of the potential economic impact of a decision to enforce the current certification deadline. Of course, most people who lose a job can find some other employment, but that does not mean that there is no cost to such a change. It may take a while to find alternative employment. The new employment may not be as remunerative. Existing investments may be wasted and new investments in recruitment, training, equipment and marketing may be required.

The Department is also concerned about the cost imposed on the general public by a drastic reduction in the number of businesses licensed to perform on-site work. Due to the economic law of supply and demand, competition to obtain the services of a much smaller number of providers is likely to lead to price increases.

Finally, denial of an on-site license renewal application is one of the Department actions subject to a contested case hearing at the request of the applicant. If a substantial number of renewal applications were denied, and the applicants requested a contested case hearing to argue the unfairness of the denial, it would have potential to bankrupt the program (paying for hearings officers) and completely tie up on-site staff and the Commission in administrative matters for a protracted period of time. Preventing procedural unfairness is much more cost-effective, and better for all concerned, than curing its deleterious effects after the fact.

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

In Oregon, before any person may install or construct an on-site sewage disposal system, or pump out a septic tank, he or she is required by OAR 340-71-600 to first obtain a license from the Department. These licenses run from July 1st of one year to June 30th of the next. To receive a license each applicant must meet all of the requirements set out in rule. The proposed temporary rule reduces the following three requirements:

1. OAR 340-71-600(1) requires that, beginning July 1 1996, in order to be licensed, each applicant must pass a written examination to demonstrate familiarization with the on-site rules in OAR Chapter 340, Divisions 71 and 73, or attend a Department approved training session.

With respect to this requirement, the Department proposes delaying the certification deadline until January 1, 1997, the maximum time a temporary rule may be in effect. During the term of the temporary rule, the Department will undertake permanent rulemaking and propose to extend the certification deadline further to July 1, 1997 (the next on-site license renewal deadline) or later.

Time is needed to obtain the resources to properly develop and implement a competent certification program. The problems the Department has encountered in implementing the current rule stem from the lack of any staffing, fee or other budgeted revenue to pay for what is needed to carry out the certification requirement. A program option package has been proposed to enhance the on-site

program in the Department's 1997-99 biennial budget. If the positions and revenues requested to pay for them are approved by the Governor and Legislature, then the Department will be able to properly carry out its on-site certification responsibilities. Should the staffing and revenues not be approved, then the Department will be unable to do a decent job. In this case, the Department will propose a permanent rule to make on-site worker certification a voluntary program to be implemented in the private sector.

The rule amendment imposing on-site certification requirements was approved by the Commission in October of 1994. Since then, notice of this requirement has been disseminated through publication of the rule in the Secretary of State's Bulletin and three recent statewide mailings. No Department approved training course has been offered, and only in the last two months has a certification test been developed and administered with help from O2WA, Umpqua Community College and others.

Currently, about 100 small businesses hold licenses to pump septage in Oregon, and about another 1,100 hold licenses to construct or install on-site sewage disposal systems. Of these, only about 200 (17%) have taken the test and just over 100 (8%) received passing scores of 70% or above. Just two more tests are scheduled before June 30th (at Mount Hood Community College). As yet, only one test has been held in Central or Eastern Oregon. Given the time remaining before the effective date of this requirement, it is virtually impossible for all of the people subject to the requirement, to meet it.

2. The same rule section goes on to impose the same examination or training requirement on, *all persons employed by the licensee who are involved in the construction or installation of systems.*

The Department proposes to narrow the scope of this requirement from "all employees" to "the person at each job site who supervises or is responsible for" the construction or installation of the system.

The Department believes that requiring all employees involved in construction or installation of systems to be certified over reaches what is necessary to protect public health and the environment. Reducing the scope of the requirement to those people in the field who supervise or are responsible for construction and installation of systems is adequate and more in keeping with other certification programs. That is, specific state statutes mandate certification for wastewater and drinking water systems. However, these requirements extend only to the operator in charge of each system and not to every operator that may be employed by those systems. This narrower scope has worked well in protecting public health and the environment from improper operation of wastewater treatment and drinking water treatment systems. In addition to being unnecessary, imposing a certification requirement as a precondition to employment in the on-site sewage disposal industry may also create an unfair and culturally biased barrier to employment for many individuals who need these jobs.

3. OAR 340-71-600(2)(f) requires that an applicant which operates a septage pumping service must submit a copy of the past 12 months of complete origin-destination pumping records with the application.

This requirement was also imposed by a rule amendment approved by the Commission in October of 1994. It replaced a requirement that pumpers keep the same detailed records and make them available for inspection by the Department upon request. It is proposed that the rule be changed to require that a pumper's on-site license renewal application include summary origin-destination information on a form supplied by the Department.

Submission of 12 months of detailed records is unreasonably burdensome and costly to pumpers, and this level of detail is not routinely needed by the Department. Additionally, detailed pumping records amount to a septage pumper's customer list. For most businesses, a customer list is an important piece of proprietary information. Since DEQ lacks the legal authority to treat this information confidentially, it should not routinely be requested and made part of the public record where anyone may request it.

The earlier requirement was adequate to meet the Department's needs. When a complaint or some other reason to question a hauler's disposal practices emerges, the records are available for review and, the absence of these records may serve as a basis for enforcement.

Requiring that all of the detailed origin-destination pumping records be submitted each year with a licensee's renewal application imposes a burden on the application without conferring any corresponding benefit on the Department. The Department has neither the room to store the physical records nor the resources to enter them in a data base, analyze them and use the resulting information as a basis for making program management decisions.

For the past year, the Department has asked that each pumper prepare a septage management plan which includes, among other things, a summary form called a "Septage Management Activities Inventory" . We have asked that the inventory form be submitted with the renewal application and that form (together with the availability of more detailed records at each pumper's office) has been adequate to meet the Department's oversite needs.

Recommendation for Commission Action

It is recommended that the Commission adopt the proposed temporary rule affecting the On-site Sewage Disposal Program as presented in Attachment A of the Department Staff Report.

Attachments

A. Rule (Amendments) Proposed for Adoption
B. Supporting Procedural Documentation:
Statement of Need and Emergency Justification

C. Written Comment Received from Oregon On Site Wastewater Association (O2WA)

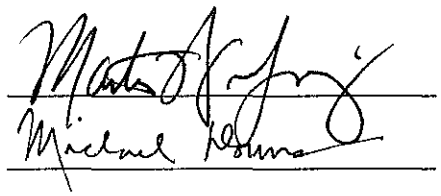
Reference Documents (available upon request)

None

Approved:

Section:

Division:



Report Prepared By: Martin W. Loring

Phone: (503) 229-5415

Date Prepared: June 6, 1996

Attachment A

Note: The **underlined** portion of text represent proposed additions to the rule. The ~~*[bracketed]*~~ portion of text represents proposed deletions to the rule.

340-71-600 SEWAGE DISPOSAL SERVICE

(1) No person shall perform sewage disposal services or advertise or represent himself/herself as being in the business of performing such services without first obtaining a license from the Department. Unless suspended or revoked at an earlier date, a Sewage Disposal Service license issued pursuant to this rule expires on July 1 next following the date of issuance. Beginning ~~*[July 1 1996]*~~ **January 1, 1997**, in order to be licensed, the applicant must pass a written examination to demonstrate familiarization with the on-site rules found in OAR Chapter 340, Divisions 71 and 73, or attend a Department approved training session. **In addition, the person at the job-site who supervises or is responsible for** ~~*[All persons employed by the licensee who are involved in]*~~ the construction or installation of **the system** ~~*[systems]*~~ shall also pass the written test or attend the training session and shall carry evidence of that on their person. The Department will provide all persons, who pass the test or attend the training session, with a wallet size card for this purpose. Retesting will be required every 5 years.

(2) Those persons making application for a sewage disposal service license shall:

(a) Submit a complete license application form to the Department for each business; and

(b) File and maintain with the Department original evidence of surety bond, or other approved equivalent security, in the penal sum of two thousand five hundred dollars ($2,500) for each business; and

(c) Shall have pumping equipment inspected by the Agent annually if intending to pump out or clean systems and shall complete the ``Sewage Pumping Equipment Description/Inspection'' form supplied by the Department. An inspection performed after January 1st shall be accepted for licensing the following July 1st; and

(d) Submit the appropriate fee as set forth in subsection 340-71-140(1)(h) for each business; and

(e) Pass the written examination or have attended a Department approved training session; and

(f) If operating a septage pumping service, submit ~~*[a copy of the past 12 months pumping records required by subsection (12)(d) of this rule]*~~ **summary origin-destination pumping information on a form supplied by the Department.**

(3) A Sewage Disposal Service license may be transferred or amended during the license period to reflect changes in business name, ownership, or entity (i.e., individual, partnership, or corporation), providing:

(a) A complete application to transfer or amend the license is submitted to the Department with the appropriate fee as set forth in OAR 340-71-140(1)(h); and

(b) The Department is provided with a rider to the surety, or a new form of security as required in subsection (2)(b) of this rule; and

(c) A valid Sewage Disposal Service license (not suspended, revoked, or expired) is returned to the Department; and

(d) If there is a change in the business name, a new ``Sewage Pumping Equipment Description/Inspection'' form for each vehicle is submitted to the Department and

(e) No person who takes over a Sewage Disposal Service shall operate the business until they have passed the written examination or attended the Department approved training session.

(4) The type of security to be furnished pursuant to OAR 340-71-600(2)(b) may be:

(a) Surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the Department. The bond shall be issued by a surety company licensed by the Insurance Commissioner of Oregon. Any surety bond shall be so conditioned that it may be cancelled only after forty-five (45) days notice to the Department, and to otherwise remain in effect for not less than two (2) years following termination of the sewage disposal service license, except as provided in subsection (e) of this section; or

(b) Insured savings account irrevocably assigned to the Department, with interest earned by such account made payable to the depositor; or

(c) Negotiable securities of a character approved by the State Treasurer, irrevocably assigned to the Department, with interest earned on deposited securities made payable to the depositor;

(d) Any deposit of cash or negotiable securities under ORS 454.705 shall remain in effect for not less than two (2) years following termination of the sewage disposal service license except as provided in subsection (e) of this section. A claim against such security deposits must be submitted in writing to the Department, together with an authenticated copy of:

(A) The court judgment or order requiring payment of the claim; or

(B) Written authority by the depositor for the Department to pay the claim.

(e) When proceedings under ORS 454.705 have been commenced while the security required is in effect, such security shall be held until final disposition of the proceedings is made. At that time claims will be referred for consideration of payment from the security so held.

(5) Each licensee shall:

(a) Be responsible for any violation of any statute, rule, or order of the Commission or Department pertaining to his licensed business;

(b) Be responsible for any act or omission of any servant, agent, employee, or representative of such licensee in violation of any statute, rule, or order pertaining to his license privileges;

(c) Deliver to each person for whom he performs services requiring such license, prior to completion of services, a written notice which contains:

(A) A list of rights of the recipient of such services which are contained in ORS 454.705(2); and

(d) If there is a change in the business name, a new ``Sewage Pumping Equipment Description/Inspection'' form for each vehicle is submitted to the Department and

(e) No person who takes over a Sewage Disposal Service shall operate the business until they have passed the written examination or attended the Department approved training session.

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(a) Surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the Department. The bond shall be issued by a surety company licensed by the Insurance Commissioner of Oregon. Any surety bond shall be so conditioned that it may be cancelled only after forty-five (45) days notice to the Department, and to otherwise remain in effect for not less than two (2) years following termination of the sewage disposal service license, except as provided in subsection (e) of this section; or

(b) Insured savings account irrevocably assigned to the Department, with interest earned by such account made payable to the depositor; or

(c) Negotiable securities of a character approved by the State Treasurer, irrevocably assigned to the Department, with interest earned on deposited securities made payable to the depositor;

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(B) Written authority by the depositor for the Department to pay the claim.

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(5) Each licensee shall:

(a) Be responsible for any violation of any statute, rule, or order of the Commission or Department pertaining to his licensed business;

(b) Be responsible for any act or omission of any servant, agent, employee, or representative of such licensee in violation of any statute, rule, or order pertaining to his license privileges;

(c) Deliver to each person for whom he performs services requiring such license, prior to completion of services, a written notice which contains:

(A) A list of rights of the recipient of such services which are contained in ORS 454.705(2); and

(B) Name and address of the surety company which has executed the bond required by ORS 454.705(1); or

(C) A statement that the licensee has deposited cash or negotiable securities for the benefit of the Department in compensating any person injured by failure of the licensee to comply with ORS 454.605 to 454.745 and with rules of the Environmental Quality Commission.

(d) Keep the Department informed on company changes that affect the license, such as business name change, change from individual to partnership, change from partnership to corporation, change in ownership, etc.

(6) Misuse of License:

(a) No licensee shall permit anyone to operate under his license, except a person who is working under supervision of the licensee;

(b) No person shall:

(A) Display or cause or permit to be displayed, or have in his possession any license, knowing it to be fictitious, revoked, suspended or fraudulently altered;

(B) Fail or refuse to surrender to the Department any license which has been suspended or revoked;

(C) Give false or fictitious information or knowingly conceal a material fact or otherwise commit a fraud in any license application.

(7) Pumping and Cleaning Responsibilities:

(a) Persons performing the service of pumping or cleaning of sewage disposal facilities shall avoid spilling of sewage while pumping or while in transport for disposal.

(b) Any spillage of sewage shall be immediately cleaned up by the operator and the spill area shall be disinfected.

(8) License Suspension or Revocation:

(a) The Department may suspend, revoke, or refuse to grant, or refuse to renew, any sewage disposal service license if it finds:

(A) A material misrepresentation or false statement in connection with a license application; or

(B) Failure to comply with any provisions of ORS 454.605 through 454.785, the rules of the Environmental Quality Commission or an order of the Commission or Department; or

(C) Failure to maintain in effect at all times the required bond or other approved equivalent security, in the full amount specified in ORS 454.705; or

(D) Nonpayment by drawee of any instrument tendered by applicant as payment of license fee.

(b) Whenever a license is suspended, revoked or expires, the licensee shall remove the license from display and remove all Department identifying labels from equipment. The licensee shall surrender the suspended or revoked license, and certify in writing to the Department within fourteen (14) days after suspension or revocation that all Department identification labels have been removed from all equipment;

(c) A sewage disposal service may not be considered for re-licensure for a period of at least one (1) year after revocation of its license;

(d) A suspended license may be reinstated, providing:

(A) A complete application for reinstatement of license is submitted to the Department, accompanied by the appropriate fee as set forth in OAR 340-71-140(1)(h); and

(B) The grounds for suspension have been corrected; and

(C) The original license would not have otherwise expired.

(9) Equipment Minimum Specifications:

(a) Tanks for pumping out of sewage disposal facilities shall comply with the following:

(A) Have a liquid capacity of at least five hundred fifty (550) gallons.

EXCEPTION: Tanks for equipment used exclusively for pumping chemical toilets not exceeding fifty (50) gallons capacity, shall have a liquid capacity of at least one hundred fifty (150) gallons.

(B) Be of watertight metal construction;

(C) Be fully enclosed;

(D) Have suitable covers to prevent spillage.

(b) The vehicle shall be equipped with either a vacuum or other type pump which will not allow seepage from the diaphragm or other packing glands and which is self priming;

(c) The sewage hose on vehicles shall be drained, capped, and stored in a manner that will not create a public health hazard or nuisance;

(d) The discharge nozzle shall be:

(A) Provided with either a camlock quick coupling or threaded screw cap;

(B) Sealed by threaded cap or quick coupling when not in use;

(C) Located so that there is no flow or drip onto any portion of the vehicle;

(D) Protected from accidental damage or breakage.

(e) No pumping equipment shall have spreader gates;

(b) Whenever a license is suspended, revoked or expires, the licensee shall remove the license from display and remove all Department identifying labels from equipment. The licensee shall surrender the suspended or revoked license, and certify in writing to the Department within fourteen (14) days after suspension or revocation that all Department identification labels have been removed from all equipment;

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(C) Be fully enclosed;

(D) Have suitable covers to prevent spillage.

(b) The vehicle shall be equipped with either a vacuum or other type pump which will not allow seepage from the diaphragm or other packing glands and which is self priming;

(c) The sewage hose on vehicles shall be drained, capped, and stored in a manner that will not create a public health hazard or nuisance;

(d) The discharge nozzle shall be:

(A) Provided with either a camlock quick coupling or threaded screw cap;

(B) Sealed by threaded cap or quick coupling when not in use;

(C) Located so that there is no flow or drip onto any portion of the vehicle;

(D) Protected from accidental damage or breakage.

(e) No pumping equipment shall have spreader gates;

(f) Each vehicle shall at all times be supplied with a pressurized wash water tank, disinfectant, and implements for cleanup;

(g) Pumping equipment shall be used for pumping sewage disposal facilities exclusively unless otherwise authorized in writing by the Agent;

(h) Chemical toilet cleaning equipment shall not be used for any other purpose.

(10) Equipment Operation and Maintenance:

(a) When in use, pumping equipment shall be operated in a manner so as not to create public health hazards or nuisances;

(b) Equipment shall be maintained in a reasonably clean condition at all times.

(11) Vehicles shall be identified as follows:

(a) Display the name or assumed business name on each vehicle cab and on each side of a tank trailer:

(A) In letters at least three (3) inches in height; and

(B) In a color contrasting with the background.

(b) Tank capacity shall be printed on both sides of the tank:

(A) In letters at least three (3) inches in height; and

(B) In a color contrasting with the background.

(c) Labels issued by the Department for each current license period shall be displayed at all times at the front, rear, and on each side of the ``motor vehicle'' as defined by United States Department of Transportation Regulations, Title 49 U.S.C.

(12) Disposal of Septage. Each licensee shall:

(a) Discharge no septage upon the surface of the ground unless approved by the Department in writing;

(b) Dispose of septage only in disposal facilities approved by the Department;

(c) Possess at all times during pumping, transport or disposal of septage, origin-destination records for sewage disposal services rendered;

(d) Maintain on file complete origin-destination records for sewage disposal services rendered. Origin-Destination records shall include:

(A) Source of septage on each occurrence, including name and address;

(B) Specific type of material pumped on each occurrence;

(C) Quantity of material pumped on each occurrence;

(D) Name and location of authorized disposal site, where septage was deposited on each occurrence;

(E) Quantity of material deposited on each occurrence.

(e) Transport septage in a manner that will not create a public health hazard or nuisance;

(f) Possess a current septage management plan, approved by the Department. The plan shall be kept current, with any revisions approved by the Department before implementation;

(g) Comply with the approved septage management plan, and the septage management plan approval letter issued by the Department.

(D) Name and location of authorized disposal site, where septage was deposited on each occurrence;

(E) Quantity of material deposited on each occurrence.

(e) Transport septage in a manner that will not create a public health hazard or nuisance;

(f) Possess a current septage management plan, approved by the Department. The plan shall be kept current, with any revisions approved by the Department before implementation;

(g) Comply with the approved septage management plan, and the septage management plan approval letter issued by the Department.

STATEMENT OF NEED AND EMERGENCY JUSTIFICATION
(Temporary Rule)

DEPARTMENT OF ENVIRONMENTAL QUALITY OF
THE STATE OF OREGON

IN THE MATTER OF THE AMENDMENT OF OAR 340-71-600 REQUIRING ALL SEWAGE DISPOSAL LICENSE APPLICANTS AND THEIR WORKERS TO MEET A CERTIFICATION REQUIREMENT AS A PREREQUISITE TO OBTAINING A LICENSE, AND THE REQUIREMENT THAT ORIGIN-DESTINATION RECORDS BE PROVIDED WITH THE LICENSE APPLICATION.	)))))	Statutory Authority, Statement of Need, Principal Documents Relied Upon and Statement of Emergency Justification

TO: ALL INTERESTED PERSONS

1. Effective July 12, 1996, the Department of Environmental Quality is amending Administrative Rule 340-71-600, Sewage Disposal Service, relating to sewage disposal service license requirements.

2. Statutory Authority: ORS 454.625 and ORS 468.020

3. Need for the Rule: Effective for the license period beginning on July 1, 1996, new requirements previously adopted by the Environmental Quality Commission take effect that require all license applicants to either pass a written examination to demonstrate familiarization with the on-site rules within OAR Chapter 340, Divisions 71 and 73, or attend a Department approved training session before the license can be issued. In addition, all persons employed by the license holder that are involved with the construction or installation of on-site systems must also take the test or attend the training session. Persons that fail to meet this requirement can not be issued a license, nor can they be employed in the construction or installation of systems. The DEQ has not developed or approved a training session, but has a written test to satisfy the requirement. However, the DEQ has not been able to coordinate administration of the testing throughout the state quickly enough to allow license applicants and their workers reasonable opportunity to comply by the deadline established in the administrative rule. Further, the DEQ has determined the requirement that all workers be certified is overly broad in its application and therefore unreasonable. This rule amendment would change the effective date of these requirements until January 1, 1997 (and thus provide a reasonable time interval for the license applicants and their workers to comply), and would require that only workers that supervise the construction or installation at the joist be tested or required to attend a training session.

   The current rule requires Sewage disposal service businesses that pump septic tanks, holding tanks and other sanitary facilities to provide the DEQ with copies of their last 12 months origin-destination pumping records. Once received by DEQ, these would be public records that must be made available to any person on request. The rule amendment would delete the requirement that origin-destination records be submitted with the license application, instead the pumping business would provide a summary of these records.

4. Documents Relied Upon: ORS 454.625; ORS 468.020; OAR Chapter 34, Division 71; and a letter from the Oregon On Site Wastewater Association (O2WA)

5. Justification of Temporary Rule:

   a) The Department finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest, and to the license applicants and their workers because it will cause the following consequences:

      Failure to promptly amend this rule may result in significantly fewer sewage disposal

service license holders the loss of jobs to many workers involved with the construction or installation of on-site systems. In addition, the disclosure of origin-destination pumping records as public records could jeopardize the heath of the businesses that provide them to DEQ.

b) This temporary rulemaking action will avoid or mitigate these consequences because amendment of the DEQ's rule using the temporary rulemaking process will allow the DEQ the time necessary to coordinate the testing or training sessions throughout the state, allow the continued hiring of workers that do not supervise the construction or installation of systems, eliminate the disclosure of business records as public records, and will allow the issuance of sewage disposal service licenses to those applicants that have not had the opportunity to be tested or attend a training session.

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

Dated July 12, 1996

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Director

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☒ Information Item

Agenda Item M
July 12, 1996 Meeting

Title:

Information Report on the EPA/DEQ Environmental Partnership Agreement

Summary:

Each year, the Department of Environmental Quality and the Environmental Protection Agency, Region 10, enter into an agreement which establishes the mutual understanding of program priorities and expected accomplishments for the next fiscal year. This agreement becomes the basis for federal funding assistance to the Department. This agreement is known as the State/EPA Agreement, or SEA.

This year, the EPA is taking a new approach toward the state/federal relationship and the agreement. This new approach, which replaces the SEA, is now called the Environmental Partnership Agreement, a subset of the National Environmental Performance Partnership System (NEPPS). The purpose of this report is to provide information to the Commission about DEQ's and EPA's transition to the new approach EPA is taking toward state/federal relationship for administering and funding environmental programs.

A few states have already entered into partnership agreements: Illinois, Colorado, Delaware, New Jersey, Utah, and Oklahoma. These states included all environmental media programs in their agreements (air, water, hazardous wastes, etc.).

Oregon has completed negotiations with EPA Region 10 to enter into an EnPA starting July 1996 for state fiscal year 1997; however, the Oregon agreement will cover only water quality programs under federal Clean Water Act Sections 106 (Groundwater and Surface Water); 319 (Nonpoint Source); 104(b)(3)(Water Quality research and demonstration projects); 604(b) (Water Quality planning); UIC (Underground Injection Control). DEQ and EPA have agreed upon a list of water quality priorities: watershed approach for managing water quality; salmonid recovery; water quality standards and TMDLs; pollution prevention, nonpoint source pollution; groundwater protection and management; program measures and environmental indicators; and streamlined water quality permitting and compliance assurance.

Department Recommendation:

It is recommended that the Commission accept this report, discuss the Environmental Partnership Agreement as presented in Attachment A, and provide advice and guidance to the Department as appropriate.

Report Author | Division Administrator | Director

June 26, 1996

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: June 24, 1996

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item M, Information Report on the EPA/DEQ Environmental Partnership Agreement, EQC Meeting July 12, 1996

Statement of Purpose

Each year, the Department of Environmental Quality and the Environmental Protection Agency, Region 10, enter into an agreement which establishes the mutual understanding of program priorities and expected accomplishments for the next fiscal year. This agreement becomes the basis for federal funding assistance to the Department. This agreement is known as the State/EPA Agreement, or SEA.

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The purpose of this report is to provide information to the Commission about DEQ's and EPA's transition to the new approach EPA is taking toward state/federal relationship for administering and funding environmental programs.

Background

In May, 1995, U. S. Environmental Protection Agency (EPA) officials and state environmental directors launched the National Environmental Performance Partnership System (NEPPS), an approach to boost the power of state environmental agencies through innovative mutual agreements. EPA considers the NEPPS as the principle vehicle for "devolving" federal oversight in state implemented programs. Under the NEPPS, states and EPA make commitments to be equal partners in achieving a host of environmental goals and objectives through execution of the Environmental Partnership Agreement (EnPA). Oregon's Environmental Partnership Agreement was produced by joint planning between EPA and the DEQ, taking into account national and regional program priorities, and state needs and interests.

A few states have already entered into partnership agreements: Illinois, Colorado, Delaware, New Jersey, Utah, and Oklahoma. These states included all environmental media programs in their agreements (air, water, hazardous wastes, etc.).

Oregon has completed negotiations with EPA Region 10 to enter into an EnPA starting July 1996 for state fiscal year 1997; however, the Oregon agreement will cover only water quality programs under federal Clean Water Act Sections 106 (Groundwater and Surface Water); 319 (Nonpoint Source); 104(b)(3)(Water Quality research and demonstration projects); 604(b) (Water Quality planning); UIC (Underground Injection Control). DEQ and EPA have agreed upon a list of water quality priorities: watershed approach for managing water quality; salmonid recovery; water quality standards and TMDLs; pollution prevention, nonpoint source pollution; groundwater protection and management; program measures and environmental indicators; and streamlined water quality permitting and compliance assurance.

Although the DEQ and EPA have previously entered into agreements for administering environmental programs (agreements known as State/EPA Agreements, or SEAs), this Environmental Partnership Agreement is the first of its kind between the two agencies. This approach is initiated at a time when both agencies have a need to jointly and clearly define their respective roles in protecting Oregon's precious natural resources, particularly for water quality. It represents the transition to a new approach to the federal/state relationship in our joint efforts to protect Oregon's water quality, beginning in state fiscal year 1997 (July 1, 1996 through June 30, 1997).

The EnPA recognizes the maturity of DEQ water quality programs, and redefines to some extent the DEQ/EPA relationship by shifting to a more co-equal partnership, and describing distinct yet interdependent roles for the partnership. Both DEQ and EPA realize that change does not come easily; there may be both internal and external obstacles to redefining our relationship. Each agency is committed to harmoniously overcoming those obstacles and working together diligently toward a successful equal partnership.

Authority of the Commission with Respect to the Issue

The EnPA presents a new approach to the DEQ/EPA relationship. The agreement will replace the previously used State/EPA agreement. This new agreement focuses on environmental performance and outcomes rather that the so-called "bean counting" of the past. Through the EnPA, the DEQ and EPA agree to work as co-equal partners to achieve agreed upon goals and priorities, and strive to employ a more holistic approach to managing Oregon's water quality, with emphasis on long-term environmental results.

This first agreement is really a transitional document, with some attributes of the old SEA, combined with many elements of the Environmental Partnership Agreement. Some highlights of this agreement include:

- a workplan which directly relates to the agreed upon water quality goals and priorities
- both DEQ and EPA estimated resources are reflected in the workplan, the first time the two agencies have coordinated resources to complement and supplement Oregon's water quality programs.
- the beginnings of oversight reform, to help achieve true co-equal partnership, and to begin shifting resources to more effectively meet water quality goals.
- environmental indicators and performance measures, to help determine real, long-term, environmental progress in meeting water quality goals.

Some agreements in other states (Colorado, Massachusetts) have encountered some problems with satisfying all federal requirements in terms of accountability. For instance, in Colorado, the Regional EPA Office signed the state's agreement, but the federal Office of Inspector General questioned whether the agreement contents satisfactorily supported all requirements for grant accountability. There are as yet on-going discussions and negotiations at the federal level to resolve issues, particularly concerning grant funding and (for delegated states) enforcement responsibilities.

Summary of Public Input Opportunity

The EPA strongly encourages public participation in conjunction with the development of the EnPA; however, it is not required as a prerequisite to grant application. The timeframe to draft the EnPA was extremely short, so no public notice or public hearing was held. The EQC meeting will serve as the opportunity for public input. Distribution of the EQC agenda will provide notice of the EnPA and opportunity to present oral comments at the

July 12, 1996 meeting. Future EnPAs will be prepared such that adequate time is given to provide public notice and acquire public input.

Intended Future Actions

A responsiveness summary will be prepared for any comments received on the EnPA as a result of EQC discussion and public mailing.

The Department will consider any comments received prior to finalizing the agreement. It is expected that any remaining issues pertinent to the EnPA will be resolved by July 16, 1996, so that the EnPA may be signed before the end of July, 1996.

Department Recommendation

It is recommended that the Commission accept this report, discuss the Environmental Partnership Agreement as presented in Attachment A, and provide advice and guidance to the Department as appropriate.

Attachments

Draft Environmental Partnership Agreement

Reference Documents (available upon request)

Previous State/EPA Agreement

Approved:

Section: Michael Downs

Division: Michael Downs

Report Prepared By: Jan Renfroe

Phone: (503)229-5589

Date Prepared: June 16, 1996

JMR:jmr
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10/13/95

ATTACHMENT A

Environmental Partnership Agreement

between

the State of Oregon
Department of Environmental Quality

and

the U. S. Environmental Protection Agency
Region 10

for the period July 1, 1996 through June 30, 1997

June, 1996

I. INTRODUCTION

In May, 1995, U. S. Environmental Protection Agency (EPA) officials and state environmental directors launched the National Environmental Performance Partnership System (NEPPS), an approach to boost the power of state environmental agencies through innovative mutual agreements. EPA considers the NEPPS as the principle vehicle for "devolving" federal oversight in state implemented programs. Under the NEPPS, states and EPA make commitments to be equal partners in achieving a host of environmental goals and objectives through execution of the Environmental Partnership Agreement (EnPA). Oregon's Environmental Partnership Agreement was produced by joint planning between EPA and the DEQ, taking into account national and regional program priorities, and state needs and interests.

Although the DEQ and EPA have previously entered into agreements for administering environmental programs (agreements known as State/EPA Agreements, or SEAs), this Environmental Partnership Agreement is the first of its kind between the two agencies. This approach is initiated at a time when both agencies have a need to jointly and clearly define their respective roles in protecting Oregon's precious natural resources, particularly for water quality. It represents the transition to a new approach to the federal/state relationship in our joint efforts to protect Oregon's water quality, beginning in state fiscal year 1997 (July 1, 1996 through June 30, 1997).

The EnPA recognizes the maturity of DEQ water quality programs, and redefines to some extent the DEQ/EPA relationship by shifting to a more co-equal partnership, and describing distinct yet interdependent roles for the partnership. Both DEQ and EPA realize that change does not come easily; there may be both internal and external obstacles to redefining our relationship. Each agency is committed to harmoniously overcoming those obstacles and working together diligently toward a successful equal partnership.

II. BACKGROUND

Oregon has a network of over 114,000 miles of rivers and streams, and nearly 2,350 (420,000 acres of) lakes, reservoirs, and ponds. The Willamette River, largest in the state, has more runoff per square mile than any other major river in the United States. Over half of Oregon's population (about 1.5 million people) resides in the Willamette River basin. Oregon is bounded on the north by the Columbia River, on the east by the Snake River, and on the west by the Pacific Ocean (with about 362 miles of coastline). Other of the 18 river drainage basins in the state include the Umpqua, Umatilla, Klamath, Grande Ronde, Deschutes, and John Day.

Contrary to popular belief, Oregon can be surprisingly dry. The eastern two/thirds of the state is largely high desert, with average annual rainfall of less than 12 inches. In the wetter west side of the state, summers may see little or no precipitation. Seasonal water shortages are not uncommon. This is due in part to the fact that most of Oregon's water supplies come from winter rains and mountain snow packs. Peak demand for water resources occurs in the summer, when stream flows are lowest. To help meet growing demands for water, the state is increasingly turning to groundwater sources.

How to best meet existing and future water demands--and achieve balance between protecting water quality and encouraging economic development--is a challenge Oregonians face, now more than ever.

Oregon has maintained a program for identifying and correcting water quality problems since 1938. The state's water quality program focuses on protecting the designated *beneficial uses* of waterbodies. These beneficial uses are actual, identified uses established for each basin by the state's Water Resources Commission. Major beneficial use categories include: domestic and industrial water supplies; fisheries, aquatic life, and wildlife; agriculture; navigation; hydroelectric power; recreation; and aesthetics.

In Oregon, the Department of Environmental Quality has responsibility for protecting water quality. The mission of the DEQ is to protect and enhance the quality of Oregon's rivers, streams, lakes, estuaries, and groundwaters and to maintain the beneficial uses for each drainage basin. DEQ's primary method for achieving this mission is through development, adoption, and application of the state's adopted water quality standards and criteria. Water quality is managed under a Water Quality Management Plan (found in Oregon's rules in Chapter 340, Division 41). This plan sets the framework by which discharge activities may be evaluated, on a case-by-case basis, to determine whether the activity meets water quality standards and criteria, or if a discharge permit is needed.

Water quality permits are issued based on both state rules and federal regulations: federal National Pollutant Discharge Elimination System (NPDES) permits are issued to sources discharging to surface waters; and state Water Pollution Control Facilities (WPCF) permits are issued to those not discharging to surface waters (i.e. treatment lagoons with land irrigation, subsurface disposal). The U. S. Environmental Protection Agency (EPA) has delegated authority to Oregon (DEQ) to issue NPDES permits.

Since 1984, the emphasis of the Water Quality Program has gradually shifted from technology-based controls (that is, predetermined wastewater quality achievable through application of treatment technology) to water quality-based controls, wherein individual point and nonpoint source discharges are managed based on how the discharge affects the receiving waterbody, in relation to other discharge sources and the assimilative capacity of the waterbody. This shift in emphasis is supported by making specific evaluations and assessments of water quality, with a designation of *water quality limited* for those waters not meeting standards or for which beneficial uses are not protected. For the water quality limited waterbodies, the DEQ develops Total Maximum Daily Loads (TMDLs), that is, the total amount of a pollutant (load) that a waterbody can assimilate while maintaining water quality standards, and allocate the TMDL through wasteload allocations.

In addition to the above, the DEQ is responsible for a variety of other Water Quality Program activities, as detailed under the section of the EnPA about Roles and Responsibilities.

III. PARTNERSHIP ROLES AND RESPONSIBILITIES

The National Environmental Performance Partnership System offers DEQ and EPA the opportunity to forge this partnership through the execution of the Environmental Partnership Agreement. To set the stage for developing this partnership agreement, the DEQ and EPA agree to abide by the following guiding principles:

> To work together as partners, with trust, openness, and cooperation, and with respect for our respective roles;
>
> To ensure that DEQ, as the primary agent responsible for administering state and federally-delegated water quality programs, has the greatest degree of flexibility allowable under current law to administer these programs;
>
> To coordinate work efforts, target activities, and develop joint work plans, for more efficient use of resources and to avoid duplication of effort;
>
> To improve communication between the two agencies, so that information flows in both directions, and informational exchanges are frequent and timely;
>
> To acknowledge and support EPA's role in the direct implementation of non-delegated federal programs;
>
> To develop a mutually agreeable method or process for resolving disputes and conflicts that are certain to arise as we move forward with development and implementation of the performance partnership system.

Finally, to further fulfill the environmental protection goals of this agreement, both agencies recognize that interagency coordination and collaboration are critical to attaining water quality goals. Therefore, DEQ and EPA agree to produce subsequent EnPAs using an interagency collaborative process, which includes active participation by state, federal, regional, and local agencies and groups.

A. DEQ RESPONSIBILITIES

DEQ and EPA recognize the primary role of DEQ in administering the federal water quality programs delegated to the state, and state programs prescribed by state statutes. As primary responsible agency, DEQ is charged with carrying out the following tasks:

- Issuing wastewater discharge permits
- Inspecting permitted sources for compliance with permit conditions,
- Providing technical assistance to permittees,
- Reviewing and approving plans for the construction or substantial modification of treatment facilities,

- Establishing priorities for financing municipal wastewater treatment facilities and helping applicants obtain funding,
- Monitoring the quality of the state's waters,
- Issuing permits for construction of on-site sewage disposal systems,
- Managing nonpoint source pollution, through (1) interagency agreements with other natural resource agencies; (2) grants for watershed enhancement projects; and (3) expanded public-private partnerships.
- Implementing the state's groundwater protection statutes,
- Reviewing and updating water quality standards (triennial review),
- Managing other associated treatment and disposal activities (including industrial pretreatment, biosolids, and industrial sludge)
- Establishing and implementing TMDLs, along with associated load and wasteload allocations
- Developing and maintaining water quality standards

B. EPA RESPONSIBILITIES

The Environmental Protection Agency works in partnership with a number of other federal, state, and local organizations in order to accomplish its specific responsibilities under federal environmental laws and to work creatively toward effective, efficient environmental protection. In many programs, EPA's role with state agencies is changing from oversight and direction to sharing responsibilities in order to meet mutual goals.

This document contains detail on the objectives, activities, and actions that EPA Region 10 will carry out to support mutual priorities for Clean Water Act Programs in FY 97. Specific elements include directly supplying technical assistance and financial support for a number of water quality activities, such as watershed activities, salmon recovery, TMDLs and standards, nonpoint source issues, groundwater protection, applied research, and NPDES permit program management, compliance and enforcement.

IV. SCOPE OF THE ENVIRONMENTAL PARTNERSHIP AGREEMENT

The DEQ/EPA Environmental Partnership Agreement covers these water quality related programs of the federal Clean Water Act:

- Section 106 (Ground water and Surface water)
- Section 319 (Nonpoint Source)
- Section 604(b) (Water Quality Planning)
- UIC (Underground Injection Control)
- 104 (b)(3) (Water Quality research and demonstration projects)

V. PROPOSED WATER QUALITY PRIORITIES AND OBJECTIVES

As previously mentioned, the mission of Oregon's Department of Environmental Quality is to restore, enhance, and maintain the quality of our state's land, air, and water. The DEQ's Water Quality Program strives to ensure that the quality of Oregon's rivers, lakes, estuaries, and groundwater is protected and enhanced. To fulfill this mission, both DEQ and EPA, as the primary agencies responsible for water quality management, need a venue through which water quality goals and priorities may be jointly established and mutually agreed upon so that DEQ and EPA may better coordinate activities and more efficiently make use of each others limited resources. The Environmental Partnership Agreement process provides the opportunity to launch a coordinated course of action for protecting and managing Oregon's water quality.

Water quality management through regulatory controls is now a mature enterprise. The DEQ and EPA relationship has contributed to the many successes and accomplishments realized in the area of wastewater management and pollution control primarily through permits. The EnPA process recognizes that the relationship between DEQ and EPA is now at a point where we need to move away from the federal-state model of the past to roles of equal partnership.

The following sections describe goals and priorities as agreed between the two agencies. Methods, mechanisms and resource commitments to achieve goals and objectives are laid out in the attached jointly developed workplan (Appendix A):

A. WATERSHED APPROACH

The DEQ has made considerable progress toward the creation of a watershed approach to water quality management. We are in the process of reaching consensus on methods for basin delineation, basin management cycles, basin monitoring and basin assessment protocols at the technical level. Stakeholders have been actively included in the development of this approach. The DEQ would like to further develop and implement a watershed approach; however, we have insufficient resources available to set priorities and determine appropriate management strategies for implementing this approach.

A priority goal of the DEQ and EPA is to jointly target our regulatory, educational, technical, and financial resources on development and implementation of a watershed-based water quality management program. This could be achieved by 1) integrating DEQ/EPA program activities, and partnering with other state and federal agencies, Indian tribes, and watershed councils to assess and prioritize water quality problems using a whole basin/watershed approach; and 2) coordinating DEQ/EPA efforts and resources through joint work plans, focusing our mutual resources on those basins and watersheds having the most significant water quality problems or needs.

B. SALMONID RECOVERY

The National Marine Fisheries Service has announced plans to list coastal coho salmon as threatened under the Endangered Species Act--a listing that would impact the entire coasts of Oregon and California. This announcement has mobilized concern throughout coastal communities. Oregon's governor has made coastal salmon recovery a top administration priority, and is working to bring local governments and private landowners along. Success of the initiative will require tremendous coordination and significant sacrifice on the part of thousands of Oregonians.

High stream temperatures and degradation of instream and riparian habitat are key contributors to the decline of salmon populations. Maintenance of adequate stream flows is critical to meeting the biological goals of the Clean Water Act, and crucial to recovery of salmonid populations.

The DEQ is participating with other natural resource agencies on the Governor's Coastal Salmon Restoration Planning Team, and has committed to doing its part to see that salmonid habitat is restored and protected. Meetings have been held with stakeholder groups to brief them on the Salmon Initiative. The DEQ is reviewing its programs to determine how these programs affect salmonid habitat in the Coastal region and which programs should be included in the restoration plan. Thus far, the Department has identified several program areas that should result in significant improvements to salmonid habitat: the Tillamook National Estuary Program; revised water quality standards; revised 303(d) list; the Coastal Nonpoint Source Management Program; and various watershed restoration projects.

Salmonid recovery, especially coastal coho, is a priority goal for both agencies as it will be an important factor in selecting activities and watersheds for FY 97 and beyond.

C. WATER QUALITY STANDARDS, TMDLS, AND THE 303(d) LISTING PROCESS

A priority goal of both agencies is to jointly examine methods for combining forces with other natural resource agencies and groups (tribes, state, federal, regional, local) to develop and implement cohesive watershed strategies to correct or prevent impairment of waters.

In cases where water quality standards are being violated despite the use of technology-based treatment, waterbodies may be designated as *water quality limited.* Based on intensive surveys and water quality modeling, maximum allowable loads of pollutants are calculated for these waterbodies. These loads are referred to as *total maximum daily loads* or TMDLs. Based on the TMDLs, wasteload allocations are established for the sources that are discharging to the water quality limited waterbody. The allocations for permitted sources are incorporated into the discharger's permit. Pollution load allocations for non-point sources are calculated from land area.

The triennial review process has been completed for various parameters, including bacteria, temperature, pH, and dissolved oxygen. Guidance must now be drafted and distributed to all affected entities. Review of wetlands standards is scheduled for completion by November of 1996.

The DEQ is now under a court order to identify all water bodies not meeting water quality standards (under the federal Clean Water Act, this is known as the 303(d)listing process). It is likely that the 303(d) list will drive DEQ water quality programs for many years to come, and a major challenge of both DEQ and EPA is to jointly determine how to best manage the large numbers of streams on the list.

D. NONPOINT SOURCES OF WATER POLLUTION

Both DEQ and EPA have contributed the majority of water quality program resources toward controlling water pollution from point sources. Point sources are defined as any discernible conduit (pipe, ditch, tunnel, etc.) from which pollutants may be discharged. Examples include municipal wastewater treatment plants and industrial wastewater treatment facilities. Point source control through water quality permitting is now a well-established program, and permitted sources have become more sophisticated and reliable in controlling discharges.

Over the past few years--as point source discharges have been controlled through permits, and as water quality monitoring methods have improved--it has become apparent that pollution from non-point sources

(NPS) may be an even more significant cause of water quality degradation. Major contributors to nonpoint source pollution are land and development practices that either discharge pollution to surface and groundwaters in a diffused manner (i. e., agricultural runoff), or affect water quality by increasing temperature, changing pH, or reducing dissolved oxygen in streams (such as timber harvesting). NPS pollution may flow directly into surface waters, or may slowly infiltrate groundwaters, later merging with lakes and streams. Controlling NPS pollution presents some unique challenges in that, unlike point source pollution, NPS pollution results from an accumulation of many smaller sources. While each small source may seem innocuous individually, the combined effects are significant.

The ultimate goal for DEQ and EPA is to eliminate the degradation of aquatic beneficial uses due to nonpoint sources of water pollution in all waterbodies of Oregon. Attainment of this goal will require long-term commitments of resources, not only from DEQ and EPA, but also from other state and local natural resource agencies, local governments, private industry, local communities, and individuals. While DEQ and EPA may take the lead in some areas of NPS pollution management, the key to success will be determined by how well public and private partnerships are forged and local stewardship efforts are supported.

With this EnPA, the DEQ and EPA will strive to make shifts in water quality program resources to assist in transitioning from the point source emphasis to a more holistic water quality management program, with careful attention to assuring that no reduction in water quality occurs during the transition, and that significant gains in water quality occur over time.

E. GROUNDWATER QUALITY PROTECTION

Groundwater provides Oregonians with water for drinking, agriculture, and industry. Nearly half of the state's population relies on groundwater for their daily needs, and another 20% rely on groundwater for their auxiliary drinking water supply. The Oregon Water Resources Division estimates that the demand for groundwater has doubled over the last two decades. Agricultural uses account for the largest allocation of groundwater resources, mostly for irrigation and livestock watering. The majority of domestic wells are located in shallow, unconfined aquifers less than 200 feet deep. Large urbanized areas rest atop the most sensitive and shallow aquifers.

Protection of Oregon's groundwater resources is critical to accommodate growth and prosperity. The goals of the state's groundwater quality protection program are to protect the public health and the environment by: 1) preventing degradation of groundwater; 2) maintaining high water quality where possible; and 3) restoring to productive use groundwater which has suffered contamination. Groundwater quality protection efforts are coordinated with the State Health Division, and Water Resources Division.

The Oregon Wellhead Protection program is intended to protect groundwater resources used by public water supply wells. Although attempts to make the program mandatory were unsuccessful in the state legislature, DEQ efforts have focused on two specific areas of voluntary effort: technical assistance and outreach, especially in the development of local protection plans; and development of a guidance manual for communities seeking to voluntarily implement a wellhead protection (WHP) program. Employing best management practices to minimize wastes, prevent groundwater pollution, and conserve water resources will be key elements of outreach programs.

Attainment of groundwater quality protection goals requires a balance of regulatory and voluntary protection programs, and partnerships with other state and local agencies and groups. EPA has provided financial assistance to support the state's groundwater protection efforts, through the continuing grants (Sec. 106) and through special project grants (Sec. 319). Within this EnPA, the DEQ and EPA commit to

continuing both agency's efforts for groundwater protection, and to partnering in the delivery of technical assistance and gaining community support.

F. POLLUTION PREVENTION

State statutes require that DEQ take action as necessary for the prevention of new pollution and the abatement of existing pollution by 1) fostering and encouraging the cooperation of the public, industry, governments, in order to prevent, control, and reduce pollution of the waters of the state; and 2) requiring the use of all available and reasonable methods necessary to achieve the purposes of state rules and conform to the standards of water quality and purity established under state rules.

Long-term goals for pollution prevention are to 1) firmly establish pollution prevention as the preferred environmental management strategy for all public and private sectors; and 2) integrate pollution prevention philosophies and actions into all water quality activities and programs, with an eye toward cross-media implementation. Some short-term objectives (FY97) include: building on success achieved in the point source control program by moving toward pollution prevention; pursuing ideas and opportunities to incorporate pollution prevention incentives into the permitting program ("green permits"); targeting certain pollution generators to achieve specific reductions through pollution prevention, technical assistance, and use of best management practices.

G. WATER QUALITY MONITORING, PROGRAM PERFORMANCE MEASURES AND ENVIRONMENTAL INDICATORS

An important component of the National Environmental Performance Partnership system is its emphasis on environmental performance, with less reliance on process oversight and more attention to measurable and meaningful outcomes and long-term results. A key element of measuring real progress will be through the development of environmental indicators.

DEQ maintains a state-of-the-art laboratory facility designed to meet the needs of the agency and others interested in environmental monitoring. The lab provides full-service facilities to all of DEQ and maintains nationally accepted quality assurance/quality control measures. The water quality monitoring section of the lab is actively pursuing a number of significant ambient and source-related programs, including further development of the Oregon Water Quality Index (OWQI).

DEQ has a well established and successful program for monitoring the state's water quality. Monitoring efforts will be directed towards basin-wide assessments, including but not limited to water column quality, physical instream and riparian habitat, and appropriate biological measures which serve as environmental indicators. With EPA support, DEQ commits to continuing with established monitoring programs. As a part of the monitoring program, the DEQ also commits to implementing the Oregon Water Quality Index (as further described in Appendix B). The OWQI, which measures general trends in water quality, will be made a part of the nationally recognized Oregon Benchmarks.

Oregon Benchmarks are the measurable indicators that Oregon uses at the statewide level to assess progress toward broad strategic goals. The premise is that federal, state, and local partners work together to define outcomes in the form of benchmarks that the partners want to achieve. State and local agencies then have the latitude to determine how best to achieve the benchmarks. In exchange for this discretion, state and local agencies agree to measure progress toward benchmarks and to be held accountable for results. This approach serves to unburden Oregon's public service providers from many hours of paperwork and frees resources to deliver more services to clients and customers. There are currently four main benchmark areas for water quality: development accommodation, protection of drinking water

resources, groundwater protection, and surface water (stream) health. The DEQ will be working with the Oregon Progress Board (the entity responsible for overseeing Oregon Benchmarks) to refine benchmarks and incorporate the Oregon Water Quality Index (OWQI) as a key benchmark for assessing the state's water quality.

The Oregon Benchmarks and the OWQI are useful tools to measure and assess progress; however, this is just a start and there is still a need to further develop environmental indicators and performance measures in other areas, such as groundwater, sediments, toxics and biological integrity. The DEQ intends to use (as resources allow) the Rapid Biological Protocol scoring process (RBP score) to assess ecological health (macroinvertebrates, fish, water quality). The DEQ and EPA agree to mutually investigate and design methods for further developing performance measures and environmental indicators as a priority goal of the partnership, in conjunction with other government agencies, the regulated community and the public.

A strategic goal is to jointly develop water quality-related environmental indicators for Oregon, including further work on indicators for NPS, groundwater, and sediments. Working together and with local groups, the DEQ and EPA will evaluate needs and opportunities for statewide and watershed indicators, defining how indicators will be used to communicate the status of water quality to the public, and how indicators will be used to measure environmental performance. For FY 97 -- The DEQ is considering the possibility of forming an advisory committee, made up of a broad-based group of interested parties and stakeholders, to help define measures and indicators that would be useful and meaningful for Oregonians. EPA support will be provided to help DEQ in this effort to develop an approach for establishing and defining indicators.

Some possible indicators may include: for NPS activities, number of BMPs employed in coastal zones (Tillamook NEP); percent or miles of streams protected by fencing constructed to protect streams; percent or miles of streams receiving habitat restoration (or partial); number of active watershed councils; number of acres of land applied biosolids; number of approved pretreatment programs, and number in compliance; number of point sources in compliance based on Discharge Monitoring System data. Sources that have achieved substantial compliance will be recognized, and cited in annual enforcement reports. Implementation of these indicators may be hindered by lack of data or data quality.

H. STREAMLINED WQ PERMITTING PROGRAMS

EPA has delegated authority to Oregon to administer the National Pollution Discharge Elimination System (NPDES) program. Water quality permits are based on federal regulations and state rules. Discharges are evaluated on a case-by-case basis within a framework of water quality standards, treatment criteria, and basin rules. DEQ also issues state permits (Water Pollution Control Facility, WPCF) for those facilities that do not directly discharge to surface waters. In the past, permit holders were required to meet technology-based effluent limits (that is, predetermined treatment levels based on available technology). Now permits are moving toward water-quality based limits, particularly for parameters such as ammonia and chlorine (that is, limits are set based on the water quality characteristics and assimilative capacity of the receiving stream). A priority goal of the DEQ and EPA will be to further refine the issuance of water quality-based permits, with inclusion of parameters beyond chlorine and ammonia.

One of DEQ's long-term goals is to enable industry to implement cost-effective pollution prevention strategies and other innovative approaches such that industrial discharges will no longer be significant contributors to water quality standards violations. Over the past year, the DEQ has been reviewing the water quality permitting program in general, and industrial permits in particular, to explore opportunities for streamlining. An industrial wastewater permit advisory committee was formed, at the direction of the EQC, to review the industrial WQ permitting program and to recommend changes to improve program delivery. Summarized below are the committee's overarching recommendations for DEQ attention:

- move away from the command-and-control models of the past, toward compliance assistance and performance incentives to achieve water quality goals

- provide greater flexibility in its water programs to accommodate innovation and creative approaches to water quality management

- strive to achieve greater consistency in the application of rules and policies

- consider total cost containment for water quality permittees (permit fees are just a small part of the total cost of permit management and compliance)

- create more and regular opportunities for the training and education of those involved with permit writing

The committee members emphasized that industry is not asking for the DEQ to relax water quality standards; however, now that environmental management has matured, the DEQ and EPA need to review the manner in which they interact with the regulated community and make implementation changes to the permitting program so that achievements by the regulated community are recognized, considered, and rewarded.

DEQ has made a commitment to take seriously the recommendations of the committee, and to implement recommended changes, if at all feasible, and within reasonable timeframes. The report includes recommendations that would also require EPA sanctioning to implement (i.e. electronic filing of Discharge Monitoring Reports, extension of the permit term from five to ten years for "good performers", automatic or rollover renewal of permits, etc.).

VI. CORE PROGRAM REQUIREMENTS

The DEQ and EPA agree that ensuring compliance with environmental requirements is an essential element of an effective and comprehensive water quality management program. Fostering innovation, pollution prevention, and a "beyond compliance" ethic are important elements which should be accompanied by the certainty of adequate compliance monitoring and effective enforcement by regulators.

The DEQ and EPA each have important and valuable roles in ensuring compliance, even when a state has program delegation. Our goal is to maximize use of our combined resources by implementing complementary strategies to promote and maintain compliance. DEQ and EPA are committed to working in a spirit of partnership, and will specifically promote trust and mutual respect for the contributions of each agency.

In keeping with agreements in place between the agencies, and assuming continued support from EPA, the DEQ commits to the following core programs activities for FY 97:

- Continue to implement an effective NPDES program and work with EPA to begin transition to a watershed approach for permit issuance.
- Issue all NPDES permits in a timely manner; include reasonable potential analysis as required by federal regulations.
- Continue to reduce NPDES permit backlog
- Inspect major NPDES permitted facilities as agreed to in the Compliance Assurance Agreement
- Process all major NPDES permits that expire during the period of the agreement
- Conduct bioassays on selected sources
- Continue inspection program for minor NPDES sources
- Continue administering the pretreatment program
- Continue administering the UIC program
- Further develop the biosolids program with the intent to seek delegation of the land application portion of the federal sludge management program. EPA agrees to provide technical support to help DEQ assume delegation.
- Continue work to manage industrial residuals
- Continue efforts to assure compliance and pursue enforcement when necessary.
- Continue implementation and expansion of the Environmental Partnerships for Oregon Communities Program
- Continue to implement the State Revolving Loan Fund, as outlined in the annual Intended Use Plan

- Administer EPA award grant increases, as necessary to utilize remaining 205(g) funds and to assure successful close out of the federal Construction Grants program.

A. Oversight Reform

Both DEQ and EPA recognize that, in order to achieve the goals and priorities herein described, some thought must be given to how to shift resources from the point source control orientation of the past to the more comprehensive watershed approach to water quality management. Therefore, both agencies are committed to reviewing existing programs and resources, and identifying opportunities to disinvest in some activities and to improve efficiency in other areas, so that resources may be shifted and invested appropriate to the needs and goals for Oregon's water quality.

To launch this program reform effort, the DEQ and EPA agree to the following initial changes for FY 97:

- Previous SEAs required that DEQ conduct annual compliance inspections for all major NPDES dischargers. These major sources, for the most part, have reached a level of performance such that annual compliance inspection may no longer be necessary. To make better use of limited resources, and to help shift resources to activities that are more essential to meeting water quality priorities, the DEQ agrees to conduct inspections for up to 50% of the major NPDES facilities (about 35 sources), with a general goal of inspecting each facility every other year. DEQ and EPA will work together to revise the Compliance Assurance Agreement to incorporate this and other changes (such as geographically-targeted inspections, especially for minor sources in critical basins and watersheds). Any resource savings realized from this arrangement will be used to address goals for TMDLs and salmonid recovery.

- As part of the Quarterly Non-Compliance Reporting (QNCR) process, the DEQ and EPA meet each quarter to discuss compliance status and enforcement activities. The DEQ and EPA agree that quarterly meetings are no longer necessary, and that meetings may now be scheduled twice yearly, or as mutually needed. The meetings will be broadened to include more discussion of EPA guidance changes and new developments in the NPDES program.

Beyond FY 97:

Both agencies shall explore the legal and environmental implications of altering the permit term requirements. One thought is to issue permits which do not expire, but have safeguards to assure that the permit is modified as necessary throughout its life (including opportunity for public notification and comment). Another possibility is to design criteria for automatic renewal or rollover of permits, especially as an incentive for permit holders. The DEQ is already exploring the possibilities of issuing permits by rule, and perhaps replacing some general permits with performance-based, self certifications for facilities that contribute low or minimal environmental impacts to water quality.

VII. DISPUTE RESOLUTION

The DEQ and EPA-Region 10 will use an agreed upon dispute resolution process to handle conflicts that may arise as we implement our environmental programs and will treat the resolution process as an opportunity to improve our joint efforts.

The resolution process incorporates the following principles:

- recognition that conflicts arise as a normal part of the DEQ/EPA relationship,
- disagreements are mutual problems requiring joint efforts to resolve disputes,
- discussions are opportunities to improve our relationship and our delivery of service to the public,
- resolutions should be pursued at the staff level, while keeping management informed,
- documentation of discussions, to memorialize decisions,
- prompt resolution of conflicts so as not to cause undue delays in accomplishing tasks and achieving objectives.

VIII. INCORPORATION BY REFERENCE

No single document exists which thoroughly describes the Oregon DEQ's activities, goals, and objectives for water quality, including this agreement. Oregon's water quality has been the subject of decades of work and research, and a host of management plans, assessments, and studies have been prepared as work has proceeded. Each previous effort is a critical component of our collective efforts to improve Oregon's water resources and Oregonian's quality of life.

For this EnPA, the following EPA/DEQ agreements and plans are incorporated by reference:

Delegation of the NPDES Program

Compliance Assurance Agreement, including NPDES and UIC

State Revolving Loan Fund Operating Agreement

State Revolving Loan Fund Intended Use Plan

National Estuary Programs: Tillamook Bay and Lower Columbia

Nonpoint Source Assessment Report

Nonpoint Source Statewide Management Plan

IX. PUBLIC PARTICIPATION

The EPA strongly encourages public participation in conjunction with the development of the EnPA; however, it is not required as a prerequisite to grant application. The timeframe to draft the EnPA was extremely short, so no public notice or public hearing was held. The EQC meeting will serve as the opportunity for public input. Distribution of the EQC agenda will provide notice of the EnPA and opportunity to present oral comments at the July 12, 1996 meeting. Future EnPAs will be prepared such that adequate time is given to provide public notice and acquire public input.

X. AGREEMENT

The undersigned, for the Oregon Department of Environmental Quality (DEQ) and the U. S. Environmental Protection Agency, Region 10 (EPA), enter into this agreement to manage water quality programs.

This agreement, known as the Oregon/EPA Environmental Partnership Agreement, describes priorities, activities, estimated resources, and outputs which comprise the cooperative DEQ/EPA water quality management program. The agreement, including the workplan, is the state's application for EPA program grants authorized under provisions of the federal Clean Water Act, and Safe Drinking Water Act (for underground injection control).

The agreement covers the period July 1, 1996 through June 30, 1997. All program commitments, grants, resources, and assistance are subject to actions of the state legislature, U. S. Congress, and the courts. Fulfillment of commitments described herein are subject to the availability of resources.

This agreement is hereby entered into this _____ day of _____, 1996, and remains in effect until June 30, 1997, unless amended or terminated by mutual consent.

Langdon Marsh Director Oregon Department of Environmental Quality	Chuck Clarke Regional Administrator U. S. Environmental Protection Agency--Region 10

XI. APPENDICES

A. Workplan

B. Oregon Water Quality Index

APPENDIX A: Workplan

REVISED 6-25-96

A. WATERSHED APPROACH

Long-Term Goal: Work effectively with EPA and other natural resource agencies and groups (federal, state, regional, local) to deliver a watershed-based approach to natural resource management, including extensive use of GIS.

FY 97 Objectives: Develop framework document for watershed approach; determine the watersheds that will be the focus of attention for FY 97. Develop a work plan identifying resource commitments. Ensure protection and restoration of critical basins and sensitive coastal waters.

Issue/Problem	Geographic focus	Activities/Actions	Resources	Output	Target Date	Measure/Indicator /Outcome
Effective, efficient long-term targeting of resources to implement watershed approach	Statewide	Identify remaining issues to be resolved to implement watershed approach	.25 FTE (DEQ);	Concept paper and EQC report;	Oct 96	See Goal G OWQI
		Work with EPA to prioritize watersheds; select watersheds for initial focus; define activities	1 FTE (DEQ) 1 FTE (EPA)	Framework document; implementation schedule	Mar 97	
Watershed-based NPDES permitting	(Targeted areas to be determined)	In concert with the prioritization and selection of watersheds, work with EPA to design a strategy to transition NPDES permit issuance to a watershed basis	.10 FTE (DEQ) .10 FTE (EPA)	Include permitting strategy in above mentioned framework document	Mar 97	OWQI
Coordinated Watershed Approach	Tualatin Basin	Evaluate existing data, refine TMDLs, develop and implement second phase of implementation for urban, agriculture, and Forestry;	.10 FTE (DEQ) .50 FTE (EPA)	Jointly developed TMDLs; stakeholder consensus	June 97	OWQI; increase DO, and maintain DO with growth; decrease P; decrease peak pH on mainstem

		coordinate efforts with watershed councils and stakeholders; Integrate urban subbasin plans into NPS TMDLs, Develop long term TMDL requirements for point sources.				
Coordinated Watershed Approach	Umatilla River Basin	Utilize Geographic Initiative Grant from EPA to pilot watershed approach. With state and local partners, develop total basin, multi-parameter TMDL following watershed protection strategy	.15 FTE (DEQ) .10 FTE (EPA)	Stakeholder consensus, G.I. Goals & Objectives Established Prioritize environmental projects Form project teams and implement projects TMDL	July 96 Aug 96 Dec 96 Dec 97	OWQI; decreased pH, bacteria, temperature, paraphyton; increased DO and habitat
Watershed Assessments	Umpqua R Basin	Implement a watershed assessment procedure to document linkages between	.75 FTE (DEQ)	GIS mapping of contributing factors and	Apr 97	Eventually will be reflected in OWQI; will lead to increased DO; reduced pH,

		water quality and watershed management practices.		analytical report		temperature, bacteria
Watershed Assessment	Columbia Slough	Develop a watershed based TDML for multiple parameters. Integrate WQ objectives with Environmental clean up effort. Implement TMDLs using general urban stormwater permits	.25 FTE (DEQ) .25 FTE (EPA)	Phased TMDLs; Industrial general permits, Airport de-icing limits; WQ based flow management plan; Implementation agreements	Apr 97	OWQI; increased DO w/in 2 yrs; achieve DO levels w/in 5 yrs; reduced toxic loads from urban runoff as defined in TMDL; implemented pollution control strategies as defined in Slough Risk Assessment
				Identification of pilot watershed; project agreements, implementation	July 97	
				Complete assessment of basin	Sept 97	
Fill gaps in Coastal Nonpoint Control Program	Coastal Zone	Add elements to onsite program to better address maintenance of existing systems	.50 FTE (DEQ)	Onsite inspection requirements	July 97	Reduce septic failures and eventually eliminate septic failures as determined by sanitary surveys
		Road/bridge construction/maintenance standards		BMPs for all governments with appropriate responsibility	Sept 97	Indicators to be developed through CZNPS program; initially use monitoring data from state agency reports

		Small site construction erosion control		Rules adopted, other program elements identified	July 97	Indicators to be developed through CZNPS program. (See Goal G).
NEP Community Management Plans	Tillamook Bay	Through TBNEP, provide staff, guidance, technical, and financial support	.50 FTE (EPA)	Comprehensive Conservation Management Plan	Sept 98	Reduced fecal contamination of shellfish; improved salmon habitat; reduced sedimentation
Controlling and managing dairy animal wastes	Tillamook Bay	Provide guidance and funding for Methane Energy and Agricultural Development (MEAD) project	.10 FTE (EPA)	Construction and operation of MEAD facilities	June 97	Reduced fecal coliform applied to pastures and exported to bay; reduced methane emissions to atmosphere; more complete utilization by plant uptake of nutrients from animal wastes
NW Forest Plan	Watersheds in Designated Forest Provinces	Implement NW Forest Plan Aquatic Conservation Strategy; coordinate NWFP activities with state and local watershed and salmon restoration groups	.50 FTE (EPA)	Coordinated public/private land strategies for recovery of aquatic resources	on-going	Indicator/performance measure to be developed.
Conservation Management Planning	Lower Columbia	Provide staff, guidance, technical support, and financial support	.50 FTE (EPA)	Comprehensive Conservation Management Plan	July 99	Improved physical habitat,; lower risk levels associated with fish consumption; WQ conditions meet state standards

Watershed Assessment	Grande Ronde Basin	Complete multi-parameter TMDL; complete upper GR temp TMDL; implement NPS projects; support state and local stewardship efforts	.20 FTE (EPA)	TMDLs; technical support; networking; facilitation; modeling	Dec 97	OWQI; reduce temp, peak pH, increase DO and ecological health as measured by Rapid Biological Protocol (RBP) score.
Watershed research and demonstration projects	Targeted watersheds (Rogue, Umpqua, Tillamook, or Umatilla Basins)	Administer 104(b)(3) grant; use 104(b)(3) funds to support water quality/watershed projects in critical basins (with point source connection); at least 25% of allocation to be awarded to eligible non-DEQ recipients.	.03 FTE (DEQ) .02 FTE (EPA)	Projects funded/ completed	July 97	TBD
Contaminated sediments	Statewide	Formalize cooperative interagency Sediment Management approach; work with EPA, other federal, state and tribal agencies; develop coordinated assessment approach; establish technical assistance teams.(TATs)	.03 FTE (DEQ) .02 FTE (EPA)	Sediment management approach defined; assessment criteria developed; TATs selected	July 97	TBD

B. **SALMONID RECOVERY**

Long-Term Goal: Restore and protect WQ for native salmonid populations and support efforts to improve and restore habitat.

FY 97 Objectives: Identify programs and allocate resources that both agencies could provide to support salmon recovery, and especially the Coastal Salmon Restoration Initiative and plan. Continue to support the development of watershed councils directing efforts at restoring and protecting water quality for coastal salmonid habitat. Continue water quality/salmonid habitat enhancement programs in Grande Ronde, Umatilla, Deschutes, and John Day basins. Continue active participation on governor's Scientific Advisory Team.

Problem/Issue	Geographic Focus	Activities	Resources	Output	Target Date	Outcome/Indicators
Water Temperature too high to support salmonids	Statewide	Solicit and oversee projects to restore/enhance canopy, control temperature, and other projects	1 FTE (DEQ)	Landowner contracts for riparian restorations, fencing and planting initiated, monitoring plan developed and implemented.	July 97	Reduced temp and increased shade as reflected in monitoring over the life of the project
Mitigate impacts from projects in sensitive habitats	Coastal Coho ESU Zones	Section 401 certifications reviewed with emphasis on fish habitat	.25 FTE (DEQ)	Certification of federal permits	July 97	Turbidity minimized by implementation of state requirements in permit
Salmon runs reduced in coastal estuaries and watersheds	Tillamook Bay	Water quality planning and implementation efforts focused on Tillamook Bay and supporting watersheds	.5 FTE (DEQ)	Development of CCMP	Ongoing	(See Goal A)

Salmon runs reduced in Columbia River tributaries	Grande Ronde, Umatilla, John Day, Deschutes	Complete TMDLs, watershed management plans with emphasis on salmonid enhancement.	FTE is counted in Section C	TMDLs, watershed management plans emphasizing salmonid enhancement	See schedule in Sec. C	OWQI; increased DO; reduced peak pH and temperature; increase ecological health as measured by RBP score.
Coho reduced in Coastal streams	*North Coast* Nestucca, Netarts, Nehalem Basins *South Coast* Rogue; Coquille; Umpqua Basins	Continue the Department efforts to develop and support watershed councils through technical support and 319 funding GIS Mapping support for data layers critical to salmon recovery Outreach and education programs to support Governor's Salmon Initiative	.50 FTE (DEQ) 2.25 FTE (DEQ-WR) .10 FTE (EPA) .20 FTE (EPA)	watershed plans in critical Coho habitat streams; initiation of watershed councils in the Nestucca and Netarts basins; TA and support to established watershed councils in S. Coast basins; GIS maps; at least one 319 project in each basin	June 97	OWQI; reduced temperature and sediments; increased DO levels
Salmonberry Restoration	Salmonberry River-- Restore the water quality and habitat of the Salmonberry River impaired due to flood and railroad damage	Develop WQ based maintenance requirements for railroad, establish railroad restoration requirements, and develop instream mitigation measures	.15 FTE (DEQ); .01 FTE (DEQ-Lab)	Standards,, requirements, and mitigation measures drafted; implementation plan and schedule	June 97	Increased intergravel DO; reduced sediment load, turbidity and SS; RBP scores

Interagency coordination to develop recovery plans	Coastal basins	Review all issues associated with coho survival, especially concerning WQ monitoring; participate in the development of the salmon recovery plan	.25 FTE (DEQ); .30 FTE (EPA);	Restoration plan w/monitoring strategy	July 97	Indicators to be designed in planning process and final restoration strategy
		Coordinate NW Forest Plan and Governor's Salmon Recovery Initiative; participate on Oregon State Team and Oregon Coastal Salmon Recovery Science Team	.50 FTE (EPA)		ongoing	
Salmon restoration on private lands	Coastal Basins	Coordinate with NRCS, DEQ, SWCD, and private landowners to ID and implement restoration activities to complement governor's salmon initiative	.30 FTE (EPA)	Projects implemented on private lands	ongoing	(See above)
Declining Columbia and Snake River Salmon	Columbia and Snake R, mainstem and sub-basins	With NMFS and state agencies, address WQ issues in Snake River Recovery Plan;	.03 FTE (EPA) .02 FTE (DEQ-ER)	Technical assistance provided;	June 97	Indicators/measures to be developed jointly through recovery planning process.
		Coordinate with tribes, NMFS, COE, USFWS, BPA,		Coordination meetings attended		

		NPPC, and DEQ efforts to address temperature, TDG, flow conditions; toxicity, fish contaminate level, and habitat protection Perform system operation reviews and configuration studies on hydropower facilities		reviews performed; studies completed		

C. **STANDARDS, TMDLS, AND 303(D) LIST**

Long-Term Goal: Develop a strategy to restore the large number of water-quality limited waterbodies, and make significant progress towards restoration.

FY 97 Objectives: Complete the requirements of the court order; explore alternatives to the TMDL review/approval process, such as a NPS basinwide TMDLs; use the 303(d) list as a tool to select priority watersheds. Develop TMDLs for the following basins: Tualatin, Columbia Slough, Klamath, Grande Ronde River, Umatilla River, and S. Umpqua River. Approved TMDLs will be implemented as planned in FY 97 to address priority waters. Design guidance to implement the newly adopted water quality standards for temperature and dissolved oxygen. Coordinate with DSL on wetland protection efforts.

Problem/Issue	Geographic Focus	Activity	Resources	Outputs	Target Date	Outcomes/Indicators
Large listing of water quality limited streams	Statewide	Develop priority list of water quality limited waterbodies to target resources, with emphasis on criteria for salmonid recovery; coordinate review and approval of list with EPA	.25 FTE (DEQ) .10 FTE (EPA)	Priority list approved	July 96	OWQI; reduction in number of violations
Large number of listed waterbodies with NPS component	Statewide	Work with EPA to develop guidance for plan approval to meet water quality goals that does not use traditional TMDL resources; EPA provide TA and guidance, and work with DEQ and other federal agencies to explore alternatives for NPS problems	.30 FTE (DEQ) .20 FTE (EPA)	Guidance document; implementation schedule	Aug 96	OWQI

		Assist development of watershed management plans for at least 6 listed waters	1 FTE (DEQ)	Water Quality Improvement Plans	July 97	OWQI
NPS TMDLS	Columbia Slough, Tualatin; urban areas	Develop general permit for stormwater, incorporating TMDLs	.50 FTE (EPA)	TMDLs General Permit	July 97	(See basin indicators in Goal A)
Tualatin TMDL	Tualatin Basin	Develop TMDLs, Coordinate SB1010 with DOA, urban subbasin TMDLs	.10 FTE (DEQ) .30 FTE (EPA)	Process developed; TMDL or equivalent drafted	July 97	(See Goal A)
Basin-wide TMDLs or equivalent	Coastal basins; Nestucca, Rogue, Umpqua	Develop basinwide model for TMDLs	.50 FTE (EPA)	TMDLs	July 97	OWQI; reduced temperature
Temperature TMDLs	Eastern Oregon Streams	Utilize Grande Ronde temperature model to develop TMDL.	.10 FTE (EPA) .10 FTE (DEQ)	TMDL and watershed plan submitted to EPA	Dec 96	OWQI; reduced temperature
Klamath River TMDL	Klamath River	Develop TMDL with EPA	.30 FTE (DEQ)	Complete Data Collection Establish Advisory Committee	Nov 96 Dec. 96	OWQI; reduced wasteloads as reflected in DMRs;

Umatilla River TMDL	Umatilla River	Jointly work to develop and refine TMDL	.25 FTE (DEQ) .25 FTE (EPA)	Complete Data Assessment	June 97	(See Goal A)
Grande Ronde River TMDL	Grande Ronde River	Develop and submit TMDL to EPA	.25 FTE (DEQ) .10 FTE (EPA)	Submit TMDL to EPA	Dec. 97	OWQI; reduce nutrient loads and peak pH.
Deschutes TMDL	Upper Deschutes River	Alternative NPS TMDL and WQ Management Plan	.05 FTE (DEQ) .05 FTE (EPA)	submit TMDL to EPA	Dec. 96.	OWQI; increased DO; reduced temperature and turbidity
Temperature and Dissolved Gas supersaturation	Columbia and Snake Mainstem	(See activities under Salmonid Recovery goals)	.20 FTE (EPA)	TMDL and WQ Mgmt. Plan	Aug. 96	OWQI; reduced temperature
		Assistance from EPA Lab	.05 FTE (EPA)	Technical Support	July 97	
Temperature and Dissolved Oxygen Standards implementation	Columbia and Snake Mainstem	ESA consultation; work with DEQ to develop conceptual approach with NMFS and USFWS; prepare a biological evaluation; participate in consultation	.10 FTE (EPA)	Technical Support; Conceptual approach drafted; biological evaluation drafted; consultation provided		OWQI; standards implemented; reduced temperature; increased DO.

D. **NON-POINT SOURCE POLLUTION**

Long-Term Goals: Conduct adequate water quality monitoring and assessment for non-point sources, making information available to natural resource agencies to determine work needing to be done and to use as a means of public education.

FY 97 Objectives: Form partnerships with other natural resource agencies and stakeholders to build networks for consistent policy, information transfer, and effective implementation of BMPs. Pursue funding opportunities (expand eligibility for SRF, leveraging, etc.)

Problem/Issue	**Geographic Focus**	**Activities/Actions**	**Resources**	**Outputs**	**Target Date**	**Outcome/Indicators**
Maintain, support local presence	Statewide	Support regional NPS staff with training, project funding, watershed assessments	.80 FTE (DEQ)	319 intended Use Document; quarterly staff meetings	July 97	Project evaluations and monitoring reports from project implementers
Limited applicability for SRF funds	Statewide	Seek legislative approval	.10 FTE (DEQ)	Statutory change	July 97	Funding availability
Visual indicators of water quality	Statewide	Establish reference sites in each ecoregion of good water quality with involvement of local land managers; established sites and management practices can be presented through education, stewardship efforts	.25 FTE (DEQ)	Sites identified, outreach strategy developed and implemented	July 97	Indicators/measures to be developed

Volunteer Monitoring	Statewide	Continue EPA support of Citizen Lake Watch; seek additional support through Lakes Center	.25 FTE (DEQ)	Periodic reporting, establishment of multi-agency lakes information clearinghouse	July 97	Indicators/measures to be developed
Coordinate watershed enhancement	Statewide	Develop geographic and programmatic priorities in collaboration with other NPS watershed management partners. Review MOAs for effectiveness and participate in GWEB and other programs Work with other natural resource agencies to ID projects best meeting NPS strategies; Administer 319 Grants,	.25 FTE (DEQ) .10 FTE (EPA)	Continuing involvement and support of internal and external efforts; MOAs reviewed and developed when necessary 319 Grant Projects funded and Implemented	July 97 Sep 96	TBD
Reduce NPS Pollution, Enhance Local Stewardship of Water Resources	Eastern Oregon Region	Provide technical and administrative assistance as needed	.40 FTE (DEQ) .10 FTE (EPA)	Technical Assistance	July 97	OWQI; other indicators/measures TBD
Need for Technical Assistance to Natural Resource Agencies and Local Watershed Groups	Eastern Oregon Region	Provide technical assistance and technical review of water quality management plans developed by agencies and local watershed groups.	.20 FTE (DEQ-ER) .10 FTE (EPA)	Technical assistance; plans developed	July 97	(Same as above)

	N. Coast Basins		.10 FTE (DEQ-NWR); .10 FTE (EPA)			
	S. Coast Basins		.10 FTE (DEQ-WR) .10 FTE (EPA)			
NPS Management Program	Statewide	Jointly evaluate and update Management plan	.05 FTE (EPA)	Plan evaluated and updated, if needed	July 97	TBD
Innovative funding for NPS	Statewide	Tap networks for ideas on new finding sources for NPS efforts	.05 FTE (EPA)	Funding sources identified	July 97	Long-term funding for NPS activities

E. **GROUNDWATER MANAGEMENT AND PROTECTION**

Long-Term Goal: Protect the state's groundwater resources through sound management policies and programs. Identify areas of the state that have groundwater quality problems, particularly focusing on those areas where groundwater contamination is due primarily to NPS pollution. Initiate programs to address the most significantly contaminated areas. Encourage and promote citizen stewardship of groundwater resources. Promote and encourage pollution prevention as the preferred approach for protecting groundwater water quality.

FY 97 Objectives: Support and promote groundwater education in the state. Identify areas of NPS groundwater contamination. Continue to develop accessible groundwater database and maps of vulnerable aquifers. Develop and implement the voluntary Wellhead Protection Program in cooperation with the OSHD. Work toward better consistency in groundwater rule implementation

Problem/Issue	Geographic Focus	Activities	Resources	Outputs	Target Dates	Outcomes/Indicators
Program coordination	Statewide	Develop partnerships; actively promote joint goals w/technical materials, data summaries, fact sheets, etc.	.50 FTE (DEQ)	coordinated approach to GW protection	ongoing	joint publications individual program accomplishing multiple program goals
GW protection in permits	Statewide	Provide training to regional permit staff about GW rule guidance Participate in discussions w/stakeholders about how to better implement rules	.90 FTE (DEQ)	more GW protection consideration prior to permitting GW discharges; more GW conditions; more waste minimization efforts	July 97	TBD

Source Water Protection (WHP)	Statewide	Provide TA to communities doing WHP programs; review and certify	.50 FTE (DEQ)	more WHP programs in state	ongoing	Continued progress in 20 existing WHP communities; 15 new WHP communities initiated. Development of promotional material.
Raise citizen awareness and education about gw issues	Statewide	Support and promote groundwater education activities in the state	.25 FTE (DEQ)	Children's GW Festival, school talks, other events	Ongoing	Increased community activity related to WQ protection
Community Involvement	Statewide	Continue support of Community Involvement Program	.2 FTE (OSU)	Provide support and resource to communities working for groundwater protection	July 97	TBD
GW Management Plan	Lower Umatilla Basin	Develop and implement LUB-GMA action plan	.50 FTE (DEQ)	Action plan; local involvement in program	July 97	TBD
Accessible GW database	Statewide	Continue develop of accessible database for GW information	.50 FTE (DEQ)	Progress made toward final database	on-going	TBD

Aquifer Vulnerability Mapping w/ GIS	Statewide	Complete aquifer vulnerability map; assess accuracy	.50 FTE (DEQ)	Report and map complete	July 97	TBD
Pesticides in groundwater	Statewide	Coordinate w/state pesticide management plan process; review plans	.10 FTE (DEQ-AP)	Plans reviewed	July 97	TBD
Nitrate contamination in GW	L. Umatilla, Malheur	Monitor groundwater	1 FTE (DEQ-Lab)	Data gathered from 40-well network	July 97	Reduced N concentrations as reflected in trending analysis
Vulnerable aquifers	Rural Areas	Calculate septic system densities to protect GW;	.20 FTE (EPA)	Report drafted for pilot areas (Coburg, Clatsop Plains)	June 97	Reduced N loading to shallow water table aquifers
		Research stormwater management designs that provide alternatives to dry wells	.10 FTE (EPA)	Summary article prepared for ACWA	Sept 97	
Public awareness to protect GW sources for drinking water	Statewide	Sponsor/coordinate workshops; develop outreach materials; respond to public requests for info; participate at public events and conferences.	.20 FTE (EPA)	Workshops held; outreach materials produced; public events attended where info provided	ongoing	TBD

GW concerns in watersheds	Umatilla and Columbia Basin	Provide training; TA; develop educational materials	.50 FTE (EPA)	Workshops held; TA provided; educational materials prepared and distributed	Dec 97	GW concerns incorporated into watershed management strategies
Intra-agency coordination for Oregon's GW protection program	(Regional)	Work with other EPA programs to include GW protection	.25 FTE (EPA)	Coordination; GW protection reflected in program priorities and project review criteria	ongoing	GW concerns incorporated into regional geographic initiatives
		Coordinate regional policies and programs to address GW needs in ag/rural areas. Support Home*A*Syst program		Workshops held; educational materials provided		Number of homestead assessments conducted in vulnerable areas

F. **POLLUTION PREVENTION**

Long-Term Goal: Firmly establish pollution prevention as the preferred choice for environmental management for public and private sectors. Integrate pollution prevention philosophies and actions into all water quality activities and programs, with an eye toward cross-media implementation.

FY 97 Objectives: Actively participate in the newly formed DEQ Pollution Prevention Core Committee to review issues and develop departmental strategies for integrating pollution prevention principles and incentives into DEQ activities. Drawing from the Ross Report, develop a strategy for integrating pollution prevention principles into the water quality programs. Coordinate water quality P2 initiatives with other DEQ divisions.

Problem/Issue	**Geographic Focus**	**Activities**	**Resources**	**Outputs**	**Target Dates**	**Outcomes/Indicators**
Integrating Pollution Prevention into WQ programs	Statewide (and internal to DEQ)	Serve on P2 Core Committee and appropriate subcommittees; assist in drafting legislative concept for state legislature; work with EPA to develop implementation strategy	.05 FTE (DEQ) .01 FTE (EPA)	Meetings attended Strategy completed Legislation drafted	ongoing Sept 96 July 97	Pollution prevention integrated into all WQ programs
Recognizing "green" behavior in WQ permits; design incentives to employ P2	Statewide	Work with Core Committee, DEQ P2 Coordinator; and EPA Reg 10 to investigate opportunities for incorporating P2 into WQ permits; work with EPA and DEQ P2 Coordinator to explore P2 incentives to move permittee's beyond compliance	.10 FTE (DEQ) .01 FTE (EPA)	"green" behavior defined; pilot permittee selected for P2 approach; model permit drafted	July 97	TBD

G. WQ MONITORING, PERFORMANCE MEASURES, ENVIRONMENTAL INDICATORS, OUTCOMES

Long-Term Goals: Continually improve efforts to monitor water quality for all waters of the state. Develop and implement meaning measures of performance. Develop and implement environmental indicators to help assess the long-term value of water quality efforts. Make measures and indicators meaningful to Oregonians.

FY 97 Objectives: Develop the OWQI as a tool for measuring general trends in water quality Enhance lab efforts to develop biological indicators for SW; develop set of indicators for GW. Use available sources to help determine other environmental indicators, performance measures, such as the EPA Environmental Indicators of WQ for States; State Environmental Goals Project Prospective Indicators; national catalogue of environmental indicators, when available.

Problem/Issue	Geographic Focus	Activities	Resources	Outputs	Target Dates	Outcomes/Indicators
BMP effectiveness	Grande Ronde	Conduct long-term monitoring of effectiveness of BMPs	1 FTE (DEQ)	Monitoring reports; sample collection; data analysis	June 97	Rapid Biological Protocol (RBP) scores; habitat evaluation scores
Habitat quality in flood areas	Coast Ecoregion	REMAP project--monitor reference sites for habitat integrity (macroinvertebrates, fish, water quality)	.5 FTE (DEQ) .5 FTE (EPA)	30 sites monitored; monitoring reports; sample collection; data analysis	Sept 96	OWQI; RBP scores; habitat evaluation scores; Index of biological integrity
Habitat quality in Deschutes Basin	Deschutes	REMAP project--monitor random sites for habitat integrity (macroinvertebrates, fish, water quality)	1-3 FTE (DEQ, depending on funding)	Sample collection; data analysis; monitoring report	begin June 96	OWQI; RBP scores; habitat evaluation scores; index of biological integrity

Improve WQ data for rivers, streams, and bays	Statewide	WQ ambient monitoring system	6 FTE (DEQ)	Data collection and analysis; monitoring reports	June 97	OWQI
Support voluntary monitoring/watershed councils	Statewide	Technical assistance to coordinate voluntary monitoring programs, watershed councils, and other local watershed groups	1 FTE (DEQ)	Technical assistance; program coordination; incorporation of data	June 97	Initially, amibient monitoring of specific parameter; WQ trending analysis limited to parameter of concern; eventually OWQI and RBP scores, and index of biological integrity
TMDLs	Priority basins	Support TMDL efforts by providing scientific studies	3 FTE (DEQ)	Studies completed	June 97	TBD
Toxins	Statewide	Continue implementation of toxics ambient monitoring plan	1 FTE (DEQ)	Monitoring reports	June 97	TBD
Point Sources	Statewide	Mixing zone studies; compliance and investigation sample analysis; QA split sampling; TA	2 FTE (DEQ)	Samples collected; studies completed	June 97	Initially, reduction in number of mixing zone violations; long-term indicator TBD

G. WQ MONITORING, PERFORMANCE MEASURES, ENVIRONMENTAL INDICATORS, OUTCOMES

Long-Term Goals: Continually improve efforts to monitor water quality for all waters of the state. Develop and implement meaningful measures of performance. Develop and implement environmental indicators to help assess the long-term value of water quality efforts. Make measures and indicators meaningful to Oregonians.

FY 97 Objectives: Further develop the OWQI as a tool for measuring general trends in water quality; enhance lab efforts to develop biological indicators for SW; form work group to begin developing indicators and measures for other WQ activities (i.e. GW, NPS, sediments, toxics). Use available sources to help determine other environmental indicators, performance measures, such as the EPA Environmental Indicators of WQ for States; State Environmental Goals Project Prospective Indicators; national catalogue of environmental indicators, when available.

Problem/Issue	Geographic Focus	Activities	Resources	Outputs	Target Dates	Outcomes/Indicators
BMP effectiveness	Grande Ronde	Conduct long-term monitoring of effectiveness of BMPs	1 FTE (DEQ)	Monitoring reports; sample collection; data analysis	June 97	Rapid Biological Protocol (RBP) scores; habitat evaluation scores
Habitat quality in flood areas	Coast Ecoregion	REMAP project--monitor reference sites for habitat integrity (macroinvertebrates, fish, water quality)	.50 FTE (DEQ) .50 FTE (EPA)	30 sites monitored; monitoring reports; sample collection; data analysis	Sept 96	OWQI; RBP scores; habitat evaluation scores; Index of biological integrity
Habitat quality in Deschutes Basin	Deschutes	REMAP project--monitor random sites for habitat integrity (macroinvertebrates, fish, water quality)	1-3 FTE (DEQ, depending on funding)	Sample collection; data analysis; monitoring report	begin June 96	OWQI; RBP scores; habitat evaluation scores; index of biological integrity

Improve WQ data for rivers, streams, and bays	Statewide	WQ ambient monitoring system	6 FTE (DEQ)	Data collection and analysis; monitoring reports	June 97	OWQI
Support voluntary monitoring/watershed councils	Statewide	Technical assistance to coordinate voluntary monitoring programs, watershed councils, and other local watershed groups	1 FTE (DEQ)	Technical assistance; program coordination; incorporation of data	June 97	Initially, amibient monitoring of specific parameter; WQ trending analysis limited to parameter of concern; eventually OWQI and RBP scores, and index of biological integrity
TMDLs	Priority basins	Support TMDL efforts by providing scientific studies	3 FTE (DEQ)	Studies completed	June 97	TBD
Toxins	Statewide	Continue implementation of toxics ambient monitoring plan	1 FTE (DEQ)	Monitoring reports	June 97	TBD
Point Sources	Statewide	Mixing zone studies; compliance and investigation sample analysis; QA split sampling; TA	2 FTE (DEQ)	Samples collected; studies completed	June 97	Initially, reduction in number of mixing zone violations; long-term indicator TBD

Groundwater	Statewide; GW management areas	Compliance and investigation sample analysis	4 FTE (DEQ)	Analyses completed	June 97	GW trending analysis for nitrates and organic contaminants in GWMAs
Measuring trends in surface water quality	Statewide	Further develop OWQI; incorporate into 305(b) report; add to Oregon Benchmarks	1 FTE (DEQ)	OWQI added to Oregon Benchmarks	June 97	n/a
Intergovernmental coordination, esp for NPS	Forest Provinces; Coastal basins	Liaison with Clinton Forest Plan efforts; Governor's Salmon Recovery Initiative; relative to scientific issues (Oregon Science Team)	.25 FTE (DEQ)	meetings attended; TA provided	June 97	no direct indicator; eventually OWQI and RBP
Improved data analysis	Statewide	Improve data analysis and management through use of new STORET	.05 FTE (EPA)	EPA TA to access and use new STORET capabilities	June 97	n/a
Develop environmental indicators and performance measures		Form work group to assist in developing meaningful measures and indicators of environmental performance in WQ (esp for GW, NPS, sediments, toxics)	.10 FTE (DEQ) .10 FTE (EPA)	work group formed;	Sept 96	Identified indicators will be used by WQ program in planning, prioritizing, and program effectiveness reporting
		Jointly work with selected watershed council(s) to ID scientific and visual reference sites		Sets of watershed indicators drafted	June 97	

H. STREAMLINED WQ PERMITTING AND COMPLIANCE PROGRAMS

Long-Term Goal: Enable dischargers to implement cost effective pollution prevention strategies and other innovative approaches such that dischargers will no longer be significant contributors to diminished water quality.

FY 97 Objectives:

Respond to Industrial Wastewater Permit Advisory Committee recommendations and present report to EQC. Begin implementation of recommendations as directed. Review all WQ permitting rules, identify possibilities for flexibility, innovation, consistency and streamlining. Further identify and remove rules that unreasonably hinder or inhibit opportunities for streamlining. (*NOTE: We will work with EPA to expand the workplan after direction is received from the state's Environmental Quality Commission on the above mentioned committee recommendations*)

DEQ will work continue to: 1) implement an effective NPDES permit program, and begin to transition to basin/watershed permitting; 2) implement an effective pretreatment program; and 3) implement the new state Division 50 rules, and work towards delegation of federal land application permitting responsibilities.

DEQ will continue to use enforcement as a tool to achieve compliance with WQ standards; however, DEQ and EPA will begin movement away from case-by-case discussion and review, towards a more outcome-oriented approach. DEQ and EPA will work together to revise and update the NPDES Compliance Assurance Agreement (including cyclical inspections of major NPDES permittees (up to 50% per year), and geographically-targeted and jointly developed inspection approaches to assist in transitioning to watershed-based water quality management).

Problem/Issue	Geographic Focus	Activities	Resources	Outputs	Target Dates	Outcomes/Indicators
Industrial Wastewater Permit Advisory Committee Report	Statewide	Continue to work with Industrial Wastewater Advisory Committee; finalize recommendations; present report to EQC; being implementation of recommendations as directed by EQC. Consult with EPA on issues/recommendations that affect EPA permitting program rules and policies.	.10 FTE (DEQ) .01 FTE (EPA)	Committee Report; EQC Report; EQC action on Report Recommendations ; implementation schedule drafted	Aug 96	Recommendations implemented; WQ permitting program improved and more efficient, better serving the needs of both regulators and regulated community
Water quality-based NPDES permits; stormwater permits	Statewide	Continue implementation of NPDES program, including stormwater program; perform reasonable potential analysis for new NPDES permits, as required by federal regulations EPA provide limited oversight and TA, as requested	app. 30 FTE (DEQ-HQ, Regions, Enf) .10 FTE (EPA)	Permits issued/renewed/modified; permits with WQ-bassed effluent limits; stormwater permits issued Training, TA provided	ongoing	OWQI
Pretreatment	Statewide	Continue implementation of the approved pretreatment program; EPA provide limited oversight and TA, as requested	1.75 FTE (DEQ-RK,CH) .2 FTE (EPA)	PCIs/audits completed; PCS data provided; timely enforcement, if necessary	July 97	OWQI

Biosolids/Sludge Management	Statewide	Continue to implement state program, and work with EPA towards delegation of land application responsibilities	4.25 FTE (DEQ) .05 FTE (EPA)	Delegation action plan/schedule developed; Draft EPA rules reviewed; state rules reviewed for compatibility	Apr 97	TBD
NPDES Compliance Assurance/Enforcement	Statewide	Continue to implement compliance assurance and enforcement program; work with EPA to revise Compliance Assurance Agreement; inspect up to 50% of major NPDES permits; work with EPA to develop watershed-based or otherwise geographically-targeted assistance/monitoring/inspection strategy, esp for NPDES in critical basins. DEQ provide and EPA input data into PCS, as necessary	FTE(DEQ) inc above in WQ NPDES permitting FTE(EPA) to be determined as part of revised CAA	Compliance assistance provided; monitoring; inspections completed; CAA updated; formal enforcement actions	July 97	OWQI

DEFINITIONS
Long-Term Goal the overall long-range agency purpose; the condition of the environment we are trying to achieve; the condition we are seeking to reach by a certain date
FY 97 Objective specific, attainable, quantifiable components of a goal; describes what is to be accomplished, expressed in measurable terms or levels of performance within a specified time frame or by a targeted deadline; does not include activities or actions steps to be undertaken.
WQ Problem/Issue the water quality problem or issue relative to the stated priority
Geographic Focus is problem/issue of statewide concern? or pertinent to a particular waterbody or watershed
Activities specific activities, tasks, programs, actions, steps, or methods that will be used to solve problems and achieve the stated objectives.
Resources personnel, money, programs, equipment, technical assistance, other agency resources, stakeholder resources, contracted services, ...
Outputs immediate products of activities and efforts, short-term results
Target Date expected date for completing activity and producing output
Measure/Indicator the long-term result or outcome of the activity and output; information that measures progress toward meeting water quality goals and objectives; measurable trends or improvements to water quality meaningful to the public and relevant to the objective; performance standards or measures (sample list attached)

APPENDIX B: Oregon Water Quality Index

REVISED 6-25-96

INTERPRETATION AND COMMUNICATION OF WATER QUALITY DATA USING THE OREGON WATER QUALITY INDEX

Curtis Cude, Oregon Department of Environmental Quality, Laboratory Division
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Portland, Oregon 97201

The Oregon Water Quality Index (OWQI) is a single number which expresses water quality by integrating measurements of eight carefully selected water quality parameters (temperature, dissolved oxygen, biochemical oxygen demand, pH, ammonia+nitrate nitrogen, total phosphates, total solids, fecal coliform). The index was developed for the purpose of providing a simple, concise and valid method for expressing the significance of regularly generated laboratory data, and was designed to aid in the assessment of water quality for general recreational uses. Due to resource availability and in order to maintain a manageable, yet representative, index, the OWQI will have certain limitations. The OWQI index cannot determine the quality of water for all uses. Some uses conflict with others. For instance, water quality considerations for agricultural uses are different from considerations for recreational uses. The OWQI cannot provide complete information on water quality. An index provides only a summary of the data. Also, the OWQI cannot evaluate all health hazards. The OWQI can be used to show water quality variation both spatially and temporally. The index allows users to easily interpret data and relate overall water quality variation to variations in specific categories of impairment. The OWQI can identify water quality trends and problem areas. These can be screened out and evaluated in greater detail by direct observation of pertinent data, thus increasing efficiency. Used in this manner, the OWQI provides a basis to evaluate effectiveness of water quality improvement programs and assist in establishing priorities for management purposes.

Water quality indices were first seriously proposed and demonstrated beginning in the 1970s but not widely utilized or accepted by agencies that monitor water quality. Oregon's Department of Environmental Quality developed the original Oregon Water Quality Index in 1980. Use of the index was discontinued because calculating index results in the pre-personal computer era was too labor intensive. The uses and limitations of a water quality index may be misunderstood and the potential of water quality indices for communicating the current status and trends of water quality overlooked. Evaluation of water quality only in terms of raw data can be misleading and confusing for the general public. As a result, it may be difficult for a person interested in water quality to interpret the data to gain an overall understanding of water quality conditions. This may result in faulty conclusions regarding water quality status and management practices. Thus it is difficult to effectively communicate the results from water quality improvement programs when the raw data is confusing. As a solution, a water quality index integrates complex analytical data and generates a single number expressing the degree of impairment of a given water body. This improves communication with the public and increases public awareness of water quality conditions.

The OWQI is calculated in two steps. The raw analytical results for each parameter, having different units of measurement, are transformed into unitless subindex values. These values range from 0 (worst case) to 100 (ideal) depending on that parameter's contribution to water quality impairment. These subindices are combined to give a single water quality index value ranging from 0 to 100. The unweighted harmonic square mean formula used to combine subindices allows the most impacted parameter to impart the greatest influence on the water quality index. This method acknowledges that different water quality parameters will pose differing significance to overall water quality at different times and locations. The formula is sensitive to changing conditions and to significant impacts on water quality

As an example of how a water quality index communicates information, Table 1 presents application of the Oregon Water Quality Index to rivers throughout the Portland metropolitan area.

Site	Mean OWQI 10/85-9/87	Mean OWQI 10/93-9/95	Trend[a]
Sandy R. at Troutdale Bridge	93	93	NST
Clackamas R. at High Rocks (Gladstone)	90	90[b]	NST
Mollala R. at Knights Bridge (Canby)		87[c]	ID
Clatskanie R. at HWY 30 (Clatskanie)		82[d]	ID
South Yamhill R. at HWY 99W (McMinnville)	79	80	NST
Willamette R. at Hawthorne Bridge (Portland)	72	78	Inc.
North Yamhill R. at Poverty Bend Rd. (McMinnville)	71[e]	76	Inc.
Tualatin R. at Rood Bridge (Hillsboro)	71	75	Inc.
Tualatin R. at Boones Ferry Rd. (Durham)	30	57	Inc.

Notes: ID - Insufficient data available. Inc. - Increasing water quality. NST - No significant trend.
a -Trend analysis using Seasonal-Kendall test. Results at confidence level of 95% or greater.
b - Mean taken 10/91-9/95. c - Monitoring started 3/91. Mean taken 3/91-9/95.
d - Monitoring started 10/92. Mean taken 10/92-9/95. e - Mean taken 10/88-9/90.

Table 1. Trend analysis of Portland metropolitan area rivers using the OWQI (10/85 - 9/95)

Table 1 compares mean OWQI values, where available, for the first and last two years of the ten year reporting cycle beginning October 1, 1985. Where data is collected quarterly rather than monthly, mean values are computed for four years. A significant finding is that no decreasing trends were found for these sites. Using the OWQI, one can compare water quality as it changes from upstream to downstream. The Tualatin River at Rood Bridge is situated above all major municipal wastewater treatment facilities in the Tualatin Basin. The Tualatin River at Boones Ferry Road is situated just below the furthest downstream facility at Durham. While these sources and others have impacted the Tualatin River in the past, changes in management practices and significant improvements in wastewater treatment are reflected by a marked increase in water quality. One can also compare water quality among rivers. Portland metropolitan area rivers range in quality from the significantly impacted (but improving) Tualatin River to the high quality of the Clackamas and Sandy Rivers. Also interesting is that the relative rankings of these rivers has not changed over this time period. While factors contributing to water quality impairment differ for each river, one could conclude there have been general improvements in water quality throughout the region. It is likely that further improvements in land and water use will continue to improve the quality of waters in the Portland metropolitan area.

The Oregon Water Quality Index indicates impairment of water quality and progress of water quality management practices. It can be used to detect trends over time and trends across river basins. Most importantly, the Oregon Water Quality Index improves comprehension of general water quality issues, communicates water quality status, and illustrates the need for and effectiveness of protective practices.

State of Oregon
Department of Environmental Quality Memorandum

Date: July 12, 1996

To: Environmental Quality Commissioners

From: Langdon Marsh

Subject: Director's Report

DEQ Is Now On The World Wide Web

We now have another tool available to communicate with Oregonians and even people around the world. Last month DEQ placed its own "Home Page" on the Internet World Wide Web. Since then, hundreds of pages of information ranging from news releases to Administrative Rules have been added to the web site. We expect the site to serve a variety of customers including people seeking technical data, educators and the news media. The agency is also developing an "Intranet" page that will be used within the department to support internal communication. The site is fairly basic now, but we have plans for growth and increased sophistication of information and services provided.

We owe thanks to Carolyn Young, interns from Portland State University, Dennis Kirk and the Information Systems staff and the agency web committee for months of hard work to get this new product up and running. If you have Internet access, visit the page at http://www.deq.state.or.us/

DEQ Announces Final List of Water Quality Limited Streams

The Oregon Department of Environmental Quality (DEQ) has received approval from the Environmental Protection Agency on the final list of rivers, streams, lakes, and estuaries (waterbodies) that do not meet state water quality standards. The Environmental Protection Agency approved a final list on July 1, 1996. The final 1994/1996 list includes approximately 870 rivers, streams, river and stream segments, lakes and estuaries of which 477 are on the list exclusively for temperature violations. The list has approximately 34 fewer waterbodies than the draft list released on December 29, 1995.

For streams or rivers that are on the list DEQ will:

1) begin to develop a management strategy for those streams and rivers that are targeted as high priority. The strategy will include developing Total Maximum Daily Loads (TMDLs) as well as a "non-point" source TMDL guidance now being developed in conjunction with EPA to determine how to best manage non-point source pollution such as surface runoff, elevated temperature, and habitat and flow modification.

2) focus available grant funding in basins with approved TMDLs or basins that are on the 303(d) list.

3) evaluate requests for new discharges, increased discharges and permit renewals focusing closely on water quality impacts from pollutants listed for that waterbody.

4) actively encourage federal, state and local programs to focus their efforts on these waterbodies through use of interagency agreements and technical and financial assistance programs.

Water Quality staff will complete final list compiling next week and we will begin sending out the list and supporting documents to DEQ offices, interested parties, public libraries, Natural Resource Conservation Service and OSU Extension offices, and the news media. We will also be posting summary information on the DEQ web page next week. Within a couple weeks we also hope to have the entire list available on the Internet as a searchable database.

I and some agency staff will attend a conference in Bend July 25-26 concentrating on 303(d) issues. Conference sponsors include the Oregon Water Resources Institute and the Association for Clean Water Agencies. This will be one of many outreach efforts planned over the summer and fall.

In mid August, we will reopen the list through October for public comment for new or additional data not received during the first comment period and, if appropriate, the list will be revised and submitted to EPA in early 1997.

Agreement Opens Property for Development

EPA and DEQ recently signed a landmark agreement (de minimis settlement) with Winmar Pacific which limits their liability and will enable development to proceed on over 400 acres of commercial property located in Portland and Gresham.

The property owned by Winmar is located within the East Multnomah County Groundwater Contamination site (EMC). Boeing Company of Portland and Cascade Corporation are the two companies responsible for the majority of the contamination at the EMC site. The Winmar property has not contributed to contamination at the EMC site

Provided Winmar, its tenants, or new owners follow the terms of the agreement, DEQ and EPA agree to limit their liability under state and federal law in exchange for DEQ access to their property to allow long-term environmental monitoring. The agreement also provides DEQ with a one-time contribution of $100,000 to assist our community participation efforts and other cleanup-related work at the EMC site. The agreement does not limit liability of Winmar, its tenants, or new owners for future activities conducted by these parties which may result in new contamination being released to the environment and contributing to contamination at the EMC site.

EPA Approves $2.9 Million McCormick & Baxter Credit

DEQ applied to EPA for credit for state cost sharing toward cleanup at the McCormick and Baxter National Priorities List (Superfund) site in Portland. (At federally funded sites, states pay 10% of cleanup costs.)

EPA performed an audit of DEQ record keeping with regard to this site and recently issued a preliminary draft audit report approving approximately $2.9 million in credit at this site. The $2.9 million represents money in cleanup activities that DEQ had already put into the site before it was declared an NPL site--eligible for federal superfund monies. At a projected total cleanup cost of about $30 million, we expect the credit to fully capture our 10% share.

To the best of our knowledge, this is the first credit of this magnitude issued to a state by EPA.

DEQ Involved in MLK Boulevard Revitalization Project

A team of NW Region staff have joined a community effort to revitalize properties and businesses along Portland's Martin Luther King Boulevard. Regional Administrator Tom Bispham reports that the project is very positive and an excellent use of DEQ's expertise to serve a community need. The agency has committed to the following as a project participant.

1) By Aug. 15th we will provide a fact sheet to local businesses or property owners that will provide technical assistance on actual or suspected contamination problems (including asbestos, tanks, and hazardous waste). This fact sheet will identify an ombudsperson so they have a single point of contact.

2) By Aug.15th we will provide a tech. asst. fact sheet and contact person for contractors on what to do when they run into contamination or suspect it.

By Sept. 15th we will conduct one or two training sessions for these same contractors and also for small businesses that wish to enter the environmental field. Pollution Prevention will be integrated into this training and technical assistance.

3) By Sept. 30th we will have completed a field survey and data base search to identify actual or suspected environmental problems. A written report of findings will be completed by Nov. 15th. We also advised the group of our committment to using Prospective Purchaser Agreements.

4) Lastly, We emphasized that we believe it is important for the private community to become involved and invested in this project. Thus, we have committed to soliciting the assistance (pro bono) of asbestos contractors to do surveys, consultants to contribute level 1 assessments, private lab assistance, and tank service providers to assist in any way they can.

Agency Acts To Reduce Projected 1995-97 Budget Shortfalls

Every quarter, the Budget Office prepares a forecast of revenue and expenditures for the rest of the current biennium. It's our best estimate at this point in time, using the best methodology we have. The forecast is prepared by starting with biennium-to-date actuals, then adding estimated costs for the rest of the biennium, and finally making adjustments based on actual knowledge about future events. When the second-quarter forecast came out, showing budget problems, division administrators and managers in all programs took steps, like holding positions vacant and cutting contract spending. The third-quarter forecast predicts more of a shortfall than the second-quarter estimates, and now more actions are needed.

Water Quality and Air Quality have the greatest shortfall when we look at this biennium. If trends continue as they have so far, Water Quality would end the biennium with a negative ending balance of ($1.1 million), and Air Quality's ending balance—also negative-- would be ($704 thousand). For the current (1995-97) biennium, program managers and division administrators have developed deficit reduction plans. Given the size of the overall agency budget, these shortfalls are relatively small and should be quite manageable over the next year. Program reductions will be necessary however. Some of the actions uderway to offset these deficits include:

- a hiring freeze
- leaving vacancies open for a while
- cutting contract expenditures
- cutting capital outlay expenditures
- reducing "Supplies and Services" expenditures, like PCs, travel and subscriptions

Total Dissolved Gas Levels High On Columbia

Since the EQC granted the waiver to the state's total dissolved gas standard for the Columbia River at its meeting in April 1996, spill has been occurring. All of this spill has been involuntary -- caused by the high volume of water in the river exceeding the hydraulic capacity of the dams, and through the lack of markets for electricity. The result of this has been high levels of dissolved gas, reaching as high as 140 percent of saturation below Ice Harbor and John Day dams.

The physical monitoring of gas levels is working reliably, and the biological monitoring is yielding results consistent with the high gas levels. The incidence of gas bubble disease showing up in migrating salmonids and resident species is higher than was detected last year when gas levels were within the state waiver.

The Columbia River InterTribal Fish Commission received grant funding to investigate the levels of gas bubble disease found in fish in dam reservoirs and in the Columbia Estuary. They have sampled 2,000 fish to date, and generally found that the level of gas bubbles appearing in fish is consistent with what is being detected at dam bypasses.

The relationship between this agency and the various state and federal fishery management agencies is excellent, with DEQ being included in all discussions on spill and gas supersaturation.

Governor Forms Taskforce to Address Willamette Water Quality

Governor Kitzhaber has formed a taskforce that will focus on long-term health of the Willamette River. This group will spend the next 18 months examining potential water quality problems and devising recommendations on potential resolutions. A final taskforce report is due in January, 1997.

Taskforce members represent a variety of interests and areas, all with a stake in maintaining the Willamette's water quality. They had their first meeting in June. The next session is set for late July. DEQ Water Quality Division is providing some staff support to the taskforce. Retired DEQ chair Bill Wessinger is a member of the group. Other members include:

Bill Chambers, Corvallis -- Stahlbush Island Farms
Dr. Loisa Silva M.D., Salem
Bill Gaffi, Hillsboro -- Unified Sewage Agency, Association of Clean Water Agencies
Stan Gregory, Corvallis -- Professor, Oregon State University
Mike Houck, Portland -- Wetlands Conservation Organization, Audubon Society
Mel Jackson, Eugene -- Professor, University of Oregon
Gayle Killiam, Portland -- Oregon Environmental Council
Dean Marriott, Portland -- City of Portland, Bureau of Environmental Services
Catherine Mater, Corvallis -- Mater Engineering
Frank Mauldin, Salem -- City of Salem
Jack McGowan, Portland -- SOLV Executive Director
John Miller, Salem -- Wildwood, Inc. -- Taskforce chair
Frank Morse, Tangent -- Morse Brothers Aggregate
John Nelson, Corvallis -- City of Corvallis
Terry Smith, Eugene -- City of Eugene
Barte Starker, Albany -- Starker Forest Products
J.B. Summers, Stayton -- Norpac Foods
Sara Vickerman, Portland -- Defenders of Wildlife