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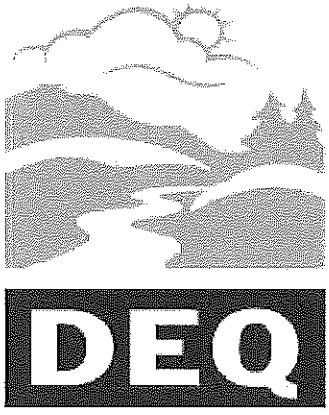
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 04/18/1997



State of Oregon
Department of Environmental Quality

A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

April 17-18, 1997
DEQ Conference Room 3A
811 S. W. Sixth Avenue
Portland, Oregon

Notes:

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

Public Forum: The Commission will break the meeting at approximately **11:30 a.m.** for the Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. The public comment period has already closed for the Rule Adoption items and, in accordance with ORS 183.335(13), no comments can be presented to the Commission on those agenda items. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

Thursday, April 17, 1997
Work Session Starting at 1:00 p.m.

CANCELLED

Joint meeting between the Environmental Quality Commission and the State Board of Agriculture regarding Healthy Streams, Coastal Salmon and other topics of mutual cooperation

**The Board of Agriculture and the Environmental Quality Commission will meet for dinner at the Hilton Hotel, Portland, Oregon at 6:30 pm. The dinner may include discussion of enhanced communication and cooperation among the two agencies.

Friday, April 18, 1997
Regular Meeting
Starting at 8:30 a.m.

Work Session: Mixing Zone Rulemaking

Work Session: Proposed Solid Waste Rules Relating to Composting Operations

A. **Approval of Minutes**

B. **Approval of Tax Credits**

C. **Action Item**: National Marine Fisheries Service Total Dissolved Gas Waiver Request

D. †**Rule Adoption**: Municipal Solid Waste Landfill Rules of Oregon

E. †**Rule Adoption**: Annual Oregon Title V Operating Fee Increase and Redefinition of "Volatile Organic Compound" to Reflect Federal Changes

F. **Temporary Rule Adoption**: Correction to the Source Specific Reasonably Available Control Technology (RACT) Applicability Rule (OAR 340-022-0104)

G. **Action Item**: Petition to Adopt a Rule Prohibiting New or Increased Waste Discharges to Coastal Water Bodies

H. **Action Item**: Revocation and Request to Decommission Permit No. 95-014 - John M Compton

I. Commissioners' Reports

J. Director's Report

Hearings have already been held on the Rule Adoption items and the public comment period has closed. In accordance with ORS 183.335(13), no comments can be presented by any party to either the Commission or the Department on these items at any time during this meeting.

The Commission has set aside June 5-6, 1997, for their next meeting. The location has not been established.

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

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

State of Oregon

Department of Environmental Quality Memorandum

Date: March 31, 1997

To: Environmental Quality Commission

From: Barbara Burton, Western Region Water Quality Manager

Subject: April 18 Work Session, Proposed Mixing Zone Rule Revision

The proposed rule revisions were initiated by the Department, in response to a lawsuit filed relating to the NPDES permit issued to Oremet. The Department worked with a technical advisory committee, with numerous draft rule revisions and nine meetings spaced over about a year's time. The technical advisory committee was able to thoroughly discuss the issues, and able to reach substantial agreement over most of the provisions of the proposed rule. It was agreed that the remaining areas of disagreement should be forwarded to the Triennial Standards Policy Advisory Committee for further discussion and action.

The Policy Advisory Committee discussed the proposed rule at two meetings (the first where there was not a quorum), and at the second meeting voted unanimously to accept the draft rule. There were some provisions that were not agreed to by all members, however.

The Department is bringing this issue to the Commission for a work session for the following reasons:

1. Mixing zones and the various alternatives, and their implications in terms of impact on water quality, fiscal impact on permittees, impact on Department staff resources, and legal implications, are relatively complex. More time is needed to discuss the issues with the Commission.

2. The proposed rule is "less stringent" than the literal reading of the existing mixing zone rule, however it is "more stringent" than current Department practice. Some dischargers will be required to eliminate or relocate their outfalls, at varying costs depending on the options available and distance to the nearest larger receiving streams. For some facilities, the expense will be substantial.

3. There was not 100% agreement by the advisory committee as to all provisions of the draft rule. It is not clear how much public interest there may be in the rule, but it may be significant. The work session allows the Commission to hear from individuals with varying viewpoints on the issue.

Background

The existing mixing zone rule specifies the conditions under which a zone of dilution or mixing zone may be allowed for point source dischargers. The assigned mixing zone allows the permittee an area of dilution around the point of discharge where instream water quality standards can be exceeded, provided water quality standards are met at the edge and outside of the mixing zone. Even with a very

high level of treatment, almost all discharges do require some dilution and mixing with the receiving stream before instream water quality standards can be met. The "mixing zone rule" is actually identical language repeated in each basin's standards in Division 41, for example listed in OAR 340-41-445(4) for the Willamette Basin.

The existing mixing zone rule works well for point source discharges to relatively large receiving streams, where significant dilution is available (such as the larger rivers). Where discharges are to smaller streams, or to storm drainage systems, however, the mixing zone required to provide adequate dilution may be several miles long. This is contrary to the language of the existing rule, which requires that the mixing zone be in "the immediate area of a wastewater discharge". The NPDES permit issued to Oremet was challenged in court because of the two mile long mixing zone, and the Department lost. The judge in essence said we may have the statutory authority to allow a mixing zone this long, but the existing rule does not allow long mixing zones.

For domestic wastewater discharges, there is a specific minimum dilution rule that applies to facilities built or expanded after 1976. The Department has been moving most domestic wastewater discharges out of the smaller streams, almost always at the time of treatment plant upgrade and expansion. The most common way facilities have met the minimum dilution requirement is by constructing storage facilities with spray irrigation in the summer, to eliminate either the summer or the entire year's discharge. There are still some domestic wastewater sources that discharge to smaller streams.

For most large industrial process wastewater sources, particularly newer facilities, we have required that they have an adequately sized receiving stream. However, for hundreds of minor industrial discharges (including many sources on general permits), discharges have typically been allowed at the most convenient nearby receiving stream or drainage ditch, provided the wastewater discharged does not create a nuisance. There are also still some relatively significant discharges in minor receiving streams, for example Oremet and Teledyne Wah Chang.

Historically, the Department has been somewhat reluctant to take on this issue because of the difficulty and expense of eliminating these existing discharges, and the staff resources needed to require these changes. However, with the recent court case, it is clear that some changes need to be made.

Staff believe that some of these discharges to smaller streams are pretty innocuous, and can be allowed with little if any impact on water quality, either because of the pollutant characteristics of the effluent or the nature of the receiving stream. The proposed rule sets out and defines those circumstances under which a larger mixing zone may be allowed:

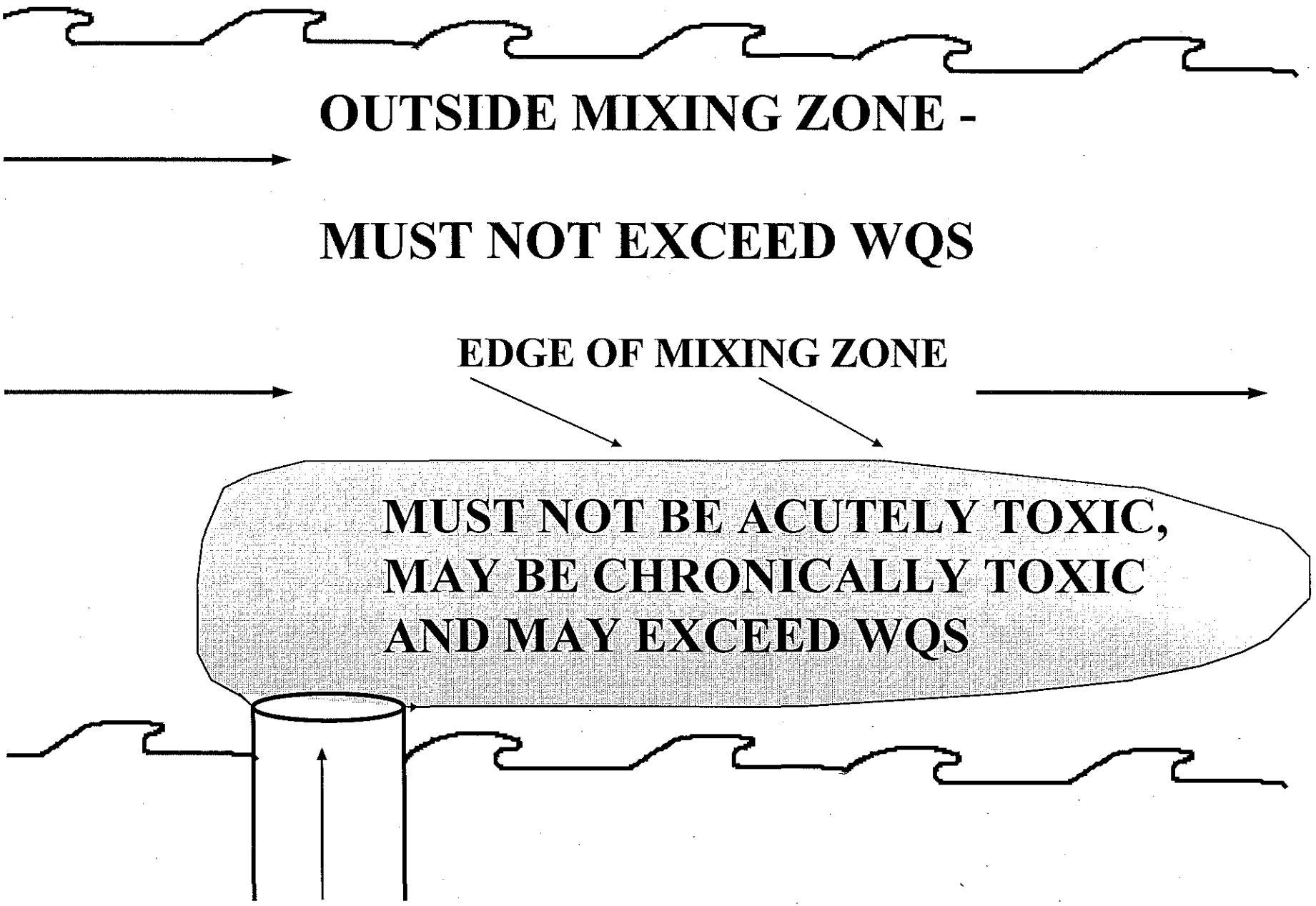
1. The discharge either creates an **overall environmental benefit**, or the applicant is willing to undertake other mitigation measures that will more than offset the detrimental affects of the discharge. As currently drafted, the requirements for demonstrating an overall environmental benefit are set at a level that will be expensive both for the studies required and the mitigation measures proposed. Since very few discharges "improve" the receiving stream, it will be difficult for applicants to qualify. The Department expects that relatively few discharges will be able to successfully make this demonstration (possibly a dozen or less?). This provision only applies to existing facilities.

2. The **discharge is to a constructed water course**. There are many hundreds of smaller, less significant discharges to municipal storm sewers, road side ditches, or constructed effluent ditches. Some or all of these "receiving streams" may technically qualify as "waters of the state", however due to their artificial nature and limited or non-existent biological value, discharges are expected to have little impact.

3. The **discharge is insignificant**, based upon volume, pollutant load, or short term nature. Filter backwash water and underground storage tank groundwater cleanups are listed as the two common discharges that would qualify. The Department may also designate a discharge as insignificant based on temporary nature or de minimus impact.

PROPOSED RULE REVISIONS

MIXING ZONES
FOR
POINT SOURCE DISCHARGES


OUTSIDE MIXING ZONE -
MUST NOT EXCEED WQS
EDGE OF MIXING ZONE
MUST NOT BE ACUTELY TOXIC,
MAY BE CHRONICALLY TOXIC
AND MAY EXCEED WQS

EXAMPLE PERMIT LANGUAGE FOR MIXING ZONE

"Notwithstanding the effluent limitations established by this permit, no wastes shall be discharged and no activities shall be conducted which will violate Water Quality Standards as adopted in OAR Chapter 340 Division 41 except in the following defined mixing zone:

That portion of Schooner Creek within a two hundred (200) foot radius from the point of discharge. The ZID [Zone of Immediate Dilution] shall include that portion of Schooner Creek within a 20 foot radius of the point of discharge."

WHAT TYPES OF DISCHARGES ARE AFFECTED?

RELATIVELY LARGE DISCHARGES TO SMALL STREAMS
(NOT MUCH DILUTION)

OTHER TERMS USED FOR THESE STREAMS

- EFFLUENT DOMINATED
- INTERMITTENT STREAM
- INADEQUATE RECEIVING STREAM
- WATER QUALITY LIMITED STREAM

Estimated Number of Dischargers Affected, By Source Type

Source Category	Total Number Permittees	Est. Number Permittees to Smaller Streams/ Storm Sewers
Non-contact cooling water(G)	113	56
Filter backwash (G)	63	32
Fish hatcheries (G)	53	0
Log ponds (G)	25	12
Boiler blowdown (G)	19	18
Seafood processors (G)	27	9
Oil/water separators (G)	17	8
UST (G)	127	64
Washwater (G)	184	92
Domestic wastewater	250	75
	100	50
(individual permits)		
	979	**416**

Note - does not include stormwater dischargers or recreational dredgers

ALTERNATIVES TO DISCHARGE TO SMALL STREAMS

- RE-LOCATE OUTFALL TO LARGER STREAM
- CONNECTION TO SANITARY SEWER
- SUMMER IRRIGATION
- SUMMER IRRIGATION/WINTER STORAGE
- TREAT TO INSTREAM WATER QUALITY STANDARDS FOR ALL PARAMETERS
- RE-CYCLE/ELIMINATE GENERATION OF WASTEWATER
- TREATMENT/SUBSURFACE DISPOSAL

OVERVIEW OF PROPOSED RULE MODIFICATION

ALLOWS LONGER/BANK-TO-BANK MIXING ZONE IF DISCHARGER CAN DEMONSTRATE:

- DISCHARGE IS INSIGNIFICANT
- DISCHARGE IS TO CONSTRUCTED WATERWAY
- DISCHARGE (OR DISCHARGE COMBINED WITH MITIGATION MEASURES) IS ENVIRONMENTALLY BENEFICIAL ON BALANCE

EQC WS #1 Handout for Board

valid data for the purposes of paragraph (C) of this subsection. If toxicity occurs, the Department shall evaluate and implement measures necessary to reduce toxicity on a case-by-case basis.

(3) Where the natural quality parameters of waters of the Deschutes Basin are outside the numerical limits of the above assigned water quality standards, the natural water quality shall be the standard.

(4) Mixing zones:

(a) The Department may allow a designated portion of a receiving water to serve as a zone of dilution for wastewaters and receiving waters to mix thoroughly and this zone will be defined as a mixing zone;

(b) The Department may suspend all or part of the water quality standards, or set less restrictive standards, in the defined mixing zone, provided that the following conditions are met:

(A) The water within the mixing zone shall be free of:

(i) Materials in concentrations that will cause acute toxicity to aquatic life as measured by a Department approved bioassay method. Acute toxicity is lethality to aquatic life as measured by a significant difference in lethal concentration between the control and 100 percent effluent in an acute bioassay test. Lethality in 100 percent effluent may be allowed due to ammonia and chlorine only when it is demonstrated on a case-by-case basis that immediate dilution of the effluent within the mixing zone reduces toxicity below lethal concentrations. the department may on a case-by-case basis establish a zone of immediate dilution if appropriate for other parameters;

(ii) Materials that will settle to form objectionable deposits;

(iii) Floating debris, oil, scum, or other materials that cause nuisance conditions;

(iv) Substances in concentrations that produce deleterious amounts of fungal or bacterial growths.

(B) The water outside the boundary of the mixing zone shall:

(i) Be free of materials in concentrations that will cause chronic (sublethal) toxicity. Chronic toxicity is measured as the concentration that causes long-term sublethal effects, such as significantly impaired growth or reproduction in aquatic organisms, during a testing period based on test species life cycle. Procedures and end points will be specified by the Department in wastewater discharge permits;

(ii) Meet all other water quality standards under normal annual low flow conditions.

(c) The limits of the mixing zone shall be described in the wastewater discharge permit. In determining the location, surface area, and volume of a mixing zone area, the Department may use appropriate mixing zone guidelines to assess the biological, physical, and chemical character of receiving waters, and effluent, and the most appropriate placement of the outfall, to protect instream water quality, public health, and other beneficial uses. Based on receiving water and effluent characteristics, the Department shall define a mixing zone in the immediate area of a wastewater discharge to:

(A) Be as small as feasible;

(B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms;

(C) Minimize adverse effects on the indigenous biological community especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or for other similar reasons as determined by the Department and does not block the free passage of aquatic life;

(D) Not threaten public health;

(E) Minimize adverse effects on other designated beneficial uses outside the mixing zone.

(d) The Department may request the applicant of a permitted discharge for which a mixing zone is required, to submit all information necessary to define a mixing zone, such as:

(A) Type of operation to be conducted;

(B) Characteristics of effluent flow rates and composition;

(C) Characteristics of low flows of receiving waters;

(D) Description of potential environmental effects;

(E) Proposed design for outfall structures.

(e) The Department may, as necessary, require mixing zone monitoring studies and/or bioassays to be conducted to evaluate water quality or biological status within and outside the mixing zone boundary;

(f) The Department may change mixing zone limits or require the relocation of an outfall if it determines that the water quality within the mixing zone adversely affects any existing beneficial uses in the receiving waters.

(5) Testing methods: The analytical testing methods for determining compliance with the water quality standards contained in this rule shall be in accordance with the most recent edition of **Standard Methods for the Examination of Water and Waste Water** published jointly by the **American Public Health Association, American Water Works Association, and Water Pollution Control Federation**, unless the Department has published an applicable superseding method, in which case testing shall be in accordance with the superseding method; provided, however, that testing in accordance with an alternative method shall comply with this rule if the Department has published the method or has approved the method in writing.

[**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 468B.035 & 468.735
Hist.: DEQ 148, f. & ef. 1-21-77; DEQ 1-1980, f. & ef. 1-9-80; DEQ 18-1987, f. & ef. 9-4-87; DEQ 14-1991, f. & cert. ef. 8-13-91; DEQ 17-1992, f. & cert. ef. 8-7-92 (and corrected 8-13-92)

Minimum Design Criteria for Treatment and Control of Wastes

340-41-575 Subject to the implementation program set forth in OAR 340-41-120, prior to discharge of any wastes from any new or modified facility to any waters of the Deschutes River Basin, such wastes shall be treated and controlled in facilities designed in accordance with the following

4-18-97
EQC
handout
WS #1

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

Date: February 28, 1997

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Modification of Water Quality Rules Relating to Mixing Zones for Point Source Discharges

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt rule amendments regarding mixing zones. 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 allow some point source dischargers of wastewater to have larger mixing zones than are allowed under the current rule. A mixing zone is an area in a stream receiving effluent, where mixing of the effluent and the stream occurs. Within a mixing zone, some instream water quality standards may be exceeded with some limitations. At the edge and outside of the mixing zone, all instream water quality standards must be met.

The Department has the statutory authority to address this issue under Oregon Revised Statutes (ORS) 183.335, 468.020, 468B.010, 468B.030, and 468B.035.

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 (amendments).

Hearing Process Details

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

Date: March 28, 1997
Time: 1:00 PM
Place: Room 3A, DEQ Headquarters
811 SW 6th Avenue
Portland, Oregon

Deadline for submittal of Written Comments: April 17, 1997

The Presiding Officer at the hearing has not yet been appointed.

In addition, a work session to discuss this proposed rule has been scheduled for the Environmental Quality Commission for April 17, 1997. The Commission may choose to receive oral testimony relating to the proposed rule at that time, and any testimony received will be included in the record. Testimony will be by invitation of the Commission only.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attention Barbara Burton, 750 Front Street, NE, Salem, Oregon 97310.

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.

What Happens After the Public Comment Period Closes

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.

The Department will review and evaluate the rulemaking proposal in light of all information received during the comment period. Following the review, the rules may be presented to the EQC as originally proposed or with modifications made in response to public comments received.

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 June 6, 1997. 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. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

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

The existing mixing zone rule allows the Department to establish mixing zones for each point source discharger, in the immediate vicinity of the discharge. Each assigned mixing zone is included in the National Pollutant Discharge Elimination System (NPDES) permit issued to the point source discharger of wastewater. This rule works well for discharges to relatively large receiving streams, where there is adequate dilution available. That is, with a high degree of treatment, almost all point source dischargers can qualify for a relatively small mixing zone if the discharge is to a larger receiving stream.

For most significant discharges to smaller receiving streams, the Department has over the years either required the discharger to stop discharges when the stream flows are too low (such as in the summer), or to build an outfall to a nearby but much larger receiving stream. For the remaining discharges to smaller streams, the Department has often allowed a mixing zone that extended the length of the smaller receiving stream until it joined a much larger stream, where adequate dilution could occur. Some of the assigned mixing zones are several miles long.

A recent court ruling found that the existing mixing zone rule does not allow very large mixing zones. The Department believes that there are still some significant discharges to smaller streams that should be removed. However, there are some circumstances under which discharges to smaller streams can be allowed, and still protect the overall biological integrity of the receiving stream. The discharges that could still be allowed are where the pollutant loads are very low or temporary, and where the "receiving stream" is a constructed water course with limited value as aquatic habitat (such as an irrigation canal or urban stormwater drainage ditch). In some few cases, a discharge may even provide an overall benefit to the receiving stream and these discharges could also be permitted a larger mixing zone.

How was the rule developed

A subcommittee of the Triennial Standards Policy Advisory Committee assisted in drafting the rule. The subcommittee met eleven times to discuss the draft rule. The full Triennial Standards Policy Advisory Committee met and voted to accept the rule as drafted, although there were some areas of remaining disagreement.

The documents relied upon are: Oregon Revised Statutes (ORS) 183, 468 and 468B; Oregon Administrative Rules (OAR) 340 Division 41; and the U.S. Environmental Protection Agency 1993 Water Quality Standards Handbook, Second Edition, Chapter 5.

Copies of the documents relied upon in the development of this rulemaking proposal can be

reviewed at the Department of Environmental Quality's office at 750 Front Street, NE, Salem, Oregon. Please contact Barbara Burton at (503) 378-8240, extension 264, for times when the documents are available for review.

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

The proposed rule will affect all users of public waters, and will affect many dischargers with NPDES permits. It will have the effect of requiring many current permit holders to either eliminate or re-locate their discharges. The removal of all or most of the discharges will improve the water quality in the receiving streams. In some locations, removal of existing discharges will reduce the amount of stream flow available for out of stream uses such as irrigation.

For those NPDES permit holders required to eliminate or re-locate their outfalls for some or all of the year, the expense will vary depending on the location, distance to nearest larger receiving stream, availability of sewers, availability of land for irrigation, characteristics of the discharge, and other variables. The least expensive option is usually connection to a sanitary sewer, if available. Other options can be very costly.

For those NPDES permit holders discharging to smaller streams, but able to qualify for a larger mixing zone, there will be additional expense in preparing documentation supporting their request to stay in the stream. Costs may be less than $10 to purchase a map and 10 hours of time to describe the discharge and receiving stream in order to qualify for a discharge to a constructed water course. Costs may be up to $100,000 to conduct the more rigorous studies needed to demonstrate that a discharge results in an overall environmental benefit. Any costs for mitigation measures necessary to qualify a discharge would be in addition to study costs, and could be significant.

The proposed rule will require additional time by Department staff to review the next round of permit applications.

How will the rule be implemented

The rule will be implemented through the NPDES permit program. As permits come up for renewal, the discharge will be reviewed as to appropriateness for a given receiving stream. The Department intends to modify the permit application forms to require additional information regarding the receiving stream.

Are there time constraints

There are no firm deadlines. However, there are a number of expired permits that are being held pending resolution of this issue.

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:

Barbara Burton, Western Region Water Quality Manager, at
(503)378-8240, extension 264

ATTACHMENT A

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Modification of Water Quality Rules Relating to Mixing Zones for Point Source Discharges

Fiscal and Economic Impact Statement

Introduction

Under the current legal interpretation of the existing mixing zone rule, most discharges to smaller streams would not be allowed at all and elimination of the discharge would be required. The Department has not yet fully implemented this interpretation of the rule. If the existing rule were implemented as required by the recent court decision, the cost to most dischargers would be greater than the costs expected from the proposed rules. The proposed rules provide alternatives to eliminating the discharges to smaller streams in some circumstances, but do not require any discharger to pursue the alternatives. The only "real" additional cost from the proposed rule will be the additional information required to be submitted with the permit applications.

General Public

The general public will not be directly affected.

Small Business

Small businesses which currently hold National Pollutant Discharge Elimination System (NPDES) permits and which discharge to storm drainage systems or smaller streams will be affected by this proposed rule. It is estimated that about 150 to 200 small businesses may be affected. As discussed above, implementation of the existing rule using the recent court interpretation would require most discharges to smaller streams be eliminated. The proposed rules provide alternatives to the "no discharge" option, and presumably applicants would only pursue alternatives if they were less costly than the existing requirements. However, for informational purposes, the costs of pursuing alternatives to the "no discharge" requirement of the existing rule are described below. Also included for informational purposes is a discussion of the ways that discharges to smaller streams could be eliminated.

Additional costs for preparing application, where discharge is to a constructed waterway - This is the only "real" additional cost to applicants over the existing rule. The applicant will be required to provide a map showing the route the proposed or existing effluent will take, from the point of discharge until the effluent discharges to a natural river or stream. Photographs showing the junction of each successive water way will be required. The applicant may need to consult with municipal public works staff if the discharge is to a municipal storm sewer drainage system. The Oregon Water Resources Department or U.S. Geological Survey will have to be contacted to determine the stream flow for the ultimate receiving stream. The documentation costs should generally be less than $500. If the natural receiving stream does not have flow data (no stream gauge data available), then there would be an additional cost to hire a consultant to estimate or measure the stream flows.

Study cost for demonstrating an overall environmental benefit - The costs will vary significantly, depending on the discharge and receiving stream, and how much is known about each. For the minimum study required, a consultant providing similar studies estimates the cost to range from $80,000 to $205,000. If additional studies (such as on-site biological surveys) are required, the cost could increase by up to $65,000. This is an optional alternative, for dischargers to smaller streams who wish to try to maintain a discharge. Because of the high cost and uncertainty of outcome, it is unlikely that very many small businesses will pursue this alternative for keeping a discharge in a small receiving stream.

Cost for mitigation measures - The proposed rule allows the applicant to institute mitigation measures to "offset" the negative impact of the discharge, if the applicant wishes to keep a discharge into a smaller stream. The extent and type of mitigation measure will vary widely, depending on the site location, the receiving stream, and the characteristics of the effluent. Some possible mitigation measures and their approximate cost are described below:

> **Purchase of water rights to increase instream flows** - A recent study of current prices shows an average of about $360 per acre-foot, to be used over the irrigation season each year. The price will vary depending on scarcity of water, seniority of the water right, and willingness to sell. For a discharge of 50,000 gallons per day, it would require 276 acre-feet to provide a 10 to 1 dilution, for a cost of about $100,000 assuming the water rights holder would be willing to sell.
>
> **Fencing off stream to protect from livestock, and creation of stock watering pond** (including getting electricity to pump) - Materials and labor for the fencing are estimated to cost about $5000 per mile. Building the pond and providing the pump (and power) will vary, mostly based on the distance to an available power source, but may double the cost of this mitigation measure. The length of stream protected, and the water quality benefits derived will vary depending on location. The amount of

stream to be fenced in order to offset the impact of a discharge will vary depending on the effluent and receiving stream.

Riparian zone restoration, through planting - The cost will vary depending on soil types, native vegetation, and size of the stock being planted. Assuming a 30 foot wide strip on each side of the stream, and at $1000/acre, this measure would cost about $7300 per mile of stream riparian area restored. As with fencing, the water quality benefit derived/needed to offset a discharge will vary.

Constructing stream "structures" for fish habitat - This measure involves "creating" pools for young salmonids and other aquatic life to feed and shelter, thereby increasing numbers/size/chance of survival. The cost will depend on the accessibility of the site, and how elaborate the structure is, and typically varies from $200 to $1000 or more for each structure, including materials, equipment and labor.

There are numerous other mitigation measures that could be undertaken, at the choice of the applicant. Some example additional measures include removing tide gates in estuaries, stabilizing stream banks to minimize erosion and sediment loads, repairing culverts to allow fish passage, de-commissioning roads in logged areas, and providing setbacks from streams for farming operations.

Elimination of discharge, or change of location/timing of discharge - Under the existing court interpretation of the existing rules, most dischargers to smaller streams would be required to eliminate their discharge. Therefore, the cost of eliminating the discharge is not a "new" cost associated with the proposed rules, but would have been required anyway under the existing rules. This discussion is included for informational purposes only.

For those discharges that cannot qualify for an extended mixing zone, and must change their point or time of discharge, there are a number of alternatives. The cost of each will be site specific. The common alternatives are described below:

Connection to a sanitary sewer - Most dischargers affected by this rule are located within urban areas, where a sanitary sewer may be available. The cost of connection, if allowed by the municipality, will vary widely. Many municipalities charge a connection fee. In addition, the property owner is responsible for installing the plumbing on site. The cost of this will vary depending on the distance to the sanitary sewer, site conditions, and characteristics of the effluent. Municipalities also charge a fee for treating wastes discharging to their system. Two example municipal fees for commercial and industrial customers - $2.27/month/100 cubic feet, plus $.85/pound of BOD and $.25/pound suspended solids; and $17.75/month plus $3.75/100 cubic feet, plus $.59/pound of BOD and $.378/pound of suspended solids above normal sewage

strength. This cost would be offset by the savings on not having an NPDES permit and doing the required monitoring and reporting.

Construction of an outfall to a larger, acceptable receiving stream - This alternative will vary widely in cost depending on site conditions and distance to acceptable receiving stream, but will often be very expensive. The cost includes purchase of property or easements for the pipeline, construction of the pipeline, and construction of pumps. In addition to the initial construction costs, there will be on-going power costs and operation and maintenance costs. As an example of the possible cost, a medium sized municipality has explored piping the effluent from their sewage treatment plant approximately eight miles, at a projected construction cost of $3.25 million.

Storage in winter, spray irrigation in the summer - Most effluent could be used beneficially as irrigation water with minimal treatment, provided that appropriate sites are available nearby. Many smaller municipal sewage treatment plants have already switched over to irrigation, at least for their summer flows when receiving streams are the lowest. Generally speaking, provided that wastewater is applied at or less than the rate that the plant crop can take it up, groundwater contamination is not a concern. This will probably not be a practical alternative in urban locations, where the large space required for storage would not be reasonably available. The cost of this alternative will depend on the volume of effluent, the annual rainfall, the availability and cost of land for storage and irrigation, and treatment costs (in any) required prior to irrigation.

Spray irrigation in the summer, discharge in the winter - Particularly in Western Oregon, stream flows are much higher in the winter than the summer. For some discharges to some receiving streams, it may be possible to allow a winter but not a summer discharge. This alternative is considerably less expensive than the previous alternative, because of the much reduced storage requirements.

Additional treatment, so that all instream water quality standards are met at the end of pipe (no mixing zone is required) - The cost of the additional treatment will be dependent on the effluent. It will probably not be achievable at any reasonable cost for most discharges.

Large Business

There will be an estimated 100 to 150 large businesses affected by the proposed rules. The impacts will be the same as discussed above for small businesses.

Local Governments

Local governments with sewage treatment plants discharging to smaller streams will be affected by this rule. Over the past twenty years, most of these types of discharges have been eliminated, but some remain. There may be up to 40 municipalities which may be affected by the proposed rule. The discussion under the Small Business section above also applies to local governments. In addition, one possible alternative to discharge available to municipalities is the use of large on-site drainfields. This alternative may be available, however it is difficult to find enough area with adequate soils. Extensive groundwater studies and a concentration limit variance may be required for this option, and it may not be allowed because of unacceptable groundwater impacts.

State Agencies

- DEQ - This proposed rule would require additional staff time in the permit review and issuance process. As an estimate, each permit coming up for renewal over the next five years will require an average of two additional hours, providing the discharge is to a stream where the discharge can be allowed (either to a large stream, or to a constructed waterway, or is in the category of insignificant discharges). There are approximately 1000 active NPDES permits in Oregon that would be affected by this rule, so at 200 permits per year this will be an additional 400 hours per year of DEQ staff work.

For those applicants who choose to get a larger mixing zone by demonstrating an "overall environmental benefit", it is estimated that on average 80 DEQ staff hours for each application will be required for meetings, review of reports, and correspondence. Assuming five requests per year, this will total about 400 hours per year.

For those applicants who will be required to either eliminate their discharge, or re-locate the discharge point, it is likely that an order will be negotiated with a schedule for coming into compliance for most of them. In addition, there may be some review of engineering plans and specifications, and some review of engineering feasibility plans. It is estimated that there could be up to 25 of these per year for the next five years, at an estimated 100 hours each. This totals about 2,500 staff hours per year.

In summary, it is estimated that the proposed rule will take about an additional 3,300 hours per year for the next five years for DEQ staff if the rule is fully implemented. It is unlikely that additional staff to work on permits will be available for this work, and therefore there will be no net monetary cost to DEQ. The additional work will be absorbed by existing staff, as competing priorities allow, and less critical work will not be done. It is also likely that the additional work to implement this rule will result in larger permit backlogs.

- Other Agencies. The Water Resources Department may be contacted by applicants requesting stream flow information. It is not known how many contacts will be made, or how much time will be required. The total time required is not expected to be significant.

In addition, several state agencies hold NPDES permits with the Department, that could potentially be affected. These agencies include Oregon Department of Fish and Wildlife (for fish hatcheries), Oregon Department of Transportation (for rest areas) and Oregon Parks (for park restrooms and shower facilities). Almost all of these discharges are from fish hatcheries and are to larger streams, and so would not be affected by the proposed rule.

Assumptions

The assumptions used are described above.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

ATTACHMENT B
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Modification of Water Quality Rules Relating to Mixing Zones for Point Source Discharges

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

A recent court ruling on the current rules restrict mixing zones to the immediate area of the discharge. For most discharges, even with a high degree of treatment, some mixing with the receiving stream flows are necessary to meet the instream water quality standards. The Department has allowed some larger mixing zones, which are no longer allowed under the court ruling. The proposed rules allow larger mixing zones, under specified conditions, where larger mixing zones would be allowed without harming the overall integrity of the receiving stream.

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 rules affect the National Pollutant Discharge Elimination System permit program, which is included in OAR 340-45. In addition, the rules affect in stream water quality and are included in OAR 340-41.

Current DEQ policy requires that the land use planning official from the affected local government review and approve a "Land Use Compatibility Statement" for each permit application before DEQ issues the permit.

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

Yes__X__ No_____ (if no, explain):

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

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.**

Not applicable

Division	Intergovernmental Coord.	Date

ATTACHMENT C

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. The Clean Water Act requires that point source dischargers of wastewater must obtain a National Pollutant Discharge Elimination System (NPDES) permit, and further specifies that effluent limits must be set to insure that instream water quality standards not be violated as a result of the discharge. The Clean Water Act also allows delegated states to permit mixing zones for point source dischargers, where the effluent mixes with the receiving stream prior to being required to meet instream water quality standards. The proposed rules modify the existing Oregon rules relating to mixing zones.

In developing the proposed rules, federal guidance was used. The federal guidance was designed for use by delegated state agencies, and describes possible approaches to mixing zone rules that are consistent with the Clean Water Act.

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?

Not known.

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. Under a recent court interpretation of Oregon rules, almost all discharges to smaller streams would not be allowed. These proposed rules will allow some of the discharges to continue, under specified conditions.

ATTACHMENT D

DRAFT LANGUAGE, MIXING ZONE RULE RELATING TO ALTERNATE REQUIREMENTS

(g) **Alternate requirements for mixing zones**: For some existing or proposed discharges to some receiving streams, it may not be practicable to treat wastewater to meet instream water quality standards at the point of discharge or within a short distance from the point of discharge. Some of these discharges could be allowed without significantly impairing the overall ecological integrity of the receiving streams, or may provide an overall benefit to the receiving stream. This section specifies the conditions and circumstances under which a mixing zone may be allowed by the Department that extends beyond the immediate area around a discharge point, or that extends across a stream width. An alternate mixing zone may be approved if the applicant demonstrates to the Department's satisfaction that the discharge (A) creates an overall environmental benefit, or (B) is to an constructed water course, or (C) is insignificant. The three circumstances under which alternate mixing zones may be established are described further below. In the event that the receiving stream is water quality limited, the requirements for discharges to water quality limited streams supersede this rule.

(A) **Overall environmental benefit**. In order to qualify for an alternate mixing zone based on a finding of overall environmental benefit, the discharger must demonstrate to the Department's satisfaction the following:

(i) that all practical strategies have been or will be implemented to minimize the pollutant loads in the effluent, and

(ii) the discharge is either an existing discharge, or is an increased discharge from an existing discharger, and

(iii) for proposed increased discharges, the current discharge and mixing zone does not meet the requirements of a standard mixing zone, and

(iv) either that, on balance, an environmental benefit would be lost if the discharge did not occur, or that the discharger is prepared to undertake other actions that will mitigate the effect of the discharge to an extent resulting in a net environmental benefit to the receiving stream.

(v) For the purposes of this rule, the term "practical" shall include environmental impact, availability of alternatives, cost of alternatives, and other relevant factors.

(vi) In order to demonstrate that, on balance, an environmental benefit will result from the discharge, the following information shall be provided by the applicant:

(a) The effluent flow and pollutant loads that are detected or expected in the effluent, by month, both average and expected worst case discharges. The parameters to be evaluated include at a minimum temperature, biochemical oxygen demand, total suspended solids, total dissolved solids, pH, settleable solids, e. coli bacteria, oil and grease, any pollutants listed in Table 20 of this rule division, and any pollutant for which the receiving stream has been designated by the Department as water quality limited; and

(b) Receiving stream flow, by month; and

(c) The expected impact of the discharge, by month, on the receiving stream for the entire proposed mixing zone area for all of the pollutants listed above. Included in this analysis shall be a comparison of the receiving stream water quality with the discharge and without the discharge; and

(d) A description of fish and other vertebrate populations that reside in or are likely to pass through the proposed mixing zone, including expected location (if known), species identification, stage of development, and time of year when their presence is expected. For existing discharges, the applicant shall provide the same information for similar nearby streams that are unaffected by wastewater discharges; and

(e) The expected impact of the discharge on aquatic organisms and/or fish passage, including any expected negative impacts from the effluent attracting fish where that is not desirable; and

(f) A description of the expected environmental benefits to be derived from the discharge or other mitigation measures proposed by the applicant, including but not limited to improvements in water quality, improvements in fish passage, and improvements in aquatic habitat. If the applicant proposes to undertake mitigation measures designed to provide environmental benefits (e.g., purchasing water or water conservation rights to increase stream flows or establishing stream cover to decrease temperature), the applicant shall describe the mitigation measures in detail, including a description of the steps it will take to ensure that the benefits of the mitigation measures are attained and are not lost or diminished over time.

(vii) Some or all of the above study requirements may be waived by the Department, if the Department determines that the information is not needed. In the event that the Department does waive some or all of the above study requirements, the basis for waiving the requirements will be included in the permit evaluation report upon the next permit renewal or modification relating to the mixing zone.

(viii) Upon request of the Department, the applicant shall conduct additional studies to further evaluate the impact of the discharge, which may include whole effluent toxicity testing, stream surveys for water quality, stream surveys for fish and other aquatic organisms, or other studies as specified by the Department.

(ix) In evaluating whether an existing or proposed increase in an existing discharge would result in a net environmental benefit, the applicant shall use the native biological community in a nearby, similar stream that is unaffected by wastewater discharges. The Department shall consider all information generated as required in this rule and other relevant information. The evaluation shall consider benefits to the native aquatic biological community only.

(x) Upon determination by the Department that the discharge and mitigation measures (if any) will likely result in an overall environmental benefit, the Department shall include appropriate permit conditions to insure that the environmental benefits are attained and continue. Such permit conditions may include but not be limited to:

(a) Maximum allowed effluent flows and pollutant loads;
(b) Requirements to maintain land ownership, easements, contracts, or other legally binding measures necessary to assure that mitigation measures, if any, remain in place and effective;
(c) Special operating conditions;
(d) Monitoring and reporting requirements.

(B) **Constructed water course**: A mixing zone may be extended through a constructed water course and into a natural water course. For the purposes of this rule, a constructed water course is one that was constructed for irrigation, site drainage, or wastewater conveyance, and has the following characteristics:

(i) Irrigation flows, stormwater runoff, or wastewater flows have replaced natural streamflow regimes;

(ii) An irrigation canal must have effective fish screens in place to qualify as a constructed water course;

(iii) The channel form is greatly simplified in lengthwise and cross sectional profiles;

(iv) Physical and biological characteristics that differ significantly from nearby natural streams; and

(v) A much lower diversity of aquatic species than found in nearby natural streams.

(C) **Insignificant discharges**: Insignificant discharges are those that either by volume, pollutant characteristics, and/or temporary nature are expected to have little if any impact on beneficial uses in the receiving stream, and for which the extensive evaluations required for discharges to smaller streams are not warranted. No discharge that is acutely toxic for any pollutant parameter may qualify as an insignificant discharge. For the purposes of this rule, filter backwash discharges and underground storage tank cleanups are considered insignificant. Other discharges may be designated by the Department as insignificant based upon the temporary nature or de minimus impact of the effluent.

(D) **Other requirements for alternate mixing zones**: The following are additional requirements for dischargers requesting an alternate mixing zone:

(i) Most discharges that qualify for an alternate mixing zone will extend through the receiving stream until a larger stream is reached, where thorough mixing of the effluent can occur and where the edge of the allowed mixing zone will be located. The portion of the mixing zone in the larger stream must meet all of the requirements of the standard mixing zone, including not blocking aquatic life passage; and

(ii) An alternate mixing zone shall not be granted if a municipal drinking water intake is located within the proposed mixing zone, and the discharge has a significant adverse impact on the drinking water source; and

(iii) The discharge will not pose an unreasonable hazard to human health or the environment.

State of Oregon

Department of Environmental Quality Memorandum

Date: April 7, 1997

To: Environmental Quality Commission

Subject: Overview of DEQ's proposed **Solid Waste Rules Relating to Composting Facilities** for April 18 EQC work session

From: Langdon Marsh, Director

The proposed composting facility rules were developed upon request of DEQ's solid waste managers to minimize odor and water quality problems at composting facilities.

These proposed rules would establish:

- three classes of regulation for composting facilities depending on amount and type of materials composted and
- fees for each class of regulation based on the potential environmental risk and amount of DEQ staff oversight needed.

These rules were developed to provide reasonable, consistent regulation to protect air and water quality and human health while promoting large-scale composting. In summary, the proposed rules would require that:

- small facilities composting "green feedstocks" be registered rather than permitted because they have a lesser environmental impact and
- large facilities composting "green feedstocks" or any facility composting "non-green feedstocks" be permitted because they have a greater environmental impact.

In response to issues raised at public hearings held in November 1996, DEQ extended the comment period to May 2, 1997. Particular issues raised at public hearing and to be discussed at the April 18 EQC work session include:

- on-farm composting;
- implementation of existing water quality rules and
- "grandfathering in" of existing composting facilities.

In this packet I've included a brief summary of the rules and a flow chart to help describe our regulatory approach. I look forward to seeing you on April 18.

0407mmo.doc

Summary: DEQ's Proposed Composting Facility Rules

Why is there a need for the rule?

Existing solid waste rules cannot easily be applied to composting operations. This has resulted in inconsistencies in interpretation and application of existing rules by staff for the 45 composting facilities around the state. Only six of the facilities currently have solid waste disposal site permits.

The number of commercial composting facilities in the state has increased from 15 to 45 in the last five years and is expected to continue to grow to approximately 65 facilities by the year 2001. This growth is in response to the increasing availability of organic feedstocks for composting and the increasing demand for composted products. In addition, agricultural composting is increasing in the state in response to desire by farmers to take off-farm materials to compost and sell and because composting is considered a best-management practice for disposal of poultry mortality.

The types of feedstocks composted is also diversifying. Currently about 15 feedstocks are composted including yard debris, crop residue, manure, dead chickens, fish waste and sawdust. A pilot project for composting pre-consumer restaurant waste is underway by Metro and could have statewide implications.

While the number of facilities and types of feedstocks composted have increased, so has the number of issues and complaints regarding environmental problems at these facilities. In September 1995, the Department's solid waste managers selected a staff person to focus on environmental issues at composting facilities and to provide a recommendation regarding resolution of those issues.

During development of the rules, the Compost Work Group actively sought ways to promote composting by limiting regulatory burden. When the risk of environmental and human health issues is low for a type of facility, the number of conditions to protect the environment is small. The Work Group reduced fees and paperwork for the composter by creating a general permit (one size fits all). Following are some of the specific ways composting will be promoted by the framework of these rules:

- exclude from regulation anyone doing home composting and anyone composting less than or equal to 20 tons of feedstocks per year (this might include small landscapers, elementary schools composting their grass clippings, "hobby farmers," etc.);
- provide a "registration" category for small composting facilities handling only green feedstocks - this category has a minimal fee and only six conditions to protect the environment;
- revamp the existing solid waste disposal site permit into a "composting general permit" that will be provided to large composting facilities handling only green feedstocks. This general permit can be implemented by DEQ for much lower fees and completed by the composter with much less paperwork;
- exclude agricultural composters from these rules *if* they compost only their own "green" agricultural materials and use the compost on-site *or* if they are under another set of regulations that protect the environment;
- exclude composters of sewage sludge or biosolids *if* they have a current DEQ water quality permit for sewage treatment works;
- exclude institutions composting only green feedstocks generated on-site and utilizing the finished compost on-site (this might include prisons, college campuses, etc.);

- exclude reload facilities, providing no composting occurs at the site.

How was the rule developed?

A Compost Work Group was formed in January 1996 and is composed of 11 members representing compost operators, OSU Extension Service, county staff, farmers, private industry and Department solid waste and water quality staff. The goal of the Work Group was to develop reasonable, consistent draft rules for composting facilities that would protect air and water quality *and* promote composting.

Two members of the Work Group are also members of the Department's Solid Waste Advisory Committee (SWAC); they gave updates twice to SWAC during the Work Group's development of the draft rules. The Work Group met 10 times between January and August 1996 to develop the proposed rules they have recommended to the Department.

After five public hearings were held in Novmeber 1996, the Work Group met again in February 1997 to review revisions to the proposed rules made as a result of testimony at the hearings. Work Group meetings attracted between 15 and 35 additional people who provided feedback and represented compost operators, consultants, city and county staff and interested parties. In addition, a mailing list of 260 interested people received agendas and summaries of all of the meetings.

Compost Work Group Members

Lynn Halladey, Agripac, Inc., Woodburn
Jon Lund, Willamette Industries, Albany
James and Dennis Thorpe, Thorpe Valley Farms, Noti
Ron Stewart, Columbia Gorge Organic Fruit Company, Hood River
Ranei Nomura, DEQ Water Quality Program, Headquarters
Bob Barrows, DEQ Solid Waste Program, Salem
Ken Lucas, DEQ Solid Waste Program, The Dalles
Craig Starr, Lane County Waste Mgmt., Eugene
Ron Miner, OSU Extension, Corvallis
Jack Hoeck, Rexius Forest ByProducts, Eugene
Lauren Ettlin, DEQ Solid Waste Program, Headquarters

What do the rules say?

Class 1 - Composting Facility Registration.

Regulation: This is a registration, not a permit, for small facilities which accept only "green feedstocks." [1] These feedstocks have relatively low risk of containing unwanted substances or human pathogens and are less likely to create air and water quality problems. They are regulated by six conditions to protect the environment and human health.

Feedstocks and tonnages:

- For green feedstocks: between 20 and 2,000 tons in a calendar year
- For yard debris and woodwaste *only*: [2] between 20 and 5,000 tons in a calendar year

Who is affected? DEQ estimates there are currently about 20 Class 1 compost facilities in Oregon; we expect that number to increase to about 30 facilities by the year 2001. These include

[1] "Green feedstocks" are materials used to produce a compost. Green feedstocks are relatively low in or unlikely to support human pathogens or substances that pose a present or future hazard to human health or the environment. Green feedstocks include but are not limited to: yard debris, animal manures, woodwaste (as defined in ORS 340-93-030 (92)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor byproducts, and crop residue. Green feedstocks may also include other materials that can be shown by the composter to be relatively low in or unlikely to support human pathogens and substances that pose a present or future hazard to human health or the environment.

[2] Yard debris and woodwaste are a subset of and included in the green feedstock category.

Who is affected? DEQ estimates there are currently about 20 Class 1 compost facilities in Oregon; we expect that number to increase to about 30 facilities by the year 2001. These include "start-up" companies that have been in operation less than 5 years and seasonal leaf/crop residue composting operations, that are in operation less than 6 months of each year. In addition, this class would include agricultural composters who fit within the parameters listed above and accept feedstocks from off-farm in excess of what is considered "supplemental feedstocks."

Class 2 - Composting Facility General Permit

Regulation: This is a general permit for larger facilities which accept only "green feedstocks" and thus have relatively low risk of unwanted substances or human pathogens. These facilities pose a moderate risk of air and water quality issues and are regulated by 20 conditions to protect the environment and human health. The general permit option means the facility operator must comply with conditions of the permit but does *not* have to submit the required documents for DEQ review, reducing time and cost to both the composter and DEQ. Instead, the composter must have the documents available at the site for DEQ review upon request. The required documents address many things including: location and design of physical features of the site, plan for utilization of the finished compost, scale drawings, water quality plan, access roads, fire protection, control of vectors, odor minimization and recordkeeping.

Feedstocks and tonnages:

- For green feedstocks: more than 2,000 tons in a calendar year
- For yard debris and woodwaste *only*: more than 5,000 tons in a calendar year

Who is affected? DEQ estimates there are currently 22 Class 2 facilities in Oregon; we expect that number to increase to about 32 facilities by the year 2001. These include medium to large established companies accepting "green feedstocks" for composting. In addition, this class would include agricultural composters who fit within the parameters listed above and accept feedstocks from off-farm in excess of what is considered "supplemental feedstocks."

Class 3 - Composting Facility Permit

Regulation: This is a full permit for small or large facilities which accept "non-green feedstocks" which have a high risk of unwanted substances and human pathogens. These facilities pose a high risk of air and water quality issues and are regulated by 23 conditions to protect the environment and human health.

Feedstocks and tonnages: over 20 tons of feedstocks that include any amount of non-green feedstocks

Who is affected? DEQ estimates there is one Class 3 facility in the state; we estimate that number may increase to about 5 facilities by the year 2001. These are small to large facilities composting non-green feedstocks such as animal parts and products, mixed materials containing animal parts and byproducts and municipal solid waste (garbage). In addition, this class would include agricultural composters who fit within the parameters listed above and accept feedstocks from off-farm in excess of what is considered "supplemental feedstocks."

How will the rule be implemented

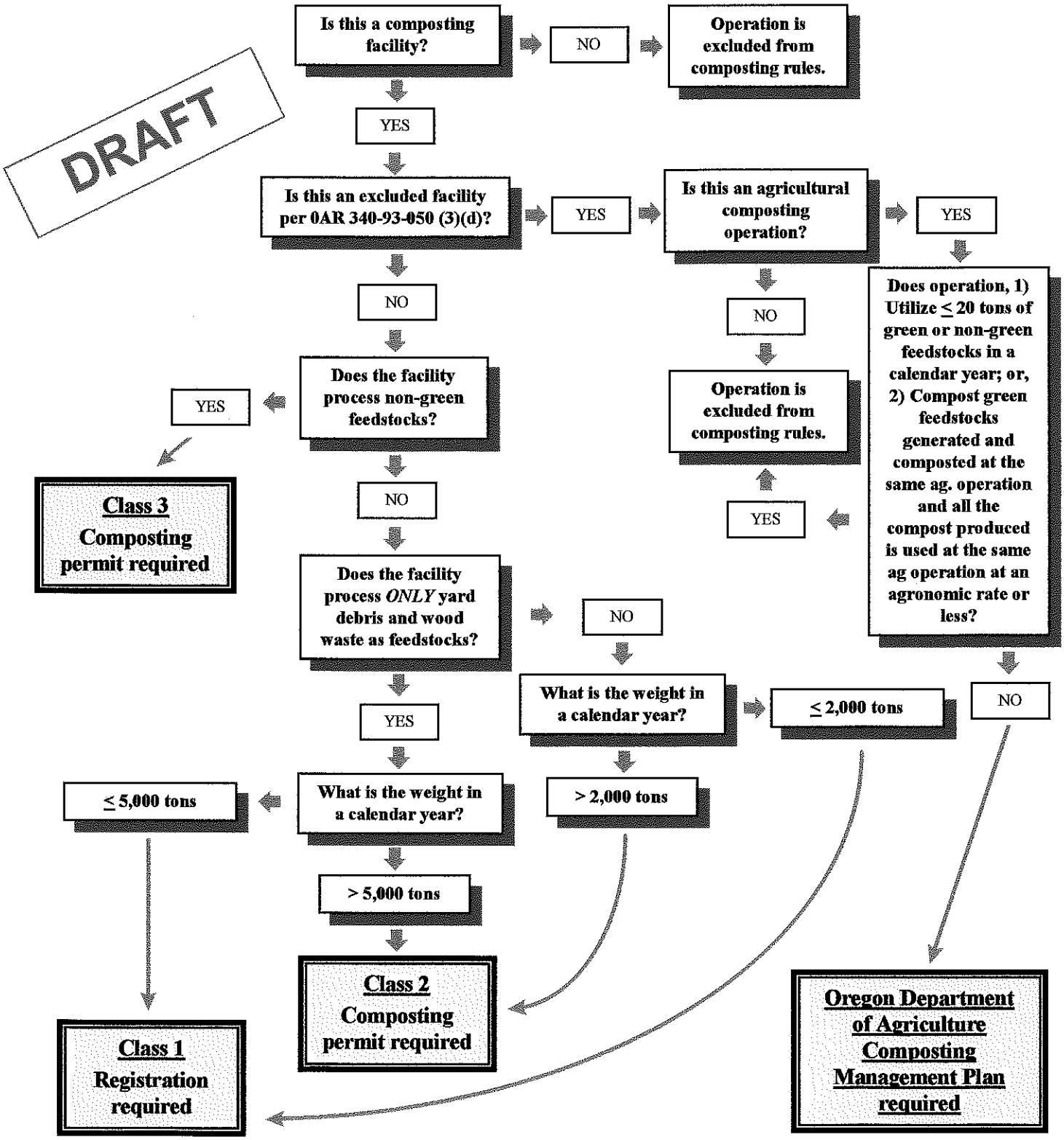
DEQ staff will:

1. Develop guidance documents concerning environmental issues at composting facilities, methods to comply with permit conditions and tools and techniques related to composting. Staff will also develop registration and permit application forms.

2. Work with the Oregon Department of Agriculture (ODA) to develop the requirements for agricultural composters in ODA's composting management plan.
3. Develop an intergovernmental agreement with ODA identifying which agency will respond to complaints regarding composters not following their management plans.
4. Develop an intergovernmental agreement with Metro regarding composting facilities in the Portland area with a Metro license.
5. Notify compost operators of the new rules and the timeline for compliance (existing facilities must comply within 18 months of rule adoption, new facilities must comply once these rules are adopted). Develop a "fact sheet" for those composters who want to send it to their local planning official with their application for a land use compatibility statement.
6. Offer information sessions to composters regarding how to comply with the new regulations.
7. Receive and file completed registration and permit by rule applications from Class 1 and 2 facilities.
8. Review and approve completed Class 3 permit applications.
9. Respond to questions from applicants for registration and permit categories.
10. Inspect Class 2 and 3 facilities within the permit timeline; site inspections will occur for Class 1 facilities only if necessary to resolve environmental issues.
11. Respond to complaints about composting facilities.

0403sum.doc

Oregon DEQ Compost Facility Permitting Decision Tree



April 1997

This flow chart is provided to make it easier to understand DEQ's Solid Waste rules that apply to composting facilities. For specific rule language, see OAR 340, Divisions 93, 96 and 97.

Testimony given to the Environmental Quality Commission April 18, 1997.

Good Morning,

I am Dave Johnson, President of the Oregon Broiler Growers Association, a trade organization which represents the broiler producers in the state of Oregon. To be an active member of the Broiler Growers one must be actively involved in the production of broilers within the state. Associate members include, allied industry (including equipment suppliers and feed processors), as well as government officials, University Faculty and Staff, and others who are closely aligned with the broiler industry.

What is the broiler industry in Oregon? Broiler growers are farmers, concentrated in the Willamette Valley, who are involved in the live production of broiler chickens, also called fryers, to supply chicken meat for consumption by Oregon consumers. The industry as a whole produces about 22 million chickens annually, which are consumed primarily by Oregonians, with a farmgate value of around $35 million. This places broiler production within the top 20 agricultural commodities grown in Oregon. Oregon broiler farms, of which there are about 60, range in size from less than 100,000 birds produced annually to more than 1.2 million. The average or more accurately median farm, produces about 400,000 birds annually.

As with most agricultural production, waste is produced in association with the desired commodity. During the live production of broilers, this waste in the form of litter and dead birds. For the most part the litter, which is a mixture of manure and bedding, either chopped grass straw or wood shavings, is sold (or given away) fresh to be used as a soil amendment, fertilizer, or to be composted commercially. Only a hand full of growers compost all of the litter which comes from their facility. It is estimated that the Oregon broiler industry produces in excess of 110,000 tons of litter annually or about 2000 tons for an average farm.

Until the early 1990's, virtually all of the mortality, which averages around 5%, was either buried, rendered, incinerated, or sent to the landfill. Each of these methods has drawbacks of either cost, odor, or biosecurity. Composting became an option for mortality disposal following the publication of research from the University of Maryland. This research reported on an efficient and effective method of mortality disposal which used on-farm composting. The publication provided methods for sizing the facility to the size of the farm, a recipe for using litter, dead birds, straw and water for proper composting, and results which show that vectors, odor, and pathogens are either not problems or reduced to the point where these problems are negligible. Extension Service materials concerning the composting of broiler mortalities from several states have been provided to DEQ for their information. The OSU Extension Service has provided composting information to the Broiler Growers Association and individual growers in the form of newsletter articles, presentations at meetings, videotapes, Extension publications, and personal contacts.

Composting has become the method of choice for broiler mortality disposal throughout the nation's broiler producing states. It provides a method of disposing of a noxious waste product in a way that it becomes an excellent soil amendment and fertilizer. The process which was developed uses bins which are layered with manure caked litter, dead birds, and straw until the bin is filled. The stack is allowed to heat for a period of between 2 to 3 weeks at which time the temperature begins to decline. The pile is transferred to a second bin, a process which allows the pile to be charged with oxygen for a second heating cycle of the same amount of time. Following the second heating, the broiler carcasses are virtually decomposed with only a few feathers and bones which are recognizable. At this point, composting can continue or the compost can be spread on agricultural land. Testimonial results from "organic" farmers and gardeners suggest that there is nothing better that broiler mortality compost for growing crops.

The recipe for proper composting requires a ratio of about 1 part carcasses, 1 1/2 parts of caked litter and 1/10 part straw, and water if needed to keep the microbes active. To determine the amount of compost produced by the average broiler farm in Oregon some assumptions must me made. 1) The grower uses the above recipe. 2) The grower has average mortality (5%) for the year. 3) The average dead broiler weighs about 2.5 lbs. Following these assumptions the average Oregon Broiler producer will use about 65 tons of composting feed stocks annually. Using extension figures for sizing of a composting facility, the average grower composting 65 tons per year would require a facility of less than 500 square feet.

Now let me discuss the current proposed composting rules. First a little history. The Oregon poultry industry found out about the proposed rules by accident in late October of 1996. Calls were made and meetings took place. Our presence in the arena apparently took DEQ by surprise, they did not know we existed. The original draft of the rules exempted composting facilities based on size, institutions, homes, and Confined Animal Feeding Operations (CAFO) which held a CAFO permit, which includes dairies and others facilities using waste water treatment. The poultry industry, properly defined as CAFO, felt that we too should be exempted along with the dairies, but on the contrary, because we compost mortalities, we were placed in the highest regulatory category, Level 3, requiring measures and permits more similar to a landfill than an agricultural enterprise. Because of testimony by members of the poultry industry and the OSU Extension Service and the fact that the original rules would cease composing on poultry farms, the rule making process was amended and delayed to accommodate our concerns.

The current rules allow for agricultural exemptions based on feedstocks and location of disposal of the finished compost as long as there is a "Composting Management Plan" on file and implemented with the Oregon Department of Agriculture. The only total exemption is those ag. enterprises which compost only "green" feedstocks and dispose of the

compost on their own agricultural enterprise. All other must have the ODA Composting Management Plan.

It must be noted that the broiler industry had virtually no input on the creation of the requirement for a Composting Management Plan. We were informed of the process between ODA and DEQ but were only allow a cursory review after the requirement was added to the rules. We were allow to provide input only to massage the language. In each case, the rules were set before we had input. While the Management Plan regulated by ODA is far better than the previous rules, we in the broiler industry are still at a loss as to why this small 500 square foot pile of agricultural waste is of such a great danger to the public that it requires 2 agencies of state government to regulate, both of which are currently under funded and understaffed.

Our concerns remain relatively unchanged since our first reading of the proposed rules last October with a few more from the Management Plan proposal.

1. As CAFO operations we are already regulated by ODA in a complaint driven process which can result in fines and penalties if our operations are polluting ground or surface water.

2. The new regulations treat us as if we are commercial composters which we are not. There is no profit in composting mortalities, it just cost less than other methods.

3. There have not been reasonable or justifiable complaints concerning broiler mortality composting for either dust or odor.

4. Pathogens and human disease seem to be the driving force behind the rules, at least with regard to mortality composting, however the composting process has been proven to reduce pathogens. So why the big fuss. Is there even one case of a person becoming sick from compost?

Why regulate something that is not a problem.

5. We are concerned about agreeing to a proposal when it is yet unfinished. The Composting Management Plan is in flux and may become too cumbersome, resulting in the end of composting and the resurgence of burial pits.

6. Why is a plan needed for compost spread on my neighbor's land when I can haul it hundreds of miles to spread it on my own land with out a plan.

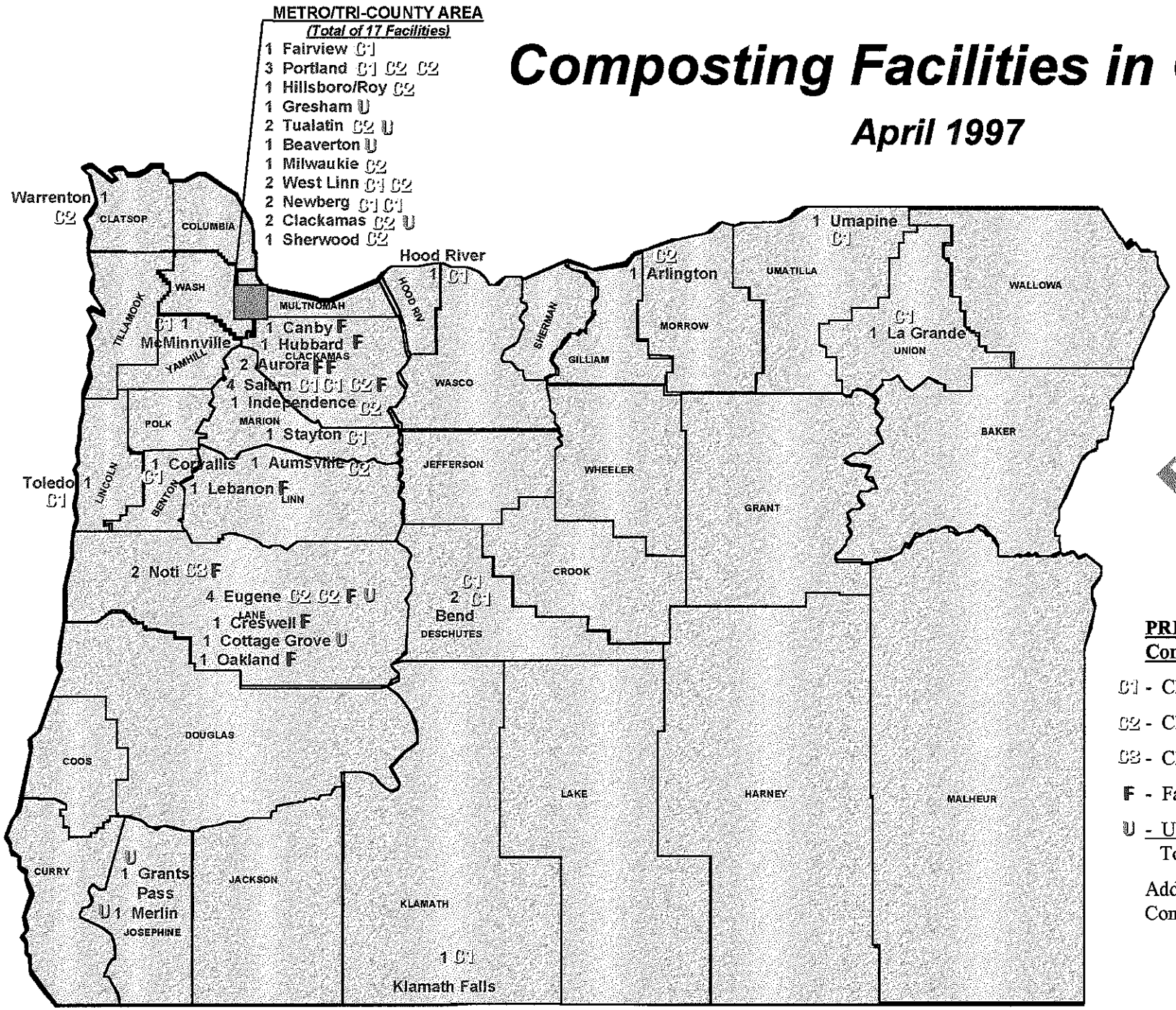
Composting has become a vital method of waste disposal for the broiler industry. It is has become the method of choice for many broiler producers in Oregon and throughout the nation. However, if it becomes a regulatory nightmare that growers must wade through with lots of paperwork it will probably cease to exist as a disposal method.

Thank you for your attention.

EQC
4-18-97
Handout
WS #2

Composting Facilities in Oregon

April 1997



PRELIMINARY LIST of Composting Facilities

C1	- Class 1	= 17
C2	- Class 2	= 15
C3	- Class 3	= 1
F	- Farmer	= 10
U	- Unknown	= 8
	Total	= 51

Additional *Proposed* Composting Facilities = 10

EQC 4-18-97
WS #2
Handout

PROPOSED

AGRICULTURAL COMPOSTING EXEMPTIONS

presented to the

Oregon Environmental Quality Commission

by the

Oregon Department of Agriculture
April 18, 1997

Reasons for the Exemptions

- Composting integral to farming operations should be promoted.
- Agricultural composting has water quality aspects to be regulated under SB 1010 related water quality management plans.
- Farming practices have historically enjoyed a minimum of regulation from nuisance and trespass if done reasonably and prudently.
- Land application of raw agricultural wastes and residues except wastewaters generally not regulated if applied at agronomic rates.
- Concerns recognized, practical and seamless system for agriculture needed or program will discourage composting.

What are the Exemptions ?

- Green feedstocks generated, composted and utilized on-farm.
- Green feedstocks generated, composted, and used off-farm. **(with ODA approved, implemented plan)**
- Non-green feedstocks generated and composted on-farm, utilized either on or off-farm. **(With ODA approved, implemented plan)**

Who Developed these Exemptions?

- ODA met with DEQ to review farmer's concerns.
- Staff developed proposed exemptions.
- Taken to DEQ Compost Workgroup with farmers in attendance.
- Reviewed, accepted by "farm only " group (ODA, farmers, Extension).

Parameters Contained in an ODA Compost Management Plan

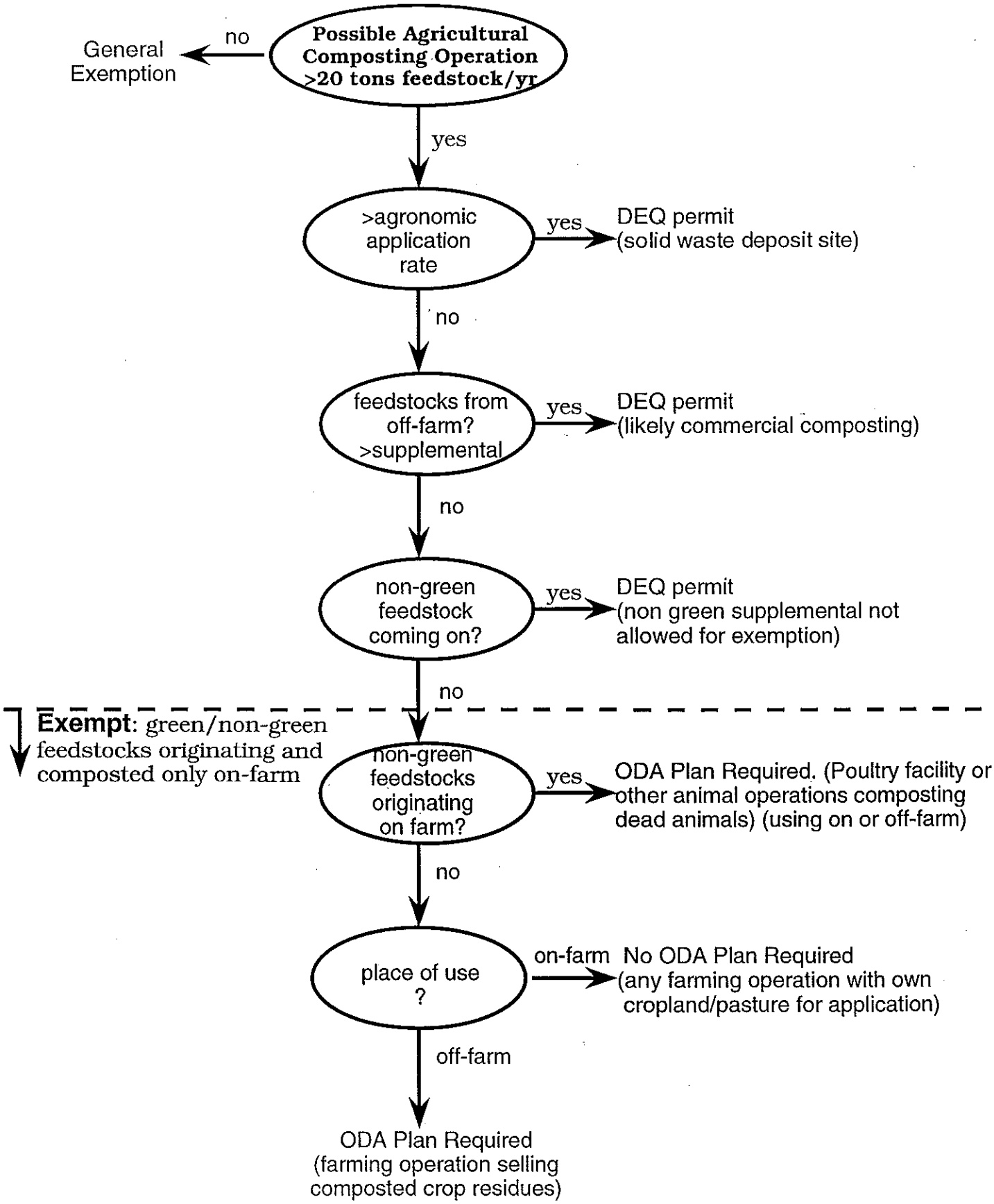
- Small working group (ODA,DEQ,farmers, NRCS,Extension) developing.
- Content essentially same as DEQ plan requirements (OAR 340-96-028), tailored to agricultural needs.

How will ODA composting plans be implemented?

- Outreach effort to agricultural community.
- Referral of contacts to appropriate technical assistance provider (SWCDs, NRCS, Extension, private consultants)
- Review of plans.
- Investigate complaints, report finding on exempt status to DEQ.

Compost Management Plan Elements (from OAR 340-96-028)

- **operator contact information** - name, business name, mailing address, phone, fax, e-mail;
- **location** by address, TRS, Lat/Long.;
- **mass balance calculation** of all farm and supplemental feedstocks and compost output;
- **calculation of management areas** for compost processing for selected composting method;
- **calculation of storage volumes** for feedstocks and finished compost storage for designed storage period;
- **scale drawings** of compost processing areas, feedstock storage, wastewater facilities;
- standard drawings, BMPs, and engineered drawings if necessary;
- **plan view of overall farm operation** including buildings, soils, surface drainage features, waterways, access;
- detailed **description of leachate control systems** including prevention, liners, collection, sumps, storage, disposal;
- **wastewater calculations** including precipitation, runoff, washwater, and leachate accumulation for designed storage season;
- **construction quality assurance** plan for all facilities;
- **access roads** sufficient for feedstock supply and compost disposal for all intended operating conditions;
- **fire protection** measures in accordance with state and local fire regulations;
- **measures to control noise, vectors, dust, litter;**
- **operation and maintenance plan** for normal operations and procedures for upset conditions including C:N ratio, moisture content, aeration pH, and temperature;
- **odor control** measures including avoidance of anaerobic conditions;feedstock storage and mixing guidelines; windrow or pile size, location, and orientation; pile covering as an odor filter;
- **specification** of on-farm **feedstocks** and supplemental feedstocks including bulking agents;
- **compost mixing or moving considerations** including time of day, wind direction, percent moisture, odor potential, compost maturity;
- **compost removal** including quantities, times,, and destination;
- **agronomic utilization on farm** including crop, yield, soil, nutrient content application timing and rate;
- **pathogen reduction plan** including pile configuration, temperature, time, and number of turnings;
- **feedstock source(s)**, minimum amount necessary for composting, minimum storage period
- compost quality assurance plan.


Possible Agricultural Composting Operation >20 tons feedstock/yr
no
General Exemption
yes
>agronomic application rate
yes
DEQ permit (solid waste deposit site)
no
feedstocks from off-farm? >supplemental
yes
DEQ permit (likely commercial composting)
no
non-green feedstock coming on?
yes
DEQ permit (non green supplemental not allowed for exemption)
no
Exempt: green/non-green feedstocks originating and composted only on-farm
non-green feedstocks originating on farm?
yes
ODA Plan Required. (Poultry facility or other animal operations composting dead animals) (using on or off-farm)
no
place of use ?
on-farm
No ODA Plan Required (any farming operation with own cropland/pasture for application)
off-farm
ODA Plan Required (farming operation selling composted crop residues)

EQC 4-18-97
WS #2-Handout

Composting Council of Oregon (CCO)
P.O. Box 934
Aumsville, Oregon 97325

April 18, 1997

Environmental Quality Commission

RE: Proposed D.E.Q. Composting Rules

My name is Glenn Zimmerman and I'm the chairman of the Executive Board of the Composting Council of Oregon. The Composting Council of Oregon is a recently formed trade organization for persons and companies interested in composting in Oregon. Our membership exceeds 30 which sounds small, but 21 of those members are commercial composters, 5 are vendors of composting equipment, 1 represents a large recycling group and the others are from the regulatory agencies. Most of our commercial composter members will probably be in the Class 2 or Class 3 permit categories. Personally my company will be going from 4,000 tons to over 15,000 tons this next year due to Salem's implementing a curbside yard debris pickup program. The Composting Council of Oregon feels that it does in fact represent all of the commercial composters interests in Oregon.

Three of the Composting Council of Oregon executive board members (Dennis Thorpe, Ron Stewart, and Jack Hoeck) were members of the DEQ Compost Work Group that helped form these draft proposed rules that are before you today. Many other members of the CCO including myself attended many (and some of us all) of the compost work group meetings and provided input throughout the process. To say that the members of the Composting Council of Oregon have had a real interest in these proposed rules is putting it mildly.

These rules will have a tremendous effect on all commercial composting in Oregon once they are implemented. This effect will be financially on every composter, some may go out of business due to land use issues, new commercial composters may have a hard time finding property with the proper zoning that will allow a new Solid Waste Disposal Site (i.e. Compost Facility) to be permitted and sited.

One of the biggest concerns that existing commercial composters have regarding these rules is that there is no provision to grandfather them into a permit. We are not trying to get out of the permit fees or any of the rules applying to composting. We do feel that it's not fair that we should be treated as if our businesses did not exist prior to these rules. Many commercial composters have had communities grow around them over the years and now they will have to start from scratch on everything from obtaining a Land Use Compatibility Statement (LUCS) from their local government to possibly being on property that is not zoned to allow a solid waste disposal site. I know that DEQ through Lauren Ettlin has verbally said that they will work with the existing composters to get them through the local government process. We appreciate this , but it sure would be nice to not have to go through this process at all. Getting local government to sign off on what they verbally agreed to years ago may be a problem and will surely cost commercial composters more money.

The CCO feels that overall the proposed composting rules are needed and are a fair compromise between the composting industry and DEQ. It was refreshing to actually have a voice in the rule making process. The proposed composting rules will level the playing field between all commercial composters and agricultural composters and take away the interruption by the DEQ Regional Managers. This will make for a better system for all concerned.

The composting industry in this country and even more so in Oregon is in it's infancy. The proliferation of yard debris composting facilities has been driven by the solid waste agencies forcing the yard debris out of the waste stream to increase recycling rates in their waste sheds. Consequently a lot of yard debris composting facilities are driven by the tipping fees and not the profits from the sale of finished compost. As the composting industry matures in Oregon there will be a switch to making a higher value compost which will possibly involve bringing additional feed stocks to these facilities. Additionally there are numerous pilot projects being conducted nationwide on many different types of composting techniques. As a result of all of this the CCO would hope that these rules may be revisited periodically to update them as technology and feed stocks change.

An example of this might be that technology and techniques have changed so that things such as meat , dairy and grease products that are not normally composted conventionally due to possible pathogens and vector problems are routinely composted in the future. At that time portions of the rules may need to be changed and the CCO would hope another compost work group would be formed to work out the changes.

Another concern that a lot of commercial composters had was the water quality issue which was unknown for quite a while. We have now been told that only one water quality permit will be required , a general 1200 H (Z) storm water permit. This should be more than satisfactory to the commercial composters since initially there was the possibility of three water quality permits being required.

Other than the previously mentioned concerns, the CCO fully supports the proposed DEQ composting rules. The CCO hopes to work with DEQ on the educational phase and implementation of these rules over the next 18 months after they are adopted. Additionally, when DEQ starts work on compost quality standards the CCO would hope to be involved and a part of that process.

In closing I would like to say that it's been a long 14 months since this process started but a very fruitful time in producing composting rules we can all live with. Specifically I would like to commend Lauren Ettlin of DEQ for doing an outstanding job as a facilitator for these rules. She worked closely with anyone and everyone that had an interest in the composting rules.

Lastly I thank the Environmental Quality Commission for allowing the Composting Council of Oregon to speak before you.

Thank You;

Glenn Zimmerman

Glenn Zimmerman, Chairman
Composting Council of Oregon

No minutes were presented for approval

Environmental Quality Commission

☐ Rule Adoption Item
X Action Item
☐ Information Item

Agenda Item B
April 18, 1997 Meeting

Title:

Approval of Tax Credit Applications

Summary:

Staff recommends approval of the following tax credits:

2 Pollution Control

2	Field Burning Facility	66,255
2	**Total Tax Credits**	**$66,255**

0 Applications with costs exceeding $250,000
0 Discussion issue
0 Applications for pre-certification
0 Requests for certificate transfer
0 Certificates for revocation
0 Requests for extension of time to file

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

Maggie Vandehey
Report Author

Division Administrator

Director

March 31, 1997
Taxshare\eqc_fin\9704_eqc.doc

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

State of Oregon
Department of Environmental Quality Memorandum

Date: March 31, 1997

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item B, April 18, 1997 EQC Meeting
Approval of Tax Credit Applications

Statement of the Need for Action

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

Applications for Pollution Control Tax Credit,

Division 16

4736	Dennis and Karen Wirth	AQ: Field Burning. Installation of an 85 acre drainage tile system.	$58,310	100%
4737	Ronald Schmidt	AQ: Field Burning. John Deere flail chopper.	$7,945	100%
		Total Pollution Control	**$66,255**	

Background and Discussion of Issues

There are no issues presented for discussion.

Summary of Any Prior Public Input Opportunity

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

Conclusions

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

Recommendation for Commission Action

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

Intended Follow-up Actions

Notify applicants of Environmental Quality Commission actions.

Attachments

A. Pollution Control Tax Credit Application Review Reports
B. Program Summary

Reference Documents (available upon request)

1. ORS 468.150 through 468.190.
2. OAR 340-16-100 through 340-16-125.
3. OAR 340-16-005 through 340-16-050.
4. ORS 468.925 through 468.965.
5. OAR 340-17-010 through 340-17-055.

Approved:

Section:

Division:

Report Prepared By: Margaret Vandehey
Phone: (503) 229-6878
Date Prepared: March 31, 1997

Taxshare\eqc\9704_deq.doc

Tax Credit Program Overview
Overview of Certified Facilities

Certificates	4/18/97 Recommendation			Cumulative - 1997		
	Facility Cost	Allocable Cost	No. Apps	Facility Cost	Allocable Cost	No. Apps
Pollution Prevention	$ -	$ -	0	$ 123,843	$ 123,843	3
Pollution Control	$ -	$ -	0	$ -	$ -	0
Air Quality	$ -	$ -	0	$ -	$ -	0
CFC	$ -	$ -	0	$ -	$ -	0
Field Burning	$ 66,255	$ 66,255	2	$ 187,548	$ 122,032	3
Noise	$ -	$ -	0	$ -	$ -	0
Hazardous Waste	$ -	$ -	0	$ -	$ -	0
SW - Recycling	$ -	$ -	0	$ -	$ -	0
SW - Landfill	$ -	$ -	0	$ -	$ -	0
Water Quality	$ -	$ -	0	$ -	$ -	0
UST	$ -	$ -	0	$ -	$ -	0
Total	$ 66,255	$ 66,255	2	$ 187,548	$ 122,032	3
Reclaimed Plastics	$ -	$ -	0	$ -	$ -	0
TOTALS	**$ 66,255**	**$ 66,255**	**2**	**$ 311,391**	**$ 245,875**	**6**

Facility Cost represents the facility cost certified or to be certified by the EQC.
Allocable Cost represents the certified facility cost multiplied by percentage allocable to pollution control.
The actual dollars that can be applied as credit are 50 percent of the certified allocable cost.

Maximum Tax Relief That May Be Taken In Future Tax Years

	App. No	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Prior to 1997		$18,189,000	$15,848,000	$15,347,000	$14,898,000	$12,739,000	$11,133,000	$7,750,000	$5,750,000	$738,000	
2/97 EQC		$16,889	$16,889	$16,889	$16,889	$16,889	$4,505	$4,505			
4/97 EQC	**4726**	$ 2,916	$ 2,916	$ 2,916	$ 2,916	$ 2,916	$ 2,916	$ 2,916	$ 2,916	$ 2,916	$ 2,916
	4737	$ 568	$ 568	$ 568	$ 568	$ 568	$ 568	$ 568			
Total 4/87		$ 3,483	$ 3,483	$ 3,483	$ 3,483	$ 3,483	$ 3,483	$ 3,483	$ 2,916	$ 2,916	$ 2,916
Total 1997		$ 20,372	$ 20,372	$ 20,372	$ 20,372	$ 20,372	$ 7,988	$ 7,988	$ 2,916	$ 2,916	$ 2,916
Total		$18,209,372	$15,868,372	$15,367,372	$14,918,372	$12,759,372	$11,140,988	$7,757,988	$5,752,916	$740,916	$2,916

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Dennis and Karen Wirth
31595 Driver Road
Tangent, Oregon 97389

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

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

2. Description of Claimed Facility

The facility described in this application is an 85 acre drainage tile installation, located at 31595 Driver Road, Tangent, Oregon. The land is owned by the applicant.

Claimed facility cost: $58,310.43
(Accountant's Certification was provided.)

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

The applicant has 792 perennial acres and 146 annual acres under grass seed cultivation. The applicant has removed nearly all perennial acreage from open field burning. The majority of acreage recently open field burned consists of annual ryegrass

Tiling of this 85 acre field allowed the applicant to replace the annual ryegrass previously grown with perennial grass in a crop rotation system. Residual straw will be chopped and plowed under thereby removing the acreage from open field burning.

4. Procedural Requirements

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

Construction of the facility was substantially completed on June 26, 1996. The application for final certification was found to be complete on February 20, 1997. The application was filed within two years of substantial completion of the facility.

5. Evaluation of Application

a. The facility is eligible under ORS 468.150 because the facility is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air

contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f) C): "Drainage tile installations which will result in a reduction of grass seed acreage under production."

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

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

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

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

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

6. Summation

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

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

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $58,310.43, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4726.

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

JB:rc
February 20, 1997

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Ronald Schmidt
6573 Sunnyview Rd NE
Salem OR 97305

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

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

2. Description of Claimed Facility

The equipment described in this application is John Deere, model 1418, flail chopper, located at 6573 Sunnyview Road NE, Salem, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $7,945
(The applicant provided copies of purchase orders and agreements.)

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

The applicant has 200 acres of perennial grass seed under cultivation. Initially, Mr. Schmidt open field burned as many acres as the weather and smoke management program permitted. Subsequently, the applicant baled and propane flamed the acreage as an alternative to open field burning but found that method too expensive and ineffective.

Beginning with the upcoming season, Mr. Schmidt is going to bale off the bulk straw and flail chop the remaining stubble as the alternative to open field burning.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on November 20, 1996. The application was submitted on March 5, 1997; and the application for final certification was found to be complete on March 12, 1997. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

   There is an increase in operating costs of $2,400 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

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

   c. The equipment complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $7,945, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4737.

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

JB/rc
March 18, 1997

State of Oregon
Department of Environmental Quality Memorandum

Date: April 18, 1997

To: Environmental Quality Commission

From: Stephanie Hallock, Water Quality Acting Division Administrator

Subject: Outline for the National Marine Fisheries Service's Annual Report to the Environmental Quality Commission on Total Dissolved Gas

Attached is an outline for the National Marine Fisheries Service's (NMFS) 1998 annual report on total dissolved gas (TDG) to the Environmental Quality Commission (EQC). The outline was requested by the EQC at the February 28, 1997 meeting as a requirement for granting the NMFS request for a waiver to the state of Oregon's TDG water quality standard. The waiver request was made by NMFS to allow the U.S. Army Corps of Engineers to voluntarily spill water which would aid salmonid smolt migration past the Columbia River dams.

The Department of Environmental Quality (DEQ) recommends that the EQC grant the TDG waiver request as stated in the February 28, 1997 Staff Report for the Total Dissolved Gas Waiver Request. The DEQ recommends that the outline for the annual report be included as part of the conditions that were in the February 28, 1997 Staff Report under Department Recommendations section (vi) item 3.

Outline for the NMFS 1998 TDG Annual Report to the EQC

Introduction

The National Marine Fisheries Service (NMFS) is required by the Environmental Quality Commission (EQC) to provide a report on Total Dissolved Gas (TDG) in the Columbia River as a condition of the TDG water quality standard waiver. The report will contain information on the physical monitoring of TDG, the factors causing spill, biological monitoring for the incidence of Gas Bubble Disease (GBD) signs, the research being conducted on the effects of TDG on fish, and an evaluation of the real-time biological monitoring. A draft of the report will be peer reviewed prior to the report becoming final. Below is an outline of the information to be contained in the NMFS annual report.

Physical Monitoring of Total Dissolved Gas (TDG)

The results of TDG monitoring in the forebay and tailrace areas of Bonneville, The Dalles, John Day, and McNary Dams will be presented in tabular and graphical format. The tables and graphs will include daily average and 24-hour minimum and maximum TDG levels for the four mainstem dams in Oregon.

The Factors Causing Spill

There will be tabular and graphical presentation of data on the quantities of voluntary and involuntary spill. The tables and graphs will include the following information.

A. The project location which will include all 8 lower Snake and Columbia River dams.

B. The dates of data collection will be from April 10 through August 31, 1997.

C. The data collected will be daily averages and will include:

1) Observed total river flow (kcfs);
2) Project hydraulic capacity (kcfs);
3) Total involuntary spill (kcfs) and caused by:
    a) Lack of hydraulic capacity (kcfs);
    b) Lack of market (kcfs);
4) Voluntary Spill (kcfs) according to the Reasonable and Prudent Alternative #2 spill to reach 80% Fish Passage Efficiency;
5) Total Spill (kcfs);
6) The percentage of total spill that was voluntary.

The tables and graphs to be produced for this section will be similar to the information presented in section 2 of the NMFS report on the 1996 spill season to the EQC (NMFS 1997). The information collected for the 1997 spill season will provide better resolution of the amount of spill due to voluntary and involuntary spill. The report on the 1996 spill season used weekly averages while the 1997 report will use daily averages for calculating voluntary and involuntary spill.

Biological Monitoring for Real-Time Spill Management

This section of the report will contain the results from the juvenile salmonid and adult salmon monitoring program. This program was designed to be used for real-time spill management. Juvenile salmonids will be routinely monitored for signs of GBD by the Fish Passage Center (FPC) as part of the Smolt Monitoring Program. Adult salmon will be collected as they ascend fish ladders and examined for signs of GBD. The adult monitoring will be conducted by NMFS, Columbia River Intertribal Fish Commission (CRITFC), or Washington Department of Fish and Wildlife (WDFW) depending on location. Juvenile salmonid monitoring will be conducted at Lower Granite, Little Goose, Lower Monumental, Ice Harbor, Rock Island, McNary, John Day, and Bonneville

dams. Adult monitoring will be conducted at Lower Granite and Bonneville dams. The report will contain the following biological monitoring information.

A. Juvenile salmonid data on the incidence and severity of GBD signs.

B. Adult salmon data on the incidence and severity of GBD signs.

C. Assessment of the incidence of GBD signs which will include a discussion of the sensitivity of GBD signs monitoring to changes in TDG. A graphic of incidence of GBD signs overlaid by TDG levels will be included in the report.

Update on Gas Bubble Research

This section of the report will discuss the research designed to address the critical uncertainties identified by the NMFS 1996 Gas Expert Panel. The goal of the gas bubble research is to assure that biological monitoring for GBD signs represent in-river fish condition and is suitable for measuring adverse effects from TDG induced GBD signs. The report will contain the responsible party performing the research, the anticipated completion date, and the funding source. The objectives and research designed for achieving the goal are described below.

The research designed to address the objectives should provide information to answer questions such as the relevancy of specific GBD signs (bubbles in the filaments), estimating potential mortality due to TDG, and whether the incidence of GBD signs for fish collected through the smolt monitoring program represents the incidence of GBD signs for in-river fish. The 1997 report will contain information on the objectives, results of completed research, and abstracts of on-going research. Some of the research projects will be multi-year studies. Full reports on the research will be made available when the investigators have completed their reports.

Objective 1: Determine if there is a difference in the incidence and severity of signs of GBD between migratory fish in the reservoir and in the fish sampled through the Smolt Monitoring Program.

Research for Objective 1:

A. Field test juveniles exposed to TDG. Expose juvenile salmonids to TDG, release them upstream of the project, and recapture them in the smolt by-pass system. Evaluate changes in incidence of GBD signs resulting from dam passage.

B. Compare incidence and severity of GBD signs in juvenile salmonids collected from the forebay and the smolt by-pass system.

C. Continue laboratory research on GBD signs, hydrostatic pressure and TDG body burden.

Objective 2: Determine the progression of GBD signs as the result of exposure to TDG and the relation between signs, health, and survival of aquatic species indigenous to the Columbia and Snake Rivers.

Research for Objectives 2:

A. Continue net-pen field research correlating resident fish GBD signs and mortality.

B. Laboratory studies correlating TDG exposure and GBD signs with mortality of juvenile and adult salmonids and sublethal effects.

C. Assess survival of fish exposed to TDG and released to the river.

D. Investigate the cause of headburns.

Objective 3: Describe the migratory distribution of juvenile and adult salmonids, particularly with respect to vertical distribution in the reservoir and relate fish distribution to the distribution of TDG.

Research for Objective 3:

Determine the lateral and vertical distribution of migrants in relation to plume and TDG.

Objective 4: Determine the physical characteristics of dissolved gas throughout the hydrosystem under specific spill and flow regimes.

Research for Objective 4:

Determine the TDG distribution downstream from spill.

Objective 5: Determine whether the protocol and examination techniques used in the GBD monitoring program optimize the detection of GBD signs demonstrated to affect fish health and survival, while minimizing impacts to individuals and populations.

Research for Objective 5:

Evaluation of monitoring protocols.

The net-pen research using juvenile salmonids was discontinued. The researchers and members of the dissolved gas team thought that there were better methods available

for answering the questions the juvenile salmonid net-pen research was to address. Researchers thought that laboratory exposures would be better able to address the dose-response of salmonids to TDG.

Other Research

In addition to the research on GBD signs in the previous section, there will be research conducted to evaluate the effects of ambient conditions and transportation on salmonid survival. PIT tags will be used to estimate salmonid survival through various river reaches. Ambient conditions will be measured, such as river flow, temperature, and TDG. The ambient conditions will be regressed against annual survivorship estimates developed from PIT tag data. This information may help to understand the effects of these variables on salmonid survivorship. Other studies will examine the effect barge transport has on smolt on survivorship to adulthood. PIT tag methodology will be used to estimate annual survivorship. In addition to transport effects on smolt survivorship to adulthood, other in-river variables such as flow and spill will be measured and regressed against annual survivorship.

Evaluation of Spill Effects on Fish Passage Efficiency and Survivorship

The report will contain an evaluation of the effectiveness of spill on increasing fish passage efficiency (FPE) and survivorship of migrating juvenile salmonids. Numerical modeling will be used to perform this evaulation. The NMFS model, SIMPAS, will be used to estimate the FPE and survivorship for the Bonneville, The Dalles, John Day, and McNary dams at the flow and spill volumes observed during the 1997 spill season. Tabular and graphical data for the average weekly FPE, survivorship, river flow (kcfs), voluntary (kcfs), and involuntary (kcfs) spill will be presented. Point estimates of FPE and survivorship will be provided for spill scenarios of 110, 115, and 120 %TDG in the tail race of Bonneville, The Dalles, John Day, and McNary dams.

Peer Review of the Report

The critical uncertainties in the 1996 report by the Gas Expert Panel and the NMFS Research Plan identify the research to be conducted and a system for the annual review of the research results. There will be an annual research review meeting held by NMFS in September to discuss the previous years research results on TDG, spill, and GBD signs. These meetings also discuss whether the designed research program is meeting the goal and objectives identified. The NMFS report will contain a summary of the research review meeting. These meetings are open to the public and are coordinated with the Bonneville Power Authority, U.S. Army Corps of Engineers, Northwest Power Planning Council, state and federal fishery agencies, and state and federal environmental regulatory agencies. Through this process the research results and the research program are peer reviewed.

The draft NMFS report will be available for peer review by the state and federal fisheries agencies, state and federal environmental regulatory agencies, and the interested public. The draft report will be made available for public comment by December 1, 1997. In addition, the ISAB will review the draft report and provide written comments to the NMFS on the results of their review. NMFS will provide to the ODEQ the final report and the written reviews of the draft report by January 15, 1998.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item D
Meeting

Title:

New Source Performance Standards (NSPS) and Emission Guidelines
Municipal Solid Waste Landfills

Summary:

The Department is proposing to adopt federal NSPS and Emission Guidelines for Municipal Solid Waste Landfills. This rulemaking requires small landfills to report initially, but large landfills that emit over 50 Mg of Nonmethane Organic Compounds need to install a collection system and control device to destroy 98% of these emissions. Controls must remain in place even after the landfill closes until emissions drop below a threshold.

There are seven large landfills in Oregon, four have collection systems and control devices installed presently, one of which is closed. Large landfills also have to submit Title V applications as part of this regulation. EPA estimates this regulation will result in a 53% reduction in Nonmethane Organic Compound emissions and 30% reduction in methane emissions. Other benefits include reduction in toxics, odor and explosion control.

Department Recommendation:

It is recommended that the Commission adopt the NSPS and Emission Guidelines for Municipal Solid Waste Landfills 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: March 13, 1997

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item, D, EQC Meeting April 18, 1997

New Source Performance Standards and Emission Guidelines:
Municipal Solid Waste Landfills

Background

On August 8, 1996, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which apply to Municipal Solid Waste landfills.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on September 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 August 12, 1996.

A Public Hearing was held September 17, 1996 with Ben Allen serving as Presiding Officer. The Presiding Officer's Report (Attachment C) states that no oral testimony was presented. In addition, no written comments were received by the end of the public comment period (September 23, 1996).

Issue this Proposed Rulemaking Action is Intended to Address

Proposed New Source Performance Standards (NSPS) and Emission Guidelines to control Nonmethane Organic Compound Emissions from Municipal Solid Waste Landfills.

Relationship to Federal and Adjacent State Rules

Both the NSPS and Emission Guidelines are identical to federal requirements.

Authority to Address the Issue

The Commission has the authority to address this rule amendment under ORS 468.020, 468A.025

Development of Rule Proposal

Advisory Committee Involvement; Alternatives considered

The Solid Waste Advisory Committee and the Industrial Source Advisory Committee (Air Quality issues) were informed of this proposed rulemaking on June 27, 1996 and July 10, 1996 respectively.

Rulemaking Proposal Mailed to Interested Parties

See Attachment B4

Summary of Significant Public Comments

There were no written or oral comments.

Summary of Proposed Rule Implementation

The proposed rule will be implemented through the Department's permitting program, and regional staff will process reporting requirements. See Attachment E for more details. Attachment F (Draft 111(d) State Plan which is submitted to EPA) outlines implementation of the Emission Guidelines.

Recommendation for Commission Action

It is recommended that the Commission adopt the NSPS and Emission Guidelines for Municipal Solid Waste Landfills as presented in Attachment A of the Department Staff Report.

Attachments

A. Proposed Rule Language for Adoption
   1. Proposed changes to other rules as result of this rule action
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Advisory Committee Membership
E. Rule Implementation Plan
F. Draft 111(d) State Plan for Emission Guidelines submitted to EPA

New Source Performance Standards and Emission Guidelines:
Municipal Solid Waste Landfills

Approved:

Section: Andrew Ginsburg

Division: Susan Greco for GAG

Report Prepared By: Kathleen Craig

Phone: 503-229-6833

Date Prepared: March 13, 1997

Lfeqcmemo

Attachment A

Proposed rule language for adoption

New Source Performance Standards and Emission Guidelines for Municipal Solid Waste Landfills

Note: the following regulations are all new

Standards of Performance for Municipal Solid Waste Landfills
340-025-0740

(1) Applicability. This rule applies to small and large municipal solid waste landfills in the following categories:
  (a) Landfills constructed after 5/30/91
  (b) Existing landfills with modifications after 5/30/91
  (c) Landfills that closed after 11/08/87 with modifications after 5/30/91.

(2) General Requirements. Landfills subject to this rule must comply with **40 CFR Part 60, Subpart WWW, 3/12/96** as adopted under OAR 340-025-0535, except as noted in Section 4 this rule.

(3) Permitting requirements. Landfills subject to this rule must comply with Federal Operating Permit Requirements (Title V) as specified in OAR 340-028-2100 through 340-028-2740 except as noted in (e) of this subsection.
  (a) Existing large landfills with modifications after 5/30/91 must submit a complete Federal Operating Permit application by 3/12/97.
  (b) Existing large landfills with modifications after 3/12/97 must submit a complete Federal Operating Permit application the earliest of one year from the date EPA approves the 111(d) State Plan for this rule, or within one year of the modification.
  (c) New large landfills, which includes newly constructed large landfills after 3/12/96 and existing small landfills that become large landfills after 3/12/96 must submit a complete Federal Operating Permit application within one year of becoming subject to this requirement.
  (d) New and modified existing small landfills that are major sources as defined in OAR 340-028-0110 must submit a complete Federal Operating Permit application within one year of becoming a major source.
  (e) OAR 340-028-2110(4)(c) does not apply to sources subject to this rule.

(4) Reporting requirements. Landfills subject to this rule must comply with the following:
  (a) Large landfills listed in Subsection (1)(a) through (c) of this rule must:
    (A) Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 30 days of the effective date of this rule, and
    (B) Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are $\geq$ 50 Mg/yr.
  (b) Small landfills listed in Subsection (1)(a) through (c) of this rule must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 30 days of the effective date of this rule.
  (c) Landfills subject to this rule after the effective date of this rule must submit an Initial Design Capacity Report and an Initial

Nonmethane Organic Compound Report within 30 days of becoming subject to this rule.

(5) Definitions. As used in this rule:

(a) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(b) "Effective date" means the date this rule is filed with the Secretary of State.

(c) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(d) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(e) "Modification" means an action that results in an increase in the design capacity of the landfill.

(f) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(g) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(h) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

Emission Guidelines for Municipal Solid Waste Landfills

340-025-0745

(1) Applicability. This rule applies to small and large municipal solid waste landfills in the following categories:

(a) Landfills that have accepted waste since 11/08/87
(b) Landfills with no modifications after 5/30/91
(c) Landfills that closed after 11/08/87 with no modifications after 5/30/91.

(2) General Requirements. Landfills subject to this rule must comply with **40 CFR Part 60, Subpart WWW, 3/12/96** as adopted under OAR 340-025-0535, except as noted in Section 4 of this rule.

(3) Permitting requirements. Landfills subject to this rule must comply with Federal Operating Permit Requirements (Title V) as specified in OAR 340-028-2100 through 340-028-2740 except as noted in (c) of this subsection.
(a) Existing large landfills must submit a complete Federal Operating Permit application one year after EPA approves the 111(d) State Plan associated with this rule.
(b) Existing small landfills that are major sources as defined in OAR 340-028-0110 must submit a complete Federal Operating Permit application within one year of becoming a major source.
(c) OAR 340-028-2110(4)(c) does not apply to sources subject to this rule.

(4) Reporting requirements. Landfills subject to this rule must comply with the following:
(a) Large landfills listed in Subsection (1)(a) through (c) of this rule must comply with:
(A) Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 90 days of the effective date of this rule.
(B) Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are ≥ 50 Mg/yr.
(b) Small landfills listed in Subsection (1)(a) through (c) of this rule must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 90 days of the effective date of this rule.

(5) Definitions. As used in this rule:
(a) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.
(b) "Effective date" means the date this rule is filed with the Secretary of State.
(c) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(d) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(e) "Modification" means an action that results in an increase in the design capacity of the landfill.

(f) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification)

(g) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(h) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

Attachment A1

Proposed changes to other rules as result of this rule action

Standards of Performance for New Stationary Sources

Statement of Purpose

340-025-0505 The U.S. Environmental Protection Agency has adopted in Title 40, Code of Federal Regulations, Part 60, Standards of Performance for certain new stationary sources. It is the intent of OAR 340-025-0505 through 340-025-08045 to specify requirements and procedures necessary for the Department to implement and enforce the aforementioned Federal Regulation.

[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 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & ef. 11-4-93

Definitions

340-025-0510 As used in OAR 340-025-0505 through 340-025-08045:

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "CFR" means Code of Federal Regulations.

(3) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance.

(4) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(5) "Commenced" means, with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(6) "Construction" means fabrication, erection, or installation of an facility.

(7) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Pollution Authority.

(8) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(9) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(10) "Existing facility" means, with reference to a stationary source, any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus which could be altered in such a way as to be of that type.

(11) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.

(12) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(13) "Modification" means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

(14) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.

(15) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(b) it is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(16) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60 (July 1, 1995).

(17) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(18) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

(19) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.

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

Statement of Policy

340-025-0515 It is the policy of the Commission to consider the performance standards for new stationary sources contained in OAR 340-025-0505 through 340-025-0845 to be minimum standards; and, as technology advances, conditions warrant, and Commission or regional authority rules require or permit, additional rules may be adopted.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & ef. 11-4-93

Delegation

340-025-0520

(1) The Lane Regional Air Pollution Authority (LRAPA) is authorized to implement and enforce, within its boundaries, the provisions of OAR 340-025-0505 through 340-025-0845.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in OAR 340-025-0505 through 340-025-0845. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of OAR 340-025-0505 through 340-025-0845 upon receipt of delegation from EPA. Delegation may be withdrawn for cause by the Commission.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & ef. 11-4-93

Applicability

340-025-0525 OAR 340-025-0505 through 340-025-0845 shall be applicable to stationary sources identified in OAR 340-025-0550 through 340-025-0839 for which construction, reconstruction, or modification has commenced.

[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 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & ef. 11-4-93

General Provisions

340-025-0530

(1) Except as provided in section (2) of this rule, 40 CFR Part 60, Subpart A (July 1, 1995) is by this reference adopted and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, Subpart A, "Department" shall be substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

[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 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & ef. 11-4-93

Performance Standards

Federal Regulations Adopted by Reference

340-025-0535

(1) Except as provided in section (2) of this rule, 40 CFR Part 60 Subparts D through XX and BBB through NNN and PPP through ~~XXXX~~WWW (July 1, ~~1993~~) are by this reference adopted and incorporated herein, and 40 CFR Part 60 Subpart OOO (July 1, 1993) is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" shall be substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) Where a discrepancy is determined to exist between OAR 340-025-0505 through 340-025-0800~~45~~ and 40 CFR Part 60, 40 CFR Part 60 shall apply.

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

Attachment B1

Notice of Proposed Rulemaking Hearing

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340-025-740;340-025-745

DATE:	**TIME:**	**LOCATION:**
September 17, 1996	4:00 p.m.	DEQ HQ: 811 SW 6th Rm 3A Portland, OR

HEARINGS OFFICER(s): Ben Allen

STATUTORY AUTHORITY: ORS 468.020, 468A.025
or **OTHER AUTHORITY:**
STATUTES IMPLEMENTED: **ORS 468A.025**

ADOPT: 340-025-740; 340-025-745

AMEND: 340-025-505, 510, 515, 520, 525, 530, 535, 800, 805

REPEAL:

RENUMBER: (prior approval from Secretary of State REQUIRED) **AMEND & RENUMBER: 340-025-800, 805**

☒ This hearing notice is the initial notice given for this rulemaking action.
☐ This hearing was requested by interested persons after a previous rulemaking notice.
☒ Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY:

This proposal would adopt by reference New Source Performance Standards (NSPS) for both new and existing municipal solid waste landfills. In addition, the State is required to submit a Section 111(d) State Plan as a federally enforceable mechanism for implementing Emission Guidelines. Housekeeping amendments as a result of this rulemaking include adding Subpart WWW to OAR 340-025-535(1), updating the date referenced in that section, and updating rule numbers as referenced throughout Division 025 resulting from this rulemaking (inserting proposed rules into Division 25).

LAST DATE FOR COMMENT: September 23, 1996; 5:00 p.m.

AGENCY RULES COORDINATOR: Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL:
ADDRESS: 811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: /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
Signature

8/14/96
Date

8/14/96 FAXED TO SOS

Attachment B2

Fiscal and Economic Impact

Attachment B2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

New Source Performance Standards and Emission Guidelines
for Municipal Solid Waste Landfills

Fiscal and Economic Impact Statement

Introduction

Seven sources in Oregon will be affected by this rulemaking:

1.	Columbia Ridge	Arlington
2.	Finley Buttes	Boardman
3.	Riverbend	McMinnville
4.	Hillsboro	Hillsboro
5.	Short Mountain	Eugene
6.	Coffin Butte	Corvallis
7.	St. John's	(Closed site, yet still affected by this rule)

General Public

EPA estimates annualized costs for collection and control of air emissions from new Municipal Solid Waste landfills to be $4 million. Nationwide costs for existing landfills are estimated to be approximately $90 million. Preliminary EPA estimates anticipate the annual cost of waste disposal may increase by an average of approximately $0.60 per Mg for the NSPS and $1.30 per Mg for the Emission Guidelines. Costs per household are estimated to increase approximately $2.50 to $5.00 per year when the household is served by a new or existing landfill, respectively. EPA anticipates less than 10% of the households would face annual increases of $15 or more per household as a result of the Emission Guidelines. However, if landfills elect to use energy recovery systems, costs per households would be less.

Small Business

Not applicable.

Large Business

Not applicable.

Local Governments

The landfills affected by the proposed rulemaking are existing solid waste sources. Therefore, it is not anticipated that this rulemaking will have any additional fiscal and economic impact on local governments.

State Agencies

This rule will be implemented either through existing solid waste or air quality permitting programs. Therefore, it is not anticipated that there will be any increase in costs to the Department. The emission fees collected through the Title V permitting program would pay for costs associated with permitting and compliance inspections.

lffiscal

Attachment B3

Land Use Evaluation

Attachment B3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Revisions to Stationary Source Emission Standards and Requirements

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Department proposes to adopt new rules regarding New Source Performance Standards and Emission Guidelines for Municipal Solid Waste Landfills. The rules would adopt EPA's rules for New Source Performance Standards by reference so the Department can apply for full delegation of this program. This rulemaking also includes a 111(d) State Plan to meet a federal Clean Air Act requirement that Emission Guidelines be federally enforceable.

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 Department's air discharge permits: ACDP and Title V as appropriate.

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

Yes X No __ (if no, explain):

The proposed rules would be implemented through the Department's existing stationary source permitting program. This program requires local government approval of a Land Use

permitting program. This program requires local government approval of a Land Use Compatibility Statement before an air discharge permit can be issued.

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

Not applicable

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

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

Not applicable

Gregory A. Glas — Division

Lydia Taylor — Intergovernmental Coord.

8/8/96 — Date

Attachment B4

Cover Memorandum from Public Notice

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

Date: August 12, 1996

To: Interested Parties and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements
Municipal Solid Waste Landfills

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules/rule amendments regarding Municipal Solid Waste Landfills. 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 adopt by reference New Source Performance Standards (NSPS) for both new and existing municipal solid waste landfills since the requirements are the same for both sources, with the exception of compliance times which will be noted in the proposed regulations. In addition, the Department is required to develop a 111(d) State Plan to meet a federal Clean Air Act requirement for a federally enforceable mechanism for implementing Emission Guidelines for existing sources. There are also some housekeeping changes related to this rulemaking: adding Municipal Solid Waste landfill emission (measured as nonmethane organic compounds) in a table in OAR 340-028-0110 (Significant Emission Rates for Pollutants Regulated Under the Clean Air Act), and adding Subpart WWW to OAR 340-025-535 Federal Regulations Adopted by Reference.

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

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 (amendments).

Attachment E	Related housekeeping changes
Attachment F	111(d) State Plan

Hearing Process Details

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

Date: September 17, 1996
Time: 4:00 p.m.
Place: DEQ Headquarters
Room 3A
811 SW Sixth Avenue
Portland, OR 97204

Deadline for submittal of Written Comments: September 23, 1996
5:00 p.m.

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.

Ben Allen 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 November 15, 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 Department is required to either adopt federal requirements by reference, or to develop equivalent regulations that are federally enforceable. The Department is proposing to adopt New Source Performance Standards by reference for both new and existing municipal solid waste landfills, since the requirements are the same for both sources with the exception of compliance times. In addition, housekeeping changes were necessary as a result of these proposed rules (see cover page for description of these changes). The Department is required to develop a 111(d) State Plan to make the Emission Guidelines federally enforceable.

How was the rule developed

The proposed rules were discussed with affected sources on July 19, 1996, presented to the Solid Waste Advisory Committe on June 27, 1996, and before the Industrial Source Advisory Committee on July 13, 1996. The Department developed the proposed rules and State Plan through discussions with EPA Headquarters and Region X.

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

The proposed rules affects seven sources in Oregon that are currently regulated under the Department's solid waste rules. These rules are the first air quality regulations for these sources. The proposed rules include reporting and recordkeeping requirements as well as installation of collection systems and control devices for landfills emitting over 55 tpy of nonmethane organic

compounds. One landfill feels it can meet the requirements of this proposed rule with existing collection and control systems. The rest of the landfills will need to install collection systems and control devices to comply with the new requirements.

How will the rule be implemented

The proposed rules will be implemented through the Department's permitting program.

Are there time constraints

Yes. EPA requires states to adopt these rules by no later than December, 1996.

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:

Kathleen Craig
DEQ
811 SW Sixth Avenue
Portland, Oregon 97204
(503) 229-6833
In Oregon: 1-800-452-4011

Attachment C

Presiding Officer's Report for Rulemaking Hearing

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

Date: September 18, 1996

To: Environmental Quality Commission

From: Benjamin Allen

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: September 17, 1996, beginning at 4:00 PM
Hearing Location: DEQ Headquarters, Portland

Title of Proposal:

New Source Review Requirements for Maintenance Areas
and
New Source Performance Standards and Emission Guidelines for New and Existing Municipal Solid Waste Landfills

The rulemaking hearing on the above titled proposal was convened at 4:15 PM. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Two people attended. No one signed up to give testimony.
Prior to receiving testimony, Benjamin Allen briefly explained the specific rulemaking proposal, and the reason for the proposal.

Summary of Testimony

No one presented oral or written testimony. The hearing was closed at 4:50 PM.

Attachment D

Advisory Committee Membership

Attachment D

Oregon Department of Environmental Quality
Air Quality Industrial Source Advisory Committee IV Members

Chair

Patricia M. Amedeo
Bogle & Gates
1400 KOIN Center
222 SW Columbia
Portland, OR 97201
721-3648
FAX 721-3666

Don Arkell
Lane Regional Air Pollution Authority
225 N 5th #501
Springfield, OR 97477
1-503-726-2514
FAX 1-503-726-1205

Chris Bergstrom
9270 SW Ibach Court
Tualatin, OR 97062
692-6394
mess: Sharon at 280-9716

Dr. Lisa Brenner
Oregon Environmental Council
18181 SW Kummrow Road
Sherwood, OR 97140-9164
625-6891
FAX 625-5259
INTERNET: LBRENNER@IGC.APC.ORG

Dr. George Feldman
Physicians For Social Responsibility
11230 SW Collina Avenue
Portland, OR 97219
652-2880
FAX 786-8445
INTERNET:
FELDMANGE@KPNWOA.MTS.KPNW.ORG

Bonnie Gariepy
Intel Corporation, AL4-91
5200 NE Elam Young Parkway
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FAX 649-3996

Sharon Genasci
Northwest District Association Board
2217 NW Johnson
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229-0525
FAX 229-0665

Gary Hancock
1805 N Portland Blvd.
Portland, OR 97217
289-6821
FAX 248-9625

Candee Hatch
CH_2M Hill
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Portland, OR 97232
235-5022 X 4336
FAX 235-2445

John Head
Environmental Consulting & Investigation, Inc.
Bend Clean Air Committee
745 NW Wall #306
Bend, OR 97701
1-800-822-0616
1-503-383-1406
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David Murray
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Precision Castparts Corp.
4600 SE Harney Drive
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Dr. Robert Palzer
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Jim Spear
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Canby, OR 97013
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Oregon Governmental Affairs
Northwest Pulp and Paper Assoc.
1631 Water Street NE, Suite 39
Salem, OR 97303
1-503-581-8832
FAX 1-503-581-8185

David Bartz (interim)
Schwabe Williamson & Wyatt
1600-1800 Pacwest Center
1211 SW 5th Avenue
Portland, OR 97204
796-2907
FAX 796-2900

Attachment E

Rule Implementation Plan

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
New Source Performance Standards and Emission Guidelines
Municipal Solid Waste Landfills

Rule Implementation Plan

Summary of the Proposed Rule

Adoption of New Source Performance Standards (NSPS) and Emission Guidelines for Municipal Solid Waste Landfills controlling nonmethane organic compound emissions. State rule will clarify compliance and reporting schedules for these sources in addition to adopting these rules by reference. The Department will submit a draft 111(d) State Plan to EPA which will implement the Emission Guidelines.

Proposed Effective Date of the Rule

April 18, 1997

Proposal for Notification of Affected Persons

Past notification:

In addition to mailings as part of the public hearing process, and separate mailings summarizing the proposed regulations, discussions have been held with both the Solid Waste Advisory Committee on June 27, 1996 and the Industrial Source Advisory Committee (discusses air issues) on July 10, 1996 where some affected sources attended. The Department has had several meetings with affected sources and regional DEQ representatives from the air program and from the solid waste program updating them on the proposed regulation. A workshop was held on December 18, 1996 helping landfills estimate their nonmethane emissions and an introduction to Title V permitting. Computer models were mailed to interested parties which estimate nonmethane organic compound emissions for later reporting.

The Department does not have plans for additional notification.

Proposed Implementing Actions

Regional representatives who will be responsible for implementing this regulation through the Department's permitting program, have been updated on the proposed regulation through meetings and a workshop (see preceding paragraph).

Proposed Training/Assistance Actions

No additional training is proposed at this time. The Department's proposed rule language has been reviewed by regional representatives and staff in headquarters is available for assisting regional staff on both permitting and clarification of the proposed rule. Staff in headquarters will also distribute to regional staff reporting information for landfills in their regions, the 111(d) State Plan submitted to EPA, contact names and addresses of all municipal solid waste landfills, date of closures and other pertinent information.

lfimplem

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item E
April 18, 1997 Meeting

Title:

Title V Operating Permit Fee Increase AND Delisting of VOC Compounds

Summary:

The Department is proposing to increase the Title V Fees by 2.75% through a new fee schedule to be issued in June 1997. The Federal Clean Air Act requires that the Oregon Title V Operating Permit Program be 100% self sufficient and includes a provision to increase fees consistent with the Consumer Price Index.

Through this Rule the Department is also proposing to delist certain chemical compounds presently listed as VOC's (Volatile Organic Compounds) which will align the State definition of these compounds to the federal definition. This action will mean that these compounds will no longer be regulated for their role in ground level ozone formation, however it does not preclude them from being regulated elsewhere.

Department Recommendation:

It is recommended that the Commission adopt the rule amendments regarding the proposed Title V operating permit fee increase and delisting certain compounds as VOC's as presented in Attachment A of the Department Staff Report.

Report Author | Division Administrator | Director

March 24, 1997

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: 3-6-97

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item E, April 18, 1997 EQC Meeting
Title V Operating Permit Fee Increase AND Delisting of VOC Compounds

Background

On December 12, 1997 the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would increase Title V operating permit fees by an amount allowed by ORS 468A.315, and would delist certain compounds presently regulated as VOC's to be consistent with federal delisting actions.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on January 1, 1997. 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 December 17, 1997. This mailing offered that a public hearing would be conducted if there were written comments indicating significant public interest, or 10 or more individuals or an organization representing at least 10 people requested a hearing. No such requests were made.

The Department received one comment on the proposed Title V operating permit fee increase. No comments were received on the proposed delisting of certain compounds presently regulated as VOC's. Department staff has evaluated the comment to the proposed Title V fee increase and it's response is included in Attachment D.

Issue this Proposed Rulemaking Action is Intended to Address

Proposed Title V operating permit fee increase consistent with an increase in the Consumer Price Index as allowed by Oregon Statutes AND delisting of perchloroethylene, acetone, HFC 43-10mee and HCFC 225ca and cb.

Relationship to Federal and State Rules

Title V operating permit fee increase: the Federal Clean Air Act requires that the Oregon Title V operating permit program be 100% self-sufficient which may include an increase in fees consistent with the increase in the Consumer Price Index.

VOC delisting: The proposed delisting of certain compounds presently regulated as VOC's will align state definitions of these compounds to the federal definition.

Authority to Address the Issue

The Environmental Quality Commission has the authority to address both of these proposed rule issues under ORS 468.020, 468A.025, 468A.315

Development of the Rulemaking Proposal

Advisory Committee involvement; Alternatives considered

The Industrial Source Advisory Committee was informed of the proposed rule changes at their November 13, 1996 meeting. Because federal and state law require the Title V program to be self-supporting, options are limited. Two alternatives to the proposed Title V fee increase are:

1. A statutory change to allow other fees to be assessed or to increase specific activity fees being charged to sources;

2. If there are no fee increases, reduce staff with a parallel reduction in service to sources.

An alternative for delisting certain compounds presently regulated as VOC's is to continue to regulated these compounds as VOC's which would mean state requirements would be stricter than federal requirements.

Summary of Rulemaking Proposal Mailed to Interested Parties

See Attachment B4

Summary of Significant Public Comments and Department's response

The Department received one written comment on the proposed Title V operating permit fee increase.

1. **Comment:** The commenter asked for justification of the increase.

The Department feels the requested 2.75% increase in Title V fees is warranted since it has experienced cost of living increases over the past year, and will incur new cost of living expenses in the second half of 1997. The predominant component for the most recent cost of living increases has been salary increases due to step increases as staff moves up in their range once a year under the existing classification series, and step increases for some positions as these positions shifted to a new classification series, which was effective January, 1997. New costs will include ongoing increases in the cost of living and may include the 3% per year increase proposed in the Governor's budget.

Summary of the Proposed Rule Implementation

The proposed Title V operating permit fee increases will be implemented through a new fee schedule which will be issued in June, 1997.

The proposed VOC delisting rules will be implemented through the Department's permitting program. The proposed delisting of compounds as VOC's will result in the need to recalculate PSEL's for certain VOC sources, adjust Title V fees for sources emitting these compounds, adjust some VOC bubbles that include these compounds and will require adjustments to the Emission Inventory. The mechanics of how each of these issues will be addressed will be summarized in Guidance which will be developed with staff responsible for implementation.

See Attachment D, Rule Implementation Plan for more details.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding the proposed Title V operating permit fee increase and delisting certain compounds as VOC's 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. Cover Memorandum from Public Notice
C. Advisory Committee Membership and Report
D. Rule Implementation Plan

Approved:

Section: Andrew Ginsburg

Division: John Erickson, For GAG

Report Prepared By: Kathleen Craig

Phone: 503-229-6833

Date Prepared: 3/6/97

tveqcstaff

Attachment A

Proposed Amendments

Title V Fees

Annual Base Fee

340-028-2580

(1) The Department shall assess an annual base fee of $2,714 ~~2,642~~ for each major source subject to the Oregon Title V Operating Permit program.

(2) The annual base fee shall be paid to cover the period from November 15 of the current calendar year to November 14 of the following year.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1992, f. & ef. 5-19-94; DEQ 22-1995, f. & ef. 10-6-95; DEQ xx-1996, f. & ef. 5-xx-96

Emission Fee

340-028-2590

(1) Based on the Oregon Title V Operating Permit Program Budget, prepared by the Department and approved by the 1993 Oregon Legislature, the Commission determines that an emission fee of $31.78 ~~30.93~~ per ton is necessary to cover all reasonable direct and indirect costs of implementing the Oregon Title V operating permit program.

(2) The emission fee shall be applied to emissions from the previous calendar year based on the elections made according to OAR 340-028-2640.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94; DEQ 22-1995, f. & ef. 10-6-95; DEQ xx-1996, f. & ef. 5-xx-96

Volatile Organic Compound

Definitions

340-022-0102 As used in OAR 340-022-0100 through 340-022-0300:

. . .

(73) "Volatile Organic Compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(a) Excluded from the definition of VOC are those compounds which the U.S. Environmental Protection Agency classifies as being of negligible photochemical reactivity, including: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HCFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); HCFC 225ca and cb; HFC 43-10mee ; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene; and perfluorocarbon compounds which fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

[**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.]

[**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
Stats. Implemented: ORS 468.020 and 468A.025
Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95

Definitions

340-028-0110 As used in this Division:

. . .

(129) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(a) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) ; chlorodifluoromethane (CFC-22) ; trifluoromethane (FC-23) ; 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) ; HCFC 225ca and cb; HFC 43-10mee; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; perchloroethylene; and perfluorocarbon compounds which fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds, as listed in subsection (a), may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(c) As a precondition to excluding these compounds, as listed in subsection (a) , as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

Stat. Auth.: ORS 468.020

Statutes Implemented.: ORS 468A.025

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-

(129) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(a) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) ; chlorodifluoromethane (CFC-22) ; trifluoromethane (FC-23) ; 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) ; HCFC 225ca and cb; HFC 43-10mee; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; perchloroethylene; and perfluorocarbon compounds which fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds, as listed in subsection (a), may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(c) As a precondition to excluding these compounds, as listed in subsection (a) , as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

Stat. Auth.: ORS 468.020

Statutes Implemented.: ORS 468A.025

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.]

tvrule

Attachment B1

NOTICE OF PROPOSED RULEMAKING

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

Department of Environmental Quality
OAR Chapter 340

STATUTORY AUTHORITY: ORS 468.020, 468A.025

AMEND: OAR 340-022-0102
OAR 340-028-0110, 2580, 2590

SUMMARY:

The proposed revisions would raise the fees for Title V permits by the amount of the increase in the Consumer Price Index, and would "delist" some compounds as Volatile Organic Compounds because they have been determined not to contribute to ground level ozone formation.

LAST DATE FOR COMMENT: January 24, 1997

AGENCY RULES COORDINATOR:	Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL:	Kathleen Craig
ADDRESS:	Air Quality Division 811 S. W. 6th Avenue Portland, Oregon 97204
TELEPHONE:	503-229-6833 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 received 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 persons or 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 before the hearing.

Susan M. Greco

Signature

Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Annual Oregon Title V Operating Permit Fee Increase AND Redefinition of "Volatile Organic Compound" to Reflect Federal Changes

Fiscal and Economic Impact Statement

Introduction

Title V Fee Increase

Costs of implementing and administering the Oregon Title V Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

As a result of the increase in fees, regulated facilities would pay more for each ton of air pollution released. This might provide some incentive for reducing the quantities emitted. To the extent that a facility could avoid these higher fees by reducing their emissions they would enjoy a competitive advantage over other facilities with greater emissions.

In 1996, the Annual Base Fee was charged to 138 major industrial sources. At least three of these sources are no longer subject to the program. This fee would increase from $2,642 per year to $2,714 per year if the proposed rule amendment were made. The proposed rule amendment would increase the fee paid per ton of pollution from $30.93 to $31.78.

Volatile Organic Compounds

The exclusion of acetone, perchloroethylene, and HFC 43-10mee, and HCFC 225ca and cb from the definition of Volatile Organic Compound (VOC) constitutes a rule relaxation, and is expected to produce a net economic benefit for sources. Also, this change would conform the Oregon VOC definitions to the federal definition, enhancing regulatory consistency.

General Public

Title V Fee Increase

Higher regulatory costs would likely affect consumers through higher costs of goods and services.

Volatile Organic Compounds

There would be no financial effect on the general public from these revisions.

Small Business

Title V Fee Increase

Some industrial sources which are defined to be major sources of air pollution by rule may be small businesses. In general, these companies tend to emit less than 100 tons per year of air pollutants. The fee increase proposed would raise the fees of a 100 ton per year source by a total of $157 per year (from $5,735 to $5,892).

Volatile Organic Compounds

Small businesses would be able to substitute acetone for some VOCs that they currently use. Acetone is less expensive than many alternative solvents. Perchloroethylene is regulated as a Hazardous Air Pollutant (HAP), and usage amounts and methods are not expected to change. HFC 43-10mee, and HCFC 225ca and cb are not regulated as HAPs, but use is not expected to change.

Large Business

Title V Fee Increase

Most industrial manufacturing facilities are major sources of air pollution and are subject to Oregon Title V Operating Permits and the associated fees. The largest source of air pollution in the state has approximately 8,100 tons/yr of assessable emissions, and will pay about $250,000 in fees in 1997 (exact numbers will not be available until late February). The proposed fee increase would raise this by 2.75 percent, (about $7,000). The second largest source has emissions of less than 4,000 tons/yr, and the vast majority of sources fall in the 100 to 1000 tons/yr range.

Volatile Organic Compounds

For the most part, changes to the VOC definition are expected to produce a positive economic effect as this rule relaxation would increase the number of non-VOC solvents available to area sources required to control their VOC emissions. However, companies that have developed low VOC alternatives to these compounds could face a loss of their research investment or a reduction of future profits.

Local Governments

Title V Fee Increase

At this time Coos County, the Port of Portland, Oregon State University, and the Oregon Health Sciences University are the only public agencies required to receive Oregon Title V Operating Permits. Their permitting fees would also increase by 2.75 percent.

The Lane Regional Air Pollution Authority is the only other air permitting agency in Oregon. They must also demonstrate to the EPA that their Title V Operating Permit

program is self-supporting, but they establish their own fee schedule and this rule amendment would not necessarily affect them.

Volatile Organic Compounds

The Department does not expect the delisting would have significant effects on local governments.

State Agencies

Title V Fee Increase

Costs of implementing and administering the Oregon Title V Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. This permitting program must remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. The proposed increase in fees is intended to offset the increased costs in order to maintain self-sufficiency without any increase in staff. Expenditures are projected to increase by 2.75 percent over 1996 levels.

Volatile Organic Compounds

The Department does not expect the delisting would have a significant effect on state agencies.

Housing Cost Impact Statement

This proposed rulemaking would have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

Assumptions

Title V Fee Increase

Estimated expenditures are based on the assumption that the workload analysis completed in September 1992 by the Air Quality Division is accurate. Revenue forecasts are also based on the assumption that the number of sources subject to this program are known, and that air emissions did not change significantly in 1996 (each billing is based on the previous year's emissions).

Volatile Organic Compounds

HFC 43-10mee, and HCFC 225ca and cb use levels would not change significantly. None of these compounds is otherwise regulated under Oregon's rules. HCFC 225ca and cb are Class II stratospheric ozone depleters, and are regulated under federal rules that are more restrictive of them than are the VOC rules.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Annual Oregon Title V Operating Permit Fee Increase AND Redefinition of "Volatile Organic Compound" to Reflect Federal Changes

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.**

Title V Fee Increase

Costs of implementing and administering the Oregon Title V Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. The federal Clean Air Act requires that the permitting program remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status.

Volatile Organic Compounds

The Environmental Protection Agency has determined that several compounds previously identified as "Volatile Organic Compounds" (VOCs) are negligible contributors to ozone formation, and has redefined VOC in order to exclude those compounds. The Department proposes to revise its own definitions of VOC in order to match the federal definitions. This means that the compounds would no longer be regulated for their role in ground level ozone formation. They might still be regulated for other reasons.

The compounds to be excluded ("delisted" as VOCs) are: acetone, perchloroethylene, HFC 43-10mee, and HCFC 225ca and cb. Acetone is a common solvent; perchloroethylene is a compound used in dry cleaning. HFC 43-10mee, and HCFC 225ca and cb are solvents which could be used in electronics and precision cleaning.

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 Oregon Title V 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.

Division Representative | Intergovernmental Coord. | Date 12/9/96

State of Oregon

Department of Environmental Quality **Memorandum**

Date: December 17, 1996

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Annual Oregon Title V Operating Permit Fee Increase AND Redefinition of "Volatile Organic Compound" to Reflect Federal Changes

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to amend rules regarding Title V operating permit program fees and the definition of "Volatile Organic Compound" (VOC). Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to amend rules.

This proposal would increase Title V operating permit program fees by the amount allowed by ORS 468A.315, and would delist certain compounds as VOCs to match the federal definition.

The Department has the statutory authority to address this issue under ORS 468.020, 468A.025, and 468A.315.

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 amendments.

Public Comment Period

You are invited to review these materials and submit written comment on the proposed rule changes. Written comments must be presented to the Department by 5:00 p.m., January 24, 1997. 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 to the Department of Environmental Quality, 811 S.W. 6th, 11th Floor between 8:00 a.m. and 5:00 p.m.

Following the 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., January 24, 1997.

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 April 18, 1997. 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 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?

Title V Fee Increase

Costs of implementing and administering the Oregon Title V Operating Permit program in Oregon have increased as a result of increased costs for staff, services, and supplies. The federal Clean Air Act requires that the permitting program remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status.

Volatile Organic Compounds

The Environmental Protection Agency has determined that several compounds previously identified as "Volatile Organic Compounds" (VOCs) are negligible contributors to ozone formation, and has redefined VOC in order to exclude those compounds. The Department proposes to revise its own definitions of VOC in order to match the federal definitions. This means that the compounds would no longer be regulated for their role in ground level ozone formation. They might still be regulated for other reasons.

The compounds to be excluded ("delisted" as VOCs) are: acetone, perchloroethylene, HFC 43-10mee, and HCFC 225ca and cb. Acetone is a common solvent; perchloroethylene is a compound used in dry cleaning. HFC 43-10mee, and HCFC 225ca and cb are solvents which could be used in electronics and precision cleaning.

The Department has definitions of VOC in two divisions of the Oregon Administrative Rules (OARs): Divisions 22 (area and Reasonably Achievable Control Technology sources) and 28 (other sources with permits). The proposed rulemaking would revise both definitions to match the federal definitions. Acetone was delisted for Division 22 in early 1996.

How was the rule developed?

Title V Fee Increase

ORS 468A.315 allows the Department to increase Title V fees by the amount of the increase in the Consumer Price Index (CPI). A CPI increase of 2.75 percent was reported to the Department by EPA, and was used to calculate new fees.

Volatile Organic Compounds

The revisions are modeled on changes to the federal definition of VOC. The Department relied on the federal delisting decisions, at 60 FR 31633 (acetone), 61 FR 4588 (perchloroethylene), and 61 FR 19231 (HFC 43-10mee, and HCFC 225ca and cb).

The documents relied upon for this rulemaking can be reviewed at 811 SW 6th Ave., Portland, OR 97204, by calling Benjamin Allen at (503) 229-6828.

The Air Quality Industrial Source Advisory Committee was advised of the proposed revisions at its meeting on November 13, 1996.

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

Title V Fee Increase

The revision would affect all Title V sources.

Volatile Organic Compounds

The revisions would affect all users of acetone, perchloroethylene, and HFC 43-10mee, and HCFC 225ca and cb. Because these compounds would no longer be considered VOCs, users would not be subject to restrictions on the use of VOCs. However, the compounds would still be subject to other regulations. For example, perchloroethylene would still be regulated as a Hazardous Air Pollutant, and under the Department's dry-cleaner rules.

How will the rule be implemented?

Title V Fee Increase

The Department would begin billing Title V sources at the new rates starting in June, 1997.

Volatile Organic Compounds

Staff and LRAPA would be informed of the change, and would be provided with guidance on how to recalculate Plant Site Emission Limits in view of the new definition of VOC. The guidance is based on rules expected to be adopted in the first half of 1997.

Are there time constraints?

No.

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:

Benjamin M. Allen
811 SW 6th Ave., Portland, OR 97204-1390
(503) 229-6828

Attachment C

Oregon Department of Environmental Quality
Air Quality Industrial Source Advisory Committee IV Members

Chair

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Bogle & Gates
1400 KOIN Center
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721-3648
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Don Arkell
Lane Regional Air Pollution Authority
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FAX 796-2900

Attachment D

Rule Implementation Plan

Title V Operating Permit Fee Increase;
VOC Delisting

Summary of Proposed Rule

Proposed Title V operating permit fee increase consistent with an increase in the Consumer Price Index as allowed by Oregon Statutes AND delisting of perchloroethylene, acetone, HFC 43-10mee and HCFC 225ca and cb.

Proposed Effective Date of Rule

April 18, 1997

Proposal for Notification of Affected sources

The Department discussed the proposed rule amendments with the Industrial Source Advisory Committee at their November 13, 1996 meeting and affected sources were notified as part of the public mailing.

Proposed Implementing Actions

The proposed Title V operating permit fee increase will be implemented through a new fee schedule which will be issued June, 1997.

The proposed VOC delisting rules will be implemented through a Guidance Document since existing rules do not specify the mechanics of how to make the following adjustments which result from this rule action:

1. Recalculate PSEL's for VOC sources where necessary;

   Exclude acetone, perchloroethylene, HFC 43-10mee and HCFC 225ca and cb from baseline calculations and present permitted levels where baseline emissions for these compounds have not been used for a netting action.

Proposed Implementing Actions (Continued)

2. Decrease Title V fees for sources emitting compounds regulated as VOC's prior to this rule action;

   If a source's fees are based on actual emission levels, their fees would be decreased for these compounds as of the effective date of the delisting by the EQC. If a source pays on permitted levels or actual emissions are calculated using an emission factor specified in the permit, their fees would continue to include these compounds until their permit is modified.

3. Adjust some VOC bubbles that include compounds regulated as VOC's prior to this rule action ;

   No effect on bubbles that contain these compounds that were established prior to delisting. If a source requests a change in a bubble, it would be based on the new VOC definition.

4. Adjust the Emission Inventory

   The Department will exclude acetone, perchloroethylene, HFC 43-10mee and HCFC 225ca and cb from the point source emission inventory as emission factors are revised in the permits. Area and mobile source emission inventories will use adjusted emission factors as they become available from EPA.

Details of the Guidance Document will be developed with staff involved in these areas.

tvimplem

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item F
April 18, 1997 Meeting

Title:

Temporary Rule Amendment to Reasonably Achievable Control Technology (RACT) Rules to be consistent with federal requirements

Summary:

The Department is proposing a temporary rule change to the RACT rule because the current state rule is not federally approvable which affects the request for redesignation of the Portland Ozone Nonattainment Area to Attainment Area. The request for redesignation is to be approved in April, 1997. This temporary rule amendment will be followed up by a permanent rule within six months of temporary rule adoption.

Department Recommendation:

It is recommended that the Commission adopt the temporary rule amendment regarding the proposed amendment to RACT rules as presented in Attachment A of the Department Staff Report and the statements required under the Administrative Procedures Act as presented in Attachment B.

Report Author | Division Administrator | Director

RACTeqcsumm

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

State of Oregon
Department of Environmental Quality Memorandum

Date: March 11, 1997

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item F, EQC Meeting April 18, 1997

Temporary Rule Amendment to Reasonably Available Control Technology (RACT) rules to be consistent with federal requirements

Note: This temporary rule will be followed up by a permanent rule within six months of temporary rule adoption

Background

This rule change is necessary because the current state rule for RACT is not federally approvable, which affects the request for redesignation of the Portland Ozone Nonattainment Area to an Attainment Area. The request for redesignation is to be approved in April, 1997. This temporary rule amendment will be followed up by a permanent rule within six months of temporary rule adoption. Because this is a temporary rule, there was no public hearing; however, a newspaper notice was published on March 14, 1997 informing the public of the meeting before the Environmental Quality Commission, and that a final rule would be adopted within six months of temporary rule adoption at which time a public hearing will be held.

Issue this Proposed Rulemaking Action is Intended to Address

Proposed amendments to the definition of potential to emit under the RACT rules.

Relationship to Federal and Adjacent State Rules

This action will bring Oregon's rules into conformity with federal law which is required before EPA will approve the request for redesignation of the Portland Ozone Nonattainment Area to Attainment Area.

Authority to Address the Issue

The Environmental Quality Commission has the authority to address the proposed rule amendment under ORS 468.020 and 468A.025.

Development of the Rulemaking Proposal

Advisory Committee Involvement; Alternatives Considered

There was no advisory committee involvement of the temporary rule; however, the Industrial Source Advisory Committee will be advised of the permanent rule within six months of the temporary rule adoption.

The only alternative to the proposed rule amendment is to continue with existing rules which are not federally approvable as part of the State Implementation Plan (SIP) because they are less stringent than federal rules. The Department faces legal challenge if it imposes case-by-case RACT requirements without revising the state rule. If the redesignation request is not approved by April, 1997, the Department will have to revise the Portland Ozone Maintenance Plan, which has been a lengthy process to develop, to include another year and will have to resubmit the request. This delay would continue to subject industry to more stringent regulations since the Portland Ozone area would still be considered in Nonattainment. It would also mean more stringent requirements for Metro because of federal conformity requirements. Finally, it would result in a significant workload for Department staff to recalculate emissions data and strategies for the Portland Ozone Maintenance Plan.

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

As noted above, no public mailing or notice was issued for this temporary rule, but mailings to interested parties and affected sources will be issued before the public hearing on the final rule. Affected sources are aware of the temporary rule amendment.

Summary of Significant Public Comment

None. See above.

Summary of Proposed Rule Implementation

Affected staff and sources are aware of the proposed rule amendment which will be implemented through the Department's permitting program.

Recommendation for Commission Action

It is recommended that the Commission adopt the temporary rule amendment regarding the proposed amendment to RACT rules as presented in Attachment A of the Department Staff Report and the statements required by the Administrative Procedures Act as presented in Attachment B.

Attachments

A. Temporary Rule Amendments Proposed for Adoption

B. Supporting Procedural Documentation:
Statements required by Administrative Procedures Act

Approved:

Section: Andrew Ginsburg

Division: Gregory A. Green

Report Prepared By: Kathleen Craig

Phone: 503-229-6833

Date Prepared: March 11, 1997

Limitations and Requirements

General Requirements for New and Existing Sources

~~340-22-~~340-022-0104

(1) Notwithstanding the emission limitations in OAR 340-~~22-100 through 340-22-~~022-0100 through 340-022-0300, all new major sources or major modifications at existing sources, located within the areas cited in section (2) of this rule, shall comply with 340-~~28-1900 through 340-~~028-1900 through 340-028-2000 (New Source Review).

(2) All new and existing sources inside the following areas shall comply with the General Emission Standards for Volatile Organic Compounds:
(a) Portland-Vancouver Air Quality Maintenance Area;
(b) Medford-Ashland Air Quality Maintenance Area;
(c) Salem Area Transportation Study (SATS).

(3) VOC sources located outside the areas cited in section (2) of this rule are exempt from the General Emission standards for Volatile Organic Compounds.

(4) All new and existing sources inside the designated nonattainment areas identified in section (2) of this rule shall apply Reasonably Available Control Technology (RACT) subject to the categorical RACT requirements set forth in OAR 340-~~22-100 through 340-22-~~022-0100 through 340-022-0300, or as described in sections (5) and (6) of this rule. Compliance with the conditions set forth in OAR 340-~~22-100-~~022-~~through 340-22-~~0100 through 340-022-0300 shall be presumed to satisfy the RACT requirement.

(5) Sources operating prior to November 15, 1990 for which no categorical RACT requirements exist and which have ~~the potential to emit (as defined in OAR 340-28-110)~~potential emissions before add-on equipment of over 100 tons per year (TPY) of VOC from aggregated, non-regulated emission units, shall have RACT requirements developed on a case-by-case basis by the Department. Sources that have complied with New Source Review requirements per OAR 340-~~28-1900 through 340-~~028-1900 through 340-028-2000 and are subject to Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements are presumed to have met RACT. A source may request RACT not be applied by demonstrating to the Department that its potential emissions are below 100 tons due to a permanent reduction ~~their potential to emit is below 100 tons.~~in production or capacity. Once a source becomes subject to RACT requirements under OAR 340-~~22-100 through 340-22-~~022-0100 through 340-022-0300, it shall continue to be subject to RACT, unless emissions fall below 100 tons and the source requests that RACT be removed, by demonstrating to the Department that ~~their potential to emit is below 100 tons.~~its potential emissions, before add-on equipment, are below 100 tons due to a permanent reduction in production or capacity.

(6) Within 3 months of written notification by the Department of the applicability of section (5) of this rule, or, for good cause shown, up to an additional 3 months as approved by the Department, the source shall submit to the Department a complete analysis of RACT for each category of emission unit at the source, taking into account technical and economic feasibility of available control technology, and the emission reductions each technology would provide. This analysis does not need to include any emission units subject to a specific RACT requirement under OAR 340-~~22-100 through 340-22-300. The~~022-0100 through 340-022-0300. These case-by-case RACT requirements approved by the Department shall be incorporated in the source's Air Contaminant Discharge Permit or Oregon Title V Operating Permit, and shall not become effective until approved by EPA as a source specific SIP revision. The source shall have one year from the date of notification by the Department of EPA approval to comply with the applicable RACT requirements.

(7) Failure by a source to submit a RACT analysis required by section (6) of this rule shall not relieve the source of complying with a RACT determination established 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 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95

Attachment B

STATEMENT OF NEED AND JUSTIFICATION
Before the Environmental Quality Commission

In the matter of temporary rule amendment for Reasonably Achievable Control Technology (RACT) to bring Oregon's rules into conformity with federal law.

) Statutory Authority,
) Statement of Need,
) Principal Documents Relied
) Upon and Statement of
) Justification

1. **Citation of statutory authority:**

ORS 468.020 and 468A.025

2. **Need for the rules:**

This rule action is needed to bring Oregon's rules into conformity with federal law which is required before EPA will approve the request for redesignation of the Portland Ozone Nonattainment Area to Attainment.

3. **Documents relied upon:**

There are no documents the Department relied upon when considering the need for the rule.

4. **Justification of temporary rules:**

Failure of the Commission to act promptly on this rule action will result in serious prejudice to the public interest for the following reasons:

The Department faces potential legal challenges if it imposes case-by-case RACT requirements without revising the state rule. If the redesignation request is not approved by April, 1997, the Department will have to revise the Portland Ozone Maintenance Plan, which has been a lengthy process to develop, to include another year and will have to resubmit the request. This delay would continue to subject industry to more stringent regulations since the Portland Ozone area would still be considered in Nonattainment. It would also mean more stringent requirements for Metro because of federal conformity requirements. Finally, it would result in a significant workload for Department staff to recalculate emissions data and strategies for the Portland Ozone Maintenance Plan.

5. **Housing Cost Impact Statement:**

The Department has determined that this rule change will not effect the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

3/27/97
Date

Susan L. Luce
Signature

Environmental Quality Commission

☐ Rule Adoption Item
☒ Action Item
☐ Information Item

Agenda Item G
April 18, 1997 Meeting

Title:

Petition to apply the Three Basin Rule to Coastal Basins

Summary:

On March 21, 1997 the Department received a petition from NEDC, the Pacific Coast Federation of Fishermen's Associations (PCFFA), and the Institute for Fisheries Resources (IFR) requesting the Environmental Quality Commission (EQC) to adopt rules "to protect the water quality of coastal streams which provide critical habitat for currently depressed and threatened populations of wild Pacific coho salmon and endangered Umpqua River sea-run cutthroat trout." The petition would accomplish this protection by adoption of a rule virtually identical to the Three Basin Rule, OAR 340-41-470(1) to (8), for certain coastal waterbodies.

The Department has reviewed the petition and reached the following conclusions:

1. No compelling evidence has been provided that shows the Three Basin rule is needed in the coastal basins to protect salmonids, public water supplies, or high quality waters.

2. Adoption of the Three Basin rule for coastal basins, at this point, would be a top down command and control regulatory approach that is inconsistent with the collaborative approach envisioned by the CSRI and the new Source Water Protection Program, which have as objectives protection of salmon and drinking water. Pursuing it could send the wrong message to stakeholders DEQ will be working with in the coastal basins.

Department Recommendation:

It is recommended that the Commission deny the petition submitted by NEDC, et al. and direct the Department to implement the Coastal Salmon Restoration Initiative Plan as expeditiously as possible within the resources authorized by the Oregon Legislature.

Michael Downs
Report Author

Division Administrator

Director

April 4, 1997

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

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 4, 1997

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item G, Petition to apply the Three Basin Rule to Coastal Basins, EQC Meeting April 18, 1997

Statement of Purpose

Consideration of a petition submitted by the Northwest Environmental Defense Center (NEDC), et al. to adopt rules prohibiting new or increased waste discharges in certain coastal waterbodies containing coho salmon and endangered cutthroat trout.

Background

On March 21, 1997 the Department received a petition from NEDC, the Pacific Coast Federation of Fishermen's Associations (PCFFA), and the Institute for Fisheries Resources (IFR) requesting the Environmental Quality Commission (EQC) to adopt rules "to protect the water quality of coastal streams which provide critical habitat for currently depressed and threatened populations of wild Pacific coho salmon and endangered Umpqua River sea-run cutthroat trout." The petition would accomplish this protection by adoption of a rule virtually identical to the Three Basin Rule, OAR 340-41-470(1) to (8), for certain coastal waterbodies.

The petitioners argue that additional rules are required in coastal basins primarily to:

- To protect threatened Pacific coho salmon and prevent any further degradation of important coho habitat, and
- To protect endangered Umpqua River cutthroat trout from extinction.

Secondarily, the petitioners argue that the rules are needed to:

- Prevent further pollution discharges to water quality limited streams,
- To protect waterbodies that are used by municipalities for drinking water supplies, and
- To protect streams designated as national wild and scenic rivers or state scenic waterways, or that run through state parks.

Department Response

The Department has considered the petitioners arguments for the proposed rule and has the following observations:

The rule is necessary to protect threatened Pacific coho salmon and prevent any further degradation of important coho habitat.

Over the past year the state of Oregon has developed a comprehensive plan to restore coastal salmon populations to productive and sustainable levels. The Coastal Salmon Restoration Initiative (CSRI) consists of four essential elements:

1. Coordination of effort by all parties,
2. Development of action plans with relevance and ownership at the local level,
3. Monitoring progress, and
4. Making appropriate corrective changes in the future.

The basis of the plan involves identification of the factors causing the decline of salmonids in coastal basins, development of biological objectives designed to halt or reverse the decline, and implementation of agency management measures that will result in achievement of the biological objectives. The state natural resource agencies have identified measures they will implement to achieve each of the biological objectives. The state agency management measures are grouped into four categories:

- Water Quality
- Physical Habitat
- Water Quantity, Fish Passage and Fish Screening
- Fish Management

Within the water quality arena, the most important considerations are elevated water temperature and sedimentation due to nonpoint source activities. Other areas of concern include biological conditions, dissolved oxygen, pH, and toxics. Again the most significant sources are nonpoint in nature with some isolated incidences of point source problems that need to be addressed through TMDLs and permit modifications.

DEQ will be implementing a comprehensive set of measures, identified in Attachment D, to ensure water quality will not continue to be a significant factor for decline of coastal salmonids. One of the most significant of the DEQ measures is developing TMDLs for the water quality limited waterbodies in the coastal basins. Under the Healthy Streams Partnership budget, DEQ will complete this work within ten years. Additionally, the Department of Agriculture will complete SB 1010 plans for all coastal basins within two years. These are just two examples of the extensive work that is planned for the coastal basins. All of this work will be accomplished in cooperation with watershed councils, Soil & Water Conservation Districts, state and federal agencies, and other stakeholders.

There is no evidence that adoption of the Three Basin rule for coastal basins is necessary for, or will even assist in, recovery of coastal salmonids. In fact, it would not be consistent with the approach taken in the CSRI to address water quality concerns, and sends the wrong message to stakeholders we need to work with in the coastal basins. A major tenet of the CSRI approach is that state agencies will work with local stakeholders through watershed councils to craft the measures required to protect salmonids. We will work with stakeholders on a watershed basis to develop programs designed to address the particular issues in the watershed. The adoption of the Three Basin rule for the coastal basins is a top down command and control approach that will have little, if any, beneficial effects on salmonid survival and be contrary to the process we have committed to follow.

The CSRI is a comprehensive response to the coho salmon crises, and is predicated upon an adaptive management approach that can resolve problems as they arise. If point sources are determined to be a more significant concern for salmon recovery than evidence now suggests, the CSRI will be modified to address the problems. It should be given an opportunity to work.

The rule is necessary to protect endangered Umpqua cutthroat trout from extinction.
Effective September 9, 1996 the National Marine Fisheries Service (NMFS) issued a final determination that the Umpqua River cutthroat trout is an endangered species under the Endangered Species Act (ESA). NMFS determined that all cutthroat trout life forms (i.e., resident, anadromous, potamodromous)[1] should be included in the listed Umpqua River cutthroat trout ESU[2]. The listed ESU for Umpqua River cutthroat trout is defined as all naturally spawning populations of cutthroat trout in the mainstem Umpqua River, the North Umpqua River, and the South Umpqua River, and their respective tributaries, residing below long-term, naturally impassible barriers.

NMFS has identified silviculture related activities and recreational fishing as the predominate factors adversely affecting cutthroat trout in the Umpqua River ESU. The adverse effects of silviculture related activities identified by NMFS include:

- Removal of forest canopy and streamside vegetation
- Loss of riparian areas
- Siltation
- Reduced dissolved oxygen levels

---

[1] *Anadromy*, a life history characteristic common to Pacific salmonids, is exemplified by a species that migrates from fresh water to the ocean, then returns to fresh water as an adult to spawn.
Potamodromy, a relatively uncommon life history trait, is exemplified by a species that undertakes freshwater migrations of varying length without entering the ocean.
Residency, a relatively common life history trait, is exemplified by a species that remains within a relatively small freshwater range throughout its entire life cycle.

[2] Evolutionarily Significant Unit (ESU) is a salmon population or group of populations that satisfies two criteria: (1) it is reproductively isolated from other population units, and (2) it contributes substantially to the ecological/genetic diversity of the species as a whole.

- Altered stream flow regimes.

NMFS has also identified degradation of estuarine habitats resulting from dredging, filling and diking of estuarine areas for agricultural, commercial, or municipal uses as a likely contributor to the decline of the species.

These are some of the same physical habitat (including water quality) parameters that have been identified as leading to the decline of coho salmon in the CSRI. The state believes the measures in the CSRI that address water quality and habitat degradation will also significantly assist in the recovery of Umpqua River cutthroat trout. The Umpqua Basin Watershed Council, National Marine Fisheries Service, and Oregon Department of Fish and Wildlife are currently working cooperatively on a recovery plan for Umpqua River cutthroat trout. The expected completion date is the middle of 1998.

The recovery plan currently under development will determine whether additional physical habitat and water quality measures are necessary to protect Umpqua River cutthroat trout. At this time there is no evidence that placing further restrictions on new or increased discharges from point sources by applying the Three Basin rule in the Umpqua basin will significantly assist in species recovery. It would seem to be more appropriate to await the findings of the recovery plan and develop additional control measures, as appropriate, based upon the recommendations in the plan.

The rule is necessary to prevent further pollution discharges to water quality limited streams. There are approximately 18,137 miles of streams in the coastal basins. Of that number, 6,086 stream miles (33.5%) have been assessed by DEQ using available water quality information. Of the 6,086 stream miles assessed, 3,035 stream miles (49.9%) were found to be water quality limited, and 2,345 stream miles (38.5%) need additional data or were of potential concern.

As streams are identified as being water quality limited and placed on the 303(d) list, they become subject to OAR 340-41-026(3)(a)(C). This rule prohibits new or increased discharges to water quality limited streams, with some exceptions, until a total maximum daily load (TMDL) has been established for the stream, compliance plans have been established to enforce the TMDL, and there will be a sufficient reserve capacity to assimilate the increased load under the TMDL.

Further, OAR 340-41-026(2) provides that growth and development are to be accommodated by increased efficiency and effectiveness of waste treatment and control such that future discharge loads from existing sources do not exceed presently allowed discharge loads unless the Commission grants and exception under OAR 340-41-026(3).

These two existing rules accomplish the same result as the proposed Three Basin rule in coastal streams, except that they allow increased loads where there is no adverse impact to water quality or beneficial uses.

The rule is necessary to protect waterbodies that are used by municipalities for drinking water supplies.

There are approximately 178 public water supplies in the coastal basins that rely, at least in part, on surface water for their source water. Most of them are located on tributaries running through forest lands. According to Dave Leland, Manager of the Drinking Water Program, Oregon Health Division, logging related activities pose the most significant potential threats to source water quality in most coastal basins. This is because most water withdrawals in the coastal basins occur in areas where the surrounding land use is silviculture. Siltation and turbidity associated with logging can result in significantly higher treatment costs for public water supplies. In some cases where population density is higher and source water options are limited, other concerns arise like the effect of agricultural practices and urbanization on source water quality. For example, the City of Talent has its drinking water withdrawal downstream of the City of Ashland's wastewater discharge.

In August of 1996, President Clinton signed into law the 1996 Safe Drinking Water Act Amendments. The amendments included new funding for water system improvements to meet existing and future health standards, and funding for source water protection to prevent contamination of public water systems. The amendments allocated $18,920,500 to Oregon in fiscal year 1997 and $11,237,500 is proposed in President Clinton's budget for fiscal year 1998. The entire amount will be awarded to the Department of Human Resources - Health Division, as the agency in Oregon responsible for implementation and enforcement of federal drinking water quality standards.

Of the total amount of Oregon's allocated funds, 85% will be direct "Drinking Water State Revolving Fund" (DWSRF) loans to Oregon communities for funding water system improvements. The Economic Development Department will administer the DWSRF loans. The 1996 Safe Drinking Water Act also authorized a one-time optional set-aside of 10% from FY97 funds for the purpose of protecting drinking water sources. Technical assistance and implementation of the source water protection elements will be administered by the Department of Human Resources - Health Division, and the Department of Environmental Quality.

The source water protection requirements of the 1996 Safe Drinking Water Act Amendments include delineating or identifying the public water system source areas that supply drinking water to citizens, and assessing the area to determine potential sources of contamination. To address these requirements (upon approval by the Legislature), Oregon will expand its successful voluntary "Wellhead Protection Program" which protects groundwater sources of drinking water. Technical assistance requests already far exceed the available staff resources. The new voluntary "Drinking Water Protection Program" will include protection for groundwater and surface-water-supplied public water systems. The Health Division will conduct the delineations for systems utilizing groundwater. The Department of Environmental Quality will conduct the delineations for systems utilizing surface water, and be responsible for assessments and providing direct technical assistance to communities as they determine how to protect their local drinking water sources.

The Department has requested resources in its 1997-99 biennial budget to accomplish the following objectives:

> 1) Develop a methodology for delineating surface-water-supplied public water systems in Oregon. DEQ will use a citizen's advisory committee, including several large water suppliers in Oregon, to develop guidelines for surface water systems comparable to the existing groundwater delineation methodology currently being used by more than 200 Oregon communities.
>
> 2) Implement the assessment requirements in the 1996 Safe Drinking Water Act. After the drinking water protection areas are delineated by the Health Division or DEQ, the areas will be assessed or "inventoried" for any potential sources of contamination by DEQ. There are approximately 3550 public water systems in Oregon, serving over 75% of the state's citizens. Knowing more about the drinking water source will enable the local community to determine if voluntary steps to protect the source are in the community's best interests.

The new source water protection requirements of the 1996 Safe Drinking Water Act Amendments seem like an appropriate way to address potential future threats to public water supply source water. It allows DEQ and the Health Division to work cooperatively with public water supplies to determine risks and appropriate protection strategies. Further, the available information indicates that the most significant threats to source water in the coastal basins are related to nonpoint source activities in the watersheds. Prohibiting new or increased discharges from point sources in these watersheds would give added protection to source waters, but may miss the mark in terms of what the real threats are and thus not be cost effective. Additionally, it would circumvent the source water protection process laid out in the 1996 Safe Drinking Water Act Amendments. It is a top down regulatory approach that assumes DEQ knows what is best for the many small public water supplies in the coastal basins.

The rule is necessary to protect streams designated as national wild and scenic rivers or state scenic waterways, or that run through state parks.

DEQ's High Quality Waters Policy, OAR 340-41-026(1)(a)(A)[3], provides that water quality better than the standards must be maintained and protected. However, the Environmental Quality Commission can allow a lowering of water quality in these high quality waters if it finds:

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[3] 340-41-026(1)(a)(A) High Quality Waters Policy: Where existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses, that level of water quality shall be maintained and protected. The Environmental Quality Commission, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, and with full consideration of sections (2), (3) and (5) of this rule, however, may allow a lowering of water quality in these high quality waters if they find:

(i) No other reasonable alternatives exist except to lower water quality; and

- No other reasonable alternatives exist except to lower water quality; and
- The action is necessary and justifiable for economic or social development benefits and outweighs the environmental costs of lowered water quality; and
- All water quality standards will be met and beneficial uses protected.

These requirements apply to both point sources and nonpoint sources. DEQ applies the policy to point sources through the NPDES permits issued to facilities that discharge to surface waters. The Oregon Department of Forestry implements this water quality standard through the Oregon Forest Practices Act, and the Oregon Department of Agriculture implements it through SB 1010. Federal agencies are required by the Clean Water Act to implement the standard on federal lands.

The High Quality Waters Policy should be adequate to protect most clean waterbodies from the effects of point and nonpoint source activities. However, if the Commission wishes to provide a higher level of protection for pristine waterbodies, DEQ's Outstanding Resource Waters Policy, OAR 340-41-026(1)(a)(D)[4] provides the ability for the Commission to designate waterbodies for this special level of protection.

(ii) The action is necessary and justifiable for economic or social development benefits and outweighs the environmental costs of lowered water quality; and

(iii) All water quality standards will be met and beneficial uses protected.

[4] 340-41-026(1)(a)(D) Outstanding Resource Waters Policy: Where existing high quality waters constitute an outstanding state or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values shall be maintained and protected, and classified as "Outstanding Resource Waters of Oregon". The Commission may specially designate high quality waterbodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies. The Department will develop a screening process and establish a list of nominated waterbodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority waterbodies for nomination include:

(i) National Parks;

(ii) National Wild and Scenic Rivers;

(iii) National Wildlife Refuges;

(iv) State Parks; and

(v) State Scenic Waterways.

(E) The Department will bring to the Commission a list of waterbodies which are proposed for designation as Outstanding Resource Waters at the time of each Triennial Water Quality Standards Review;

(F) In designating Outstanding Resource Waters, the Commission shall establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission shall not allow activities that may lower water quality below the level established except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.

340-41-006(40) "Critical habitat" means those areas which support rare, threatened or endangered species, or serve as sensitive spawning and rearing areas for aquatic life.

Nominations for designation as Outstanding Resource Waters will be solicited during the next water quality standards triennial review process beginning in the 1997-99 biennium. Once designated, the Commission can set specific restrictions on point and nonpoint source activities in the associated watershed to provide the level of protection desired and best suited to the particular waterbody. This seems like a more reasonable approach than simply applying the Three Basin rule to all coastal waterbodies.

Authority of the Commission with Respect to the Issue

Under ORS 183.390, an interested person may petition an agency to adopt or amend rules. The rules governing submission, consideration and disposition of the petition are set forth in the Attorney General's Uniform Rule, OAR 137-01-070. Oral presentations by affected parties may be heard at the Commission's discretion.

Alternatives and Evaluation

Within 30 days of submission of the petition (April 20, 1997), the Commission must either deny the petition in writing or initiate rulemaking. If the agency is already reviewing the rule or subject matter addressed by the petition, it may grant the petition and begin rulemaking. If the Commission decides not to adopt the rule exactly as proposed by the petitioner, it may nevertheless grant the petition and begin rulemaking. The rule as proposed can be amended during the course of the rulemaking. Alternatively, the Commission may deny the request and inform the petitioner that the subject raised in the rulemaking petition is under consideration.

Summary of Public Input Opportunity

Considerable public/peer review and comment were provided on the proposed Coastal Salmon Restoration Initiative Plan. There has not been any public review or comment on the rule proposed for adoption in this petition.

Conclusions

1. No compelling evidence has been provided that shows the Three Basin rule is needed in the coastal basins to protect salmonids, public water supplies, or high quality waters. The Department believes implementation of current rules, the CSRI and the new Source Water Protection Program will provide adequate protection of these resources.

340-41-006(41) "High quality waters" means those waters which meet or exceed those levels that are necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses.

2. Adoption of the Three Basin rule for coastal basins, at this point, would be a top down command and control regulatory approach that is inconsistent with the collaborative approach envisioned by the CSRI and the new Source Water Protection Program, which have as objectives protection of salmon and drinking water. Pursuing it could send the wrong message to stakeholders DEQ will be working with in the coastal basins.

Intended Future Actions

1. DEQ will vigorously implement the CSRI.

2. DEQ will continue to work with the Umpqua Watershed Council, NMFS, and ODFW to develop a recovery plan for Umpqua River cutthroat trout.

3. DEQ will work with the Oregon Health Division and public water suppliers to implement the source water protection provisions of the 1996 Safe Drinking Water Act amendments.

4. DEQ will solicit nominations for Outstanding Resource Water designations during the 1997-99 triennial water quality standards review process.

5. DEQ will continue to update the 303(d) list in April of even numbered years and prepare TMDLs for water quality limited waterbodies.

Department Recommendation

It is recommended that the Commission deny the petition submitted by NEDC, et al. and direct the Department to implement the Coastal Salmon Restoration Initiative Plan as expeditiously as possible within the resources authorized by the Oregon Legislature.

Attachments

A. Petition filed by NEDC, et al. (March 21, 1997)

B. Three Basin Rule, OAR 340-41-470(1) to (8)

C. Executive Summary, Coastal Salmon Restoration Initiative, March 7, 1997

D. DEQ Management Measures that support the Coastal Salmon Restoration Initiative, March 7, 1997

E. Attorney General's Uniform Rule, OAR 137-01-070

Reference Documents (available upon request)

Oregon Coastal Salmon Restoration Plan Phase I & II Action Plans, DEQ, March 21, 1997

Approved:

Section: _____

Division: Russell Harding

Report Prepared By: Mike Downs

Phone: (503) 229-6790

Date Prepared: April 4, 1997

mjd
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10/13/95

Attachment A

Petition filed by Northwest Environmental Defense Center, et al
March 21, 1997

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

IN THE MATTER OF RULES	)	Petition for
PROHIBITING NEW OR INCREASED	)	Rulemaking
WASTE DISCHARGES TO CERTAIN	)	
WATERBODIES	)	

Pursuant to ORS 183.390 and OAR 137-01-070, the Northwest Environmental Defense Center (NEDC), the Pacific Coast Federation of Fishermens Associations (PCFFA), and the Institute for Fisheries Resources (IFR) request that the EQC adopt rules prohibiting new or increased waste discharges in certain critical salmon anadromous fish bearing waterbodies. This action is needed to protect the water quality of coastal streams which provide critical habitat for currently depressed and threatened populations of wild Pacific coho salmon and endangered Umpqua River sea-run cutthroat trout.

NEDC is a non-profit organization that has been working to protect the natural environment of the Pacific Northwest for over twenty-five years. NEDC has a long history of involvement in Oregon water quality issues. NEDC's address is 10015 SW Terwilliger Blvd., Portland, Oregon 97219. PCFFA is the largest organization of commercial fishermen on the west coast. PCFFA's members have a direct financial interest in preventing further declines of salmon and other fisheries on the Oregon coast. IFR is a nonprofit fisheries conservation organization affiliated with PCFFA, but focusing primarily on salmon restoration and protection. PCFFA and IFR have their regional office at P.O. Box 11170, Eugene, Oregon 97440.

Other parties that may be interested in these rules include: (1) future dischargers of waste into the waterbodies covered by the proposed rules; (2) all members of the general public who enjoy and appreciate the continued existence of wild Pacific coho salmon or Umpqua cutthroat trout runs on the Oregon coast; and (3) all commercial fishermen who rely on the continuing vitality of Oregon's coastal Pacific coho salmon runs for their livelihood. Listing all of these parties' names and addresses is not feasible.

REASONS FOR THE PETITION

The Oregon Department of Fish and Wildlife has determined that the populations of Pacific coho salmon in each of the waterbodies affected by these proposed rules are critically depressed. *See* Status of Anadromous Salmonids in Oregon Coastal Streams, Nickelson et al., Oregon Department of Fish and Wildlife, Portland, Oregon, 1992. The water quality in these streams has a tremendous impact on coho populations. Id. The rules proposed in this petition are part of a proposed comprehensive regulatory effort designed to protect Pacific coho salmon and prevent any further degradation of important coho habitat. *See* Briefing Book Attached.

In August 1996, the National Marine Fisheries Service (NMFS) listed the Umpqua sea-run cutthroat trout as an endangered species under the Endangered Species Act (ESA). *See* 61 Fed. Reg. 41514 (August 9, 1996). The Umpqua cutthroat trout populations throughout the Umpqua River Basin face a high risk of extinction. *Id.*; *see also,* Status Review for Oregon's Umpqua River Sea-run Cutthroat Trout, Johnson et al., National Marine Fisheries Service (1994). The water quality in streams affected by the rules proposed in this petition has a significant impact on the Umpqua cutthroat trout and may be critical to the recovery of the species as a whole.

The waterbodies covered by these proposed rules also merit protection for other reasons. The Department of Environmental Quality (DEQ) has already identified many of these streams to be in violation of water quality standards. Such streams are water quality limited bodies of water, requiring the establishment of a total maximum daily load for

specific pollutants. Further pollution discharges on such already polluted or limited waters should not be permitted. In addition, many of these streams are sources of municipal drinking water supply. Further degradation of these waterbodies may require municipalities to install expensive additional filtration equipment to protect their water supplies.

Moreover, many of these streams are national wild and scenic rivers or state scenic waterways or run through state parks. Accordingly, these are priority waterbodies for designation as outstanding resource waters. *See* OAR 340-41-026(1)(a)(D). The quality of these waters should not continued to be threatened by future increased pollution discharges. Permitting further discharges to such streams also violates DEQ's anti-degradation policy for high quality waterbodies constituting state or national resources. OAR 340-41-026(1)(a)(D).

For easy reference, the attributes of each stream for which protection against new or increased discharges is requested are individually listed in Attachment B. This petition requests only protection from new or increased pollution discharges. Current discharges will not be affected by these rules.

PRECEDENT FOR ADOPTION

The Commission has previously adopted a rule virtually identical to those proposed in this petition. That rule, OAR 340-41-470(1), was adopted in 1977. As originally promulgated, the rule prohibited any further waste discharges to the waters of the Clackamas River, McKenzie River, and North Santiam River Subbasins in order to preserve high quality municipal water supply and recreation in the Willamette Basin. This rule is commonly known as "The Three Basin Rule."

Recognizing that an absolute prohibition of increased discharges presents some practical difficulties in application, in 1994 the EQC amended OAR 340-41-370(1) to permit the DEQ Director to allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent or serious danger to public health and welfare. In February, 1995, the EQC further amended the rule to allow for additional flexibility. *See*

Current Version OAR 340-41-470. The current rule allows the Director to issue general permits for storm water construction activities, underground storage tank cleanups, non-contact cooling water, filter back wash, boiler blowdown water, and suction dredging. The Director may also issue 401 water quality certifications. In addition, the DEQ may issue WPCF permits for new industrial or confined animal feeding operation water discharges, provided there is no waste discharge to surface water and all groundwater protection requirements are met. All of these same provisions are incorporated in the rules proposed in this petition. There is no rational reason why Coastal Rivers and Coastal citizens should be denied the same level of protection as that already present for the Clackamas, Santiam and McKenzie Rivers in the Willamette Basin.

STATUTORY AUTHORITY

Section 303 of the Clean Water Act, 33 U.S.C. § 1313, requires the state of Oregon to adopt water quality standards to protect the beneficial uses of Oregon waters. Water quality standards consist of designated uses and water quality criteria designed to protect those uses. The Oregon legislature has determined that "wildlife and fish uses" are beneficial uses of Oregon waters, and has declared that it is the policy of Oregon to protect, maintain, and improve the quality of the waters of the state for fish and aquatic life. *See* ORS 468B.015(2). EQC and DEQ have determined that wildlife and fish uses, including anadromous fish passage, salmonid rearing, and salmonid spawning, are beneficial uses for each of the waterbodies covered by the rules proposed in this petition. *See* OAR 340-41-202, 242, 282, 322, 362. In other words, one of the crucial purposes of Oregon's water quality standards is to protect fish, like the Coho Salmon and Sea-Run Cutthroat trout.

The Oregon Supreme Court has recently confirmed the EQC's and DEQ's authority and responsibility to develop and enforce water quality standards in conformance with the state's public policy to protect, maintain, and improve Oregon's water quality for fish propagation and other beneficial uses. *See* City of Klamath Falls v. Environmental Quality Commission, 318 Or. 532, 870 P.2d 825 (1994). In addition, the Supreme Court

emphasized that the Agency is not limited to providing only the bare minimum of protection to the public interest in public waters. The Agency may provide greater protection to fish consistent with the policy purposes of the water quality standards. That is precisely what the "Three Basin Rule" currently does for the Clackamas, Santiam and McKenzie River Basins. It is also what the EQC ought to do for the Coastal streams addressed in this petition.

In addition to fish uses, other designated beneficial uses of the waterbodies covered by these proposed rules include domestic drinking water supply, aesthetic quality, and recreation. *See* OAR 340-41-202, 242, 282, 322, 362. The proposed rules would also preserve and protect these uses. Section 303 of the Clean Water Act and ORS 468B.048 authorize the Agency to establish water quality standards necessary to protect each of these beneficial uses. ORS 468B.020 directs the Agency to take actions necessary to prevent and abate pollution, by requiring the use of all available and reasonable methods to conform to these standards. Thus, the state and federal law provides clear authority and direction to adopt rules such as those proposed in this petition. DEQ regulations also require that Oregon waters be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities. OAR 340-41-027. Adopting the rules proposed by this petition will assist in compliance with this criteria.

SPECIFICS OF THE PROPOSED RULES

The proposed rules are set out in Attachment A. They provide the same protection to certain waterbodies in the North Coast, Mid Coast, South Coast, Umpqua, and Rogue River Basins as the current Three Basin Rule. That is, the proposed rules substantially prohibit new or increased waste discharges. The rules do not in any way limit or restrain existing dischargers, beyond what the applicable NPDES permits already require. Thus, the rules merely help to preserve the status quo. The substantive provisions of the rules are the same for each waterbody/basin.

DISCUSSION

The dramatic decline in the Oregon's populations of Pacific coho salmon is well-documented and well-publicized. This collapse of coho stocks is both an environmental and economic disaster. The state's commercial fishing industry, together with the economies of numerous local communities, have been pushed to the brink of ruin. As the coho runs have dwindled, so has a significant source of state revenues and the livelihood of many coastal residents.

There is evidence that not only the Umpqua Sea-Run's but also many other native sea-run trout species are nearing extinction. 61 Fed. Reg. 41514, 41515; *see also*, Status Review for Oregon's Umpqua River Sea-run Cutthroat Trout, Johnson et al., National Marine Fisheries Service (1994). More data is desperately needed for sea-run trout populations. The adoption of the rules proposed in this petition is necessary not only to protect the endangered Umpqua sea-run cutthroat trout, but also to protect other sea-run trout populations as further information on those species becomes available.

Immediate action is needed to ensure that further degradation of Pacific coho and Umpqua cutthroat habitat does not occur. The rules proposed in this petition would serve **only to maintain at present levels** the existing water quality in coastal streams where coho populations are depressed and cutthroat populations are endangered. Present dischargers would not be harmed. Instead, these rules will hopefully assist in preventing the total disappearance of coho salmon and the Umpqua cutthroat from the Oregon coast.

This petition is also consistent with and based in part on the policy direction of Governor John Kitzhaber's proposed Coastal Salmon Restoration Initiative (CRI) which seeks to restore and preserve Oregon's native coastal salmon and trout populations. The initial purpose of the CRI is to demonstrate that Oregon has an adequate state regulatory program which would prevent the need for an ESA listing of the currently proposed coho salmon and other native coastal salmon and trout species. *See* Draft Oregon Coastal Salmon Restoration Initiative, Governor John Kitzhaber's Office (1996). The adoption of the rules proposed in this petition would further the goals of the CRI.

CONCLUSION

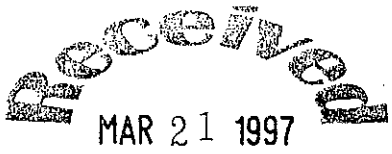
NEDC, PCFFA, & IFR urge the Commission to begin rulemaking proceedings to permanently adopt the proposed rules. These proposed rules are necessary to ensure that all beneficial uses of the covered waterbodies, including fish and wildlife uses, are fully preserved and protected. Immediate action is necessary to save both the coho and the coastal communities that depend on the fishery resource. Oregon's public policy to protect the quality of the state's waters for fish and aquatic life, the requirements of federal and state law, and the needs of the Oregon economy demand the adoption of the proposed rules.

Respectfully submitted this 21st day of March, 1997.

Bart Brush, President, NEDC
Karl G. Anuta, Vice President, NEDC
Phil Bender, Executive Director, NEDC
Claire Gilchrist, Law Clerk, NEDC

Glen Spain, Reg. Direc. PCFFA/IFR

State of Oregon
Department of Environmental Quality



OFFICE OF THE DIRECTOR

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 41
STATE-WIDE WATER QUALITY MANAGEMENT PLAN, BENEFICIAL USES
POLICIES, STANDARDS, AND TREATMENT CRITERIA FOR OREGON

Special Policies and Guidelines Applicable to the North Coast, Mid Coast, South Coast, Umpqua, and Rogue Basins

340-41-028

(1) In order to preserve existing water quality for fish and wildlife uses, public water supplies, aesthetic quality, and recreation, it is the policy of the Environmental Quality Commission to prohibit any new or increased waste discharges to the waters of:

(a) In the North Coast Basin, the:

(i) Necanicum River;
(ii) Elk Creek;
(iii) Lower Nehalem River;
(iv) North Fork Nehalem River;
(v) Upper Nehalem River;
(vi) Miami River;
(vii) Kilchis River;
(viii) Wilson River;
(ix) Trask River;
(x) Tillamook River;
(xi) Nestucca River; and
(xii) Little Nestucca River.

(b) In the Mid Coast Basin, the:

(i) Salmon River;
(ii) Siletz River;
(iii) Yaquina River;
(iv) Beaver Creek;
(v) Yachats River;
(vi) Siuslaw River; and
(vii) North Fork Siuslaw River.

(c) In the Umpqua Basin, the:

Note: Text in **Underlined boldface** is new; text in [*italics and brackets*] is existing language to be deleted.

(i) Smith River;
(ii) Lower Umpqua River;
(iii) North Fork Umpqua River;
(iv) South Fork Umpqua River;
(v) North Fork Smith River;
(vi) Wasson Creek;
(vii) Scare Creek;
(viii) Umpqua River;
(ix) Calapooya Creek;
(x) Elk Creek;
(xi) Scholfield Slough;
(xii) Camp Creek;
(xiii) Big Salamander Creek;
(xiv) Lake Creek/Loon Lake;
(xv) Waggoner Creek;
(xvi) Little River;
(xvii) Rock Creek;
(xviii) Steamboat Creek;
(xix) Steelhead Creek;
(xx) Copeland Creek;
(xxi) Boulder Creek;
(xxii) Lookingglass Creek;
(xxiii) Olalla Creek;
(xxiv) Thompson Creek;
(xxv) South Myrtle Creek;
(xxvi) Louis Creek;
(xxvii) Cow Creek;
(xxviii) Russell Creek;
(xxix) Table Creek;
(xxx) Little Dads Creek;
(xxxi) Cattle Creek;
(xxxii) Union Creek;
(xxxiii) West Fork Cow Creek;
(xxxiv) Bobby Creek;
(xxxv) Upper West Fork Cow Creek;
(xxxvi) Whitehorse Creek;
(xxxvii) Coffee Creek; and
(xxxviii) Deadman Creek.

(d) In the South Coast Basin, the:

(i) Tenmile Creek;
(ii) Millicoma River;

Note: Text in **Underlined boldface** is new; text in [*italics and brackets*] is existing language to be deleted.

(iii) South Fork Coquille River;
(iv) New River Tributaries;
(v) Sixes River;
(vi) Hunter Creek;
(vii) Pistol River;
(viii) Chetco River;
(ix) Winchuck River;
(x) Elk River; and
(xi) Euchre Creek.

(e) In the Rogue Basin, the:

(i) Lower Rogue River;
(ii) Middle Rogue River;
(iii) Upper Rogue River;
(iv) Illinois River; and
(v) Applegate River.

(2) The Director of the Department of Environmental Quality may allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent and serious danger to public health or welfare.

(3) The Director of the Department of Environmental Quality may also allow minimal discharges as provided for in OAR 340-41-470.

Special Policies and Guidelines

340-41-216

(1) In order to preserve existing water quality for fish and wildlife uses, public water supplies, aesthetic quality, and recreation, it is the policy of the Environmental Quality Commission to prohibit any new or increased water discharges to the waters of:

(a) Necanicum River;
(b) Elk Creek;
(c) Lower Nehalem River;
(d) North Fork Nehalem River;
(e) Upper Nehalem River;
(f) Miami River;
(g) Kilchis River;
(h) Wilson River;
(i) Trask River;
(j) Tillamook River;

Note: Text in **Underlined boldface** is new; text in [*italics and brackets*] is existing language to be deleted.

(k) Nestucca River; and
(l) Little Nestucca River.

(2) The Director of the Department of Environmental Quality may allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent and serious danger to public health or welfare.

(3) The Director of the Department of Environmental Quality may also allow minimal discharges as provided for in OAR 340-41-470.

Special Policies and Guidelines

340-41-270

Add the following to the rule:

(1) In order to preserve existing water quality for fish and wildlife uses, public water supplies, aesthetic quality, and recreation, it is the policy of the Environmental Quality Commission to prohibit any new or increased waste discharges to the waters of:

(a) Salmon River;
(b) Siletz River;
(c) Yaquina River;
(d) Beaver Creek;
(e) Yachats River;
(f) Siuslaw River; and
(g) North Fork Siuslaw River.

(2) The Director of the Department of Environmental Quality may allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent and serious danger to public health or welfare.

(3) The Director of the Department of Environmental Quality may also allow minimal discharges as provided for in OAR 340-41-470.

Special Policies and Guidelines

340-41-296

(1) In order to preserve existing water quality for fish and wildlife uses, public water supplies, aesthetic quality, and recreation, it is the policy of the Environmental Quality Commission to prohibit any new or increased waste discharges to the waters of:

Note: Text in Underlined boldface is new; text in [*italics and brackets*] is existing language to be deleted.

(a) **Smith River;**
(b) **Lower Umpqua River;**
(c) **North Fork Umpqua River;**
(d) **South Fork Umpqua River;**
(e) **North Fork Smith River;**
(f) **Wasson Creek;**
(g) **Scare Creek;**
(h) **Umpqua River;**
(i) **Calapooya Creek;**
(j) **Elk Creek;**
(k) **Scholfield Slough;**
(l) **Camp Creek;**
(m) **Big Salamander Creek;**
(n) **Lake Creek/Loon Lake;**
(o) **Waggoner Creek;**
(q) **Little River;**
(r) **Rock Creek;**
(s) **Steamboat Creek;**
(t) **Steelhead Creek;**
(u) **Copeland Creek;**
(v) **Boulder Creek;**
(w) **Lookingglass Creek;**
(x) **Olalla Creek;**
(y) **Thompson Creek;**
(z) **South Myrtle Creek;**
(aa) **Louis Creek;**
(bb) **Cow Creek;**
(cc) **Russell Creek;**
(dd) **Table Creek;**
(ee) **Little Dads Creek;**
(ff) **Cattle Creek;**
(gg) **Union Creek;**
(hh) **West Fork Cow Creek;**
(ii) **Bobby Creek;**
(jj) **Upper West Fork Cow Creek;**
(kk) **Whitehorse Creek;**
(ll) **Coffee Creek; and**
(mm) **Deadman Creek.**

(2) The Director of the Department of Environmental Quality may allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent and serious danger to public health or welfare.

Note: Text in **Underlined boldface** is new; text in [*italics and brackets*] is existing language to be deleted.

(3) The Director of the Department of Environmental Quality may also allow minimal discharges as provided for in OAR 340-41-470.

Special Policies and Guidelines

340-41-336

(1) In order to preserve existing water quality for fish and wildlife uses, public water supplies, aesthetic quality, and recreation, it is the policy of the Environmental Quality Commission to prohibit any new or increased waste discharges to the waters of:

(a) Tenmile Creek;
(b) Millicoma River;
(c) South Fork Coquille River;
(d) New River Tributaries;
(e) Sixes River;
(f) Hunter Creek;
(g) Pistol River;
(h) Chetco River;
(i) Winchuk River;
(j) Elk River; and
(k) Euchre Creek.

(2) The Director of the Department of Environmental Quality may allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent and serious danger to public health or welfare.

(3) The Director of the Department of Environmental Quality may also allow minimal discharges as provided for in OAR 340-41-470.

Special Policies and Guidelines

340-41-385

Add the following to the existing rule:

(1) In order to preserve the existing water quality for fish and wildlife uses, public water supplies, aesthetic quality, and recreation, it is the policy of the Environmental Quality Commission to prohibit any new or increased waste discharges to the waters of:

(a) Lower Rogue River;
(b) Middle Rogue River;
(c) Upper Rogue River;

Note: Text in **Underlined boldface** is new; text in [*italics and brackets*] is existing language to be deleted.

(d) **Illinois River; and**
(e) **Applegate River.**

(2) The Director of the Department of Environmental Quality may allow lower water quality on a short-term basis, to respond to emergencies, or to otherwise avoid imminent or serious danger to public health or welfare.

(3) The Director of the Department of Environmental Quality may also allow minimal discharges as provided for in OAR 340-41-470.

Note: Text in **Underlined boldface** is new; text in [*italics and brackets*] is existing language to be deleted.

ATTRIBUTES OF INDIVIDUAL WATERBODIES- Coho Salmon Waters

The Oregon Department of Fish and Wildlife has determined that Pacific coho salmon populations in each of the following waterbodies were depressed as of December 1992. *See* Status of Anadromous Salmonids in Oregon Coastal Streams, Nickelson et al., Oregon Department of Fish and Wildlife, Portland, Oregon, 1992. Many of these waterbodies **also** have additional attributes requiring protection.

Some of these streams are water quality limited. Some provide domestic drinking water supply. Many are priority waterbodies for designation as outstanding resource waters due to their status as state scenic waterways, federal wild and scenic rivers, or rivers flowing through state parks. *See* DEQ'S 1992 Water Quality Status Assessment Report (water quality limited status); DEQ's 1994/96 303(d) List of Water Quality Limited Waterbodies (1996); Oregon Department of Health (domestic drinking water supply); ORS 390.826 (state scenic waterways); 16 U.S.C. § 1274 (federal wild and scenic rivers); and State Parks Department (rivers flowing through state parks).

1. Necanicum River

- Water quality limited for fecal coliform, affecting aquatic water contact recreation
- Domestic water supply for Seaside Water Department and Freddie's Place

2. Elk Creek

3. Lower Nehalem River

- Water quality limited for temperature, affecting aquatic life
- Domestic water supply for Timer Water Association [Nehalem River Infiltration Gallery]

4. North Fork Nehalem River

- Water quality limited for fecal coliform, affecting water contact recreation
- Domestic water supply for Timber Water Association [Nehalem River Infiltration Gallery]

5. Upper Nehalem River

- Water quality limited for temperature, affecting aquatic life
- Domestic water supply for Timber Water Association [Nehalem River Infiltration Gallery]

6. Miami River

- Water quality limited for fecal coliform, affecting water contact recreation

7. **Kilchis River**

- Water quality limited for fecal coliform, affecting water contact recreation

8. **Wilson River**

- Water quality limited for temperature, affecting aquatic life, and for fecal coliform, affecting water contact recreation

9. **Trask River**

- Water quality limited for temperature, affecting aquatic life
- Domestic water supply for Hillsboro, Beaverton, Cherry Grove, and Forest Grove [North Fork]

10. **Tillamook River**

- Water quality limited for fecal coliform, affecting water contact recreation

11. **Nestucca River**

- Water quality limited for flow modification, temperature, and sediment, affecting aquatic life
- State scenic waterway

12. **Little Nestucca River**

13. **Salmon River**

- Water quality limited for temperature, affecting aquatic life
- Domestic water supply for Salmon river Park Water Improvement District and Salmon River Hatchery
- Federal Wild and Scenic River

14. **Siletz River**

- Domestic water supply for city of Siletz and Toledo Water Utilities

15. **Yaquina River**

- Water quality limited for temperature and fecal coliform, affecting aquatic life

16. **Beaver Creek**

- Water quality limited for temperature, affecting aquatic life
- Domestic water supply for Beaver Water District and London Water Co-op

17. Yachats River

- Water quality limited for temperature, affecting aquatic life

18. Siuslaw River

- Water quality limited for temperature, affecting aquatic life

19. North Fork Siuslaw River

- Water quality limited for habitat modification, sediment, and temperature, affecting aquatic life

20. Smith River

- Water quality limited for temperature, affecting aquatic life
- Federal Wild and Scenic River (North Fork)

21. Lower Umpqua River

22. North Fork Umpqua River

- Water quality limited for flow modification and temperature, affecting aquatic life
- State scenic waterway
- Federal Wild and Scenic River
- Domestic water supply for city of Roseburg, Glide Water Association, Umpqua Basin Water Association, ODOT HD Steamboat Maintenance Station, Lone Rock Court, Idlewyld Trading Post, North Umpqua Resort, Timer River RV Park, USFS Horseshoe Bend Campground, and Susan Creek Mobile Home Park

23. South Fork Umpqua River

- Water quality limited for temperature, dissolved oxygen, biological criteria, sediment, and pH, affecting aquatic life, and for fecal coliform, affecting water contact recreation; also water quality limited for phosphorus and periphyton
- Domestic water supply for Clarks Branch Water Association, Tri-City Water District, City of Myrtle Creek, Roberts Creek Water District, Winston-Dillard Water District, USFS Tiller Ranger Station, Roseburg Forest Products, and Milo Academy

24. Tenmile Creek

25. **Millicoma River**

26. **South Fork Coquille River**

- Water quality limited for temperature, affecting aquatic life, and for fecal coliform, affecting water contact recreation
- Domestic water supply for City of Powers

27. **New River Tributaries**

28. **Sixes River**

- Water quality limited for temperature, affecting aquatic life
- Cape Blanco State Park

29. **Hunter Creek**

30. **Pistol River**

- Pistol River State Park

31. **Chetco River**

- Water quality limited for dissolved oxygen, affecting aquatic life
- Federal Wild and Scenic River

32. **Winchuk River**

33. **Elk River**

- Water quality limited for habitat modification and temperature, affecting aquatic life
- Federal Wild and Scenic River
- State scenic waterway

34. **Euchre Creek**

35. **Lower Rogue River**

- Water quality limited for temperature, pH, and toxics (mercury), affecting aquatic life, and for fecal coliform, affecting water contact recreation
- State scenic waterway
- Domestic water supply for Cities of Gold and Grant's Pass, Medford Water Commission, Country View Mobile Home Estates, Josephine County Parks -Alameda Bar Park, Union Rogue Baptist Camp, and Coe McGregor Park [Rogue]

36. Middle Rogue River

- Water quality limited for temperature, affecting aquatic life, and for fecal coliform, affecting water contact recreation
- State scenic waterway
- Domestic water supply [see 35]

37. Upper Rogue River

- Water quality limited for temperature, affecting aquatic life
- Federal Wild and Scenic River
- State scenic waterway
- Domestic water supply [see 35]
- Tou Velle State Park and Casey State Park

38. Illinois River

- Water quality limited for flow modification and temperature, affecting aquatic life
- Federal Wild and Scenic River
- Domestic water supply for City of Cave Junction [East Fork]
- State scenic waterway

39. Applegate River

- Water quality limited for flow modification and temperature, affecting aquatic life
- Domestic water supply for USFS Star Ranger Station

ATTRIBUTES OF INDIVIDUAL WATERBODIES- Cutthroat Waters

The National Marine Fisheries Service has determined that the Umpqua River cutthroat trout is an endangered species under the Endangered Species Act. 61 Fed. Reg. 41514 (August 9, 1996). The Umpqua cutthroat trout populations throughout the Umpqua River Basin are at high risk of extinction. *Id.*, *see also* Status Review for Oregon's Umpqua River Sea-run Cutthroat Trout, Johnson et al., National Marine Fisheries Service (1994). The following is a list of waterbodies in the Umpqua River Basin that support the Umpqua cutthroat trout. Biennial Report On the Status of Wild Fish In Oregon, Oregon Department of Fish and Wildlife (December 1995).

In addition to supporting the endangered Umpqua cutthroat trout, many of these waterbodies are also water quality limited and therefore warrant further protection from any new or increased pollution discharges. *See* DEQ's 1994/96 303(d) List of Water Quality Limited Waterbodies (1996).

1. **Smith River**

   - Water quality limited for temperature, affecting aquatic life

2. **North Fork Smith River**

   - Water quality limited for temperature, affecting aquatic life

3. **Wasson Creek**

4. **Scare Creek**

5. **Umpqua River**

   - Water quality limited for temperature, affecting aquatic life, and for fecal coliform, affecting water contact recreation

6. **Calapooya Creek**

   - Water quality limited for dissolved oxygen, flow modification, pH, and temperature, affecting aquatic life, and for fecal coliform, affecting water contact recreation

7. **Elk Creek**

   - Water quality limited for dissolved oxygen, flow modification, and temperature, affecting aquatic life, and for fecal coliform, affecting water contact recreation

8. **Scholfield Slough**

- Water quality limited for fecal coliform, affecting aquatic life

9. **Camp Creek**

10. **Big Salamander Creek**

11. **Lake Creek/Loon Lake**

12. **Waggoner Creek**

13. **North Umpqua River**

- Water quality limited for flow modification and temperature, affecting aquatic life
- Federal Wild and Scenic River
- State scenic waterway

14. **Little River**

- Water quality limited for habitat modification, sediment, pH, and temperature, affecting aquatic life

15. **Rock Creek**

- Water quality limited for temperature, affecting aquatic life

16. **Steamboat Creek**

- Water quality limited for pH and temperature, affecting aquatic life
- Proposed Federal Wild and Scenic River

17. **Steelhead Creek**

- Water quality limited for temperature, affecting aquatic life

18. **Copeland Creek**

- Water quality limited for temperature, affecting aquatic life

19. **Boulder Creek**

- Water quality limited for habitat modification and temperature, affecting aquatic life

20. **South Umpqua River (Mouth to Days Creek)**

- Water quality limited for temperature, dissolved oxygen, biological criteria, and pH,

affecting aquatic life, and for fecal coliform, affecting water contact recreation; also water quality limited for phosphorus and periphyton

21. **South Umpqua River (Days Creek to Castle Rock/Black Rock Forks)**

- Water quality limited for pH, sediment, and temperature, affecting aquatic life

22. **Lookingglass Creek**

23. **Olalla Creek**

- Water quality limited for temperature, affecting aquatic life

24. **Thompson Creek**

25. **South Myrtle Creek**

- Water quality limited for flow modification and temperature, affecting aquatic life

26. **Louis Creek**

27. **Cow Creek**

- Water quality limited for pH and temperature, affecting aquatic life

28. **Russell Creek**

29. **Table Creek**

30. **Little Dads Creek**

31. **Cattle Creek**

32. **Union Creek**

33. **West Fork Cow Creek**

34. **Bobby Creek**

35. **Upper West Fork Cow Creek**

36. **Whitehorse Creek**

37. **Coffee Creek**

38. Deadman Creek

- Water quality limited for temperature, affecting aquatic life

Attachment B

Three Basin Rule
OAR 340-41-470(1) to (8)

for the jurisdiction to provide stormwater quality control facilities for the land development being assessed the fee. Estimated costs shall include costs associated with off-site land and rights-of-way acquisition, design, construction and construction inspection;

(B) The jurisdiction shall deposit any in-lieu fees collected pursuant to this paragraph in an account dedicated only to reimbursing the jurisdiction for expenses related to off-site land and rights-of-way acquisition, design, construction and construction inspection of stormwater quality control facilities;

(C) The ordinance establishing the in-lieu fee shall include provisions that reduce the fee in proportion to the ratio of the site's average runoff coefficient (R_v), as established according to the equation in paragraph (3)(e)(A) of this rule;

(D) No new development shall be granted an exemption if the jurisdiction is not meeting an approved time schedule for identifying the location for the off-site stormwater quality control facilities that would serve that development.

(g) The Department may approve other mechanisms that allow jurisdictions to grant exemptions to new development. The Department shall only approve those mechanisms that assure financing for off-site stormwater quality control facilities and that encourage or require on-site retention where feasible;

(h) Subsection (b) of this section shall apply until a jurisdiction adopts ordinances that provide for a program equivalent to subsection (b) of this section, or the Environmental Quality Commission determines such a program is not necessary when it approves the jurisdiction's program plan required by OAR 340-41-470(3)(g).

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 128, f. & ef. 1-21-77; DEQ 16-1989, f. & cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 30-1989, f. & cert. ef. 12-14-89

Special Policies and Guidelines

340-41-470

(1) In order to preserve the existing high quality water for municipal water supplies and recreation, it is the policy of the EQC to prohibit any new or increased waste discharges to the waters of:

(a) The Clackamas River Subbasin;

(b) The McKenzie River Subbasin above the Hayden Bridge (river mile 15);

(c) The North Santiam River Subbasin.

(2)Except as otherwise provided for in this rule, this rule becomes effective and applies to all permits pending or applied for after the date of filing with the Secretary of State. For the purposes of sections (1) through (7) of this rule, the following definitions apply:

(a) ``Waste Discharges" are defined to mean any discharge that requires an NPDES permit, WPCF permit, or 401 Certification. Individual on-site sewage disposal systems subject to issuance of a construction-installation permit; domestic sewage facilities that discharge less than 5,000 gallons per day under a WPCF permit; biosolids land applied within agronomic loading rates pursuant to OAR Chapter 340, Division 50; and reclaimed domestic wastewater land applied at agronomic rates pursuant to OAR Chapter 340, Division 55 are excluded from this definition.

(b) ``Existing Discharges'' are defined as those discharges from point sources which existed prior to January 28, 1994;

(c) ``Existing Facilities'' are defined as those for which construction started prior to January 28, 1994. Where existing facilities are exempted from requirements placed on new facilities, the exemption applies only to the specific permit(s) addressed in the subsection which allows the exemption;

(d) ``New'' NPDES and WPCF permits are defined to include permits for potential or existing discharges which did not previously have a permit, and existing discharges which have a permit, but request an increased load limitation;

(e) ``Agronomic Loading Rate'' means the application of biosolids or reclaimed effluent to the land at a rate which is designed to:

(A) Provide the quantity of plant nutrients, usually nitrogen, needed by a food crop, feed crop, fiber crop, cover, crop or other vegetation grown on the land; and

(B) To minimize the quantity of nitrogen or other nutrients from the land applied materials that passes below the root zone of the crop or vegetation grown on the land to groundwater.

(f) ``Biosolids'' means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemical stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application;

(g) ``Reclaimed Wastewater'' means treated effluent from a domestic wastewater treatment system which, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.

(3) To respond to emergencies or to otherwise avoid imminent serious danger to public health or welfare, the Director or a designee may allow lower water quality on a short-term basis.

(4) The Director or a designee may renew or transfer NPDES and WPCF permits for existing facilities. Existing facilities with NPDES permits may not be granted increases in their permitted mass load limitations. The following restrictions and exceptions apply:

(a) The Department shall conduct an inspection prior to permit renewal. Existing sources with general permits who are found not to qualify for a general permit, and who wish to continue discharging, shall be required to apply for an individual permit;

(b)Fish hatcheries (General Permit 300) and log ponds (General Permit 400) shall be required to apply for an individual permit at the time of permit renewal;

(c)Additional industrial, confined animal feeding operation, or domestic waste loads that are irrigated on land at agronomic rates or that otherwise meet the conditions of section (7) of this rule shall not be considered an increase in the permitted wasteload.

(5) The Director or a designee may issue the following General Permits or Certifications subject to the conditions of the Permit or Certification:

(a) Storm water construction activities (General Permits 1200C and 1200CA);

(b) Underground storage tank cleanups using best available treatment technology (General Permit 1500);

(c) Non-contact cooling water (General Permit 100);

(d) Filter backwash (General Permit 200);

(e) Boiler blowdown water (General Permit 500);

(f) Suction dredging (General Permit 700) only in portions of the basins that are not designated as Scenic Waterways under ORS 390.805 to 390.925;

(g) Federal Clean Water Act Section 401 water quality certifications.

(6) Long-term general and individual storm water permits may be allowed as required by State and/or Federal law. The following requirements apply:

(a) New storm water discharge permittees shall maintain a monitoring and water quality evaluation program which is effective in evaluation of the in-stream water quality impacts of the discharge; and

(b) When sufficient data is available to do so, the Department shall assess the water quality impacts of storm water discharges. Within a subbasin, if the proportion of total degradation that is contributed by storm water is determined to be significant compared to that of other permitted sources, or if the Department determines that reducing degradation due to storm water is cost-effective when compared to other available pollution control options, the Department may institute regulatory mechanisms or modify permit conditions to require control technologies and/or practices which result in protection that is greater than that required statewide.

(7) Industrial waste discharge sources, confined animal feeding operations, and domestic sewage treatment facilities shall meet the following conditions:

(a) No NPDES permits for new industrial or new confined animal feeding operation waste discharges, or new domestic sewage treatment facilities shall be issued, except as allowed under sections (3), (4), (5), and (6) of this rule;

(b) The Department may issue WPCF permits for new industrial or confined animal feeding operation waste discharges provided:

(A) There is no waste discharge to surface water; and

(B) All groundwater quality protection requirements of OAR 340-40-030 are met. Neither the Department nor the Commission shall grant a concentration limit variance as provided in OAR 340-40-030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing shall be held prior to Commission action on the request.

(c) The Department may issue WPCF permits for new domestic sewage treatment facilities provided there is no waste discharge to surface water and provided:

(A) All groundwater quality protection requirements of OAR 340-40-030 are met. Neither the Department nor the Commission shall grant a concentration limit variance as provided in OAR 340-40-030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing shall be held and the permit application will be evaluated according to paragraphs (B) and (C) of this subsection;

(B) The Commission finds that the proposed, new domestic sewage treatment facility provides a preferable means of sewage collection, treatment and disposal as compared to individual on-site sewage disposal systems. To be preferable, the Commission shall find that one of the following criteria applies:

(i) The new sewage treatment facility will eliminate a significant number of failing individual on-site sewage disposal systems that cannot be otherwise reliably and cost-effectively repaired; or

(ii) The new sewage treatment facility will treat domestic sewage that would otherwise be treated by individual on-site sewage disposal systems, from which the cumulative impact to groundwater is projected to be greater than that from the new facility; or

(iii) If an individual on-site sewage disposal system, or several such systems, would not normally be utilized, a new sewage treatment facility may be allowed if the Commission finds that the social and economic benefits of the discharge outweigh the possible environmental impacts.

(C) Applicants for domestic wastewater WPCF permits must meet the following requirements:

(i) Application must be for an individual permit; and

(ii) The proposed discharge must not include wastes that incapacitate the treatment system; and

(iii) The facility must be operated or supervised by a certified wastewater treatment plant operator as required in OAR 340-49-015, except as exempted by ORS 448.430; and

(iv) Annual written certification of proper treatment and disposal system operation shall be obtained from a qualified Registered Sanitarian, Professional Engineer, or certified wastewater treatment system operator.

(8) The Environmental Quality Commission shall investigate, together with any other affected state agencies, the means of maintaining at least existing minimum flow during the summer low flow period.

(9) In order to improve water quality within the Tualatin River subbasin to meet the existing water quality standard for dissolved oxygen, and the 15 ug/1 chlorophyll *a* action level stated in OAR 340-41-150, the following special rules for total maximum daily loads, waste load allocations, load allocations, and implementation plans are established:

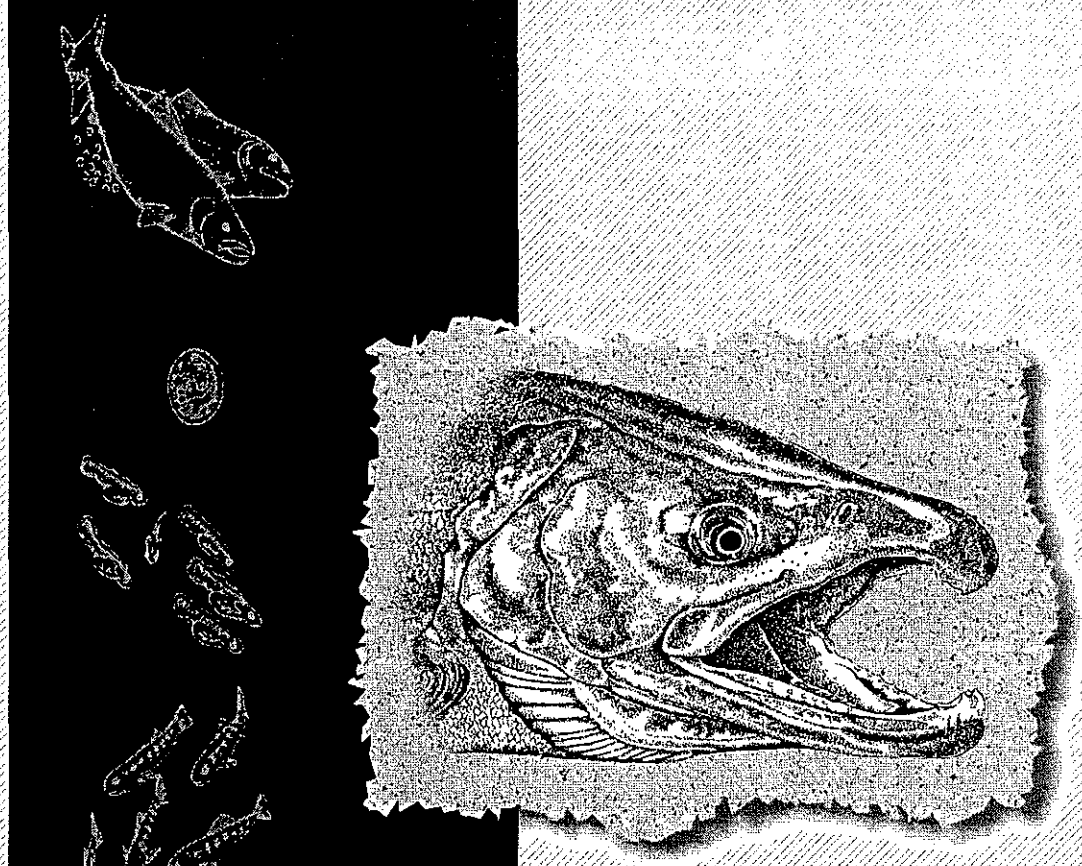
(a) After completion of wastewater control facilities and implementation of management plans approved by the Commission under this rule and no later than June 30, 1993, no activities shall be allowed and no wastewater shall be discharged to the Tualatin River or its tributaries without the specific authorization of the Commission that cause the monthly median concentration of total phosphorus at the mouths of the tributaries listed below and the specified points along the main-stream of the Tualatin River, as measured during the low flow period between May 1 and October 31*, of each year, unless otherwise specified by the Department, to exceed the following criteria:

Mainstream (RM)	ug/1	Tributaries	ug/1
Cherry Grove (67.8)	20	Scoggins Cr.	60
Dilley (58.8)	40	Gales Cr.	45
Golf Course Rd. (52.8)	45	Dairy Cr.	45
Rood Rd. (38.5)	50	McKay Cr.	45
Farmington (33.3)	70	Rock Cr.	70
Elsner (16.2)	70	Fanno Cr.	70
Stafford (5.4)	70	Chicken Cr.	70

Attachment C

Coastal Salmon Restoration Initiative
Executive Summary
March 7, 1997

State of Oregon



Coastal Salmon Restoration Initiative

Executive Summary & Overview

The Oregon Plan

Restoring an Oregon legacy through cooperative efforts

Oregon Coastal Salmon Restoration Initiative

Mission

"To restore our coastal salmon populations and fisheries to productive and sustainable levels that will provide substantial environmental, cultural, and economic benefits."

The *heart* of the Oregon Plan is its commitment. Commitments only have meaning if they are sincere as proven over time by faithful conduct. I hope, for our sake and for our children's sake, that society will live up to this pledge.

–Jay W. Nicholas
principal writer/
plan coordinator
March 7, 1997

Revision of the Oregon Plan

This conservation plan is a synthesis of the first draft of the Oregon Coastal Salmon Restoration Initiative Plan, which was released for public and scientific peer review in August 1996, and a legislative review draft, prepared in February 1997. Public input was gathered to improve the Plan through a series of eight community briefings held throughout western Oregon. In November 1996, a group of scientists reviewed the Plan and suggested improvements. Over the last six months, the many agency staff working on the Coastal Salmon Restoration Initiative have been meeting with staff of the National Marine Fisheries Service and other key partners to improve and strengthen the plan. In February 1997, a revised and updated draft was presented at Legislative hearings. This provided an opportunity for the Legislature to address concerns and make needed changes to the Plan. This final draft is the result of those efforts.

The final draft of the Oregon Plan was submitted to the National Marine Fisheries Service in March 1997. This plan will be useful in NMFS's listing decision for coastal coho salmon under the federal Endangered Species Act. The decision is expected by April 25, 1997.

Oregon's Plan is an adaptive strategy that will change and improve over time based on constructive suggestions from the public, key partners, scientific reviewers, and the Legislature. Over the long term, the Plan will continue to change as we implement agency measures, build local support, obtain voluntary commitments, and monitor the ongoing success of those efforts.

The Oregon Plan

An Overview

Oregon's conservation plan is designed to restore salmon to a level at which they can once again be a part of people's lives. The emphasis is on coho salmon in coastal river basins. However, it is a model that will expand to include all salmon and trout throughout the state. While the Plan focuses on the needs of salmon, it will conserve and restore crucial elements of natural systems that support fish, wildlife and people. No other state has ever attempted such a comprehensive program.

The Plan consists of four essential elements:

Coordinated agency programs: Many state and federal agencies administer laws, policies, and management programs that have an impact on salmon. These agencies are responsible for fishery harvest management, production of hatchery fish, water quality, water quantity, and a wide variety of habitat protection, alteration, and restoration activities. Previously, agencies conducted business independently. Salmon, whose life cycle crosses the jurisdictional boundaries of all of these agencies, suffered. Salmon suffered because they were affected by the actions of all the agencies, but no single agency was responsible for comprehensive, life-cycle management. Under this plan, all government agencies that impact salmon are accountable for coordinated programs in a manner that is consistent with conservation and restoration efforts.

Community-based action: Government, alone, cannot conserve and restore salmon across the landscape. The Plan recognizes that actions to conserve and restore salmon must be worked out by communities and landowners, with local knowledge of problems and ownership in solutions. Watershed councils, soil and water conservation districts, and other grassroots efforts are vehicles for getting the work done. Government programs will provide regulatory and technical support to these efforts, but the bulk of the work to conserve and restore watersheds will be done by local people. Education is a fundamental part of community-based action. People must understand the needs of salmon in order to make informed decisions about how to make changes to their way of life that will accommodate the needs of the fish.

Monitoring: The monitoring program combines an annual appraisal of work accomplished and results achieved. Workplans will be used to determine whether agencies meet their goals as promised. Biological and physical sampling will be conducted to determine whether salmon habitats and populations respond as expected to conservation and restoration efforts.

Appropriate corrective measures: The Plan includes an explicit process for learning from experience, discussing alternative approaches, and making changes to current programs. The Plan emphasizes improving compliance with existing environmental laws rather than arbitrarily establishing new protective laws. Compliance will be achieved through a combination of education and prioritized enforcement of laws that are expected to yield the greatest benefits for salmon.

In summary, the Oregon Plan involves the following: (1) coordination of effort by all parties, (2) development of action plans with relevance and ownership at the local level, (3) monitoring progress, and (4) making appropriate corrective changes in the future.

The Oregon Approach

In contrast to many endangered species recovery plans that rely primarily on regulatory approaches, this plan represents a new way of restoring natural systems... the "Oregon Approach." This approach meshes scientifically sound actions with local watershed-based public support. It relies on teamwork among the various levels of government and is dependent on monitoring and accountability for results. Strong enforcement of existing laws and regulations are a foundation upon which voluntary and cooperative actions can be built. We believe that this is the only approach—one that will generate the support and commitment across all sectors, from landowners and industry to government agencies—to restore salmon and their natural systems. This plan will require an unprecedented level of cooperation and coordination among local, state, and federal agencies. It represents the commitment of all Oregonians to the fish, the watersheds, and our children.

Four Key Elements

- Investments in Local Solutions
- Private/Public Partnerships
- Science-Based Watershed Management
- Implementation of Existing Laws

Executive Summary

Restoration of Oregon's anadromous fish presents many challenges to Oregonians. Perhaps the greatest challenge is to discover how people and salmon can co-exist in the future. This challenge has no clear endpoint, no time when "success" can be declared forever. Some measure of success, however, may be reached if Oregon achieves a fundamental shift toward resource management philosophies and practices that support conservation and restoration of natural systems in a way that is more favorable to salmon. After all, a basic tenet of the Oregon Coastal Salmon Restoration Initiative (OCSRI) is that all Oregon citizens share responsibility for the changes to the natural systems that have hurt salmon and, likewise, share responsibility for restoration. For the long term, the challenge is to negotiate societal decisions that address the complex, conflicting issues of human population growth and competition for natural resources. This must be done in a manner that meets the needs of both salmon and people.

Reason for this Report

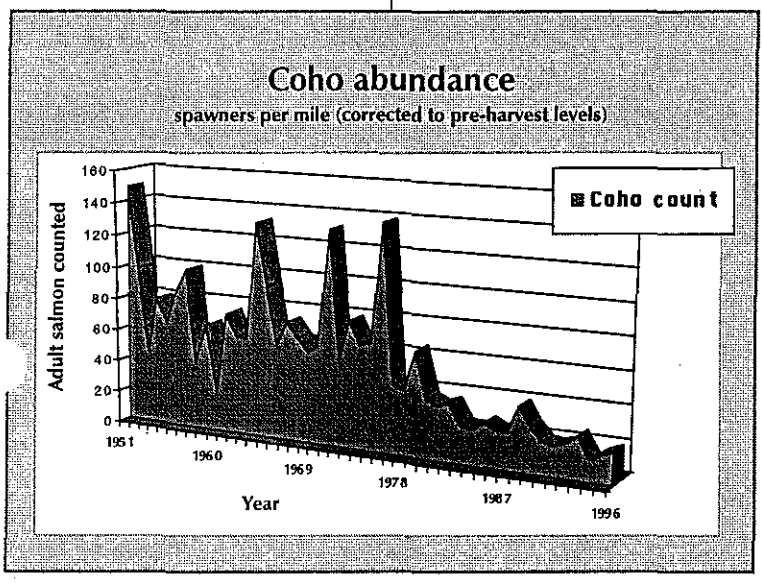
This report would not be needed if salmon and trout populations in Oregon were healthy today. Native populations of salmon, steelhead, and trout have declined, some dramatically, in Oregon during the century and a half since the region has been exposed to industrial-scale development. Many populations of salmon, steelhead, and trout are extinct today; other populations are at risk of extinction, and relatively few are in a condition that may be considered healthy.

Oregon's Coastal Salmon Restoration Initiative (OCSRI) is an unprecedented effort to turn the tide on the salmon's decline. No single action by government or Oregon citizens will restore salmon and trout to a viable role in Oregon's culture and economy, but a cooperative effort, sustained over time, may succeed. This document presents the essential elements of a planning and action process that has been in progress since October 1995. The intent of this report is to describe progress to date and to list activities that are either underway or needed to restore the vitality of salmon and trout populations in Oregon coastal river basins.

The National Marine Fisheries Service (NMFS) is currently considering a recommendation to list two groups of coho salmon in Oregon as *threatened* under the federal Endangered Species Act. Oregon is hoping to retain state authority over management of Oregon's natural resources. The goal of the OCSRI is not merely to prevent the extinction of coho salmon in the coastal region, but to *restore* populations of salmon, steelhead, and cutthroat trout to levels that are considered *healthy*.

The Beginning of OCSRI

Governor John Kitzhaber announced the planning effort to conserve and restore Oregon's coastal salmon and steelhead in October 1995. One of his first steps was to establish a team approach for developing an action plan that would lead to restoring the health of coastal salmon and trout populations. Another early step was to require directors of key state agencies to meet with the Governor bi-weekly, reporting progress and resolving interagency obstacles. An outreach team began to work with key agency stakeholders, asking for their advice and ideas. A Science Team was established to work on technical issues. Agencies worked with stakeholders and NMFS staff to develop action plans designed to address management practices and environmental factors that were affecting salmon production. All of this occurred on a fast track and a draft was submitted to NMFS in August 1996.



Historical Perspective of Coho Abundance

Near the turn-of-the-century, coastal coho salmon were harvested by gill-net fleets that fished in coastal estuaries and the lower reaches of coastal rivers. Based on records of canned coho salmon from these fisheries, an average of 500,000 adult coho salmon were landed annually during the 1890s. Assuming these fisheries harvested 40 percent of the run, coastal coho salmon north of Cape Blanco numbered about 1.25 million adults annually around the turn-of-the-century. While other assumptions may be made regarding methods of estimating turn-of-the-century abundance of Oregon coastal coho, it is clear that returns in some years exceeded a million fish.

From the turn-of-the-century through the 1930s, annual abundance of coho salmon averaged about 900,000. By the 1940s and 1950s, however, annual production had declined to half that level. During recent years, annual production of wild coho in Oregon coastal basins has been dramatically less, around 50,000 to 80,000 fish under adverse ocean conditions.

Declining Populations

The Oregon Plan recognizes an historic decline in coastal coho populations. The Plan is designed to reverse this decline and return salmon, once again, to healthy levels.

Sources of Risk to the Oregon Coho ESUs

Salmon have declined to a small fraction of their historic abundance in Oregon due to a number of human activities. Society recognizes the immediate crisis: too few salmon. This crisis, however, is merely a symptom of many circumstances acting over a broad scale of space and time to reduce salmon production.

Evolutionarily Significant Units

Two of the evolutionarily significant units (ESUs) of coho salmon proposed for listing under the federal Endangered Species Act occur wholly or partly in Oregon.

An ESU

This is a population of fish that are important because they represent a vital step in the evolution of the species.

Northern Oregon Coast ESU: This ESU includes all coastal populations from the mouth of the Columbia to Cape Blanco, including the Umpqua Basin. This ESU consists of three groupings of populations that are classified by ODFW as Gene Conservation Groups (GCGs).

Southern Oregon and Northern California ESU: This ESU includes all coastal populations in Oregon south of Cape Blanco to the California border, including the Rogue Basin. ODFW has identified only one GCG of coho salmon in the Oregon portion of this ESU. The ESU also includes coho populations in northern California, including the Klamath and Smith basins.

Activities and processes that, individually and collectively may contribute to the decline of salmon populations are often referred to as "risk agents." These are discussed in categories related to their underlying cause:

Harvest risk agents include all management activities pertinent to control of fishing-related mortality, including: ocean fisheries, in-river fisheries, direct harvest effects, indirect fishery effects, and effects on adults and juveniles.

Hatchery risk agents include all management activities pertinent to the use of artificial propagation, including decisions related to: broodstocks used, numbers stocked, locations where fish will be stocked, expansions or reductions in stocking programs, and criteria for smolt sizes.

Habitat management risk agents include all management activities that influence the nature of freshwater landscapes in a way that will affect fish, including efforts to: conserve and improve the productive capacities of freshwater environments for salmonids, provide passage at culverts and dams, and screen withdrawals and diversions.

Other risk agents include the relative productivity of the ocean environment, and predation by marine mammals and birds.

Obstacles to Success of the Plan

Funding

Adequate funding is needed to support agency efforts and for projects that restore Oregon's salmon and trout populations. There are many statewide issues competing for those resources. Restoration efforts must make the most effective use of public and private funds that are available.

Institutional Barriers

Many state, federal and local governments involved in natural resource management have a history of not communicating or fully cooperating with each other on salmon conservation. Time, public support, and continued leadership is needed to eliminate these institutional barriers.

Monitoring Program

A comprehensive, multi-disciplinary monitoring program is crucial to Oregon's ability to conserve and restore salmon and trout populations. No such program has been established or funded in the past. Clear leadership and secure funding is needed for an effective monitoring program.

Public Expectations for a Quick-Fix

The complexity of the "salmon crisis" does not lead to easy or quick solutions even though the public may expect instant results. Outreach and education efforts are needed to create a reasonable level of optimism that success is possible in the long term.

An Adverse Ocean Environment

The ocean off the Oregon coast is extremely variable in its suitability for coho salmon. No one can predict the cycles of good vs. poor ocean conditions. Presently, improvements can only be made to freshwater and estuarine habitats that support salmon so populations can persist until more favorable ocean conditions return.

Unintended Consequences of Listing

A listing of coho in Oregon under the federal Endangered Species Act could result in unintended consequences such as withdrawal of key voluntary measures and a loss of public participation in restoration and enhancement efforts.

The Ongoing Evolution of Oregon's Plan

The strength of this conservation plan lies in an explicit recognition that it will need to adapt, evolve, and improve, based on information obtained from monitoring, independent scientific review, and the people who are putting the Plan to work on the land and in the streams. The written document therefore celebrates a beginning—a turning point in the way Oregonians manage the natural systems that support people and salmon.

Historical Review of Restoration

Efforts to restore salmon have been attempted for over 125 years. Most of these have failed due to inadequate science, inaccurate projections, lack of integrated decision-making, lack of monitoring and accountability, and/or lack of sustained political priority. History has offered us an opportunity to demonstrate that the OCSRI approach can overcome the challenges of the past. The Oregon Plan includes a discussion of past attempts at restoration and how the OSCRI differs from, yet builds upon, those efforts.

Conceptual Foundation

While past restoration efforts have relied on hoping for success through technical solutions, the OCSRI is based on three basic principles:

1. Restoration of salmon must address natural and cultural systems.
2. Salmon require complex and interconnected habitats which are created, altered and maintained by natural physical processes.
3. Life history diversity, genetic diversity, and metapopulation organization (patterns of populations) are ways salmon adapt to their complex and interconnected habitats.

These principles are similar to those underlying the restoration efforts for salmon on the Columbia River basin.

Independent Science Team

An independent team of five scientists will be established to help the OCSRI partners base restoration efforts on the most sound science available. The team will provide an independent audit each year on the strengths and weaknesses of the OCSRI. They will focus on the adaptive process of compiling new information and results into a review of goals, objectives, strategies, and approaches. This team will help hold the plan accountable to its goals.

Point of Reference

Based on the current habitat-based model, production of coho at full seeding might range from a little under 200,000 adults under adverse ocean conditions to a little over 400,000 adults under favorable ocean conditions.

New Information: *Trends and Expectations*

A life-cycle model of coho populations has been improved based on actual habitat capacity. This model suggests that total production, proportion of habitat utilized, and spawner needs vary dramatically based on cycles of ocean survival. Spawning goals for adjusting harvest rates have been updated based on this improved model. The model has also been used to estimate the probability of survival based on other scenarios.

Habitat improvement is important to increase production of coho for any level of ocean survival and to help ensure persistence if ocean conditions drop below current levels. Improved habitat and greater numbers of coho will also help ensure their long-term viability if our predictions for survival in underseeded streams prove too optimistic.

Monitoring

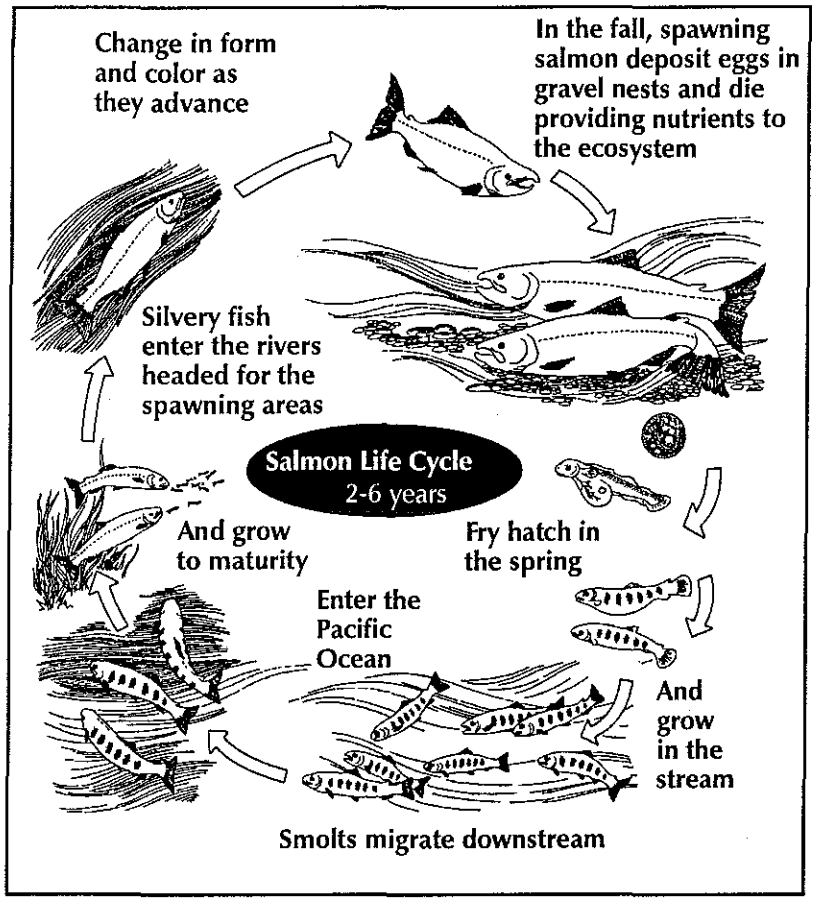
Legislative Oversight

The Legislative Oversight Committee will provide coordinated political support and recommend changes to statutes where needed. This committee will also ensure that budget and staffing proposals receive appropriate review and support.

There is almost unanimous response from NMFS, the public, and peer reviewers on the critical role of monitoring to assure accountability, adaptive learning, and credibility to the Plan. Over 60 different groups, including tribes, agency staff, stakeholders, and watershed councils, have been working to develop the next iteration of the monitoring program.

The current program describes 15 distinct tasks from monitoring habitat quality/quantity, to fish abundance and even estimating ocean productivity levels. The monitoring program includes provisions for more intensive monitoring in some core production and index areas. Other parts of the monitoring program will cover a broader geographic scope. Monitoring results will be summarized by the team, including state/federal agency staff and interested groups, annually for Oregon's report to the people and the federal government on the progress of restoration efforts.

Voluntary public participation in the monitoring program is a key element to the success of these efforts. The training for the monitoring program will provide great educational benefits. Participants such as landowners, educators, children, and conservation groups can take ownership in restoration efforts through participation in the monitoring program.



Salmon Life Cycle

The salmon life cycle illustrates how these fish depend on healthy habitat for their survival. Oregon salmon range from the headwaters of coastal streams all the way to the Pacific Ocean — crossing man-made boundaries and natural obstacles. The Oregon Plan aims to provide ways for Oregonians to restore and protect the valuable habitat necessary to sustain healthy salmon runs.

Outreach and Education

OCSRI outreach efforts are focused on educating the public about natural resource issues. This includes creating ownership of the Plan through stewardship activities and facilitating new partnerships at the local level. The value of education to protection and restoration efforts cannot be measured by data collection and monitoring—but is measured by the number of citizens who come forward to volunteer their time to help implement the plan and build stewardship for the future. The outreach and education section of the plan has moved from informing the public, to facilitating the development of education tools for private and public citizens to use to help implement the plan.

The Outreach Team has developed a compendium of salmon/watershed education programs, services, and activities resulting from a survey of educators (individuals, groups, agencies and organizations) conducted in January 1997. The survey also identified needs, barriers, successes, and failures to improve outreach efforts and develop strategies for education activities. This survey, together with an OSU survey of coastal residents and leaders, provides valuable insight about the willingness of Oregonians to be involved in salmon restoration and how to improve this involvement.

Oregon State University Extension Service hosted a Salmon and Watershed Education Workshop in February 1997. The OCSRI Outreach Team and seven state agencies provided sponsorship and support. Approximately 200 leaders came together to review the compendium and survey results. Participants identified ways to effectively deliver existing education programs to key audiences. The workshop also focused on new education opportunities including: establishing a clearinghouse for educational materials, finding ways to broadly distribute existing model curriculum, developing "how-to" training materials, creating incentive programs for involvement, facilitating local communication networks and seeking more secure funding for education.

Watershed Councils

Oregon now has over 60 watershed councils working with local soil and water conservation districts and landowners. The Plan highlights the key role for these partners in conducting basin assessments, understanding limiting factors, and involving landowners. Watershed councils are developing action plans and monitoring programs at the local level.

In order for watershed councils to continue restoration efforts, they have many ongoing needs. These include: long-term funding for coordinators, adequate technical support, cost-share grants, and incentives for landowners. In addition, comprehensive action plans must be developed and some watershed councils need to broaden landowner and stakeholder involvement.

State Agency Measures and Workplans

State agency measures represent commitments by various agencies and their stakeholders. The workplans show how agencies are already implementing measures with their current staff and budgets. Specific assignments, due dates, and work products are listed.

State agency measures are organized by categories of "Factors for Decline." This allows the reader to understand how the measures relate to specific objectives designed to address one of the major factors that have caused the decline of salmon. The factors for decline include: loss/degradation of riparian areas, channel morphology, substrate changes in streams, loss of instream roughness (structure), fish passage impediments, loss of estuarine rearing habitat, loss of wetlands, water quality degradation/sedimentation, changes in flow, elimination of habitat, and direct take of salmonids such as fishing mortality or predation.

The agencies and their stakeholders have listed over 200 measures and actions to address these factors and achieve the objectives to restore salmon and watersheds. Where possible, specific numerical objectives and timelines for achievement are listed. In some cases, numerical objectives must be developed at the local level to be most effective. Agencies will work with stakeholders, watershed councils, soil and water conservation districts, and NMFS staff to develop the appropriate objectives and timelines.

Some of the most significant measures include:

- Increased numbers of conifers left along streams on state and private land.
- A habitat conservation plan was developed for the Elliott State Forest and is being developed for the Tillamook/Clatsop State Forest.
- Commitment to evaluate road sedimentation risks and to correct problems on state and private forest roads that may threaten salmon streams.
- SB 1010 will be used by the Oregon Department of Agriculture to work with landowners to develop water quality management plans which will be used to address water quality concerns in agricultural areas.

Key Measures

- More trees in riparian areas
- Habitat conservation plans
- Water quality management
- Improved enforcement
- Improved fish passage
- More fish screens
- Better hatchery management
- Improved physical habitat

Cooperation

The measures, workplans, and proposed budget packages have been developed cooperatively across agency boundaries. This was necessary to prevent duplication and promote interagency partnering.

- Various tools to maintain and enhance streamflows (such as better enforcement of illegal water diversions, as well as water conservation programs, instream water rights, off-stream storage, and water right transfers and leases) will be used to meet the flow needs of fish, while still respecting senior water rights.
- Fill and removal laws will be enforced more strongly in salmon production areas, particularly in core production areas.
- Fish passage will be restored where man-made barriers are blocking access to historic range. Culverts and push-up dams are priority focus areas.
- Fish screens must be installed on irrigation diversions that are impacting coastal salmon. This work is in progress.
- Spawning escapement needs will require very restrictive management of fisheries to rebuild salmon populations. Hatchery fish will be marked to provide for selective fisheries and to identify strays on spawning grounds. Strict limits on strays are in place.
- Hatchery production will be reduced and new broodstocks will be developed to ensure compatibility with natural stocks.
- The Department of Environmental Quality will intensify its work with the Departments of Agriculture and Forestry to ensure water quality standards are met. Water quality standards will continually be updated through the triennial review process. Monitoring programs will be strengthened.
- Private forest and agricultural landowners will continue to intensify efforts to restore habitat structure and off-channel habitat through watershed councils, SWCDs, and industry-sponsored initiatives.

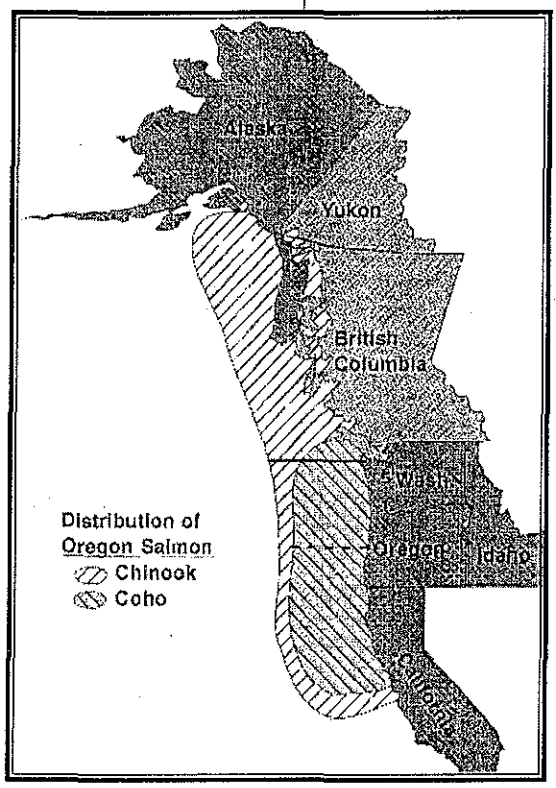
Many of the objectives have been developed using the ODFW habitat survey database. A reasonable baseline already exists to track habitat and water quality status for coastal basins. Maintaining and expanding this effort is a key part of the monitoring program and will provide accountability and feedback on the results of these measures.

Federal Measures and Workplans

Federal agencies have included measures and workplans in this draft to support the OCSRI. The aquatic conservation strategy associated with the Northwest Forest Plan should dramatically improve fish habitat, watershed stability, and water quality over time. This is one of the major anchors of the OCSRI restoration strategy. Additionally, federal agencies will provide support for monitoring, watershed council activities, and technical efforts such as watershed assessment and education. Federal agencies will work with Oregon to determine the effect of federally protected predators on salmon and measures that might address identified problems.

Local Government Measures: *Cities, Counties, and Ports*

The Association of Oregon Counties, League of Oregon Cities, Oregon Public Ports Association, and the Oregon Coastal Zone Management Association are partners in the OCSRI. The counties and cities have summarized their measures in terms of biological benefit to fish. Currently, only a small fraction of key habitat streams are in urban development areas. As population grows and cities continue to expand, local governments can have a profound impact on the future health of streams through land-use planning and development of water supplies. Over 50 individual projects are listed in the Plan by counties and cities.



Salmon Migration

Salmon use vast areas of ocean during their rearing cycle. When salmon return to Oregon's rivers and streams, they require healthy and abundant habitat for spawning and freshwater rearing.

Enforcement

Feedback from the public, peer reviewers, and NMFS also reinforced the critical role of enforcement in the OCSRI. To build on a working foundation of current law and regulation — and expand it using voluntary and cooperative efforts — the Plan requires that agencies enforce the current regulations more effectively.

Voluntary compliance with environmental laws requires the right balance of education, enforcement action, and compliance monitoring. The Fish and Wildlife Division of the Oregon State Police (OSP) supports habitat protection and environmental law enforcement in addition to enforcing hunting and fishing laws.

Additionally, state natural resource agencies are committed to effective enforcement and education of habitat protection regulations. Each agency will be responsible for demonstrating the compliance level for key laws and regulations. For example, the Department of Forestry will statistically monitor the compliance rate for forest operations relating to the Forest Practices Act. OSP has been monitoring compliance with fish and wildlife laws for years and will be able to provide valuable assistance to agencies in designing these programs.

Funding

Many of the agencies participating in the Plan are working within existing budgets and authority to implement programs geared toward restoration goals. However, the public, peer reviewers, and NMFS understand that without substantial new funding and a long-term commitment, the OCSRI Plan has little chance of recovering the salmon and watersheds to sustainable, economically viable levels.

Appraisal of the Oregon Plan

Oregon concludes that the OSCRI Plan is sufficient to prevent extinction and to achieve recovery of coho salmon in coastal river basin, especially in the Northern ESU. This is based on eight major points:

1. **Recovery**
   Several sources of information suggest that although coastal coho populations are not currently at desired levels, they remain sufficiently resilient to recover.
2. **Factors**
   Major factors for decline are being actively addressed by existing and new programs.
3. **Priorities**
   The conservation plan includes rationale and information to facilitate prioritization of conservation and restoration efforts.
4. **Timelines**
   Explicit objectives and timelines are stated in the conservation plan.
5. **Monitoring**
   A comprehensive monitoring program is in place.
6. **Certainty**
   The Plan provides a high level of certainty that identified measures and actions will be implemented.
7. **Integration**
   The Plan is founded on an active and ongoing integration and coordination of government agencies and stakeholders.
8. **Evaluation**
   The Plan includes an explicit process of evaluating whether sufficient progress is being made, overcoming institutional barriers, and making future changes to the way the Plan is implemented.

Federal Funding

Federal agencies are already making substantial investments in salmon and watershed restoration. The Bureau of Land Management and the U.S. Forest Service are involved in funding and implementing the Northwest Forest Plan, which is a critical element of the OCSRI. Programs such as "Hire the Fishermen" and "Jobs in the Woods" are providing key support to watershed councils, SWCDs, and other watershed restoration programs. Possible assistance from the Natural Resources Conservation Service through the Farm Bill and flood restoration funds might provide assistance.

Federal funding is needed to support the monitoring programs for federal lands and to support federal participation with watershed councils and SWCDs. Federal funds are also needed to support research on the impact of federally protected predators on fish.

What to Expect Next

Development and implementation of the OCSRI Plan only marks the beginning of a process to conserve and restore salmon and trout populations in Oregon. The Plan must be a dynamic process that is modified and improved as new information becomes available. The focus of the Plan will expand to provide more detail for steelhead, cutthroat trout, chum salmon, and chinook salmon. Eventually, the work of the OCSRI should be expanded to encompass the entire state.

Many of the immediate steps required for the Plan to be successful are evident:

- Leadership and coordination that has brought the Plan to its current state of implementation will be continued.
- Active participation by the Oregon Legislature that has been developing in recent months will be strengthened and maintained.
- An independent scientific assessment team will be appointed and established.
- Watershed councils, soil and water conservation districts, and other grassroots organizations must receive adequate support and technical assistance.

- State and federal agencies have made great strides in overcoming traditional territorial conflicts. They must continue to coordinate, communicate, and improve efficiency in shared missions.
- Funding must be secured from appropriate state and federal sources to support conservation and restoration efforts.
- Economic and social incentives need further development to support the Oregon Plan.
- Compliance with existing environmental laws will be improved.
- Public outreach and education programs will improve the public's understanding of the effect of habitat alteration on salmon.
- Proposed monitoring programs will be implemented.
- Delivery of information from the monitoring program to grassroots level will be improved.
- Hundreds of commitments by government, watershed councils, conservation organizations, industries, and private landowners will be met.
- The Oregon Plan must be constantly re-evaluated and modified as necessary to ensure that the mission is achieved.

Where to Find the Oregon Plan

Copies of the Plan and the appendices will be available for review at the following locations:

- **Tillamook Library**
  210 Ivy Avenue, Tillamook
- **Hatfield Marine Science Center**
  2030 Marine Science Drive, Newport
- **Coos Bay Library**
  525 Anderson, Coos Bay
- **Oregon Dept. of Fish and Wildlife**
  SW Region Office
  4192 N. Umpqua Hwy, Roseburg
- **The Nature of Oregon Information Center**
  800 NE Oregon, Suite 177, Portland
- **Rogue Valley Council of Governments**
  155 South 2nd St, Central Point
- **Oregon State Library**
  Reference on 2nd floor, Capitol Mall, Salem
- **Astoria Public Library**
  450 Tenth St, Astoria
- **Siuslaw Public Library,**
  1460 9th St, Florence
- **Reedsport Branch Library**
  395 Winchester Ave, Reedsport
- **Curry Public Library**
  330 Colvin St, Gold Beach
- **Chetco Community Public Library**
  405 Alder St, Brookings
- **Jackson County Library Services**
  413 W. Main St, Medford

The plan is also available on the internet at:
www.governor.state.or.us/governor.html

Conclusion

Oregon faces significant challenges in managing the state's natural resources. These challenges include restoring native fish populations and improving water quality in our rivers and streams. How we meet these challenges will determine if Oregonians will continue to manage their future, or if control will be turned over to the federal government. The OCSRI represents a portion of the "Oregon Approach" that focuses on results through innovation and grassroots involvement for natural resource management. This summary represents the continuing evolution of the Oregon Approach to collaborative problem solving. The OCSRI demonstrates Oregon's spirit of natural resource citizenship coupled with local involvement and government partnerships to tackle natural resource issues using teamwork and cooperation.

Elements of the OCSRI Conservation Plan

Attachment D

DEQ Management Measures that support the Coastal Salmon Restoration Initiative
March 7, 1997

DEPARTMENT OF ENVIRONMENTAL QUALITY
MANAGEMENT MEASURES THAT SUPPORT OCSRI

PHASE 1 ACTIONS

DEQ1 - ***Coastal Nonpoint Control Program***
Nonpoint sources of pollution will be minimized in coastal areas through comprehensive state and local programs. Full implementation of management measures designed by EPA and NOAA is expected by 2004 with benefits to coastal salmonids continuing beyond full implementation. DEQ will implement the Coastal Nonpoint Pollution Control Program by developing new programs to address the following issues: 1) erosion from construction sites disturbing less than five acres; 2) failing onsite sewage disposal systems resulting from inadequate maintenance of septic tanks and drainfields; and 3) pollutant runoff from road and bridge construction, maintenance and operation by local highway departments.

DEQ2 - ***Implementation of Recently Revised Water Quality Standards for Temperature and Dissolved Oxygen***
Water quality standards for dissolved oxygen and temperature have been modified and a new standard developed for inter-gravel dissolved oxygen to improve protection of cold water aquatic species. Implementation plans will be developed for both point and nonpoint sources of pollution to reduce pollutant loads such that the new water quality standards can be achieved. Particular attention will be paid to coastal waterbodies as these parameters are critical limiting factors in every stage of salmonid fresh water life cycles.

DEQ3 - ***Implementation of 303(D) List Priorities for TMDL Development***
DEQ will prioritize its list of water quality limited waters to address limiting factors for coastal salmonid recovery. Under Section 303(d) of the Clean Water Act, DEQ recently revised its list of water quality limited waterbodies and is developing a priority list for TMDL development. The presence of threatened or endangered species within a given waterbody and the Oregon Coastal Salmon Restoration Initiative priority waterbodies will be included in the criteria for ranking waterbodies for TMDL action.

DEQ4 - ***Watershed Council Support***
The Department will enhance and improve support of local watershed council efforts to improve water quality in the coastal salmon waters. DEQ will enhance its current watershed council technical assistance by providing additional monitoring support, and providing targeted support for both basin and project level sites in watersheds with mature programs. In areas where watershed activity is beginning or unfocused, additional technical assistance staff will be assigned to primarily provide program development, project guidance, and linkages to government programs and funding. Additional monitoring work will be provided as programs mature.

DEQ5 - ***Enhanced 401 Certification Program in Coastal Watersheds***
Section 401 of the Clean Water Act requires state certification that water quality standards will be met when certain federally permitted activities, like dredge and fill operations, are conducted in the state. DEQ will improve review and enforcement of 401 certification conditions for activities in coastal salmonid waters to ensure adequate protection of all salmonid life stages.

DEQ6 - ***Tillamook Bay National Estuary Program***
DEQ will continue to support and provide technical assistance for the development of a Coordinated Conservation Management Plan in the Tillamook Bay watershed that addresses salmon concerns. Tillamook Bay is an estuary of national significance as recognized through the National Estuary Program. A local management committee is charged with developing and implementing a conservation plan that will ensure water quality standards supportive of coastal salmon and other coldwater fisheries are attained.

DEQ7 - ***Revise Water Quality Standard for Sediment***
During the next Triennial Review of water quality standards beginning in the 1997-99 biennium, DEQ will undertake a major review of its sediment standard with the intent of significantly upgrading it to better address stream attributes related to sediment loads such as cobble embeddedness, particle size distribution and residual pool volume.

DEQ8 - ***Implement Antidegradation Water Quality Standard***
DEQ will implement its antidegradation water quality standard in coastal basins to address degradation of water quality that is currently cleaner than parameter specific water quality standards would allow. DEQ will ensure that point source discharges are subjected to antidegradation review as permits are issued for new or increased discharges, and will work with ODF, ODA and other state and federal natural resource agencies to ensure the antidegradation standard is implemented for nonpoint sources.

DEQ9 - ***Apply for Instream Water Rights on Streams with TMDLs***
As TMDLs are developed for coastal waterbodies, DEQ will request instream water rights from WRD at flow levels necessary to ensure water quality standards can continue to be met once the TMDL is implemented. Of course, this will not affect senior water rights but it will give the Department the ability to limit additional appropriations that would adversely affect water quality and beneficial uses.

DEQ10 - ***Review and Revise Water Quality Standards during Triennial Review Process***
Under Section 303(c) of the Clean Water Act, the state is required to review and, as appropriate, revise its water quality standards every three years. As DEQ undertakes this process it will make it a priority to update standards that primarily benefit salmonids to ensure they remain protective of the beneficial uses based upon the most current scientific information. DEQ will also investigate standards that go beyond parameter specific criteria and focus on habitat condition and the overall health of aquatic communities.

PHASE 2 ACTIONS

DEQ11 - ***Implementation of Recently Revised Water Quality Standards for Temperature and Dissolved Oxygen***
If the Healthy Streams Partnership budget is approved, DEQ will use the additional resources to complete watershed assessments and TMDLs related to temperature, dissolved oxygen and inter-gravel dissolved oxygen for all coastal watersheds by 2007.

DEQ12 - ***Watershed Council Support***
If the Healthy Streams Partnership budget is approved, DEQ will use the additional resources to provide technical assistance and monitoring support to all functioning, sanctioned watershed councils in the coastal basins.

DEQ13 - ***Enhanced 401 Certification Program in Coastal Watersheds***
If the Healthy Streams Partnership budget is approved, DEQ will have one additional FTE to enhance its review and enforcement of 401 certifications in the coastal basins. DEQ will target projects for enhanced review and enforcement that have the greatest potential to adversely affect salmonids.

DEQ14 - ***Implement Water Quality Standards for Biological Criteria, Toxics and pH***
If the Healthy Streams Partnership budget is approved, DEQ will use the additional resources to complete watershed assessments and TMDLs related to biological criteria, pH and toxics for all coastal watersheds by 2007.

Attachment E

Attorney General's Uniform Rule
OAR 137-01-070

oral submissions received at the hearing, and the presiding officer's recommenda , if any.

(3) The rulemaking record shall be maintained by the rules coordinator. The agency shall make the rulemaking record available to members of the public upon request.

Stat. Authority: ORS 183.341
Stat. Implemented: ORS 183.330(2) 183.335(3), 183.341(1)

Agency Rulemaking Action

137-01-050 At the conclusion of the hearing, or after receipt of the presiding officer's requested report and recommendation, if any, the agency may adopt, amend, or repeal rules covered by the notice of intended action. The agency shall fully consider all written and oral submissions.

Stat. Authority: ORS 183.341
Stat. Implemented: ORS 183.335(3)

Secretary of State Rule Filing

137-01-060 (1) The agency shall file in the office of the Secretary of State a certified copy of each rule adopted, including rules that amend or repeal any rule.

(2) The rule shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or a later effective date is specified in the rule.

Stat. Authority: ORS 183.341
Stat. Implemented: ORS 183.341(1), 183.355

Note: Rule 137-01-070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.

Petition to Promulgate, Amend, or Repeal Rule

137-01-070 (1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, nd, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted enclosed in brackets and proposed additions shown by boldface;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

(c) All propositions of law to be asserted by petitioner.

(2) The agency:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations;

(c) Shall, in writing, within 30 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Stat. Authority: ORS 183.390
Stat. Implemented: ORS 183.390

Temporary Rulemaking Requirements (as amended effective 1/1/96)

137-01-080 (1) If no notice has been provided before adoption of a temporary rule, the agency shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under ORS 183.335(5). If a temporary rule or rules are over ten pages in length, the agency may provide a summary and state how and where a copy of the rule or rules may be obtained. Failure to give this notice shall not affect the validity of any rule.

(2) The agency shall file with the Secretary of State a certified copy of the temporary rule and a copy of the statement required by ORS 183.335(5).

(3) A temporary rule is effective for 180 days, unless a shorter period is specified in the temporary rule.

Stat. Authority: ORS 183.341
Stat. Implemented: ORS 183.335(5), 183.341(1), 183.355

State of Oregon
Department of Environmental Quality Memorandum

Date: February 14, 1997

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item C, Revocation and Request to Decommission Lane County Permit No. 95-014 - John Compton; EQC Meeting: February 28, 1997

Background

Lane County Environmental Health Department administers the on-site sewage disposal system program under contract from the Department in Lane County. In 1995, the County issued permit #95-014 to John Compton (hereinafter "Compton") for a capping-fill sand filter septic system installation. The system was installed and the County issued a Certificate of Satisfactory Completion of the construction on September 18, 1995.

The Department received a request from the Corp of Engineers to issue a 401 certification that the fill on the property would meet water quality standards. Due to the request for 401 certification, Department staff inspected the property on April 29, 1996. The Department concluded that the approval of the system and permit was issued in error by Lane County. On June 10, 1996, the Department sent Compton a letter revoking the permit and requesting decommission of the system. In that letter the Department stated that the system that was installed did not meet the criteria for installation as follows:
(1) A capping fill system requires a minimum of 18 inches of effective soil depth and a six inch separation between the bottom of the trench and the seasonal ground water. (OAR 340-71-265) The Department concluded that there was virtually no effective soil depth, with visible groundwater nine inches below the natural ground surface.
(2) OAR 340-71-220, Table 1 requires that the minimum setback distance between the disposal area including replacement area and an unpiped intermittent stream be 50 feet. the Department found that one part of the installed disposal field is within 30 feet of a seasonal water way. The replacement area is between the intermittent stream and the original disposal field.
(3) Capping fills are limited to soils that have a soil texture of "no finer than silty clay loam." (OAR 340-71-265). The Department found that the soil is a silty clay over a clay which is finer.
(4) Each lot or parcel must have sufficient usable area available to accommodate an initial and replacement system that meets all rules pertaining to siting, construction and maintenance of the system. (OAR 340-71-150). The Department found that the replacement system area is inadequate.

On June 14, 1996, Compton appealed the revocation. Compton argued that the permit for installation of a sewage disposal system is not of an on-going nature and thus cannot be revoked once construction is completed and a Certificate of Satisfactory Completion is issued. Furthermore, none of the grounds for decommissioning a system in OAR 340-71-185 are

applicable to the system in question. Instead, the only provision for requiring decommissioning of a system by an owner is contained in ORS 454.645 which requires the Department to petition for an injunction. The Department contended that the permit to construct and install the system continues in effect and that the permit can be revoked at any time the system is not in compliance with the rules for issuance of a construction permit.

A hearing was held on September 10, 1996 and the hearing officer issued a Proposed Findings of Fact and Conclusions of Law, dated December 31, 1996. The hearing officer found that the system would not meet the permit requirements for a construction and installation permit, and that continued use of the installed system would cause a public health hazard and water pollution. The facts of the case would have established cause to revoke the permit during construction of the system. Once constructed, a system is subject to those specific conditions or limitations contained in the site evaluation report after construction of the system is complete and the owner is responsible for maintaining the requirements of the system approval, any conditions contained in the approval, along with ongoing operation requirements. But, although "[t]he enforcement scheme while not completely clear in this type of situation would indicate that a construction or installation permit can be revoked during construction, and that after the construction authorized by the permit is completed and approved, then the provisions of Division 12 apply, requiring that the owner be given notice of violation and directed to take action to eliminate the problem. The construction permit is not revoked under OAR 340-14-045."

The Department has taken exception to the Proposed Order's finding that (1) a permit issued pursuant to OAR 340-71-160 cannot be revoked after construction is completed and a certificate of satisfactory completion is issued, and (2) that decommissioning of a system can only be ordered in an enforcement proceeding. Compton responded that the permit was only a construction permit of limited duration and no longer in effect once the system is installed and that there is no legal authority to order the decommissioning of the system.

Alternatives and Evaluation

The Commission may:
(1) Adopt the hearing officer's Proposed Findings of Fact and Conclusions of Law dated December 31, 1996, which held that (a) the Department does not have the authority to revoke a on-site system construction permit issued pursuant to OAR 340-71-160 after construction is completed and a certificate of satisfactory completion issued; and (b) that the Department does not have the authority to order decommissioning of the system except in an enforcement proceeding.
(2) Adopt the Department proposed alternative conclusions of law that (a) the Department, pursuant to ORS 468.070 and OAR 340-14-045, has authority to revoke a permit issued for

construction where the permit has been improperly issued in violation of applicable law; and (b) the Department, pursuant to OAR 340-71-185, may order decommissioning of a system if the construction permit is revoked.

(3) Adopt Compton's contention that (a) there is no basis in law for revoking the permit that is for construction of a system once the construction has been completed; and (b) there is no health hazard at the site and if there were, the state's only remedy would be an action in circuit court by the state for an injunction, pursuant to ORS 454.645

Attachments

1. Response to DEQ's Exceptions to Proposed Findings of Fact and Conclusions of Law, dated February 7, 1997
2. DEQ's Exceptions to Hearings Officer's Proposed Findings of Fact and Conclusions of Law, dated January 31, 1997
3. Letter to James Spickerman and Larry Edelman, dated January 7, 1997
4. Proposed Findings of Fact and Conclusions of Law, dated December 31, 1996
5. Property Owner's Reply Memorandum, dated October 1, 1996
6. DEQ's Post-Hearing Memorandum, dated September 27, 1996
7. Property Owner's Memorandum
8. Exhibits 1 through 9 to the Proposed Findings of Fact and Conclusions of Law
9. Notice of Appeal, dated June 14, 1996
10. Notice of Permit Revocation and Request for Decommissioning, dated June 10, 1996

Reference Documents (available upon request)

ORS Chapter 454
OAR Chapter 340, Divisions 12, 14, 71

Report Prepared By: Susan Greco
Phone: (503) 229-5213

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: On-Site Sewage Disposal System Permit Issued to John Compton #95-014 Revocation Proceeding	**RESPONSE TO DEQ'S EXCEPTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

BACKGROUND

In 1995, Lane County, acting as agent for the Department of Environmental Quality (DEQ), determined Mr. Compton's site was appropriate for a sand filter septic system and approved a permit allowing installation of such a system. Mr. Compton installed the system according to the county's specifications. Upon completion of installation, the system was inspected and Lane County issued a Certificate of Satisfactory Completion. Nearly 9 months later DEQ, after examining the site, notified Mr. Compton of intent to revoke the permit for installation of the system based upon the conditions of the site not being appropriate for a sand filter system.

The Hearings Officer found that, while the facts of the case would have established cause to revoke the permit before or during the construction of the system, once a Certificate of Satisfactory Completion had been issued, the permit to construct the system could not be revoked. The Hearings Officer stated:

> "Revocation of the construction permit would prohibit respondent from constructing that which is already constructed. Respondent acted in good faith under what appeared to be a valid permit and constructing the system would not be subject to sanction for constructing the system without a permit. Revocation of the permit does not revoke or withdraw the site evaluation that approved the

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Attachment 1 - 8 pages

> construction and operation of the system. Under the revocation proceedings the respondent would not be allowed to construct the system he has already constructed; however he still has an underlying approval to operate the system that he could not now build."

A. DEQ's First Exception

The Department takes exception to the Hearings Officer's conclusion that the permit could not be revoked. The Department can only prevail on its claim that the permit to install a subsurface sewage disposal system can be revoked if it can prevail on its argument that the permit was more than only a construction permit of limited duration and moot once construction was completed. To establish that claim, the Department has to contend that criteria for conditions that allows the installation of a sand filter system are really conditions of operation of the system. OAR 340-71-160(9) provides:

> "A permit issued pursuant to these rules shall be effective for one (1) year from the date of issuance for construction of the system. The installation permit is not transferable. Once the system is installed pursuant to the permit, and a Certificate of Satisfactory Completion has been issued for the installation, <u>conditions imposed as requirements for permit issuance shall continue in force as long as the system is in use</u>." (Emphasis added)

DEQ would stretch the term "conditions" to include the type of system and the criteria for soil conditions that must be analyzed at the time of issuance of the permit. The Department wrongly characterizes the Hearings Officer's decision by saying that:

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> "The Hearings Officer seemed to find that all underlying conditions and requirements for a system continue in effect, but the permit vanishes once construction is complete."

To the contrary, the Hearing Officer stated:

> "In this type of situation, it is clear that respondent is responsible to adhere to the basic standards and requirements of the system approval, any specific conditions imposed in the approval, the primary health and pollution mandates, and also ongoing operation requirements. However, he is no longer subject to the actual construction rules because he has finished construction and has received a Certificate of Satisfactory Completion for that construction."

The Hearings Officer was likely looking at what the administrative rules contemplate as "conditions". At OAR 340-71-305 entitled "Sand Filter System Operation and Maintenance" it is provided:

> "(1) Sand Filters serving a single-family dwelling with wastewater not exceeding "residential waste strength 'shall be subject to the following provisions:
>
> (a) Sand filter operation and maintenance tasks and requirements shall be as specified on the Certificate of Satisfactory Completion...'"

The administrative rule indicates what are conditions and they are what generally would be considered conditions. They do not include the criteria to determine appropriateness of a site for a particular system.

B. DEQ's Second Exception

DEQ's second exception is moot unless a basis for revocation is found under the first exception. DEQ contends that not only

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should the permit be revoked but the Hearing Officer should have ordered the system decommissioned.

The Department makes this contention on the basis of OAR 340-71-185(1)(d). Applicable parts of that section are as follows:

> "(1) The owner shall decommission...a system when:
>
> (d) The system has been constructed, installed, altered, or repaired without a required permit authorizing the same, unless and until a permit is subsequently issued therefore..."

The Department claims that under this provision the owner can be ordered to decommission the system.

The Hearing Officer noted that the notice of revocation did not order decommissioning and that the Hearing Officer had no authority to order decommissioning in this proceeding. The Hearing Officer also found that there is not any basis under OAR 340-71-185(1)(d) in that the system was constructed and installed with the required permit authorizing the construction and installation and there is no evidence that it has been altered or repaired without a permit.

There is simply no authority to order the system decommissioned. In fact, when it comes to decommissioning a system or causing the operation of a system or facility to cease, the only statutory provision is ORS 454.645 pertaining to public health hazards. That statute provides that the State of Oregon can petition for a mandatory injunction compelling the person in control of the system to cease and desist operation or to make

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improvements as necessary to eliminate the risk. There is no authority for a Hearings Officer or the DEQ to order decommissioning of the system.

C. Interpretation of the Statutes and Administrative Rules

The agency cites among other cases 1000 Friends of Oregon v. LCDC, 305 Or 384, 390-91, 752 P2d 271 (1988) for the proposition that "when agency experts are involved in the interpretation of statutes or rules, the courts will consider agency decisions with deference." The decision at issue here has nothing to do with agency expertise. It is merely applying what is clearly the law to the undisputed facts in the case. As stated in 1000 Friends v. LCDC:

> "The agency may have a broad mandate to promulgate rules to be administered by itself. This does not give an agency carte blanche in interpreting its rules."

Here DEQ is being asked to ignore its rules rather than interpret them.

The agency cites Harsh Investment Corporation v. State Housing Division [cited as 88 Or App 141 (1987) but found at 88 Or App 151 (1987)] for the proposition that "an agency is not authorized to act contrary to its rules, and those who deal with it cannot benefit from its doing so." The Harsh case in fact holds that the state could not be estopped from enforcing its rules because the agency had previously agreed to act contrary to the rules. The court stated:

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> "Those who deal with state officers must know the extent of their authority and cannot claim by estoppel what they could not receive by contract. The state is no more bound by a promise that it may not lawfully make or perform that is a municipality."

This language in this case is not applicable to the issue here. The respondent was lawfully issued by the agent of DEQ a permit for construction of a sewage disposal system and in good faith constructed it according to the requirements. As a matter of law, the construction permit is now moot and is not subject to revocation.

D. Conclusion

The respondent, after site inspection by the agent of the DEQ, was granted a permit for construction of a sand filter sewage disposal system and constructed the system according to the specifications of the permit. At the conclusion of that process, the respondent was issued a Certificate of Satisfactory Completion. While the Hearing Officer's decision has language indicating that a health hazard exists at the site, there is no factual basis for that conclusion. If it is assumed for a moment there is a health hazard, the system is subject to being decommissioned pursuant to appropriate action by the state in pursuing an injunction in circuit court under provision of statute. There is no basis in the applicable statutes or administrative rules for revoking a permit that was for construction of a system when that construction has

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been completed and the appropriate certificate issued, and no basis for agency order to decommission a system.

Respectfully submitted,

By: _____

James W. Spickerman, OSB No. 68158
HAMMONS, MILLS & SPICKERMAN
Attorney for Respondent
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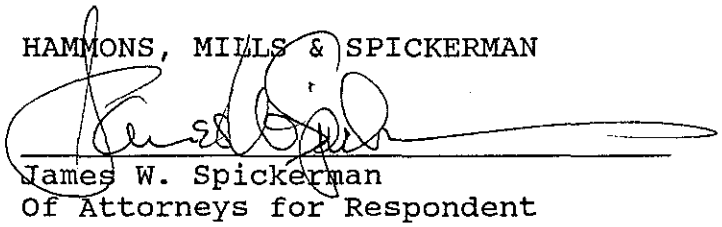
CERTIFICATE OF SERVICE

I hereby certify that on February 7, 1997, I served a true and correct copy of the foregoing RESPONSE TO DEQ'S EXCEPTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by U.S. Mail, and addressed to the following:

Susan Greco
Rules Coordinator
DEQ -- Headquarters
811 S.W. Sixth Avenue
Portland, OR 97204

Larry H. Edelman
Assistant Attorney General
Department of Justice
1515 S.W. Fifth Ave., Suite 410
Portland, OR 97201

HAMMONS, MILLS & SPICKERMAN



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CERTIFICATE OF SERVICE

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: On-Site Sewage Disposal System Permit Issued to John Compton #95-014 Revocation Proceeding	DEQ'S EXCEPTIONS TO HEARINGS OFFICER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

In 1995, Lane County, acting under contract to the Department of Environmental Quality (DEQ) pursuant to agreement under ORS 454.725, issued permit #95-104 to John Compton for a capping-fill sand filter septic system installation on Lane County Tax Lot 1401. Permits for subsurface sewage disposal systems of this type are required prior to construction under ORS 454.655 and OAR 340-71-160. The system was installed and on September 18, 1995, Lane County issued a Certificate of Satisfactory Completion of the sand filter system construction pursuant to ORS 454.665 and OAR 340-71-175.

On June 10, 1996, Greg Farrell, DEQ's Western Region On-Site Manager, notified Mr. Compton by certified letter of DEQ's decision to revoke the permit pursuant to OAR 340-14-045. DEQ's permit revocation decision was based on an April 29, 1996 site inspection of the Compton property by DEQ employees. The site inspection was initiated after DEQ had received a Clean Water Act Section 401 water quality certification request from the United States Corps of Engineers.[1]

The basis for permit revocation was the finding by DEQ that the permit had been improperly issued. The site does not meet the regulatory criteria for a capping-fill sand filter system.

///

[1] Pursuant to Section 404 of the federal Clean Water Act, 33 USC 1344, a federal permit is required for fill of certain "wetlands." The Corps of Engineers administers the 404 program. Prior to issuance of a 404 permit, the Corps must obtain a Section 401 certification from the appropriate state certifying that state water quality standards can be met. 33 USC 1341.

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Attachment 2 - 9 pages

DEQ found virtually no effective soil depth and conditions associated with saturation (as defined in OAR 340-71-100(28)) at several soil sample locations north and south of the system.

Capping-fill systems require a minimum of 18 inches of effective soil depth (as defined in OAR 340-71-100(50)) and a six-inch separation between the bottom of the disposal trench and seasonal groundwater. OAR 340-71-265.

DEQ found that there was inadequate setback distance (less than the required 50 feet) between the sand filter system and a surface stream or channel as required in OAR 340-220(1)(i).

DEQ found that the site soils were finer than silty clay loam, which precludes capping-fill systems under OAR 340-71-265(1)(f).

DEQ found inadequate system replacement area as required by OAR 340-71-150(4).

THE EVIDENCE AT HEARING

At hearing, DEQ offered testimony including that of its PhD soils scientist in support of its findings that the Compton site is unsuitable for the capping-fill sand filter system installed.

Mr. Compton offered, principally, the testimony of Dr. Simonson, a soils expert, in rebuttal. Dr. Simonson's report, however, generally agreed with the findings of DEQ. Dr. Simonson had no disagreement with DEQ as to its analysis of the north and south soil samples. Dr. Simonson also found "faint" mottling (an indication of soil saturation) at 8–14 inches at his sampling locations west of the capping fill and at 12–20 inches on the east edge of the system. SIMONSON REPORT. Dr. Simonson further acknowledged the presence of the surface water channel within 50 feet of the replacement area.

There was little question that the property is unsuitable under applicable regulations for the system installed and the Hearings Officer so found:

///

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The approved system would not meet the permit requirements for a construction and installation permit based on the facts found above.

The soil characteristics of the area in which at least the capping fill dispersal area is located are not such that would allow a capping fill system to be approved. The natural soils in the drain field dispersal trench and repair area are silty clay. OAR 340-71-265(1)(f) limits the placement of a capping fill to natural soils no finer than silty clay loam. While the actual fill could be one degree finer than the natural soil or silty clay, the natural soil into which the filtered effluent passes cannot be.

Seeping water was located at a depth of 9 inches from the surface and free water at 11 inches. OAR 340-71-290(3) sets forth that the highest level to be attained by a temporary water table is 12 inches from the surface. The temporary water table in the drainfield and repair area is located at a depth of not more than 11 inches. While the observations by the Department were toward the close of an extremely set season, soil characteristics of the area would support a finding that the temporary water table is not 12 inches or more from the surface.

The soil characteristics in the drain field and repair area are such that there was minimal effective soil depth through which to process effluent. The silty clay soil would inhibit passage and processing. OAR 340-71-265 requires that there be a minimum of 18 inches of effective soil depth and a six-inch separation between the bottom of the trench and the seasonal ground water. The site does not provide that.

There are natural or dug drainage courses that pass within 50 feet of the disposal area. A portion of the drainage was passing through cut banks and swales and there was indication of a constructed drainage canal on a portion of the property. OAR 340-71-220(1)(i) requires that any intermittent streams be 50 feet away from the disposal area. At the April 29, 1996 site visit running water was running within 30 feet of the primary dispersal and repair areas.

This is a difficult situation. A permit was issued after a site evaluation process that involved additional test holes and alternate drain field locations. The Agent was aware of the site requirements and felt that after the repositioning of the drain field, those conditions were met. Based on the expert testimony of both witnesses for the Department and the respondent, those initial findings were not supported by either of the subsequent evaluations. It is clear that the effluent is not treated as provided for in the rules and enters or is carried away by temporary or seasonal water tables or drainage ways.

Partially treated sewage effluent entering a temporary or seasonal water table or waterway could create a public health hazard and cause water pollution. Continued use of the installed system would do both. The system as installed and used does cause a public health hazard and does cause water pollution. The system should be decommissioned.

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> It appeared from the site observations made on April 29, 1996 that surface or other water was infiltrating the septic tank. The information should be taken into consideration in any decommissioning order.

> It appeared from the site observations made on April 29, 1996 that surface or other water was infiltrating the septic tank. That information should be taken into consideration in any decommissioning order.

> It is unfortunate that this matter cannot be resolved by this proceeding. It is clear from the testimony and evidence that the approval was granted in error and that the site does not meet the requirements or standards for a capping fill or other on-site sewage disposal system. This matter is returned to the Department for initiation of appropriate enforcement proceedings to resolve this matter. *Hearings Officer's Proposed Findings of Fact and Conclusions of Law.*

Notwithstanding his finding that the system does not meet legal requirements and causes a health hazard and water pollution, the Hearings Officer found:

> The enforcement scheme while not completely clear in this type of situation would indicate that a construction or installation permit can be revoked during construction, and that after the construction authorized by the permit is completed and approved, then the provisions of Division 12 apply, requiring that the owner be given notice of violation and directed to take action to eliminate the problem. System decommissioning would be appropriate in that type of a proceeding. The construction permit is not revoked under OAR 340-14-045. *Hearings Officer's Proposed Findings of Fact and Conclusions of Law.*

Exceptions

First Exception: The Department takes exception to the Hearings Officer's apparent conclusion that a permit issued pursuant to OAR 340-71-160 may not be revoked after construction is completed and a certificate of satisfactory completion issued.

Argument

The Hearings Officer's conclusion that the subject permit may not be revoked requires an unduly narrow reading of the rule and is contrary to DEQ's interpretation of the nature of the permit.

Statutory authority for revocation of permits issued pursuant to ORS 468.065 (which specifically include permits issued under ORS 454.605 to 454.745) is provided by ORS 468.070. ORS 468.070 provides in pertinent part:

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> Denial, modification, suspension or revocation of permits. (1) At any time, the department may refuse to issue, modify, suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:
>
> (a) A material misrepresentation or false statement in the application for the permit.
>
> (b) Failure to comply with the conditions of the permit.
>
> (c) Violation of any applicable provisions of ORS 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (2) or ORS chapters 468, 468A and 468B.
>
> (d) Violation of any applicable rule, standard or order of the commission.

Under subsections (c) and (d) a permit may be revoked where there is *any violation of applicable provisions of the subsurface sewage system requirements or rules of the commission*. (Emphasis added.)

The Hearings Officer found that the permit was improperly issued in violation of applicable regulations and that the system can not be operated in compliance with the regulations.[2]

OAR 340-14-045(1) further provides for permit revocation for cause.

> **340-14-045** (1) In the event that it becomes necessary for the Department to suspend or revoke a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application *or any other cause*, the Department shall notify the permittee by registered mail of its intent to suspend or revoke the permit. (Emphasis added.)

If the permit in question were only a construction permit of limited duration, it might well be of no import once construction were completed. However, that is not how the subsurface system permits operate. OAR 340-71-160(9) provides:

> A permit issued pursuant to these rules shall be effective for one (1) year from the date of issuance for construction of the system. The construction-

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[2] The fact that Lane County issued the permit under contract to DEQ does not affect its validity. An agency is not authorized to act contrary to its rules, and those who deal with it can not benefit from its doing so. ***Harsh Investment Corp. v. State Housing Division***, 88 Or App 141 (1987). ***See also Georgia Pacific Corp. v. Kight***, 126 Or App 244, 246 (1994); ***Albertson's Inc. v. Bureau of Labor and Industries***, 128 Or App 97,101 (1994)

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> installation permit is not transferable. Once a system is installed pursuant to the permit, and a Certificate of Satisfactory Completion has been issued for the installation, *conditions imposed as requirements for permit issuance shall continue in force as long as the system is in use*. (Emphasis added.)

The conditions imposed (e.g., type of system, operation, etc.) remain in effect as long as the system is in use. While the construction authorization component of the permit is of limited duration, conditions effected through the permit are not. Therefore, contrary to the Hearings Officer's conclusion, even after construction, there is a permit in effect which may be the subject of revocation. The Hearings Officer seemed to find that all underlying conditions and requirements for a system continue in effect, but the permit vanishes once construction is complete. This view is inconsistent with DEQ's interpretation and would make enforcement problematic because of the need to prove actual violations. DEQ has consistently interpreted OAR 340-71-160(9) to mean that on-site disposal permits, while only good for one (1) year in terms of beginning construction, continue in effect to enforce ongoing permit condition requirements when a system is built. DEQ has previously instituted permit revocation proceedings after construction completion (e.g., ***DEQ v. Harold Hopper***, No. SS-SWR-80-117; ***DEQ v. Mason Anderson***, No. SS-NWR-80-64).

Generally, an agency has "considerable leeway * * * to interpret its own rules, especially when the legislature has given it a broad mandate to promulgate the rules necessary to carry out its duties and powers." ***Martin v. Dept. of Transportation***, 122 Or App 271, 274-75 (1993). When agency experts are involved in the interpretation of statutes or rules, the courts will consider agency decisions with deference. ***1000 Friends of Oregon v. LCDC (Lane Co.)***, 305 Or 384, 390-91, 752 P2d 271 (1988). Agency interpretations are not erroneous as long as they are plausible and consistent with the wording of the statute or rule. ***City of Klamath Falls v. EQC***, 318 Or 532, 870 P2d 825 (1994).

Second Exception: DEQ further takes exception to the Hearings Officer's proposed conclusion that a system decommissioning order not be entered. The Hearings Officer's

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proposed decision appears based on his interpretation that decommissioning can only be ordered in an enforcement proceeding. However, if, as the Hearings Officer found, the sewage system does not meet legal requirements and the "approval was granted in error," revocation of the permit triggers OAR 340-71-185.

OAR 340-71-185 DECOMMISSIONING ... OF SYSTEMS.

(1) The owner shall decommission ... a system when:

(a) A sewerage system becomes available and the building sewer has been connected thereto; or

(b) The source of sewage has been permanently eliminated; or

(c) The system has been operated in violation of OAR 340-71-130(13), unless and until a repair permit and Certificate of Satisfactory Completion are subsequently issued therefor; or

(d) The system has been constructed, installed, altered, or repaired without a required permit authorizing same, unless and until a permit is subsequently issued therefor; or

(e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice authorizing same, unless and until a Certificate of Satisfactory Completion or Authorization Notice is subsequently issued therefor.

If the permit is revoked on the basis that it was invalid, subsection (d) becomes applicable and decommissioning may be ordered.

Department Proposed Alternative Conclusions of Law

1. Pursuant to ORS 468.070 and OAR 340-14-045 the Department has authority to revoke a permit issued for construction of an on-site subsurface sewage disposal system where such permit is determined to have been improperly issued in violation of applicable law.

2. Pursuant to OAR 340-71-185 the Department may require decommissioning of an on-site subsurface sewage disposal system if the construction permit is revoked.

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CONCLUSION

The sewage disposal system installed on the Compton property violates applicable statutory and regulatory requirements. The permit should be revoked and the system decommissioned.

DATED this 31 day of January, 1997.

Respectfully submitted,

HARDY MYERS
Attorney General

Larry H. Edelman #89158
Assistant Attorney General
Of Attorneys for DEQ
Department of Justice
1515 SW Fifth Avenue, Suite 410
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LE:kt/LHE0337.PLB

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 1997, I served a true and correct copy of the foregoing DEQ'S EXCEPTIONS TO HEARINGS OFFICER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by the method indicated below, and addressed to the following:

Susan Greco
Rules Coordinator
DEQ — Headquarters
811 SW Sixth Avenue
Portland, Oregon 97204
FAX: (503) 229-5850

____ HAND DELIVER
____ U.S. MAIL
____ OVERNIGHT MAIL
__/__ TELECOPY (FAX)

James W. Spickerman
Hammons, Mills, Spickerman
Suite 280
115 W. Eighth Avenue
Eugene, Oregon 97401

____ HAND DELIVER
____ U.S. MAIL
____ OVERNIGHT MAIL
__/__ TELECOPY (FAX)

Larry H. Edelman #89158
Assistant Attorney General
Of Attorneys for DEQ
Department of Justice
1515 SW Fifth Avenue, Suite 410
Portland, Oregon 97201
Telephone: (503) 229-5725

LE:kt/LHE0337.PLE

Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

January 7, 1997

James Spickerman, Attorney at Law
115 W. 8th Avenue, Suite 280
Eugene OR 97401

Larry Edelman
Department of Justice
1515 S.W. 5th Avenue, Suite 410
Portland OR 97201

RE: Permit No. 95-014, John M. Compton

Dear Mr. Spickerman and Mr. Edelman:

The Environmental Quality Commission will be considering the Proposed Findings of Fact and Conclusions of Law dated December 31, 1996, at their regularly scheduled meeting on February 28, 1997. The meeting will be held at the Department's headquarters at 811 S.W. 6th Avenue, Conference Room 3A, Portland, Oregon. This matter will be heard in the regular course of the meeting. At this meeting, the Commission will be making a final determination on the permit revocation. Once an agenda is available, I will forward the same to you.

If you do not agree with the hearings officer's proposed order, I will need to receive, in writing, any objections that you have to the proposed order prior to January 31, 1997. Please forward to the Environmental Quality Commission, c/o Susan Greco, 811 S.W. 6th Avenue, Portland, Oregon, 97204. Similarly, if the Department has any objections to the hearings officer's order, those objections will need to be received by January 31, 1997 and will be forwarded to you for review and response.

If you should have any questions or require special accommodations for the meeting, please feel free to call me at (503) 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,

Susan M. Greco

Susan M. Greco
Rules Coordinator

cc: Sherm Olson, WQ

Attachment 3 - 1 page

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

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

AMENDED ORDER

IN THE MATTER OF: THE REVOCATION OF THE ON-SITE SEWAGE DISPOSAL SYSTEM PERMIT ISSUED TO JOHN M. COMPTON AND REQUEST TO DECOMMISSION THE SYSTEM for Tax Lot 1401, Section 19, T. 18 S., R. 4 W., W.M., Lane County, Oregon.	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW Permit No. 95-014 Revocation and Request to Decommission. Lane County, Oregon
John M. Compton Respondent.	

This amended order amends the Order signed December 12, 1996 to correctly state that the findings of fact, conclusions of law, and order are proposed, and not a final order of the Commission.

BACKGROUND

John M. Compton has appealed a Notice of Permit Revocation and Request to Decommission dated June 10, 1996. The notice set forth that the on-site sewage disposal system permit #95-014 should be revoked because it was issued in error and that the installed system should be decommissioned.

A hearing was held in Eugene, Oregon on September 10, 1996. The respondent was represented by attorney James W. Spickerman with three witnesses. The Department was represented by Assistant Attorney General Larry Edelman with five witnesses.

RESPONDENT'S CONTENTIONS

Respondent contends that the Commission does not have jurisdiction to revoke the permit and that the soil and topographical characteristics of the site on which the installed system is located are such that the permit was properly granted.

DEPARTMENT'S CONTENTIONS

The Department contends that the permit was issued in error, that the system should not have been approved, and that a permit to construct and install an on-site sewage disposal system continues to be in effect and can be revoked after a Certificate of Satisfactory Completion is issued and that the Department can revoke the permit at any time if the system is not in compliance with the rules for issuance of a new permit.

ISSUES

Whether the Commission has jurisdiction to decide this matter.

Whether the on-site sewage disposal system permit #95-014 should be revoked under OAR 340-14-045.

Whether respondent should be ordered to decommission the installed system under OAR 340-71-185.

Attachment 4- 8 pages

FINDINGS OF FACT

1. John M. Compton and Betty Compton are the owners of that certain real property described as Tax lot 1401, Lane County Tax Map 10-04-19, Section 19, Township 18 S., Range 4 W., W.M., Lane County, Oregon.

2. The respondents applied for a permit to construct and install an on-site sewage disposal system and were issued installation permit #1811-95 August 3, 1995. The system was installed and a Certificate of Satisfactory Completion was issued on September 18, 1995.

3. The site evaluation, system approval and permit issuance, and inspections were performed, and the Certificate of Satisfactory Completion issued by the Lane County Environmental Health Division, as agent for the Department of Environmental Quality.

4. The approved system provided for a 1500 gallon septic tank, a 20 foot by 20 foot sand filter, and 150 feet of drainfield.

5. The approved permit required a 40 foot by 80 foot 12 inch capping fill over the drain field area with the disposal trench and drain lines being installed in the upper 12 inches of original soil.

6. The respondent was not aware he needed a Corps of Army Engineers permit to install the capping fill over the drainfield.

7. On April 29, 1996, the respondent met with representatives of the DEQ at the site to evaluate the site for the suitability of placing the capping fill on the property.

8. The soil characteristics described below were of soils taken from or viewed in augured test holes at the north and south end of the drain field.

9. The site evaluation determined that the soil in the area was silty clay (SiC) from 0 to 10 inches with clay (C) soil from 10 to 24 inches, and groundwater seeping at 9 inches from the surface and freewater at 11 inches from the surface.

10. A 30 inch deep test hole was dug with a shovel in the middle of the drain field area.

11. It could not be determined from the test hole where the filled soil ended and the original soil started because the fill was comprised of the same type soil as the original surface soils.

12. There was seeping water at about 20 inches in the test hole that was dug through the capping fill in the middle of the drainfield and free water at 28 inches.

13. A subsequent evaluation performed on September 4, 1996 on behalf of respondent resulted in test pits being dug with a backhoe on the east and west side of the drainfield and the soils examined.

14. The evaluation on September 4, 1996 determined that the soil characteristics were silty clay from 0 to 24 inches in depth on the west edge of the capping fill, and 0 to 20 inches in depth on the east edge of the capping fill.

15. That evaluation determined that the soil was marginally silty clay and that the drainage was marginally poor throughout the drainfield area rather than the poor drainage normally associated with silty clay soils.

16. The April 29, 1996 site evaluation located natural and dug drainage channels within approximately 30 feet of the disposal trench on the east side of the drainfield.

17. The April 29, 1996 site evaluation came after an extremely wet winter and spring and the monthly precipitation totals were 59% higher than normal and the year to date totals were 75% higher.

18. On April 29, 1996, the septic tank appeared to contain an unusual amount of water which was thought to be surface or other water that was infiltrating the tank.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction.

2. Permit #95-014 is not revoked.

3. Respondent is not ordered to decommission the existing on-site sewage disposal system.

OPINION

1. The Commission has jurisdiction.

OAR 340-71-110 provides that the purpose of the rules prescribing the requirements for the construction, alteration, repair, operation, and maintenance of on-site sewage disposal systems are to restore and maintain the quality of public waters and to protect the public health and general welfare of the people of the State of Oregon.

OAR 340-71-130(13) provides that all systems shall be operated and maintained so as not to create a public health hazard or cause water pollution.

OAR 340-71-185 provides that an owner shall decommission an on-site sewage disposal system when the system has been operated in violation of OAR 340-71-130(13), unless and until a repair permit and Certificate of Satisfactory Completion are subsequently issued for the system.

This matter is before the Commission on the basis of notice of revocation of a construction and installation permit and request for decommissioning, wherein it was alleged that the existing system did not meet the standards set forth for construction and installation of an on-site sewage disposal system when the initial permit was issued. The allegations regarding the inadequacy of treatment media and proximity to the temporary water table set forth in the notice of revocation and request for decommissioning raise issues of public heath and pollution and give the Commission jurisdiction to review this matter under OAR 340-14-045 to determine whether the construction and installation permit issued in this matter should be revoked and under OAR 340-71-185 to determine whether the system shall be decommissioned.

2. Permit #95-014 is not revoked.

OAR 340-71-150 provides that any person who wishes to install a new on-site sewage system shall first obtain a site evaluation report. The rule lists the elements of the report and the items that need to be addressed, including specific conditions or limitations imposed on an approved site, and further provides that the conditions shall be listed on the evaluation report. The rule also states that in order to obtain a favorable site evaluation report, all criteria for approval of a specific type or types of system, as outlined in OAR 340, Division 71, shall be met.

OAR 340-71-160 provides that no person shall construct a system without first applying for and obtaining a permit and that a favorable site evaluation report shall be one of the exhibits accompanying the

application for a permit. It further provides that the agent shall deny the permit if the proposed system would not comply with the rules.

The favorable site evaluation is in fact the system approval and the authority upon which the system can be operated once it is constructed. There are no provisions for specific operating permits for on-site sewage systems that serve an individual residence.

The authority to physically construct and install the system is derived from the permit, and upon satisfactory completion of the construction and installation, a Certificate of Satisfactory Completion is issued. That certificate is a statement that the construction phase of the system has been completed. No further work may be done on the system without obtaining further permits to repair, modify, or otherwise physically affect the system.

The issuance of the permit is authority to implement the system authorized by the site evaluation report, and the permit, in addition to any specific conditions or limitations imposed in the site evaluation report and referred to in OAR 340-71-160(9), is subject to the continuing requirement that the basic system approval standards and requirements are met. The fact that the initial construction and installation phase has been completed and acknowledged by the Certificate of Satisfactory Completion, does not terminate the permit or remove the basic permit requirement obligations.

In this case, notwithstanding the on site evaluation by the Agent and the favorable site evaluation report that resulted in the permit, the permit was issued in error. The soil characteristics and depth and the proximity to intermittent water ways would not support approval of a capping fill system or other system on the property. The permit should have been denied.

The Department has enforcement authority to safeguard public health and to prevent pollution. The Department can seek legal or equitable remedies to enforce compliance and to restrain further violation, it can issue notice of violation, order correction or removal and assess civil penalties under OAR Chapter 340 Division 12, or it can revoke the permit pursuant to OAR 340-14-045.

OAR 340-14-045 provides that a permit may be revoked for cause. Respondent argues that "cause" should be narrowly interpreted to address instances similar to the others listed in rule; non-compliance with the terms of the permit, unapproved changes in operation, or false information submitted in the application. The standards and conditions for granting a construction permit necessarily are attached to and affect the operation of the constructed system. If those standards were not initially met, for any reason, cause under the rule would be established. The facts in this case would establish cause to revoke a permit had the Certificate of Satisfactory Completion not been issued.

Revocation of the construction permit would prohibit respondent from constructing that which is already constructed. Respondent acted in good faith under what appeared to be a valid permit in constructing the system and would not be subject to sanction for constructing the system without a permit. Revocation of the permit does not revoke or withdraw the site evaluation that approved the construction and operation of the system. Under the revocation proceedings the respondent would not be allowed to construct the system he has already constructed; however he still has an underlying approval to operate the system that he could not now build.

The permit revocation notice did include the statement that, based on the April 29, 1996 findings, the Department must proceed with permit revocation procedures and request decommissioning of the system as prescribed by OAR 340-71-185. The notice purported to revoke the permit, but it did not order decommissioning.

OAR Chapter 340, Division 71 sets standards for initial on-site sewage disposal system approval, addresses the liability and responsibility of the landowner to comply with the rules, establishes primary responsibility not to cause a health hazard or to pollute the waters, and also ongoing operating

requirements that would not be covered during the initial approval or construction phases. An owner of a sand filter system is required to inspect the septic tank at least every three years and is responsible for the control and removal of large perennial plants, the fencing out of livestock and the control of burrowing animals. It would be appropriate to revoke a construction permit during construction if there is violation or noncompliance. It is not appropriate to revoke a construction permit because an owner allows a bush to grow on the sand filter two years after it was placed into service. It certainly would be appropriate to seek enforcement action under Division 12 by serving a notice of violation, order to remedy the situation, and assessment of civil penalty, if the situation warranted.

In this type of situation, it is clear that respondent is responsible to adhere to the basic standards and requirements of the system approval, any specific conditions imposed in the approval, the primary health and pollution mandates, and also all ongoing operation requirements. However, he is no longer subject to the actual construction rules because he has finished construction and has received a Certificate of Satisfactory Completion for that construction.

The enforcement scheme while not completely clear in this type of situation would indicate that a construction or installation permit can be revoked during construction, and that after the construction authorized by the permit is completed and approved, then the provisions of Division 12 apply, requiring that the owner be given notice of violation and directed to take action to eliminate the problem. System decommissioning would be appropriate in that type of a proceeding. The construction permit is not revoked under OAR 340-14-045.

3. Respondent is not ordered to decommission the system.

The notice of revocation did not order decommissioning. The hearings officer has no authority to order decommissioning in this proceeding.

Decommissioning is an appropriate remedy if appropriate enforcement is sought.

OAR 340-71-185 provides that the owner shall decommission a system when a sewerage system becomes available, when the source of sewage has been permanently eliminated, or when the system has been operated in such manner that it creates a public health hazard or causes water pollution, or if the system was constructed and installed without a required permit, or if the system has been operated without a Certificate of Satisfactory Completion.

In this case a sewerage system has not become available and the source of sewage has not been eliminated. The system was constructed and installed with a valid permit and did receive a Certificate of Satisfactory Completion before use. The remaining basis for an order to decommission the system is that it has been or is being operated in such manner that it creates a public health hazard or causes water pollution.

The approved system would not meet the permit requirements for a construction and installation permit based on the facts found above.

The soil characteristics of the area in which at least the capping fill dispersal area is located are not such that would allow a capping fill system to be approved. The natural soils in the drain field dispersal trench and repair area are silty clay. OAR 340-71-265(1)(f) limits the placement of a capping fill to natural soils no finer than silty clay loam. While the actual fill could be one degree finer than the natural soil or silty clay, the natural soil into which the filtered effluent passes cannot be.

Seeping water was located at a depth of 9 inches from the surface and free water at 11 inches. OAR 340-71-290(3) sets forth that the highest level to be attained by a temporary water table is 12 inches from the surface. The temporary water table in the drainfield and repair area is located at a depth of not more than 11 inches. While the observations by the Department were toward the close of an extremely wet season,

soil characteristics of the area would support a finding that the temporary water table is not 12 inches or more from the surface.

The soil characteristics in the drain field and repair area are such that there was minimal effective soil depth through which to process effluent. The silty clay soil would inhibit passage and processing. OAR 340-71-71-265 requires that there be a minimum of 18 inches of effective soil depth and a six-inch separation between the bottom of the trench and the seasonal ground water. The site does not provide that.

There are natural or dug drainage courses that pass within 50 feet of the disposal area. A portion of the drainage was passing through cut banks and swales and there was indication of a constructed drainage canal on a portion of the property. OAR 340-71-220(1)(i) requires that any intermittent streams be 50 feet away from the disposal area. At the April 29, 1996 site visit running water was running within 30 feet of the primary dispersal and repair areas.

This is a difficult situation. A permit was issued after a site evaluation process that involved additional test holes and alternate drain field locations. The Agent was aware of the site requirements and felt that after the repositioning of the drain field, those conditions were met. Based on the expert testimony of both witnesses for the Department and the respondent, those initial findings were not supported by either of the subsequent evaluations. It is clear that the effluent is not treated as provided for in the rules and enters or is carried away by temporary or seasonal water tables or drainage ways.

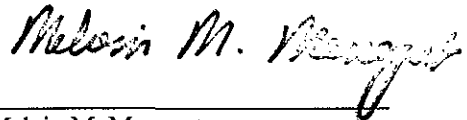
Partially treated sewage effluent entering a temporary or seasonal water table or waterway could create a public health hazard and cause water pollution. Continued use of the installed system would do both. The system as installed and used does cause a public health hazard and does cause water pollution. The system should be decommissioned.

It appeared from the site observations made on April 29, 1996 that surface or other water was infiltrating the septic tank. That information should be taken into consideration in any decommissioning order.

It is unfortunate that this matter cannot be resolved by this proceeding. It is clear from the testimony and evidence that the approval was granted in error and that the site does not meet the requirements or standards for a capping fill or other on-site sewage disposal system. This matter is returned to the Department for initiation of appropriate enforcement proceedings to resolve this matter.

Dated this 31st day of December 1996.

Environmental Quality Commission



Melvin M. Menegat
Hearings Officer.

D361com

IN THE MATTER OF: THE REVOCATION OF THE ON-SITE SEWAGE DISPOSAL SYSTEM PERMIT ISSUED TO JOHN M. COMPTON AND REQUEST TO DECOMMISSION THE SYSTEM for Tax Lot 1401, Section 19, T. 18 S., R. 4 W., W.M., Lane County, Oregon.	))))))	PROPOSED ORDER Permit No. 95-014 Revocation and Request to Decommission. Lane County, Oregon
John M. Compton Respondent.	))	

The Commission has subject matter and personal jurisdiction in this proceeding.

Permit #95-014 is not revoked. The construction-installation permit was not in force on the date the notice of revocation was mailed.

The respondent is not ordered to decommission the on-site sewage disposal system located on Tax Lot 1401, Section 19, T. 18 S., R. 4 W., W.M., Lane County, Oregon. Appropriate notice and order to decommission was not given.

This matter is returned to the Department for initiation of appropriate enforcement proceedings.

Dated this 31st day of December 1996.

Environmental Quality Commission

Melvin M. Menegat

Melvin M. Menegat
Hearings Officer.

D361com

Notice: This is not the Final Order. Exceptions to this Proposed Order must be filed with the Environmental Quality Commission, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

STATEMENT OF MAILING

HEARINGS CASE NO. 96-DEQ-013
AGENCY CASE NO. PERMIT 95-014, PERMIT REVOCATION

I certify that the attached AMENDED ORDER was served through the mail to the following parties in envelopes addressed to each at their respective addresses, with postage fully prepaid:

John Compton
2990 Kinney Loop
Eugene, OR 97708

James Spickerman, Atty
115 W 8th Ave, Ste 280
Eugene, OR 97401

Larry Edelman, Asst Atty General
1515 SW 5th, Ste 410
Portland, OR 97201

Greg Farrell
Dept. of Environmental Quality Control
725 SE Main St
Roseburg, OR 97470

Susan Greco
DEQ Rules Coordinator
Management Services Division
811 S.W. 6th Ave.
Portland, OR 97204

Mailing/Delivery Date: December 31, 1996

Hearings Clerk: BGS

STATE OF OREGON/EMPLOYMENT DEPARTMENT

0500b

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:	
On-Site Sewage Disposal System Permit Issued to John Compton #95-014 Revocation Proceeding	**PROPERTY OWNER'S REPLY MEMORANDUM**

The property owner submitted a memorandum at the time of hearing pointing out the lack of a statutory or rule basis for revocation of a sand filter septic system installation permit once a Certificate of Satisfaction of Completion had been entered pertaining to the permit. That full discussion will not be repeated here. The property owner will only reply to the particular responses made on behalf of DEQ in the format of those responses.

A. Background

The information in the portions of DEQ's Post-Hearing Memorandum entitled "Background" and "The Evidence at Hearing" contemplates the adequacy of the site for a capping-fill sand filter septic system. There is no evidence in the record, either documentary or in the form of testimony from the representatives of Lane County that such a system was required. The only evidence is that a conventional system was put in place and that Mr. Martin of Lane County required a "cap" to be put on top of the system. There was simply no evidence that a capping-fill sand filter septic system as such was required to be put in place.

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Attachment B - 4 pages

It is noted that the discussion of the experts for each party of such items as the extent of mottling of the soil and whether the soil was too fine points to the unreasonable nature of DEQ's position that they may come to a site several months after it is approved and a system installed and determine the soil is inappropriate for the system. The statutes and rules do not provide for such second opinions and rightfully so, given the potential loss to the property owner.

B. Legal Basis for Revocation

DEQ points to OAR 340-71-160(9) as an indication that a permit can be revoked if it should not have been issued in the first place. That section states:

> "A permit issued pursuant to the rules shall be effective for one (1) year from the date of issuance for construction of the system. The construction-installation permit is not transferrable. Once a system is installed pursuant to the permit, and a Certificate of Satisfactory Completion has been issued for the installation, conditions imposed as requirements for permit issuance shall continue in force as long as the system is in use." (Emphasis added).

DEQ's argument apparently is that criteria for soil conditions and other site characteristics that are applicable for approval of a sand filter system are "conditions" of the permit. This is not consistent with any conceivable meaning of the term "condition", particularly since the administrative rules at OAR 340-71-290 designates these site standards as "Criteria for Approval."

The administrative rules make clear what "conditions" are contemplated by the above quoted section. At OAR 340-71-305

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entitled "Sand Filter System Operation and Maintenance" it is provided:

> "(1) Sand filters serving a single-family dwelling with waste water not exceeding 'residential waste strength' shall be subject to the following provisions:
>
> (a) Sand filter operation and maintenance tasks and requirements shall be as specified on the Certificate of Satisfactory Completion..."

The administrative rule contemplates what is normally thought of as "conditions" of a permit. Those are specifications that are put on the permit to govern its life. There are no conditions on the Certificate of Satisfactory Completion in the record and pre-existing site characteristics cannot be considered "conditions of the permit."

c. Decommissioning

DEQ urges that the department has the authority to order the system be decommissioned and sets out paragraph (1) of OAR 340-71-185. First, it must be noted that the none of the subsections, (a) through (e) have been shown to be satisfied as a basis for decommissioning here. The system has not been shown to be operated in violation of OAR 340-71-130(13) as contemplated by paragraph 1(c). It was not installed, altered or repaired without the required permit as contemplated by (d). Also, it was not operated or used without the required Certificate of Satisfactory Completion as stated in (e). Finally, it is interesting to note that even if by some means it had been established that the permit was "revoked", that is not a listed basis for decommissioning a system.

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The department points to no language in the administrative rules that contemplates the authority within DEQ to order the decommissioning of a system. That language is not present in the administrative rules simply because there is no statutory basis for such a rule. When it comes to decommissioning a system or causing the operation of a system or facility to cease, the only statutory provision is ORS 454.645 pertaining to public health hazards which provides that the State of Oregon can petition for a mandatory injunction compelling the person in control of the system to cease and desist operation or to make improvements as necessary to eliminate the risk.

The bottom line is that even if DEQ could make the case there is some authority to revoke the permit, even though no conditions of the permit have been violated, the department is left with no remedy if use of the system continues, unless they can show public health hazard.

Respectfully submitted,

HAMMONS, MILLS & SPICKERMAN

By: _____

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: On-Site Sewage Disposal System Permit Issued to John Compton #95-014 Revocation Proceeding	DEQ's POST-HEARING MEMORANDUM

BACKGROUND

In 1995, Lane County, acting under contract to the Department of Environmental Quality (DEQ) pursuant to agreement under ORS 454.725, issued permit #95-104 to John Compton for a capping-fill sand filter septic system installation on Lane County Tax Lot 1401. Permits for subsurface sewage disposal systems of this type are required prior to construction under ORS 454.655 and OAR 340-71-160. The system was installed and on September 18, 1995, Lane County issued a Certificate of Satisfactory Completion of the sand filter system construction pursuant to ORS 454.665 and OAR 340-71-175.

On June 10, 1996, Greg Farrell, DEQ's Western Region On-Site Manager, notified Mr. Compton by certified letter of DEQ's decision to revoke the permit pursuant to OAR 340-14-045. DEQ's permit revocation decision was based on an April 29, 1996 site inspection of the Compton property by DEQ employees. The site inspection was initiated after DEQ had received a Clean Water Act Section 401 water quality certification request from the United States Corps of Engineers.[1]

The basis for permit revocation was the finding by DEQ that the permit had been improperly issued. The site does not meet the regulatory criteria for a capping-fill sand filter system.

///

[1] Pursuant to Section 404 of the federal Clean Water Act, 33 USC 1344, a federal permit is required for fill of certain "wetlands." The Corps of Engineers administers the 404 program. Prior to issuance of a 404 permit, the Corps must obtain a Section 401 certification from the appropriate state certifying that state water quality standards can be met. 33 USC 1341.

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Attachment 6 - 7 pages

DEQ found virtually no effective soil depth and conditions associated with saturation (as defined in OAR 340-71-100(28)) at several soil sample locations north and south of the system.

Capping-fill systems require a minimum of 18 inches of effective soil depth (as defined in OAR 340-71-100(50)) and a six-inch separation between the bottom of the disposal trench and seasonal groundwater. OAR 340-71-265.

DEQ found that there was inadequate setback distance (less than the required 50 feet) between the sand filter system and a surface stream or channel as required in OAR 340-220(1)(i).

DEQ found that the site soils were finer than silty clay loam, which precludes capping-fill systems under OAR 340-71-265(1)(f).

DEQ found inadequate system replacement area as required by OAR 340-71-150(4).

THE EVIDENCE AT HEARING

At hearing, DEQ offered testimony including that of its PhD soils scientist in support of its findings that the Compton site is unsuitable for the capping-fill sand filter system installed.

Mr. Compton offered, principally, the testimony of Dr. Simonson, a soils expert, in rebuttal. Dr. Simonson's report, however, generally agreed with the findings of DEQ. Dr. Simonson had no disagreement with DEQ as to its analysis of the north and south soil samples. Dr. Simonson also found "faint" mottling (an indication of soil saturation) at 8–14 inches at his sampling locations west of the capping fill and at 12–20 inches on the east edge of the system. SIMONSON REPORT. Dr. Simonson further acknowledged the presence of the surface water channel within 50 feet of the replacement area.

There is little question that the property is unsuitable under applicable regulations for the system installed.

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LEGAL BASIS FOR REVOCATION

At hearing, and in the Property Owner's Memorandum, counsel for Mr. Compton raised two arguments to urge that there is no *legal* basis for a permit revocation under OAR 340-14-045. These arguments can be summarized as:

1. None of the specified grounds in OAR 340-14-045 for revocation of a permit are applicable here; and

2. Once a Certificate of Satisfactory Completion has been issued, the permit is of no import. PROPERTY OWNER'S MEMORANDUM, p.2.

The first argument takes an unduly narrow reading of the rule; the second is contrary to DEQ's interpretation of the nature of the permit.

Statutory authority for revocation of permits issued pursuant to ORS 468.065 (which specifically include permits issued under ORS 454.605 to 454.745) is provided by ORS 468.070. ORS 468.070 provides in pertinent part:

> Denial, modification, suspension or revocation of permits. (1) At any time, the department may refuse to issue, modify, suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:
>
> (a) A material misrepresentation or false statement in the application for the permit.
>
> (b) Failure to comply with the conditions of the permit.
>
> (c) Violation of any applicable provisions of ORS 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (2) or ORS chapters 468, 468A and 468B.
>
> (d) Violation of any applicable rule, standard or order of the commission.

Under subsections (c) and (d) a permit may be revoked where there is any violation of applicable provisions of the subsurface sewage system requirements or rules of the commission.

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The evidence here indicates that the permit was improperly issued in violation of applicable regulations and that the system can not be operated in compliance with the regulations.[2]

OAR 340-14-045(1) further provides for permit revocation for cause. Contrary to counsel's argument on behalf of Mr. Compton, DEQ does not interpret the term "any other cause" narrowly. Such an interpretation would be more restrictive than the enabling statute, ORS 468.070.

If the permit in question were only a construction permit of limited duration, it might well be of no import once construction were completed. However, that is not how the subsurface system permits operate. OAR 340-71-160(9) provides:

> A permit issued pursuant to these rules shall be effective for one (1) year from the date of issuance for construction of the system. The construction-installation permit is not transferable. Once a system is installed pursuant to the permit, and a Certificate of Satisfactory Completion has been issued for the installation, *conditions imposed as requirements for permit issuance shall continue in force as long as the system is in use.* (Emphasis added.)

The conditions imposed (e.g., type of system, operation, etc.) remain in effect as long as the system is in use. While the construction authorization component of the permit is of limited duration, conditions effected through the permit are not. Therefore, even after construction, there is a permit in effect which may be the subject of revocation.

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[2] The fact that Lane County issued the permit under contract to DEQ does not affect its validity. An agency is not authorized to act contrary to its rules, and those who deal with it can not benefit from its doing so. ***Harsh Investment Corp. v. State Housing Division***, 88 Or App 141 (1987). ***See also Georgia Pacific Corp. v. Kight***, 126 Or App 244, 246 (1994); ***Albertson's Inc. v. Bureau of Labor and Industries***, 128 Or App 97,101 (1994)

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DECOMMISSIONING

DEQ has authority here to order that the system be decommissioned. OAR 340-71-185 provides:

OAR 340-71-185 DECOMMISSIONING ... OF SYSTEMS.

(1) The owner shall decommission ... a system when:

(a) A sewerage system becomes available and the building sewer has been connected thereto; or

(b) The source of sewage has been permanently eliminated; or

///

(c) The system has been operated in violation of OAR 340-71-130(13), unless and until a repair permit and Certificate of Satisfactory Completion are subsequently issued therefor; or

(d) The system has been constructed, installed, altered, or repaired without a required permit authorizing same, unless and until a permit is subsequently issued therefor; or

(e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice authorizing same, unless and until a Certificate of Satisfactory Completion or Authorization Notice is subsequently issued therefor.

If the permit is revoked on the basis that it was invalid, subsection (d) becomes applicable and decommissioning may be required.

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CONCLUSION

The sewage disposal system installed on the Compton property violates applicable statutory and regulatory requirements. The permit should be revoked and the system decommissioned.

DATED this 27 day of September, 1996.

Respectfully submitted,

THEODORE R. KULONGOSKI
Attorney General

Larry H. Edelman #89158
Assistant Attorney General
Of Attorneys for DEQ
Department of Justice
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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 1996, I served a true and correct copy of the foregoing DEQ's POST-HEARING MEMORANDUM by the method indicated below, and addressed to the following:

Melvin M. Menegat
Hearings Officer
Employment Department
P.O. Box 1027
Eugene, Oregon 97440
FAX: (541) 686-7565

____ HAND DELIVER
____ U.S. MAIL
____ OVERNIGHT MAIL
✓ TELECOPY (FAX)

James W. Spickerman
Hammons, Mills, Spickerman
Suite 280
115 W. Eighth Avenue
Eugene, Oregon 97401

____ HAND DELIVER
✓ U.S. MAIL
____ OVERNIGHT MAIL
____ TELECOPY (FAX)

L. Edelman

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BEFORE THE DEPARTMENT OF
ENVIRONMENTAL QUALITY
OF THE STATE OF OREGON

RE: Township 18S, Range 4W, Section 19, Tax Lot 1401, Tax Map 18-04-19, Lane County	)	PROPERTY OWNER'S MEMORANDUM
ON-SITE SEWAGE DISPOSAL SYSTEM OF JOHN COMPTON	)	

A. Factual Background and Introduction

Pursuant to statute and administrative rule, Lane County has been designated as agent by the Department of Environmental Quality to approve domestic waste-water disposal systems. In 1995 Mr. Compton applied to install a sand-filter septic system on his property. The Lane County Sanitarian, as agent for Department of Environmental Quality, determined the site was appropriate and adequate for such a system and granted a permit to install that system. On September 18, 1995, pursuant to administrative rule and ORS 454.665, the County Sanitarian signed the Certificate of Satisfactory Completion which confirmed that the system was correctly installed. There is in place a system on the property and no permit is now pending or in effect. The existing system is presently used only on weekends.

B. DEQ Action

On June 10, 1996, Greg Farrell, On-Site Manager, Western Region of DEQ, issued a letter purporting to revoke the Lane County permit. The letter acknowledges that the "system was installed under the authority of an installation permit number 95-014 issued by Lane County Environmental Health which administers the OSSD program under contract with the Oregon Department of Environmental Quality (DEQ) in Lane County." The stated basis for the purported revocation is that the site was not appropriate for a sand-filter system and that the permit was issued in error by Lane County.

C. Legal Basis for Revocation

The Department of Environmental Quality seeks to revoke the permit pursuant to OAR 340-14-045 entitled "Suspension or Revocation of a Permit." Subsection (1) of that rule states, in part:

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Attachment 7 - 5 pages

> "In the event that it becomes necessary for the Department to suspend or revoke a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application or any other cause, the Department shall notify the permittee by registered mail of its intent to suspend or revoke the permit. Such notification shall include the reasons for the suspension or revocation."

None of the specified grounds for revocation of a permit are applicable here and the stated ground, that the permit should not have been issued by DEQ's agent, is not similar to the other stated causes for permit revocation. The language "or any other cause" should be interpreted to only include causes of a similar nature to those stated.

This section is only the general procedure for revoking permits issued by DEQ. Where a DEQ permit is subject to suspension or revocation there is a specific substantive section setting forth specific grounds for the action. For example, OAR 340-71-167(14) makes such a provision for WPCF permits, which are of an ongoing nature. There is no similar provision for the general permit for installation of a sewage disposal system.

Even if the above section could be interpreted to allow as an unspecified cause for revocation the Director's determination that a permit should not have been issued, the revocation would have to take place after issuance of the permit to construct the system but before the system is completed and a Certificate of Satisfactory Completion has been signed by the County Sanitarian. Once the Certificate of Satisfactory Completion is in place, the permit to construct the system is of no import.

D. <u>Decommissioning the System</u>

The letter of June 10, 1996, states that as a result of the inappropriate approval of the system "the Department must proceed with permit revocation procedures and request decommissioning of the system as prescribed by Oregon Administrative Rule (OAR) 340-71-185." The cited section bears no relationship to the provision in the administrative rules of OAR 340-14-045 for revoking a permit for a system. There is no provision under this section concerning revocation of a permit that authorizes or requires decommissioning of a system. This is further indication that the section pertaining to revocation of a permit is inapplicable here. A copy of OAR 340-71-185 "DECOMMISSIONING OF SYSTEMS" is attached hereto.

None of the grounds for decommissioning a system are applicable to the system at issue here. As stated above, even if there was a basis, the process of permit revocation is irrelevant to decommissioning. The only provision for the process of compelling decommissioning by an owner appears to be that provided by statute. ORS 454.645 provides that DEQ may petition for a mandatory injunction requiring that use of a system cease or that a system be corrected to prevent a health hazard. There is no specific administrative rule that provides for a process to compel the decommissioning of a system.

E. Appropriateness of this Site for a Sand-Filter System

Although DEQ's attempt to decommission the system is not appropriately founded upon a claim that the site where the system was built does not meet the criteria for the type of system installed, the property owner will show that even that factual claim by DEQ is in error.

F. Conclusion

DEQ herein attempts to revoke a permit to install a system where the system has already been installed and a Certificate of Satisfactory Completion has been issued. Furthermore, the DEQ seeks decommissioning of the system through a means that is not available by administrative rule or statute.

Respectfully submitted,

HAMMONS, MILLS & SPICKERMAN

By: _____
JAMES W. SPICKERMAN, OSB #68158
Attorney for Property Owner
John Compton

JWS:ccc
Enc.

(b) The inspection has been conducted by the Agent and a Certificate of Satisfactory Completion has been issued; or

(c) A Certificate of Satisfactory Completion has been issued by operation of law where the inspection has not been conducted within seven (7) days of notification of completed installation.

(5) Failure to meet requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice on the site, constitutes a violation of ORS 454.605 to 454.745 and this division .

(6) No person shall connect to or use any system, completed on or after January 1, 1974, unless a Certificate of Satisfactory Completion has been issued for the installation, or deemed issued by operation of law as provided in ORS 454.665(2).

(7) Unless otherwise required by the Agent the system installer shall backfill (cover) a system within ten (10) days after issuance of a Certificate of Satisfactory Completion for that system.

(8) A Certificate of Satisfactory Completion shall be valid for a period of five (5) years , for connection of the system to the facility for which it was constructed. After the five (5) year period, rules for Authorization Notices or Alteration Permits apply, as outlined in OAR 340-71-205 and 340-71-210.

(9) Denial of a Certificate of Satisfactory Completion may be appealed in accordance with ORS 183.310 and OAR Chapter 340, Division 11.

OAR 340-71-185 DECOMMISSIONING OF SYSTEMS.

(1) The owner shall decommission a system when:

(a) A sewerage system becomes available and the building sewer has been connected thereto; or

(b) The source of sewage has been permanently eliminated; or

(c) The system has been operated in violation of OAR 340-71-130(13), unless and until a repair permit and Certificate of Satisfactory Completion are subsequently issued therefor; or

(d) The system has been constructed, installed, altered, or repaired without a required permit authorizing same, unless and until a permit is subsequently issued therefor; or

(e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice authorizing same, unless and until a Certificate of Satisfactory Completion or Authorization Notice is subsequently issued therefor.

(2) Procedures for Decommissioning:

(a) The tank(s), cesspool or seepage pit shall be pumped by a licensed sewage disposal service to remove all septage;

(b) The tank(s), cesspool or seepage pit shall be filled with reject sand, bar run gravel, or other material approved by the Agent, or the container shall be removed and properly disposed;

(3) If, in the judgment of the Agent, it is not reasonably possible or necessary to comply with subsections (2)(a) and (2)(b) of this rule, the Agent may waive either or both of these requirements provided such action does not constitute a menace to public health, welfare or safety.

340-71-195 UPGRADING DISPOSAL SYSTEMS.

When upgrading systems which approximate a pit privy and gray water discharge to the surface or to a pit, system repair rules (340-71-215) shall apply, provided:

(1) The system serves an occupied dwelling; and

(2) The system and dwelling were constructed prior to January 1, 1974.

340-71-200 PRIOR CONSTRUCTION PERMITS OR APPROVALS.

(1) All construction permits and written approvals issued prior to January 1, 1974, expired by rule of the Commission on July 1, 1976, unless they met all requirements of OAR 340-71-015(8) and were converted to Department construction permits prior to that date.

(2) Converted permits required system construction prior to July 1, 1980. Any prior approvals or prior permits failing to meet the two (2) deadline dates above are void.

(3) All sites now proposed for on-site systems must meet appropriate requirements of these rules.

EXHIBIT 1

Oregon

June 10, 1996

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

WESTERN REGION
Roseburg Branch Office
725 SE Main St.
Roseburg, OR 97470
(541) 440-3338

Mr. John M. Compton
2990 Kinney Loop
Eugene OR 97408

CERTIFIED MAIL
Z 710 387 875

RE: **Township 18S, Range 4W, Section 19, Tax Lot 1401**
Tax Map 18-04-19, Lane County

Dear Sir:

The appropriateness of the installation of the on-site sewage disposal system (OSSD) system on your property (described above) was questioned as a result of a 401 Water Quality Certification Request required by the Federal Clean Water Act before a permit may be issued to put fill in a wetland. The system was installed under the authority of an installation Permit #95-014 issued by Lane County Environmental Health which administers the OSSD program under contract from the Oregon Department of Environmental Quality (DEQ) in Lane County.

On April 29, 1996, representatives of the DEQ met with you at the above-described property. DEQ representatives who took part in an inspection and evaluation included Bijan Pour, Soil Scientist, Portland; Daryl Johnson, On-Site Specialist, Eugene; Dewey Darold, On-Site Specialist, Portland; and Greg Farrell, Manager of the OSSD Program in the Department's Western Region. Enclosed is a copy of the Department's site suitability report concerning the conditions which your conventional sand-filter treatment and disposal system was permitted by Lane County to be installed. Based on what was found during that inspection, it is the conclusion of the Department that the approval for the OSSD system and the permit which authorized construction and installation of the OSSD system were issued in error by Lane County. As a result, the Department must proceed with permit revocation procedures and request decommissioning of the system as perscribed by Oregon Administrative Rule (OAR) 340-71-185.

It is the Department's conclusion that the site where the sand-filter disposal system was built does not meet the criteria for the installation of a conventional sand-filter system, standard system, or capping fill system as prescribed in Oregon Administrative Rules (OAR) Chapter 340, Division 71, Sections 150(4)(b), 220, 260, 265, and 290.

Specifically, for a sand-filter disposal field installation on relatively level ground, OAR 340-71-290(3) requires that (a) The highest level attained by a temporary water table to be twelve (12) inches or more below ground surface. For a standard system the effective soil depth must be a minimum of 30 inches from the ground surface and the seasonal

Attachment 8 - 42 pages

water table must be 24 inches or greater below the ground surface as required by OAR 340-71-220. Capping fill systems require a minimum of 18 inches of effective soil depth and a six-inch separation between the bottom of the trench and the seasonal ground water (OAR 340-71-265). Ground water levels are predicted on the basis of "Conditions Associated with Saturation" or drainage mottles as defined in OAR 340-71-100(28). "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water, air, and grouth of plant roots." [(OAR 340-71-100(50)].

Our findings conclude that there was virtually no effective soil depth and that conditions associated with saturation were observed at or near the ground surface as displayed by the 10 YR 3/2 / 4/3 mottles in the 10 YR 4/1 / 3/1 matrix of the top ten (10) inches of silty clay soil horizon and below by the 10 YR 4/1 with 7.5 YR 4/6 mottles in the clay soil horizon (refer to attached soil description and field worksheet). Visible ground water was nine (9) inches below the natural ground surface.

OAR 340-71-260 requires that unless otherwise noted, all rules pertaining to siting, construction and maintenance of standard subsurface systems (OAR 340-71-220) apply to alternative systems. OAR 340-71-220(1)(i) requires that all setbacks listed in Table (1) be met. Table 1 requires that the minimum separation distance between a sewage disposal area including the replacement area and an unpiped intermittent stream be 50 feet. As depicted on the enclosed site sketch, at least one measurement shows that part of the installed disposal field is within 30 feet of a seasonal water way. The replacement area is supposed to be between the "channel" and the disposal field.

OAR 340-71-265(1)(f) requires that capping fills are limited to soils that have a soil texture of "no finer than silty clay loam." The soil at your site is finer. It is a silty clay over a clay.

OAR 340-71-150(4) requires that each lot or parcel must have sufficient usable area available to accommodate an initial and replacement system that meets OAR 340-71. The conditions at your site as identified above for the initial system are the same for the replacement.

Oregon Revised Statute (ORS) 183.341 provides that all state agencies must adopt rules of procedure to be used in contested case hearings. ORS 183.310 provides that a contested case be offered when the agency intends to revoke a permit. OAR 340, Division 14, Section 45 is the specific rule adopted by the Environmental Quality Commission (EQC) for the "Suspension or Revocation of a Permit." This rule provides that the Department can revoke a permit for cause. The causes have been outlined above and may not be all inclusive.

The revocation of your permit (Lane County #95-014) will become effective 20 days from the date of mailing of this notice unless within that 20 days you request a hearing before the EQC or its authorized representative. The request for hearing must be made in writing to the Department's Director and must state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.

The request for hearing must be addressed to:

Mr. Langdon Marsh, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland OR 97204-1390

It must be mailed within 20 days of the certified mailing of this letter.

If you have any questions or if I can be of any help, call me at (541) 440-3338, extension 227.

Sincerely,

Greg Farrell
On-Site Manager, Western Region

GF:cdc
Enclosures

cc: Lane County Environmental Health
Steve Greenwood, Eugene
Bijan Pour, Portland
Dewey Darold,
Sherman Olson, Portland
Martin Loring, NW Portland
Daryl Johnson, Eugene
Michael Downs, Portland
Larry Edelman, DOJ
Risk Management-

Site Visit and Evaluation Report

Date: 4, 29, 1996

Site Legal Description:

Township 18 South; Range 4 West; Section 19; Tax lot 1400 & 1401

Owner: John Compton

On April 29, the above mentioned property was visited. Bijan Pour and Dewey Darold, the Headquarters staff, accompanied Daryl Johnson and Greg Farrell, the DEQ Western Region staff.

No test pits were available at the time of visit. Thus the soil investigation was done by auguring. three Auger holes were made as depicted on the map; two adjacent to the drainfield area and one in the filled trench area.

The soil description in hole 1 was as follows:

0 - 10 inches: Silty Clay; dark gray to very dark gray 10 YR 4/1 to 3/1 matrix with few fine faint very dark grayish brown to brown 10 YR 3/2 to 4/3 mottles; fine moderate granular to subangular blocky; very sticky and very plastic; common fine and medium roots.

10 - 24 inches: Clay; dark gray 10 YR 4/1 matrix with common medium distinct strong brown 7.5 YR 4/6 mottles. Very sticky and very plastic.

There was seepage of water at the depth of 9 inches; within approximately 30 minutes, the auger hole was filled with water to the depth of 11 inches.

Auger hole 2 was similar to hole 1.

The site has a slope of 0 - 2% with some undulation.

Examination of the relatively undisturbed areas within the site revealed presence of mossy oak groves with some rash and grassy undergrowth, indicative of some hydrophytic species.

Ponded water was observed in several locations within the site. There were active drainage channels surrounding the drainfield and throughout the site.

The system was installed by the owner and consists of an intermittent sand filter with a capping fill for the disposal trenches. The drainfield area was distinctly raised from the rest of the terrain due to the fill . It appeared that the gravel portion of the trenches were installed in the fill at a depth of 12 to 18 inches.

A 30- inch hole was dug with a shovel in center area of the drainfield. The depth of the fill was not readily apparent; the mean depth was estimated to be 20 inches. Free water was observed at a depth of 28 inches from the surface of the fill.

Inspection of the distribution box indicated slow flow into the box. According to the owner, the system is currently used only on weekends with no laundry use.

Inspection of the septic tank indicated that the tank content had a "watery" consistency somewhat not typical of sewage. This may be an indication of infiltration of groundwater into the tank.

General Conclusion:

Observation of the soil, vegetation and land features at the site indicate poor drainage and presence of a water table periodically at or close to the soil surface.

SITE EVALUATION FIELD WORKSHEET D. Johnson, B. Pour

Tax Reference: Twp. 18, R04, Sec. 19; T.L. 1400-1401 Evaluator: G. Farrell, D. Darold

Property Owner: John Compton Date: 4-29-96 Parcel Size:

	DEPTH	TEXTURE	SOIL MATRIX COLOR AND MOTTLING (NOTATION), % COARSE FRAGMENTS, ROOTS, STRUCTURE, LAYER LIMITING EFFECTIVE SOIL DEPTH, ETC.
Pit 1	0-6	SiC	10YR 4/1 matrix, few fine faint mottles 10YR 3/2-4/3
			common fine-med. roots, fine SBK, weak consist.
	6-10	SiC	10YR 3/1-4/1 matrix, few fine faint mottel 10YR 4/3
	10-24	C	10YR 4/1 matrix, many coarse prominent mottles 7.5YR 4/6
			groundwater seeping at 9". free water at 11".
Pit 2			
			pit 2 similar to pit 1
Pit 3			
			Note: 30" hole dug with shovel in center area
			of drainfield; depth of fill not readily apparent,
Pit 4			approx. 20". free water at 28" from surface
			of fill (appears to be groundwater)

Landscape Notes: wetland, hydrophyllic plants, mossy oak groves,

Slope: 0-2, Variable undulating Groundwater Type: Temporary

Other Site Notes: ponded water and active drainage channel surrounding drainfield and throughout site.

SYSTEM SPECIFICATIONS

Peak Daily Flow: _____ gpd Average Daily Flow: _____ gpd

1. Initial System: _____ Disposal Facility: _____ (linear feet/square feet) Max. Depth: _____ inches
2. Replacement System: _____ Disposal Facility: _____ (linear feet/square feet) Max. Depth: _____ inches

Special Conditions:

Notes: disposal Trenches installed as capping fill design. It appeared that gravel portion of Trenches were installed in fill. Fill approx. 12-18" in depth.

Inspection of dist. box indicated slow flow into box. System currently used only on weekends / no laundry use.

Inspection of septic Tank: appeared to be excessive water / groundwater? in Tank. - not Typical sewage. (Tank leaking / infiltration?)

PLOT PLAN ON REVERSE SIDE

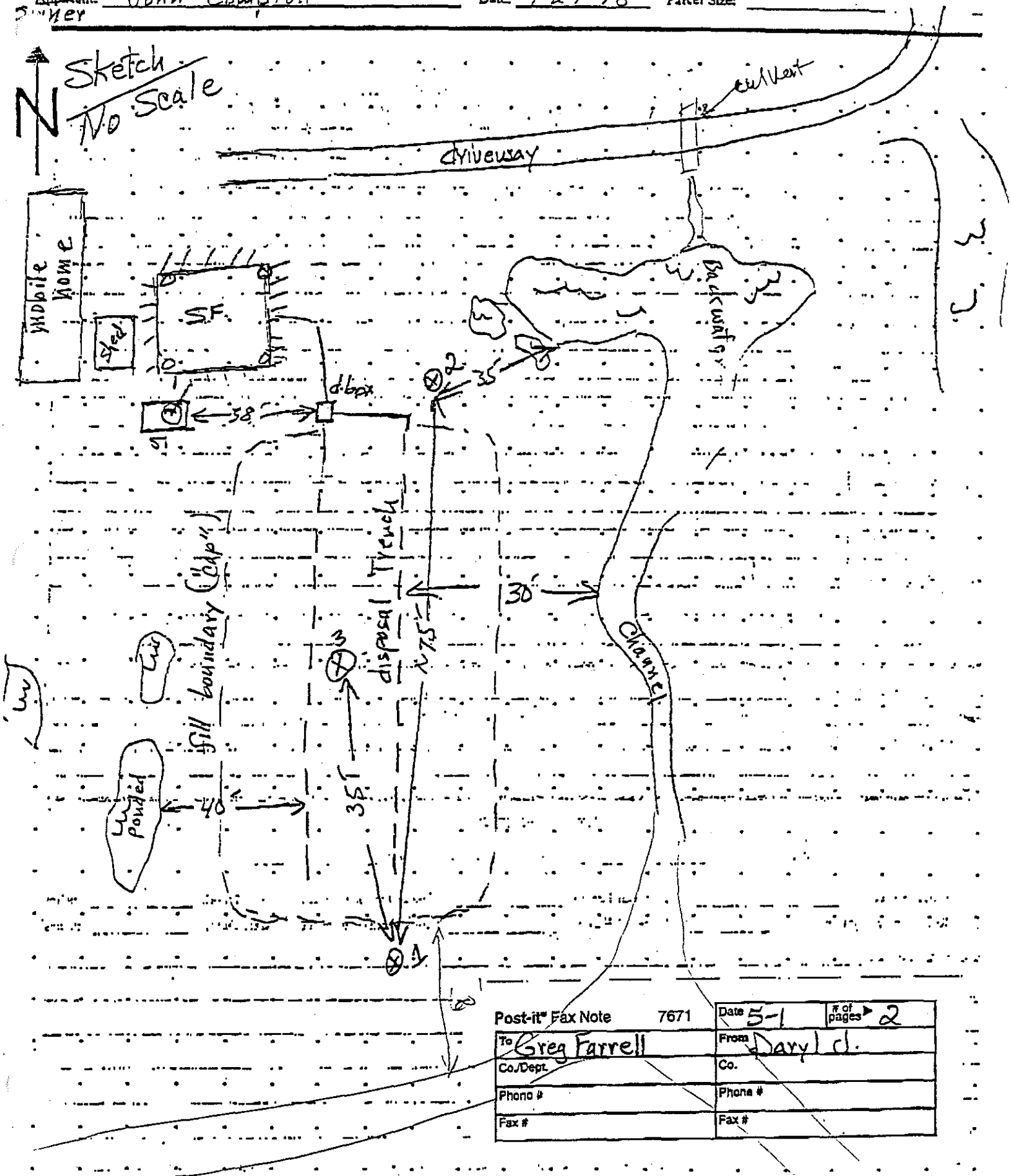
IW\TABLE\WH4933.S (10/91)

Sketch →

Tax Reference: 18-4-9; TL. 1400-1401 Evaluator: G. Farrell, D. Darold

Applicant: John Compton Date: 4-29-96 Parcel Size:

Owner



Post-it® Fax Note 7671	Date 5-1	# of pages ▶ 2
To Greg Farrell	From Daryl d.	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

Oregon
DEPARTMENT OF
ENVIRONMENTAL
QUALITY
WESTERN REGION
ROSEBURG BRANCH OFFICE
725 SE Main St.
Roseburg OR 97470

CERTIFIED

Z 710 387 875

MAIL

EUGENE OR 974 PM 06/10/96

USA 2.90

Mr. John M. Compton
2990 Kinney Loop
Eugene OR 97408

NV
6-11-96

97408-5023 06

EXHIBIT 2.

Department of Environmental Quality
811 S.W. Sixth Ave.
Portland, Or. 97204-1390

June 17, 1996

June 14,1996

Subject: Revocation of Lane County Permit # 95-014

Att: Mr. Langdon Marsh,

I request a contested case hearing, concerning the revocation of a Lane County Permit # 95-014. I was issued a certificate of satisfactory completion by Lane County on 10-09-95 showing that the sand filtration system I was required to install completes all governmental requirements. A final permit was issued on 10-17-95. The sanitation permit was issued by Lane County Sanitation Dept. under the authority and agreement that Lane County has with DEQ. According to the agreement; the county shall issue a permit only if it finds that the proposed construction will be in accordance with the rules of the DEQ. This agreement also gives the agent freedom to use its oun discretion. I worked very closely with Lane County Sanitation Dept. to carefully follow all the requirements requested.

The DEQ and Corps was notified of a joint fill permit being issued by the State Lands Division in March 1995. If there was an objection to the use of .18 of an acre they should have stopped this project before this project was completed. (Stan Petrasek of Lane County Sanitation Dept. said they were not aware of the need for a 404 permit being required and neither was I). I feel at this point it is a communication problem with DEQ, Corps and Lane County internally not mine. As I have clearly met all requirements by Lane County and the State Lands Division.

In 1995 test holes were inspected by Bill Martin of Lane County Sanitation Dept. This was after a normal year of rainfall. There was no water in either of the test holes. He approved two of the test holes.

The perch water level at the time of the on site inspection by DEQ was unusually high, due to recent flooded conditions that effected the entire state of Oregon. The most damaging flood seen in the last 100 years. There was erosion around the trees and near the drainfield that left puddling. If DEQ continues with the revocation of my system, they should also be revoking others that are worse than mine. I would like to make a request for information on any other cases that have been revoked after satisfactory completion has been met and permit has been issued.

Sincerely,

John Compton

John Compton
2990 Kinney Loop
Eugene, Or. 97408
(541) 342-6857

EXHIBIT 3

HAMMONS, MILLS & SPICKERMAN
ATTORNEYS AT LAW
EIGHTH & OLIVE BLDG.
115 W. 8TH AVE., SUITE 280
EUGENE, OREGON 97401

TERENCE J. HAMMONS
DAVID B. MILLS
JAMES W. SPICKERMAN, P.C.

PHONE (541) 484-1216
FAX (541) 484-5326

June 25, 1996

MR. LANGDON MARSH, DIRECTOR
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S.W. SIXTH AVENUE
PORTLAND, OR 97204-1390

Re: Township 18S, Range 4W, Section 19, Tax Lot 1401, Tax Map 18-04-19, Lane County Revocation of Permit of John M. Compton

Dear Mr. Marsh:

This letter is to supplement that of my client dated June 14, 1996, the permittee herein.

I wish to confirm Mr. Compton's request for a contested case hearing. It is our position that there is not legal basis to revoke the permit lawfully issued by the authorized representative of DEQ, Lane County.

Please direct all correspondence to this office.

Very truly yours,

HAMMONS, MILLS & SPICKERMAN

James W. Spickerman

JWS:ccc
cc: John M. Compton

EXHIBIT 4

Oregon

EMPLOYMENT DEPARTMENT

August 23, 1996

James W. Spickerman
Attorney at Law
115 W. 8th Avenue, Suite 280
Eugene, Oregon 97401

Larry Edelman
Assistant Attorney General
1515 SW 5th, Suite 410
Portland, Oregon 97201

Eugene Hearings Section
P.O. Box 1027
Eugene, Oregon 97440

Telephone (541) 686-7960
Fax (541) 686-7565

Re: Township 18S, Range 4W, Section 19, Tax Lot 1401
Tax Map 18-04-19, Lane County.
Revocation of On-site Sewage Disposal System permit #95-014
issued to John Compton

The contested case hearing in the above entitled matter has been scheduled as follows:

Date: September 10, 1996
Time: 10:00 a.m. PDT
Location: The location of hearing will be determined at the prehearing conference.

A telephone prehearing conference is scheduled for August 27, 1996 at 10.00 a.m. The parties will be called at the time for the prehearing conference and conferenced together. All participants will be able to speak to and hear each other. The parties will be called at the telephone number following their name.

James W. Spickerman, Attorney (541) 484-1216
Larry Edelman, Assistant Attorney General (503) 229-5725

If you have questions about the hearing, please call me at (541) 686-7960.

Melvin M. Menegat

Melvin M. Menegat
Hearings Officer

D236Com

cc. Gregg Farrell, Western Region DEQ

John A. Kitzhaber
Governor

875 Union St. NE
Salem, OR 97311
(503) 378-8420

EXHIBIT 5.

BLDG INSPECTION TRACKING RECORD ISSU DATE: 080

PERMIT #: BP181195 NAME: COMPTON, JOHN , PHONE: 342 6
MAP-TL #: 1804190001401 SITE: 85940 PLAYWAY RD., EUGENE
PROJECT : MH:PRIVATE LOT INSPECTRS: CAL CAL WM
CONTRACTR: COMPTON, JOHN

	INSPECTIONS	APPVL	NO APPVL	DATE APPVD	INSPR	COMMENTS
	UNDERGRD PLMB		X	091295	CAL	
	OTHER SPEC	A		091395	CAL	
	PLACEMENT	X		091395	CAL	
	UNDERGRD PLMB	X		091395	CAL	
	FINAL PLMB	X		091395	CAL	
	FEEDER -ELECTRL	X		091395	CAL	
	FINAL ELECTRIC	X		091395	RCS	
	FINAL SDS	X		091895	WM	
	SKIRTING		X	101095	CAL	
	FINAL BLDG	P		101095	CAL	PARTIAL
	SKIRTING	X		101795	CAL	
	FINAL BLDG	X		101795	CAL	

EXHIBIT 6

Lane County

Date 10/9/95

RE: Citizen Service - Septic Tank and Disposal Field.
TWP. 18 R. 04 SEC. 19 TAX LOT 1400
1401

Dear Citizen:

You have just acquired a treatment system to dispose of your domestic waste water, as authorized by construction permit # 1811-95 . The design and installation activities complete governmental requirements to assure that the system was installed in accordance with State requirements.

The length of time your system will function properly is equally dependent on the attention and maintenance you provide. The enclosed pamphlet, provided by Lane County, will assist you in performing the types of maintenance that will minimize premature system failure.

The enclosed diagram is specific for the system serving your structure and depicts your waste disposal system. To facilitate cleaning and maintenance, the homeowner should have a diagram of the septic tank system showing location of the house, septic tank manholes, piping and soil absorption system. We recommend that this information remain with this structure and that it be presented to the new owner should you sell in the future.

We support healthy and environmentally sound waste disposal methods through proper design and installation. Through the use of this pamphlet, we hope you will provide the types of maintenance necessary for proper operation. Do not hesitate to contact this office at 687-4480 if you have any questions or require assistance related to your waste disposal system.

Sincerely,

Stanley E. Petrasek
MANAGER

ENVIRONMENTAL HEALTH DIVISION

SEP:rm
ENCLOSURES

DEPARTMENT OF HEALTH AND HUMAN SERVICES / ENVIRONMENTAL HEALTH / 125 EAST EIGHTH, EUGENE, OREGON 97401
TELEPHONE: VOICE (503) 687-4051, TDD NON-VOICE (503) 687-3896 / FAX (503) 984-7459

Installer ___________ (Title as shown on DEQ license)
Telephone ___________
License No. ___________
Bonding Company ___________
___________ Date ___________
(Signature of Licensee)
If Installed by Owner— *John Compton* Date 9-12-95
(Signature of Owner)
Applicant's Name & Address
JOHN COMPTON
2990 KINNEY LOOP
EUGENE, OR. 97408

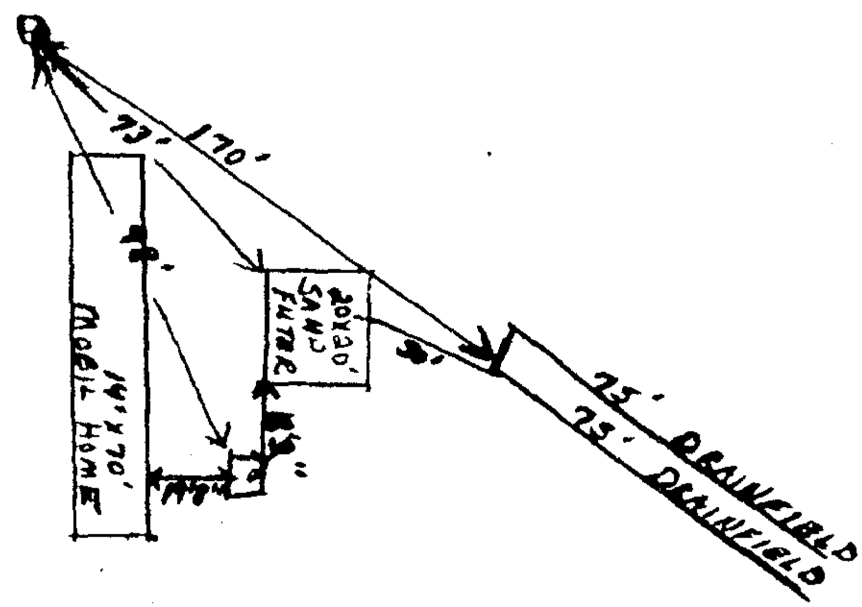
form c55-11

MUST BE IN BLACK INK

Permit No. 1811-95 Twnshp. 18 Range 04 Section 19 Tax Lot 17004 1401
Standard System ☐ Alternative System ☒ (Specify Type) SAND FILTER W/CAP
Job Location (Street Address) 85946 PLAYWAY RD, EUG
Supdivision/Partition # ___________ Parcel ___________ Lot 1401 Block ___________

DETAIL SYSTEM PLOT PLAN AS CONSTRUCTED

Scale 2" = 75'



VICINITY MAP

N

USE BLACK INK ONLY

FOR INSTALLER'S USE: Trench Depth 24" Gravel Depth Below Tile 6"
Tank Capacity 1500 gal. Manufacturer WILLAMETTE GRAYSTONE
Measured Distance from Well to Tank 98' From Drainfield 170' Total Length of Lines 150'
COMPLETE THE FOLLOWING IF A PUMP WAS USED ON THIS INSTALLATION:
I (installer's name) JOHN COMPTON certify that a (Mfg.) ORENCO (Model No.) 30 OSI 05 HH-3 STAGE Pump
and Mercury Float Switch (Mfg. and No.) [illegible] ORENCO MODEL C have been installed with this sewage installation.
Signature *John Compton* Date 9-12-95

FOR SANITARIAN'S USE ONLY: ☒ System Approved ☐ System Disapproved ☐ Needs Correction
COMMENTS: ___________
☐ System Corrected Date ___________
System Capacity 450 gal./day Signature *[signature]* Date 9/12/95

INSTALLATION RECORD & CERTIFICATE OF SATISFACTORY COMPLETION When signed by the County Sanitarian this certificate is evidence as per ORS 454.665 of satisfactory completion of a subsurface sewage disposal system at the above location

To request inspection, return all three (3) copies of this form to: Lane County Environmental Health Services located in the basement of the Public Service Building, 125 E. 8th Avenue, Eugene, OR 97401.

MEMORANDUM OF AGREEMENT

EXHIBIT 7

BETWEEN

THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE

COUNTY OF LANE

Pursuant to authority granted by Oregon Revised Statutes 454.725, this Memorandum of Agreement is made and entered into as of the 8TH day of JUNE, 1981, by and between the Department of Environmental Quality of the State of Oregon, acting by and through its Director, hereinafter called the "Department", and the County of Lane, acting by and through its _____, hereinafter called the "County". This Memorandum of Agreement supercedes one entered into by the same parties on February 23, 19 76.

WITNESSETH:

WHEREAS, the Department and the County are mutually desirous of maintaining a high quality environment and of cooperating with each other for that purpose; and

WHEREAS, the laws of the State of Oregon specify that any person may request an evaluation report on any proposed on-site (subsurface or alternative) sewage disposal system for a single lot, partitioning or subdivision, or on any proposed repair, alteration or extension to an existing on-site sewage disposal system or part thereof; and

WHEREAS, the laws of the State of Oregon specify that no person, without first obtaining a permit therefor, shall construct an on-site sewage disposal system or part thereof, or without first obtaining a Certificate of Satisfactory Completion, shall operate or use an on-site sewage disposal system or part thereof; and

WHEREAS, in order to provide service to applicants as close to home as possible and utilize effectively and efficiently the resources of the Department and County:

NOW THEREFORE, the Department and County agree as follows:

1. The County shall maintain adequate personnel and resources to, and shall, receive and process applications for evaluation reports and permits for all on-site sewage disposal systems proposed for construction, alteration, repair, or connection within the County in accordance with the provisions of ORS 454.605 through ORS 454.780, and OAR 340-71-100 to 71-600, as now or hereafter amended, utilizing procedures approved by the Department. The Department shall maintain adequate personnel and resources to carry out its commitments under this contract. The Department shall supply the County with copies of each revision of the rules and all administrative forms required by the Department, copies of internal management directives, procedural memoranda and recommended administrative forms. The County may print additional copies or order them from the Department at cost.

2. Designated County personnel shall serve as the Agent of the Department, except where the involvement of Department staff is expressly specified in Environmental Quality Commission (hereinafter called "EQC") rules or this Agreement. The Department shall upon request provide interpretive assistance to the County. Any unresolved differences of interpretation of EQC rules or this Agreement between the County and the Department shall be transmitted to the Director of the Department whose decision shall be final.

3. The Department shall issue evaluation reports and permits for experimental systems. The County shall assist applicants for experimental systems and shall assist the Department upon request in evaluation of experimental systems applications. As negotiated outside the scope of this agreement, the County shall assist the Department in monitoring experimental systems.

4. The County shall adopt fee schedules in accordance with ORS 454.745, not to exceed costs for efficiently conducted minimum services. All fees for services provided by the County for on-site systems shall be collected by and shall remain with the County to defray program expenses. All fees for services provided by the Department shall be collected and retained by the Department, to defray program expenses.

In the event the legislature, in the Department's budget process, approves a surcharge for certain on-site systems activities, the County shall collect that surcharge in accordance with the Department's fee surcharge schedule and forward to the Department quarterly.

5. The County shall collect from applicants the required fees pursuant to the County's fee schedule. The County shall keep a complete and accurate record of activities performed and of the fees collected, and quarterly, by the 15th of the succeeding month shall forward to the Department a copy of the record on forms provided by the Department.

6. If the County becomes unable to perform the responsibilities set forth in this Memorandum of Agreement, and the Department assumes all or a portion of these responsibilities, all or an appropriate proportion, as determined between the County and the Department, of the fees collected shall be forwarded to the Department quarterly.

7. Following the receipt of a completed evaluation report application and specified fee, the County shall conduct a site evaluation and issue a report, pursuant to ORS 454-655(6) and 454.755(1)(b) and (3) and OAR 340-71-150, as now or hereafter amended.

8. Following the receipt of a completed application for a permit, the County shall determine if the proposed construction will be in accordance with the rules of the EQC. The County shall issue a permit only if it finds that the proposed construction will be in accordance with the rules of the EQC.

9. The County, following receipt of notification from a permit holder that construction has commenced, shall inspect it in accordance with rules of the EQC.

10. The County shall accept and process applications for evaluations reports on the adequacy of sewage disposal methods for proposed and existing subdivisions within its jurisdiction, and shall prepare such evaluation reports pursuant to ORS 454.755(1)(c) and 92.090(5)(c). The reports shall be made on forms provided by the Department.

11. The County shall evaluate and prepare a report on existing on-site sewage disposal systems in response to appropriate applications for Authorization Notices, pursuant to OAR 340-71-205, as now or hereafter amended.

12. The County shall cooperate with and assist the Department in enforcing compliance with the provisions of ORS 454.605 through ORS 454.755. The County shall require that within the County, no person shall construct, alter, repair, extend or connect an on-site sewage disposal system without first obtaining a permit from the County and no person shall operate a new, altered, repaired, extended or reconnected on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion or an Authorization Notice, as appropriate, except that existing systems for which a permit is issued to repair, alter or extend may be allowed to operate pending receipt of the Certificate. Whenever a complaint is received or there are reasonable grounds for believing that any on-site sewage disposal system or part thereof is being constructed, operated or maintained in violation of any EQC rule, the County shall make an inspection. The County shall notify each violator verbally and/or in writing of the violation and shall use its best efforts to persuade the violator to make corrections. After the above actions have been exhausted by the County and if the violator has not complied, the County shall transmit the entire file and evidence of the violation to the appropriate regional office of the Department. After acceptance of the referral the Department shall conduct an on-site investigation as deemed necessary by the Department and provide appropriate written notification within 30 days. The County shall cooperate in assisting the Department in reinforcing the local effort with formal and legal enforcement action

by making all inspections, reports, hand delivery of notices and other actions which are requested by the Department.

For clarification, the Department will accept enforcement referrals for installer violations, improper construction methods or materials, and failure of existing systems. The Department will not accept enforcement referrals for situations which also violate local land use, planning, zoning, and/or building ordinances until such violations have been resolved by the County.

In the event future legislation provides for County administration of enforcement activities, this agreement may be amended to reflect negotiated county enforcement options.

13. The County shall maintain documentation of noncompliance of persons performing Sewage Disposal Services and shall transmit said documentation to the Department.

14. The County shall inspect upon request of the Department or Licensee, pumping equipment of persons licensed, or proposed to be licensed, to perform Sewage Disposal Services under ORS 454.695, and engaged, or to be engaged, in pumping out septic tanks, other treatment facilities or nonwater-carried waste disposal facilities.

15. The County and the Department shall negotiate appropriate Rural Area zoning designations, pursuant to EQC rules for County administration of rural area variances.

If in the negotiations the County does not to the Director's satisfaction:

a. Designate appropriate rural areas or

b. Have available manpower or staff meeting minimum educational and experience standards to conduct the program;

then the Rural Areas variance program will not be an option for the County.

16. The County shall assist those making application and upon request by the Department shall review and make recommendation on applications for variances from the on-site sewage disposal rules, and shall participate in inspections and hearings as requested by the Department.

If the Department grants the variance, the County shall issue the permit and shall conduct the construction completion inspection and issue the Certificate of Satisfactory Completion. The Department shall reimburse the County on a quarterly basis the fee for a construction permit contained in OAR 340-71-140 per granted variance to assist the County with defraying County costs in performing the duties required by these provisions.

17. Program entry level personnel hired by the County after July 1, 1981, to perform services under this contract shall meet the minimum educational qualifications for the State of Oregon, Personnel Division classification "Waste Management Specialist" No. C6408; except those personnel employed to do pre-cover inspections only shall meet minimum qualifications agreed to by the Department and the County.

In the event the County is unable to hire personnel with the qualifications of WAste·Management Specialist, the Director may authorize hiring of someone who qualifies for registration as a Sanitarian or Sanitarian Trainee under ORS 700, if the County provides a training program to qualify that person for Waste Management Specialist.

18. The County shall notify persons whose application for a site evaluation or construction permit has been denied of the opportunity for Department review of the denial, provided the denial was not based on local land use, zoning, planning, or building ordinances.

Following receipt of a completed application for review, the Department shall conduct the review within 30 days.

19. The Department shall provide required training programs to include at least one (1) annual field workshop in each region of the state; one (1) annual program conference for all personnel in the state to give opportunity to learn from each other and hear from selected speakers; other training programs the Department determines to be necessary. All County program personnel shall attend the annual field workshop and at least one person shall attend the annual program conference.

In addition, the Department shall seek to assure independent training opportunities are available for program personnel to include geology and soils courses at Oregon State University and other institutions of higher learning. The Department encourages the County to establish a budget, to assist County employes in acquiring the above training.

20. The Department shall provide the following program support services to counties, upon request:

a. Rule interpretation.

b. System Plan Review.

c. Technical assistance.

21. The Department shall perform County program evaluations and provide reports as follows:

a. Periodically - annually, during the month of January the Department's Regional Office shall conduct a program evaluation and provide Lane County with a written report within 30 days. In the event significant improvements or program modifications are needed to comply with Oregon Administrative Rules, Chapter 340, Division 71 or this memorandum of agreement, the County shall provide a written response within 30 days upon notification from the Department and provide a time schedule to implement such improvements or modifications.

b. Formal program audit on a biennial basis.

22. The Department shall evaluate materials used in on-site systems within the State of Oregon, and provide a list of approved materials to the County.

23. Except for those activities delegated below to the County under OAR 340-71-120, as now or hereafter amended, the Department shall accept and process applications for large systems site evaluations

and construction permits for sites within the County. The following activities involving large systems are hereby delegated to the County:

a. OAR 340-71-120 (1)(b) ; Site evaluations, permit issuance and inspections for systems of 2501 - 5000 gallons

b. OAR 340-71-120 (1)(c) ; Periodic inspections for systems of 5001 gallons or larger

24. The Department and County shall cooperate in sanitary surveys intended to document and eliminate health hazards caused by failing on-site systems. During the annual program evaluation, problem areas shall be evaluated and ranked. If manpower allows, priority surveys shall be scheduled.

25. The Department shall license sewage disposal service applicants and provide to the County a list of licensees on an annual basis. The annual list shall be updated by addendum quarterly.

26. The Department of Environmental Management within Lane County is designated as the Agent for purposes of administering the provisions of this Agreement.

This Memorandum of Agreement may be modified only by written agreement signed by both parties or it may terminated by either party upon 30 day written notice to the other party; provided, however, that if either party shall default in the performance of this Memorandum of Agreement, the other party may terminate it upon written notice thereof being given to the defaulting party.

DEPARTMENT OF ENVIRONMENTAL QUALITY
State of Oregon

By William H. Young
Director

Date 6-8-81

COUNTY OF Lane

By George E Morgan

General Administrative Officer

Date MAY 28 1981

XL41 (1)

APPROVED AS TO FORM
DATE 5-27-81
OFFICE OF LEGAL COUNSEL

Lane County

ENVIRONMENTAL HEALTH
COURTHOUSE/PUBLIC SERVICE BUILDING
125 EAST 8TH AVENUE
EUGENE, OREGON 97401

PRESORTED FIRST CLASS
EUGENE OR JUN-5'96
0.55

EUGENE, OR 974 06/05/96 21:57 DCR 1

BETTY COMPTON
2990 KINNEY LOOP
EUGENE, OR 97408

Oregon

February 2, 1996

Teena Monical
U.S. Army Corps of Engineers
ATTN: CENPP-OP-GP
P.O. Box 2946
Portland, OR 97208-2946

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

The Department of Environmental Quality (DEQ) has reviewed Corps of Engineers permit application 95-111, requesting fill for a driveway, trailer pad, septic system and well in a wetland. The site is located adjacent to Spencer Creek which is part of the Coyote Creek subbasin which feeds Fern Ridge. This basin is on the proposed list of Water Quality Limited streams for fecal coliform and temperature. Wells in this area show high arsenic levels.

The maps as presented are inadequate lacking detail needed for a decision (where is the county road and where are the property boundaries etc). Information is needed on the quality and size of the wetland proposed to be impacted. No alternatives or mitigation are offered.

Wetlands are rarely ameniable to functional septic systems. A favorable site evaluation report and permit for the site is required by the Lane County Enviornmental Health Department prior to approval of infilling for a septic system and drainfield.

Until further information is provided this application is denied without prejudice.
If you have any questions, please contact Barbara Priest at 229-5945.

Sincerely,

Michael Downs
Administrator
Water Quality Division

T:BP.009

cc: Nancy Leibowitz, ODSL (Salem)
Applicant
Sherm Olson, DEQ
Gerry Black, Corps of Engineers

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

Abiqua ENGINEERING Inc.

(503) 391-2864
(800) 286-4661

September 9, 1996

Mr. & Mrs. John & Betty Compton
2990 Kinney Loop
Eugene, Oregon 97408

RE: SITE VISIT ON PROPERTY LOCATED AT 85940 PLAYWAY SECTION 19, TOWNSHIP 18S, RANGE 4W, TAX LOT 1401

Dear John & Betty:

This is in follow-up to the site visit that Dr. Jerry Simonson and I conducted on your property at the above location on September 4, 1996.

The purpose of the site visit was to analyze the soils in the area of the sand filter septic system to determine if there drainage capabilities were adequate for the system. We also looked at the plant species of the subject area to determine if the vegetation in the vicinity of the septic system was hydrophytic (wetland vegetation).

WETLAND CRITERIA

Three mandatory technical criteria are required to be present in an undisturbed natural area before it can be considered wetland under federal jurisdiction. These criteria are hydrophytic vegetation, hydric soils and wetlands hydrology. Hydrophytic vegetation consists of those plant species that have adapted to growing in substrates which are periodically deficient of oxygen due to saturated soil conditions. Five basic groups of vegetation are recognized based on their frequency of occurrence in wetlands. These categories, referred to as the "wetland indicator status" are as follows: Obligate Wetland (OBL) plants are estimated to occur almost exclusively in wetlands (>99%); Facultative Wetland (FACW) plants are estimated to occur 67-99% of the time in wetland; Facultative (FAC) plants occur equally in wetlands and non-wetlands (34-66%); and Facultative Upland (FACU) plants usually occur in non-wetlands (67-99%). If a species is not assigned to one of the four groups described above it is assumed to be an Obligate Upland (UPL) plant, which is estimated to occur almost exclusively in non-wetlands (>99%).

Hydric soils are those that have formed exclusively under wet conditions. Wet conditions are characterized by the following: high water tables, ponding or frequent flooding, or saturation for extended periods during the growing season. In order to be classified as a hydric soil, the soil must be saturated to the surface for at least one week (seven consecutive days) during the growing season. Soil saturation is related to soil drainage class and soil permeability.

ONSITE CONDITIONS

SOILS:

See attached report from Dr. Jerry Simonson.
Note: I also analyzed the soils in the excavated pits, and concur with Dr. Simonson's findings.

VEGETATION:

The majority of the plant species within the area of the sand filter system, and the drain field were determined to be upland species. These species were identified as:

HERBACEOUS:
Annual Rye Grass (lolium multiflorum), Timothy Grass (Pheleum pratenses), Wild Oats (Avena fatua), Orchard Grass (Dactylis glomerata), and Tarweed (Madiva sativa).

SCRUB/SHRUB:
Snowberry (Symphoricarpos albus), Poison oak (Rhus diversiloba), and Service Berry (Amelanchier alnifolia)

OVERSTORY:
Oregon Oak (Quercus garryanna)

The above listed species are all listed by the U.S. Fish and Wildlife's "National List of Plant Species that Occur in Wetlands: Oregon 1988," as Facultative Upland species, or not listed which means they are considered upland species. A few plant species were identified in the area as wetland species, but were not in dominance. Those species are Oregon Ash (Fraxinus latifolia), Annual Rabbits Foot Grass (Polypogon monspeliensis), and Velvet Grass (Holcus lanatus).

CONCLUSIONS

Abiqua Engineering, Inc. (AEI) has determined that the area in the immediate vicinity of the sand filter and drain field is not a wetland, due to the fact that it does not meet the soil and vegetation criteria. The soils were not hydric (see Dr. Simonson's report) and the vegetation in the immediate area was determined by AEI to be of an upland dominance, ie. 12 identified species, 9 of which were upland = 75% upland vegetation.

We hope this gives you the information that you need, and sincerely hope this will help put an end to the headaches you have been subject to in pursuit of obtaining a residence on your property.

Sincerely,
ABIQUA ENGINEERING, INC.

Patrick Thompson

Patrick Thompson
Wetland Specialist

Soil Observations At The John Compton Drainfield Site;
T.L.1400-1401, Sec.19, T18, R4W, W.M., Lane County, Oregon

Investigator: Jerry Simonson (CPSSc - CPSC)
Consulting Soil Scientist Jerry Simonson

Together with Pat Thompson of Abiqua Engineering, Inc., I investigated soils of the drainfield site and the surrounding area on September 4, 1996. The drainfield consisted of two 75 foot drain lines with a capping fill. The designated replacement field is on the east side of the drainfield. The area is on nearly level alluvium along the west side of an unidentified intermittent drainageway that joins Spencer Creek to the south.

Two soil profiles were described from backhoe pits, located at the drainfield site just outside the east and west edges of the capping fill (descriptions attached). Both profiles have fine textured, dark colored surface and subsurface horizons with strong subangular blocky structure and good porosity. Roots are abundant in the upper 20-23 inches, with a few below that depth.

Profile 2 on the east side is not mottled above 18 inches depth and is somewhat poorly drained. The clay layer at 20 inches is strongly restrictive to roots and water movement. Profile 1 on the west side has a stratum of weathered gravelly alluvium at 23 - 36 inches, with strongly restrictive clay below 36 inches depth. The profile is distinctly mottled below 14 inch depth and has a grayish matrix, indicating the soil is poorly drained, although the brownish gravelly layer indicates the profile is not as poorly drained as Natroy soils. Profile 1 is located in a transition between the somewhat higher position of the drainfield with profile 2, and a lower, seasonally ponded spot to the west.

The soils were examined at the north and south sides of the drainfield beyond the capping fill, where the 4-29-96 soil evaluations by the DEQ were reported. These sites showed faint mottling in the surface 10 inches, grayish matrix colors, and fine textures approximately as reported by the DEQ.

I conclude from the soil examinations, that the drainfield is situated on a perceptably higher area with somewhat poorly drained soils - after discounting the obvious convexity of the fill itself - and is not in a hydric soil area. However, the drainfield soils and the fill are fine-textured and are bordered on all sides

John Compton Drainfield Area

Mapped Taxonomic Units: Natroy - Aeric Endoaquent (Formerly Aquic Chromoxerert)

Location: under oak trees just beyond the east edge of capping fill in replacement area.

ID. No.: (2)

No.	Horizon	Depth (in./cm)	Color Dry	Color Moist	Mottles	Texture	Coarse fragments (%/vol.) Gravel	Cobbles	Stones	2-5 mm	Particle-size estimate (% wt.) Sand	Silt	Clay	5>VFS	Cutans
1	A1	0-12.	10YR 3.4/2	10YR 2.4/2	None	silty clay	—	—	—		—	—	41		
2	A2	12-20	10YR 4/2	10YR 3/2	few, faint 7.5YR 4/4 & 4/6	silty clay	—	—	—		—	—	42		
3	2C	20-36+	—	10YR 4/2	many, distinct 5YR 5/6	clay							60+		

No.	Structure	Consistence Dry	Consistence Moist	Consistence Wet	Cementation	$CaCO_3$ and effervescence	pH	Estimated CEC x 10	Estimated ESP	Permeability (in./hr.)	Pores	Roots	Boundary
1	Strong fine SBK	hard	firm	Sticky plastic						Mod Slow	many interstitial	many fine-med.	diffuse
2	Strong Med. SBK	hard	V. firm	Sticky plastic						Slow	many interstitial	many Med-large	abrupt
3	Weak, Coarse ABK	Very hard	Ext. firm	V. sticky V. plastic						V. Slow	Few interstitial	Very few large	

Comments: Profile is somewhat poorly drained and is a non-hydric soil.
Site has non-hydrophytic vegetation.

John Compton Drainfield Area

Mapped Taxonomic Unit: Natrol (formerly Aquic Chromoxerert) Aeric Endoaqualf

Location: 8-10' west of capping fill, by oak tree

ID. No.: (1)

No.	Horizon	Depth (in./cm)	Color Dry	Color Moist	Mottles	Texture	Coarse fragments (% vol.) Gravel	Cobbles	Stones	1-5 cm	Particle-size estimate (% wt.) Sand	Silt	Clay	5>VFS	Comments
1	A1	0-8	10YR 4/2	10YR 3/2	None	Silty clay	—	—	—		—	—	42	—	wide cracks at surface
2	A2	8-14	10YR 4/1.6	10YR 3/1	Few, faint, 7.5YR 4/1	Silty clay					—	—	40	—	few black Mn coatings on peds
3	B	14-23	10YR 5/1	10YR 4/1	Common, distinct 7.5YR 5/4	Silty clay	5%	—	—		25	—	44	—	
4	2BC	23-36	—	10YR 4/3	Many, distinct 7.5YR 5/4-5/6	gr. clay loam	25%	—	—	—	25	—	35	—	common black Mn coatings
5	3C	36-40+	—	10YR 4/1	Few, distinct 7.5YR 5/4	clay	—	—	—	—	—	—	60	—	

No.	Structure	Consistence Dry	Consistence Moist	Consistence Wet	Cementation	CaCO3 and effervescence	pH	Estimated CEC(1)	Estimated ESP	Permeability (in./hr.)	Pores	Roots	Boundary
1	Strong, Med., SBK	hard	firm	Sticky Plastic	—					slow	Many interstitial	Many Fine-Med	diffuse
2	Strong, mod. SBK	hard	firm	Sticky Plastic	—		—			slow	Many interstitial	Many Med., large	clear
3	Mod, Med, ABK	hard	V. Firm	V. Sticky V. plastic	—		—			slow	Common interstitial	Common Med/large	abrupt
4	Weak, Coarse Platy-SBK	—	firm	Sticky Plastic			—			mod.	Common interstitial	Few large	abrupt
5	Massive	—	Ext. firm	V. sticky V. plastic	—		—			V. slow	V. few	None	

Comments: profile is transitional to hydric soil area to the west of site.
Lacks hydrophytic vegetation at site.

Lane County

Date 10/9/95

RE: Citizen Service - Septic Tank and Disposal Field.
TWP. 18 R. 04 SEC. 19 TAX LOT 1400
1401

Dear Citizen:

You have just acquired a treatment system to dispose of your domestic waste water, as authorized by construction permit # 1811-95 . The design and installation activities complete governmental requirements to assure that the system was installed in accordance with State requirements.

The length of time your system will function properly is equally dependent on the attention and maintenance you provide. The enclosed pamphlet, provided by Lane County, will assist you in performing the types of maintenance that will minimize premature system failure.

The enclosed diagram is specific for the system serving your structure and depicts your waste disposal system. To facilitate cleaning and maintenance, the homeowner should have a diagram of the septic tank system showing location of the house, septic tank manholes, piping and soil absorption system. We recommend that this information remain with this structure and that it be presented to the new owner should you sell in the future.

We support healthy and environmentally sound waste disposal methods through proper design and installation. Through the use of this pamphlet, we hope you will provide the types of maintenance necessary for proper operation. Do not hesitate to contact this office at 687-4480 if you have any questions or require assistance related to your waste disposal system.

Sincerely,

Stanley E. Petrasek
MANAGER

ENVIRONMENTAL HEALTH DIVISION

SEP:rm -
ENCLOSURES

MUST BE IN BLACK INK

form c55-11

Permit No. 1811-95 Twnshp. 18 Range 04 Section 19 Tax Lot 1400 & 1401

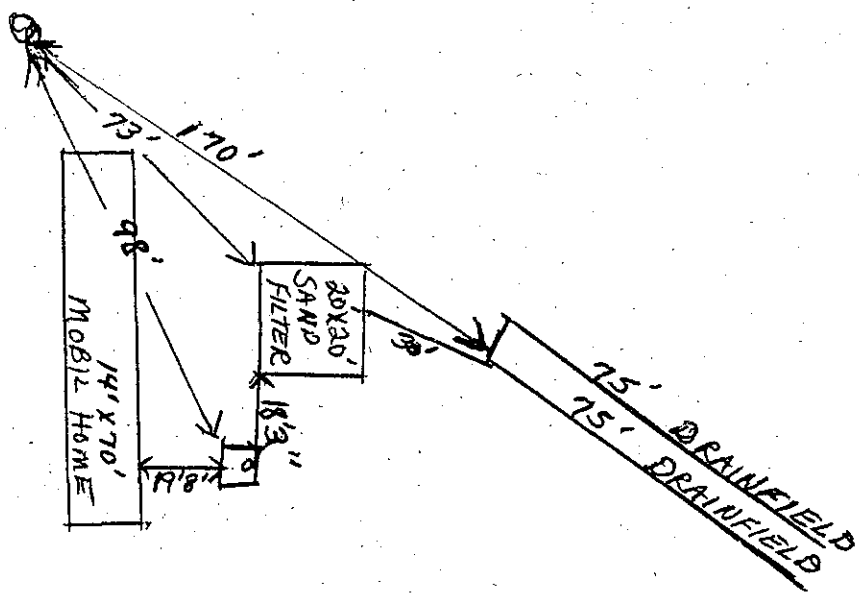
Standard System ☐ Alternative System X (Specify Type) SAND FILTER W/CAP

Job Location (Street Address) 85940 PLEASANT RD, EUG

Supdivision/Partition # _____ Parcel _____ Lot 1401 Block _____

DETAIL SYSTEM PLOT PLAN AS CONSTRUCTED

Scale 2 " = 75'



USE BLACK INK ONLY

FOR INSTALLER'S USE: Trench Depth 24" Gravel Depth Below Tile 6"

Tank Capacity 1500 gal. Manufacturer WILLAMETTE GRAYSTONE

Measured Distance from Well to Tank 98' From Drainfield 170' Total Length of Lines 150'

COMPLETE THE FOLLOWING IF A PUMP WAS USED ON THIS INSTALLATION:

I (installer's name) JOHN COMPTON certify that a (Mfg.) ORENCO (Model No.) 30 OSI 05 HH-3STAGE Pump and Mercury Float Switch (Mfg. and No.) ~~30 OSI 05~~ ORENCO MODEL C have been installed with this sewage installation.

Signature John Compton Date 9-12-95

FOR SANITARIAN'S USE ONLY: ☒ System Approved ☐ System Disapproved ☐ Needs Correction

COMMENTS: _____

☐ System Corrected Date _____

System Capacity 450 gal./day Signature _____ Date 9/18/95

INSTALLATION RECORD & CERTIFICATE OF SATISFACTORY COMPLETION When signed by the County Sanitarian. this certificate is evidence as per ORS 454.665 of satisfactory completion of a subsurface sewage disposal system at the above location.

To request inspection, return all three (3) copies of this form to: Lane County Environmental Health Services. located in the basement of the Public Service Building, 125 7th Avenue, Eugene, OR 97401.

Installer _____ (Title as shown on DEQ license)

Telephone _____

License No. _____

Bonding Company _____

_____ Date _____ (Signature of Licensee)

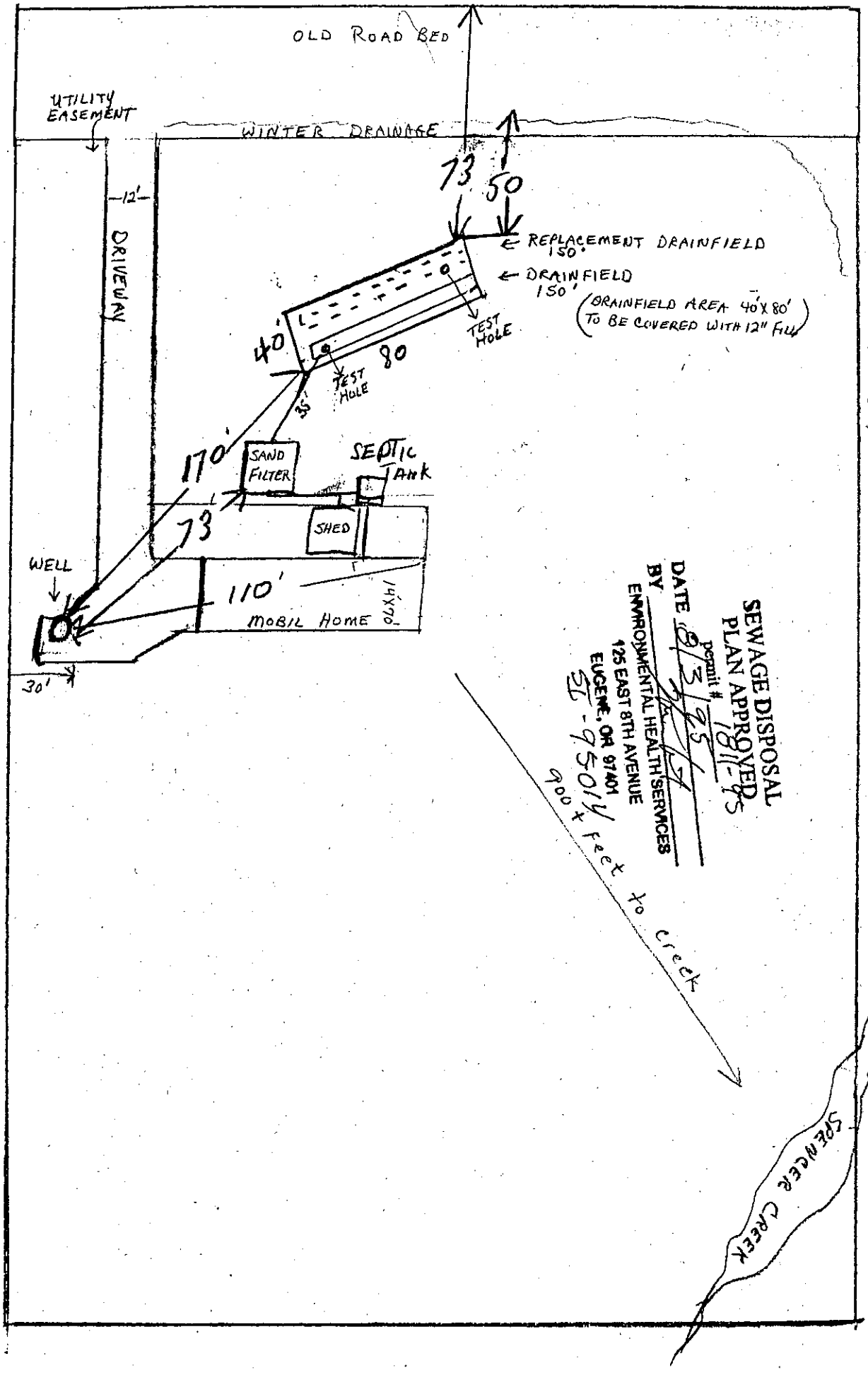
If Installed by Owner— John Compton Date 9-12-95 (Signature of Owner)

Applicant's Name & Address

JOHN COMPTON
2990 KINNEY LOOP
EUGENE, OR 97408

VICINITY MAP

RECEIVED
SEP 18 1995
LANE COUNTY
ENVIRONMENTAL HEALTH



MAP # 18-04-19-1401

John M. Compton
2990 Kinney Loop
Eugene, OR. 97408
503-342-6857

PERMIT 95-014

SEWAGE DISPOSAL SITE EVALUATION

S.I. # 95-014

TRS, TL 18-04-19 #1401 Job Location OFF PLAYWAY GIMPHL Rd, EUGENE

Written Directions END OF PLAYWAY OFF GIMPHL HILL

Subdivision: _____

Lot _____ Block _____ WATER SUPPLY WELL

APPLICANT'S NAME AND ADDRESS JOHN M. COMPTON 2990 KINNEY LOOP EUGENE, OR. 97408 Phone 342-6857

OWNER'S NAME AND ADDRESS SAME Phone _____

STRUCTURES NOW ON THE PROPERTY CABIN PROPOSED USE OF PROPERTY Homesite

I hereby certify that the above statements are true and accurate, and that I have the following legal interest in the property: X owner of record; _____ contract purchaser; _____ potential buyer; _____ realtor or agent. I further certify that (if not the owner) I am authorized to act for the owner of record, and that said owner is aware and approves of this action.

TEST HOLES READY WELL CALL 6/13/95 Signature John Compton Date 1-23-95

* OFFICE USE ONLY BELOW THIS LINE *

THIS REPORT IS NOT A PERMIT FOR SEWAGE SYSTEM INSTALLATION

The area described on the attached plot plan dated 7/20/95 is APPROVED for a SAND FILTER system.

ADDITIONAL COMMENTS: W/150' OF DRAINFIELD WITH A 12" CAP.

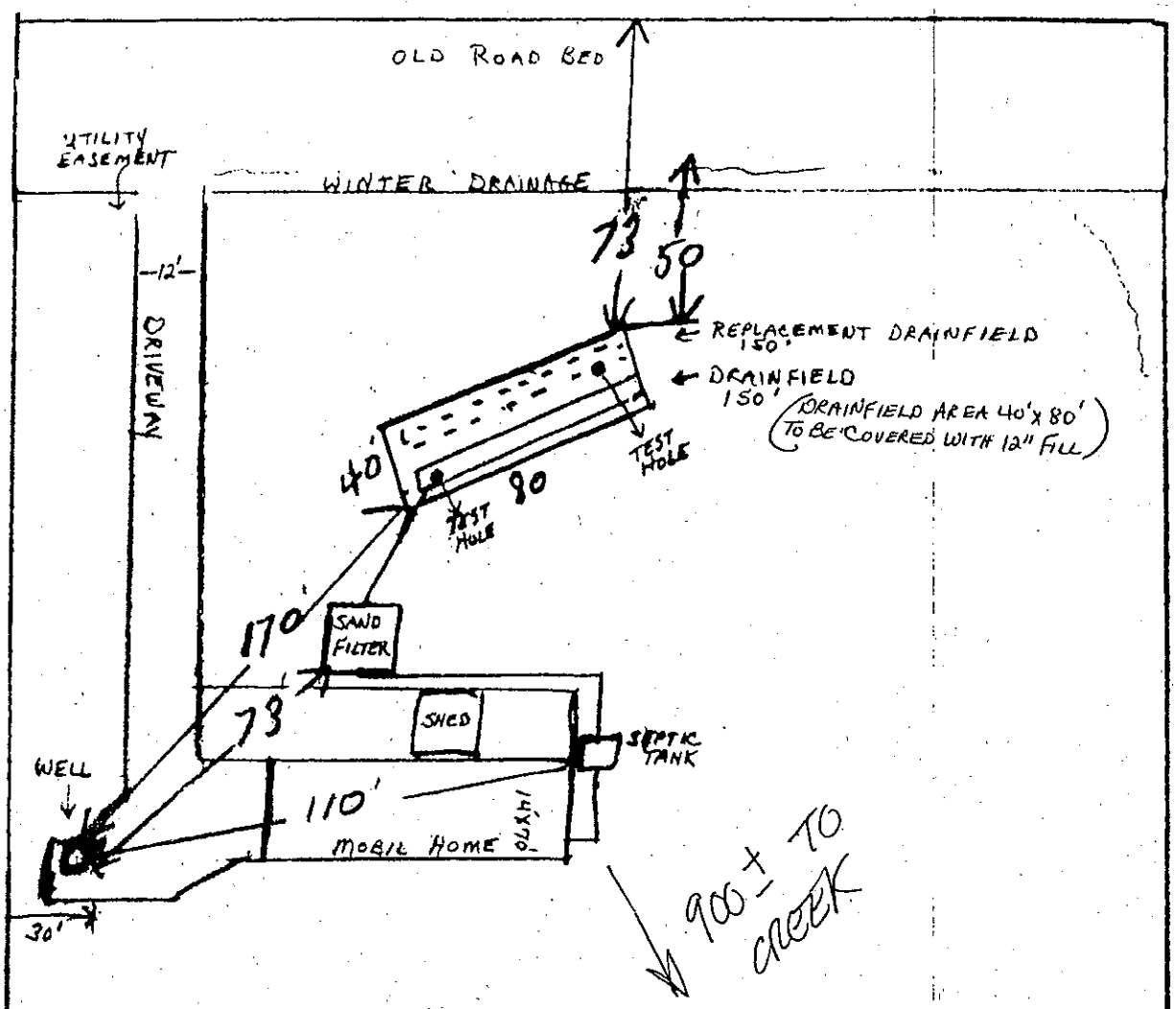
NOTE:
If this report approves use of a sand filter or pressurized distribution system, detailed construction design plans will be required with the installation permit application.

THIS IS A PRELIMINARY REPORT WHICH DOES NOT ENSURE THE ISSUANCE OF A FUTURE BUILDING PERMIT. ANY PLANS OR EXPENDITURES MADE IN RELIANCE UPON THIS REPORT ARE AT YOUR OWN RISK. IF SITE IS APPROVED, SEE REVERSE SIDE.

DEQ AUTHORIZED AGENT

7/20/95
DATE

WARNING:
This Site Evaluation is a technical report to determine if a on-site system will function properly. It does not approve the proposed use of the parcel. This Site Evaluation may be converted to a construction permit only if the parcel and use meet land use regulations in effect at the time of application. YOU ARE URGED TO CONTACT YOUR LOCAL PLANNING OFFICE FOR LAND USE REVIEW.



SEWAGE DISPOSAL
PLOT PLAN APPROVED
A permit is required
prior to starting construction.
DATE 7/28/95
BY
ENVIRONMENTAL HEALTH SERVICES
125 EAST 8TH AVENUE
EUGENE, OREGON 97401
ST - 95-014

SPENCER CREEK

MAP # 18-04-19-1401
JOHN M. COMPTON
2990 KINNEY LOOP
EUGENE, OR. 97408
503-342-6857

95-014

HOLD SLIP

Lane County

SIPS - 14

APPLICATION # 95-014

LOCATION SIMPL HILL RD.

LANE COUNTY NAME

2990 KINNEY LOOP ADDRESS

EUGENE, OR 97408
ZIP CODE

The Lane County Building and Sanitation Division cannot proceed with processing your application because:

1. ☐ Incomplete application (items deficient).
   - ☐ Address and/or directions to application site.
   - ☐ Proposed number of bedrooms in dwelling.
   - ☒ Approvable plot plan (see attachment).
   - ☐ Notification of date test holes will be ready.
2. ☐ Verification of existing system required (see attachment).
3. ☐ Two test holes (2'x4'x5' deep) required for expansion or repair of existing sewage disposal system in the area of the proposed drainfields.
4. ☐ Other: W/A CAP OVER DRAINFIELD AREA.

SIGNATURE [signature] DATE 7/7/95

OFFICE HOURS 8 to 9 PHONE 687-3752 from to

If no response has been received in regards to this matter by 8/7/95, the application will be denied.

FORM# M55-95 APRIL '91

LANE COUNTY ENVIRONMENTAL HEALTH SERVICES
Courthouse-Public Service Bldg. / 125 E. 8th Ave. / Eugene, OR 97401 / 687-4051

SITE EVALUATION FIELD WORKSHEET

Tax Reference 18-04-19-1401 Evaluator MARTIN S.I. 95-016

Applicant COMPTON Date 6/13/95 Subdiv./Part. _____ Parcel/Lot _____ Blk./ _____

Zoning _____ Use _____ Parcel Size _____ Water Supply: Well Community Public

	Depth	Texture	Soil Matrix Color and Mottling (Notation), %Coarse Fragments, Roots, Structure, Layer Limiting Effective Soil Depth, etc.
Pit 1	0-29	CLAY	HIGH CHROMA MOTTLES @ 9"
			MASSIVE, NO PORES, FEW ROOTS TO 5"
Pit 2	0-38	CLAY	HIGH CHROMA MOTTLES @ 10"
			SAME
Pit 3	0-14	SCL	MANY ROOTS & PORES
	14-39	CLAY	HIGH CHROMA MOTTLES @ 16"
Pit 4	0-12	SCL	MANY ROOTS & PORES
	12-48	CLAY	HIGH CHROMA MOTTLES @ 9"
5	0-12	SCL	
	12-40	CLAY	MOTTLES @ 13"

Landscape Notes LIGHTLY FORESTED

Slope 1% Aspect SOUTH Groundwater SPENCER CRK TO S.

Other Site Notes _____

SYSTEM SPECIFICATIONS

Type System: Design Flow 450 gpd

Initial SAND FILTER System Sizing 150 /150 g. Max. Depth Absorption Facility (in) 24"

Replacement _____ System Sizing _____ /150 g. Max. Depth Absorption Facility (in) _____

Special Conditions INSTALL CAP ON DRAINFIELD, INSTALL DRAIN LINES IN UPPER 12" OF ORIGINAL SOIL.

JC 6/7/95 ~~KLK~~ JSM 6/7/95

LMD AUTHORIZATION FORM

Land Management Division 125 E. 8th Ave. Eugene, OR 97401

PERMIT # 1811-95

ADDRESSING ☐ VALID ☒ NEW
DATE 6-7-95 LEVY CODE 4-65

REQUEST FOR: PLACE MOBILE HOME AND INSTALL SEPTIC SYSTEM
SAND FILTER

TOWNSHIP 18 RANGE 04 SECTION 19 1/4 SECTION TAX LOT 1401 & 1400 SUBDIVISION/PARTITION LOT/PARCEL BLOCK Legal Lot. PA 1059-95

LOCATION ADDRESS 85940 PLAYWAY Rd. ~~GIMPL HILL RD.~~, EUGENE, OREGON 97402

STRUCTURES NOW ON PROPERTY
SHED

PROPOSED USE RES. SEPTIC INSTALLED WATER INSTALLED WELL NO. OF STORIES NO. OF EMPLOYEES CONSTRUCTION COST/VALUE

DESCRIPTION OF PROPOSED WORK
PLACE MOBILE HOME, BROADMORE, 1971, 14'X 66', X207804 AND INSTALL SEPTIC SYSTEM NO OF BEDROOMS TWO

DIRECTIONS TO SITE FROM NEAREST MAIN INTERSECTION
WEST 11TH TO BAILEY HILL TO GIMPL HILL TO PLAYWAY; LAST LOT ON PLAYWAY.

APPLICANT NAME & ADDRESS JOHN M. COMPTON, 2990 KINNEY LP., EUGENE 97408 PHONE 342-6857

OWNERS NAME & ADDRESS JOHN M. COMPTON, 2990 KINNEY LP., EUGENE 97408 PHONE 342-6857

CONTRACTOR/INSTALLER/BUILDER NAME JOHN M. COMPTON CCB # PHONE 344-0681 BETTY

MAIL PERMIT TO:
JOHN M. COMPTON, 2990 KINNEY LP., EUGENE 97408
NAME STREET CITY ZIP

I have carefully read BOTH sides of this application and hereby certify that all information is true and correct

BETTY COMPTON (Signature) Betty Compton DATE 6-2-95
PRINT NAME

PLANNING/ZONING — READ CAREFULLY! Your Authorization Is Based On The Following Conditions

ZONE RR-10/FP/RCP FLOOD PLAIN Site N/A WETLANDS Site OK ACCESS yes LEGAL LOT yes MINIMUM SETBACKS FRONT LOT LINE 20' P/L SIDE — INTERIOR 10' REAR 10' RIPARIAN 50'

COMMENTS: Mobile home placement & SDS allowed w/i RR/RCP zone per LC16.231(2)(a). Wetland: DSL #9412 fill pmt. development OK per pk
FP Verif - PA 1905-95 - SITE OUTSIDE 100 YEAR FLOOD HAZARD AREA. NO FPSUP REQUIRED. 6/21/95-J

APPROVED BY: SSH DATE 7/25/95

SANITATION

S.I. 95-014 B.R. # INST. REC ISS'D TANK SIZE 1500 inc pump LIN. FT. D.F. 150 MAX TRN DEPTH 12" IN GRAVEL

☒ INSTALL DIST. SYSTEM PER APPROVED PLOT PLAN DATED 8-3-95
☐ THE SYSTEM APPEARS TO BE WORKING RIGHT. IF SYSTEM FAILS, YOU MUST APPLY FOR A REPAIR PERMIT
☐ HOOK TO EXISTING SYSTEM INSTALLED PER PERMIT NUMBER

SDSF 575
DEQ 35

COMMENTS: INSTALL DRAINFIELD 100' FROM WELLS ON LEVEL. INSTALL CAP PRIOR TO DRAWINGS. CALL FOR REQUIRED INSPECTIONS

APPROVED BY: [signature] DATE 8/3/95

BUILDING

TYPE — GROUP ...... USE MH

COMMENTS:

DATE 8/5/95

FEES DUE: $ 1044.40 APPROVED BY: [signature] DATE 8/5/95

CALL FOR INSPECTIONS (SEE BACK OF FORM FOR INSTRUCTIONS) 687-4065
SEPTIC permits are good for one year. ALL other permits expire after 180 days unless inspections are current.

LMD 040 Rev. 6/92

8/8/96

WEATHER

Attn: Jim Spickerman

From: John + Betty Compton

Local & Regional *forecasts*

ALMANAC

EUGENE TEMPERATURES

24 hours ending 4 p.m.

5 p.m.	58	1 a.m.	39	9 a.m.	46
6 p.m.	57	2 a.m.	40	10 a.m.	50
7 p.m.	54	3 a.m.	39	11 a.m.	52
8 p.m.	49	4 a.m.	38	12 p.m.	55
9 p.m.	45	5 a.m.	38	1 p.m.	59
10 p.m.	46	6 a.m.	37	2 p.m.	62
11 p.m.	42	7 a.m.	37	3 p.m.	64
12 a.m.	41	8 a.m.	42	4 p.m.	65

RECORDS

April 29

Temperatures

Highest: 86 in 1957; **Lowest:** 28 in 1954
Normals: High 63; Low 42

Precipitation

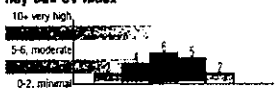
Most rain this date, 0.94" in 1992
It has rained on this date 24 times since 1931

EUGENE STATISTICS

Through 4 p.m.

Temperatures Sunday (high/low)	66/36
Precipitation 24 hours to 4 p.m.	0.00"
Precipitation month-to-date	4.56"
Normal precipitation month-to-date	2.87"
Precipitation year-to-date	38.64"
Normal year-to-date	22.13"

Ray-Ban UV Index™



The higher the UV index number, the greater the need for eye and skin protection

Pollen forecast

	Absent	Low	Moderate	High	Very High
Trees					
Grasses					
Weeds					

Kraig W. Jacobsen, M.D. and Robert F. Jones, M.D., Allergy & Asthma Research Group

River stages

Readings taken 8 a.m. Sunday

Willamette at EWEB steam plant	14.4
McKenzie at Vida	4.0
Willamette at Harrisburg	7.8
Siuslaw at Mapleton	N/A
Umpqua at Elkton	10.3
N. Umpqua 3 mi. below Winchester	6.0
Alsea at Tidewater	5.1
Siletz at Siletz	6.5

Tides

Today, Siuslaw River

High	Low
10:09 a.m. 5.4	4:18 a.m. 1.5
10:30 p.m. 6.5	4:13 p.m. 1.2

SUN & MOON

Today		Tuesday	
Sunrise	6:07 a.m.	Sunrise	6:05 a.m.
Sunset	8:14 p.m.	Sunset	8:15 p.m.

Sky watch

Tonight's Sky: Brilliant Venus will move closer to the Sun next month. Mercury will also disappear from the night sky. **Venus** sets at 12:13 a.m. **Mars** sets at 7:08 p.m. **Jupiter** sets at 10:21 a.m. **Saturn** sets at 4:50 p.m.

Jim Todd, Oregon Museum of Science and Industry

REGIONAL CITIES

Oregon

City	Sunday Hi	Lo	Prcp	Today Hi	Lo	W	Tuesday Hi	Lo	W
Astoria	61	38	0.01	57	44	pc	59	48	pc
Baker City	61	22	0.00	65	36	pc	67	38	pc
Brookings	75	54	0.00	68	46	pc	70	48	pc
Burns	56	20	0.00	66	40	pc	66	42	pc
Corvallis	71	37	0.00	69	43	pc	65	43	pc
Florence	70	37	0.00	62	48	pc	65	48	pc
Klamath Falls	65	32	0.00	75	41	pc	75	43	pc
Medford	75	34	0.00	80	46	pc	78	46	pc
Newport	64	40	0.00	62	46	pc	64	50	pc
North Bend	70	39	0.00	63	46	pc	65	50	pc
Ontario	63	25	0.00	77	41	pc	75	41	pc
Pendleton	67	33	0.00	70	43	pc	70	45	pc
Portland	68	38	0.00	66	45	pc	68	47	pc
Redmond	65	24	0.00	70	37	pc	72	37	pc
Roseburg	69	37	0.00	72	45	pc	70	47	pc
Salem	67	33	0.00	70	43	pc	72	45	pc
The Dalles	72	36	0.00	69	42	pc	67	44	pc
Tillamook	62	33	0.02	59	43	pc	56	45	pc

Northwest

City	Sunday Hi	Lo	Prcp	Today Hi	Lo	W	Tuesday Hi	Lo	W
Anchorage	50	34	0.00	50	34	pc	47	28	pc
Billings	43	34	0.25	58	41	pc	63	41	pc
Boise	58	29	0.00	70	43	pc	68	41	pc
Bozeman	50	25	0.00	65	42	pc	60	40	pc
Bremerton	58	35	0.06	61	40	pc	61	42	pc
Coeur d'Alene	56	28	0.00	64	38	pc	64	36	pc
Ellensburg	58	32	0.00	62	34	pc	60	39	pc
Fairbanks	54	28	0.00	52	27	pc	44	18	c
Helena	55	22	0.00	65	41	pc	61	41	pc
Great Falls	53	26	trace	60	37	pc	58	35	pc
Juneau	52	38	0.00	48	34	sh	45	30	pc
Missoula	56	27	0.00	62	39	pc	60	37	pc
Moscow	57	32	0.00	63	37	pc	60	37	pc
Olympia	59	32	0.00	61	36	pc	61	40	pc
Seattle	57	40	0.00	62	40	pc	62	42	pc
Spokane	55	30	0.00	61	37	pc	61	39	pc
Tacoma	59	32	0.00	61	40	pc	58	44	pc
Vancouver, B.C.	52	39	0.21	59	40	sh	59	47	pc
Vancouver, Wash.	68	36	0.00	69	45	pc	64	47	pc
Walla Walla	68	39	0.00	71	47	pc	71	47	pc
Yakima	63	28	0.00	72	41	pc	69	38	pc

EUGENE 5-DAY OUTLOOK

Today	Tuesday	Wednesday	Th
Mostly sunny	Some clouds	Mostly sunny	Cl
High 70	*High 68*	*High 72*	
Low 45	*Low 45*	*Low 45*	

Forecast: Sunshine mixed with a few clouds today with a r partly cloudy tonight. Low 45. Mostly sunny and continued : Sunshine and a few clouds Wednesday. High 72.

OREGON OUTLOOK

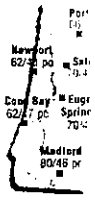
Oregon Coast: There will be a shower to start, then clouds will give way to sunshine today. Highs 58-68. Clear to partly cloudy tonight. Lows 40-46. Mostly sunny and nice Tuesday.

Oregon Cascades: Clouds will give way to sunshine today with a shower of rain or snow early. Highs 45-50. Freezing level 9,000 feet north, 10,500 feet south. Patchy clouds tonight. Lows 25-30. Partly to mostly sunny Tuesday. Highs 47-52. A mixture of clouds and sunshine Wednesday. Highs 45-50.

Eastern Oregon: Sunshine mixed with a few clouds today and nice. Highs 60-72. Clear to partly cloudy tonight. Lows 26-42. Mostly sunny and continued pleasant Tuesday. Highs 62-74.

Extended forecast for Western Oregon: Sunshine mixed with a few clouds on Wednesday with a mild afternoon. Highs 60-76. A mixture of clouds and sunshine Thursday. Highs 56-72. Intervals of clouds and some sunshine on Friday. Highs 54-70.

Extended forecast for Eastern Oregon: Abundant sunshine on Wednesday with a mild afternoon. Highs 66-76. Sunshine mixed with a few clouds on Thursday. Highs 62-72. Intervals of clouds and sunshine on Friday and continued mild. Highs 60-70.



Temperatures a…

Weather (W): s…
sh-showers, t-t…
sf-snow flurries…

Burning advis…

National & International *forecasts*

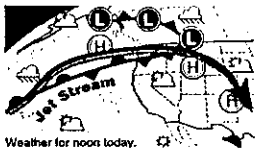
NATIONAL CITIES

City	Sunday Hi	Lo	Prcp	Today Hi	Lo	W	Tuesday Hi	Lo	W
Albany	57	28	0.00	56	49	r	65	45	s
Albuquerque	62	52	0.00	67	35	s	78	44	s
Amarillo	60	47	0.00	63	33	s	80	44	s
Asheville	73	38	0.00	78	57	t	60	42	r
Atlanta	86	50	0.00	79	62	t	64	42	sh
Atlantic Cty.	59	34	0.00	68	60	c	74	49	t
Austin	92	71	0.00	84	47	t	80	53	s
Baltimore	72	36	0.00	75	61	c	75	45	sh
Birmingham	85	55	0.00	80	58	t	62	39	sh
Bismarck	54	34	trace	59	32	s	59	35	pc
Boston	64	40	0.00	56	49	r	65	47	r
Brownsville	90	76	0.00	84	48	c	78	63	s
Buffalo	52	30	0.00	52	47	r	61	40	r
Burlington	53	30	0.00	55	46	r	61	47	r
Casper	41	19	trace	51	34	pc	60	33	pc
Charleston, S.C.	81	55	0.00	81	67	t	76	49	sh
Charleston, W.Va.	75	42	0.00	84	63	c	67	42	sh
Charlotte, N.C.	79	59	0.00	77	64	t	69	44	sh
Cheyenne	39	27	0.12	50	35	s	60	35	pc
Chicago	50	36	trace	48	36	r	46	36	r
Cincinnati	56	46	0.51	58	52	sh	58	49	r
Cleveland	54	35	trace	59	52	r	64	41	r
Colorado Springs	46	29	trace	55	32	s	66	37	pc
Columbia, S.C.	84	47	0.00	83	66	t	73	50	sh
Dallas	87	69	0.00	83	43	c	86	56	s
Dayton	55	47	0.54	67	51	sh	53	55	r
Denver	46	29	0.22	58	38	s	64	39	sh
Des Moines	51	45	0.22	44	31	sn	54	33	pc
Detroit	55	34	0.00	58	42	r	59	37	r
Duluth	52	22	trace	44	22	s	41	29	pc
El Paso	84	49	0.00	72	42	s	80	51	s
Fresno	84	47	0.00	86	56	s	87	54	s
Hartford	64	36	0.00	58	27	s	59	40	s
Houston	88	69	0.02	82	70	pc	82	70	pc
Indianapolis	59	43	0.05	73	48	t	76	53	s
Jackson, Miss.	81	61	0.00	73	52	t	69	43	pc
Jacksonville	86	61	0.00	84	66	t	76	53	t
Kansas City	52	50	0.72	49	33	sn	57	40	s
Las Vegas	74	58	0.00	84	56	s	90	64	s
Little Rock	81	59	0.50	64	42	sh	62	45	pc
Los Angeles	86	56	0.00	91	64	s	91	66	s
Louisville	65	50	0.64	70	54	t	58	41	r
Memphis	82	64	0.00	71	48	sh	55	43	c
Miami Beach	87	77	0.00	85	75	pc	81	69	r
Milwaukee	50	34	0.00	43	34	r	42	37	pc

National & International *forecasts*

Forecast: Rain will dampen areas from northern Illinois eastward to southern New England today. Thunderstorms will rumble from the southern Ohio Valley southward to the Gulf Coast. The Middle Atlantic region and the Southeast will be warm with a couple of stray thunderstorms. The upper Midwest and the northern Plains will be chilly. Sunny, hot weather will prevail in the Southwest.

Weather (W): s-sunny, pc-partly cloudy, c-cloudy, sh-showers, t-thunderstorms, r-rain, sf-snow flurries, sn-snow, i-ice, Prcp-Precipitation.

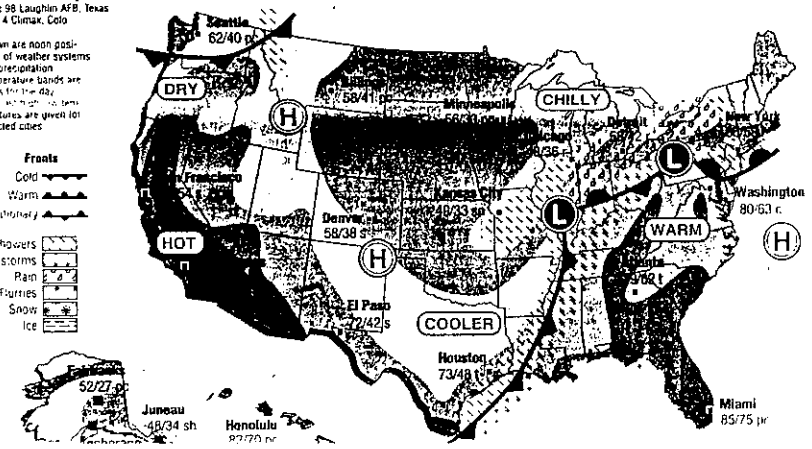


Weather for noon today.

-10s | 0s | 10s | 20s | 40s | 50s | 60s | 70s+

U.S. extremes Sunday
High: 98 Laughlin AFB, Texas
Low: 4 Climax, Colo

Shown are noon positions of weather systems and precipitation. Temperature bands are highs for the day. Temperatures are given for selected cities.



City

Canada
Calgary
Edmonton
Montreal
Quebec
Toronto

Mexico
Acapulco
Mazatlan
Mexico City

Latin America
Barbados
Bermuda
Bogota
Buenos Aires
Caracas
Lima
Nassau
Rio
San Juan
Santiago

Asia/Pacific
Auckland
Bangkok
Beijing
Hong Kong
Manila
Seoul
Singapore
Sydney
Taipei
Tokyo

Europe
Amsterdam
Athens
Barcelona
Berlin
Brussels
Budapest
Copenhagen
Dublin
Frankfurt
Geneva
Helsinki
Lisbon
London
Madrid
Moscow
Nice
Oslo
Paris
Prague
Rome
Stockholm
Vienna
Warsaw
Zurich

Department of Environmental Quality
811 S.W. Sixth Ave.
Portland, Or. 97204-1390

June 14,1996

Subject: Revocation of Lane County Permit # 95-014

Att: Mr. Langdon Marsh,

I request a contested case hearing, concerning the revocation of a Lane County Permit # 95-014. I was issued a certificate of satisfactory completion by Lane County on 10-09-95 showing that the sand filtration system I was required to install completes all governmental requirements. A final permit was issued on 10-17-95. The sanitation permit was issued by Lane County Sanitation Dept. under the authority and agreement that Lane County has with DEQ. According to the agreement; the county shall issue a permit only if it finds that the proposed construction will be in accordance with the rules of the DEQ. This agreement also gives the agent freedom to use its oun discretion. I worked very closely with Lane County Sanitation Dept. to carefully follow all the requirements requested.

The DEQ and Corps was notified of a joint fill permit being issued by the State Lands Division in March 1995. If there was an objection to the use of .18 of an acre they should have stopped this project before this project was completed. (Stan Petrasek of Lane County Sanitation Dept. said they were not aware of the need for a 404 permit being required and neither was I). I feel at this point it is a communication problem with DEQ, Corps and Lane County internally not mine. As I have clearly met all requirements by Lane County and the State Lands Division.

In 1995 test holes were inspected by Bill Martin of Lane County Sanitation Dept. This was after a normal year of rainfall. There was no water in either of the test holes. He approved two of the test holes.

The perch water level at the time of the on site inspection by DEQ was unusually high, due to recent flooded conditions that effected the entire state of Oregon. The most damaging flood seen in the last 100 years. There was erosion around the trees and near the drainfield that left puddling. If DEQ continues with the revocation of my system, they should also be revoking others that are worse than mine. I would like to make a request for information on any other cases that have been revoked after satisfactory completion has been met and permit has been issued.

Sincerely

John Compton

John Compton
2990 Kinney Loop
Eugene, Or. 97408
(541) 342-6857

Attachment 9- 2 pages

BLDG INSPECTION TRACKING RECORD ISSU DATE: 080

PERMIT #: BP181195 NAME: COMPTON, JOHN , PHONE: 342 6
MAP-TL #: 180419000140 1 SITE: 85940 PLAYWAY RD., EUGENE
PROJECT : MH:PRIVATE LOT INSPECTRS: CAL CAL WM
CONTRACTR: COMPTON, JOHN

	INSPECTIONS	APPVL	NO APPVL	DATE APPVD	INSPR	COMMENTS
	UNDERGRD PLMB		X	091295	CAL	
	OTHER SPEC	A		091395	CAL	
	PLACEMENT	X		091395	CAL	
	UNDERGRD PLMB	X		091395	CAL	
	FINAL PLMB	X		091395	CAL	
	FEEDER -ELECTRL	X		091395	CAL	
	FINAL ELECTRIC	X		091395	RCS	
	FINAL SDS	X		091895	WM	
	SKIRTING		X	101095	CAL	
	FINAL BLDG	P		101095	CAL	PARTIAL
	SKIRTING	X		101795	CAL	
	FINAL BLDG	X		101795	CAL	

Oregon

June 10, 1996

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

WESTERN REGION
Roseburg Branch Office
725 SE Main St.
Roseburg, OR 97470
(541) 440-3338

Mr. John M. Compton
2990 Kinney Loop
Eugene OR 97408

CERTIFIED MAIL
Z 710 387 875

RE: **Township 18S, Range 4W, Section 19, Tax Lot 1401**
Tax Map 18-04-19, Lane County

Dear Sir:

The appropriateness of the installation of the on-site sewage disposal system (OSSD) system on your property (described above) was questioned as a result of a 401 Water Quality Certification Request required by the Federal Clean Water Act before a permit may be issued to put fill in a wetland. The system was installed under the authority of an installation Permit #95-014 issued by Lane County Environmental Health which administers the OSSD program under contract from the Oregon Department of Environmental Quality (DEQ) in Lane County.

On April 29, 1996, representatives of the DEQ met with you at the above-described property. DEQ representatives who took part in an inspection and evaluation included Bijan Pour, Soil Scientist, Portland; Daryl Johnson, On-Site Specialist, Eugene; Dewey Darold, On-Site Specialist, Portland; and Greg Farrell, Manager of the OSSD Program in the Department's Western Region. Enclosed is a copy of the Department's site suitability report concerning the conditions which your conventional sand-filter treatment and disposal system was permitted by Lane County to be installed. Based on what was found during that inspection, it is the conclusion of the Department that the approval for the OSSD system and the permit which authorized construction and installation of the OSSD system were issued in error by Lane County. As a result, the Department must proceed with permit revocation procedures and request decommissioning of the system as perscribed by Oregon Administrative Rule (OAR) 340-71-185.

It is the Department's conclusion that the site where the sand-filter disposal system was built does not meet the criteria for the installation of a conventional sand-filter system, standard system, or capping fill system as prescribed in Oregon Administrative Rules (OAR) Chapter 340, Division 71, Sections 150(4)(b), 220, 260, 265, and 290.

Specifically, for a sand-filter disposal field installation on relatively level ground, OAR 340-71-290(3) requires that (a) The highest level attained by a temporary water table to be twelve (12) inches or more below ground surface. For a standard system the effective soil depth must be a minimum of 30 inches from the ground surface and the seasonal

Attachment 10- 8 pages

water table must be 24 inches or greater below the ground surface as required by OAR 340-71-220. Capping fill systems require a minimum of 18 inches of effective soil depth and a six-inch separation between the bottom of the trench and the seasonal ground water (OAR 340-71-265). Ground water levels are predicted on the basis of "Conditions Associated with Saturation" or drainage mottles as defined in OAR 340-71-100(28). "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water, air, and grouth of plant roots." [(OAR 340-71-100(50)].

Our findings conclude that there was virtually no effective soil depth and that conditions associated with saturation were observed at or near the ground surface as displayed by the 10 YR 3/2 / 4/3 mottles in the 10 YR 4/1 / 3/1 matrix of the top ten (10) inches of silty clay soil horizon and below by the 10 YR 4/1 with 7.5 YR 4/6 mottles in the clay soil horizon (refer to attached soil description and field worksheet). Visible ground water was nine (9) inches below the natural ground surface.

OAR 340-71-260 requires that unless otherwise noted, all rules pertaining to siting, construction and maintenance of standard subsurface systems (OAR 340-71-220) apply to alternative systems. OAR 340-71-220(1)(i) requires that all setbacks listed in Table (1) be met. Table 1 requires that the minimum separation distance between a sewage disposal area including the replacement area and an unpiped intermittent stream be 50 feet. As depicted on the enclosed site sketch, at least one measurement shows that part of the installed disposal field is within 30 feet of a seasonal water way. The replacement area is supposed to be between the "channel" and the disposal field.

OAR 340-71-265(1)(f) requires that capping fills are limited to soils that have a soil texture of "no finer than silty clay loam." The soil at your site is finer. It is a silty clay over a clay.

OAR 340-71-150(4) requires that each lot or parcel must have sufficient usable area available to accommodate an initial and replacement system that meets OAR 340-71. The conditions at your site as identified above for the initial system are the same for the replacement.

Oregon Revised Statute (ORS) 183.341 provides that all state agencies must adopt rules of procedure to be used in contested case hearings. ORS 183.310 provides that a contested case be offered when the agency intends to revoke a permit. OAR 340, Division 14, Section 45 is the specific rule adopted by the Environmental Quality Commission (EQC) for the "Suspension or Revocation of a Permit." This rule provides that the Department can revoke a permit for cause. The causes have been outlined above and may not be all inclusive.

The revocation of your permit (Lane County #95-014) will become effective 20 days from the date of mailing of this notice unless within that 20 days you request a hearing before the EQC or its authorized representative. The request for hearing must be made in writing to the Department's Director and must state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.

The request for hearing must be addressed to:

Mr. Langdon Marsh, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland OR 97204-1390

It must be mailed within 20 days of the certified mailing of this letter.

If you have any questions or if I can be of any help, call me at (541) 440-3338, extension 227.

Sincerely,

Greg Farrell
On-Site Manager, Western Region

GF:cdc
Enclosures

cc: Lane County Environmental Health
Steve Greenwood, Eugene
Bijan Pour, Portland
Dewey Darold,
Sherman Olson, Portland
Martin Loring, NW Portland
Daryl Johnson, Eugene
Michael Downs, Portland
Larry Edelman, DOJ
Risk Management-

Site Visit and Evaluation Report

Date: 4, 29, 1996

Site Legal Description:

Township 18 South; Range 4 West; Section 19; Tax lot 1400 & 1401

Owner: John Compton

On April 29, the above mentioned property was visited. Bijan Pour and Dewey Darold, the Headquarters staff, accompanied Daryl Johnson and Greg Farrell, the DEQ Western Region staff.

No test pits were available at the time of visit. Thus the soil investigation was done by auguring. three Auger holes were made as depicted on the map; two adjacent to the drainfield area and one in the filled trench area.

The soil description in hole 1 was as follows:

0 - 10 inches: Silty Clay; dark gray to very dark gray 10 YR 4/1 to 3/1 matrix with few fine faint very dark grayish brown to brown 10 YR 3/2 to 4/3 mottles; fine moderate granular to subangular blocky; very sticky and very plastic; common fine and medium roots.

10 - 24 inches: Clay; dark gray 10 YR 4/1 matrix with common medium distinct strong brown 7.5 YR 4/6 mottles. Very sticky and very plastic.

There was seepage of water at the depth of 9 inches; within approximately 30 minutes, the auger hole was filled with water to the depth of 11 inches.

Auger hole 2 was similar to hole 1.

The site has a slope of 0 - 2% with some undulation.

Examination of the relatively undisturbed areas within the site revealed presence of mossy oak groves with some rash and grassy undergrowth, indicative of some hydrophytic species.

Ponded water was observed in several locations within the site. There were active drainage channels surrounding the drainfield and throughout the site.

The system was installed by the owner and consists of an intermittent sand filter with a capping fill for the disposal trenches. The drainfield area was distinctly raised from the rest of the terrain due to the fill . It appeared that the gravel portion of the trenches were installed in the fill at a depth of 12 to 18 inches.

A 30- inch hole was dug with a shovel in center area of the drainfield. The depth of the fill was not readily apparent; the mean depth was estimated to be 20 inches. Free water was observed at a depth of 28 inches from the surface of the fill.

Inspection of the distribution box indicated slow flow into the box. According to the owner, the system is currently used only on weekends with no laundry use.

Inspection of the septic tank indicated that the tank content had a "watery" consistency somewhat not typical of sewage. This may be an indication of infiltration of groundwater into the tank.

General Conclusion:

Observation of the soil, vegetation and land features at the site indicate poor drainage and presence of a water table periodically at or close to the soil surface.

SITE EVALUATION FIELD WORKSHEET D. Johnson, B. Pour

Tax Reference: Twp. 18, R04 Sec. 19; T.L. 1400-1401 Evaluator: G. Farrell, D. Darold

Owner John Compton Date: 4-29-96 Parcel Size:

	DEPTH	TEXTURE	SOIL MATRIX COLOR AND MOTTLING (NOTATION), % COARSE FRAGMENTS, ROOTS, STRUCTURE, LAYER LIMITING EFFECTIVE SOIL DEPTH, ETC.
Pit 1	0-6	SiC	10YR 4/1 matrix, few fine faint mottles 10YR 3/2-3/3
			common fine-med. roots, fine SBK, weak consist.
	6-10	SiC	10YR 3/1-4/1 matrix, few fine faint mottle 10YR 4/3
	10-24	C	10YR 4/1 matrix, many coarse prominent mottles 7.5YR 4/6
			groundwater seeping at 9", free water at 11"
Pit 2			
			pit 2 similar to pit 1
Pit 3			
			Note: 30" hole dug with shovel in center area
			of drainfield; depth of fill not readily apparent,
			approx. 20". free water at 28" from surface
Pit 4			of fill (appears to be groundwater)

Landscape Notes: wetland, hydrophyllic plants, mossy oak groves,

Slope: 0-2, Variable ~~undulating~~ Groundwater Type: Temporary

Other Site Notes: ponded water and active drainage channel surrounding drainfield and throughout site.

SYSTEM SPECIFICATIONS

Peak Daily Flow: _____ gpd Average Daily Flow: _____ gpd

1. Initial System: _____ Disposal Facility: _____ (linear feet/square feet) Max. Depth: _____ inches
2. Replacement System: _____ Disposal Facility: _____ (linear feet/square feet) Max. Depth: _____ inches

~~Special Conditions~~ Notes: disposal trenches installed as capping fill design. It appeared that gravel portion of trenches were installed in fill. Fill approx. 12-18" in depth. Inspection of dist. box indicated slow flow into box. System currently used only on weekends / no laundry use. Inspection of septic tank: appeared to be excessive water / groundwater? in tank, - not typical sewage. (Tank leaking / infiltration?)

PLOT PLAN ON REVERSE SIDE

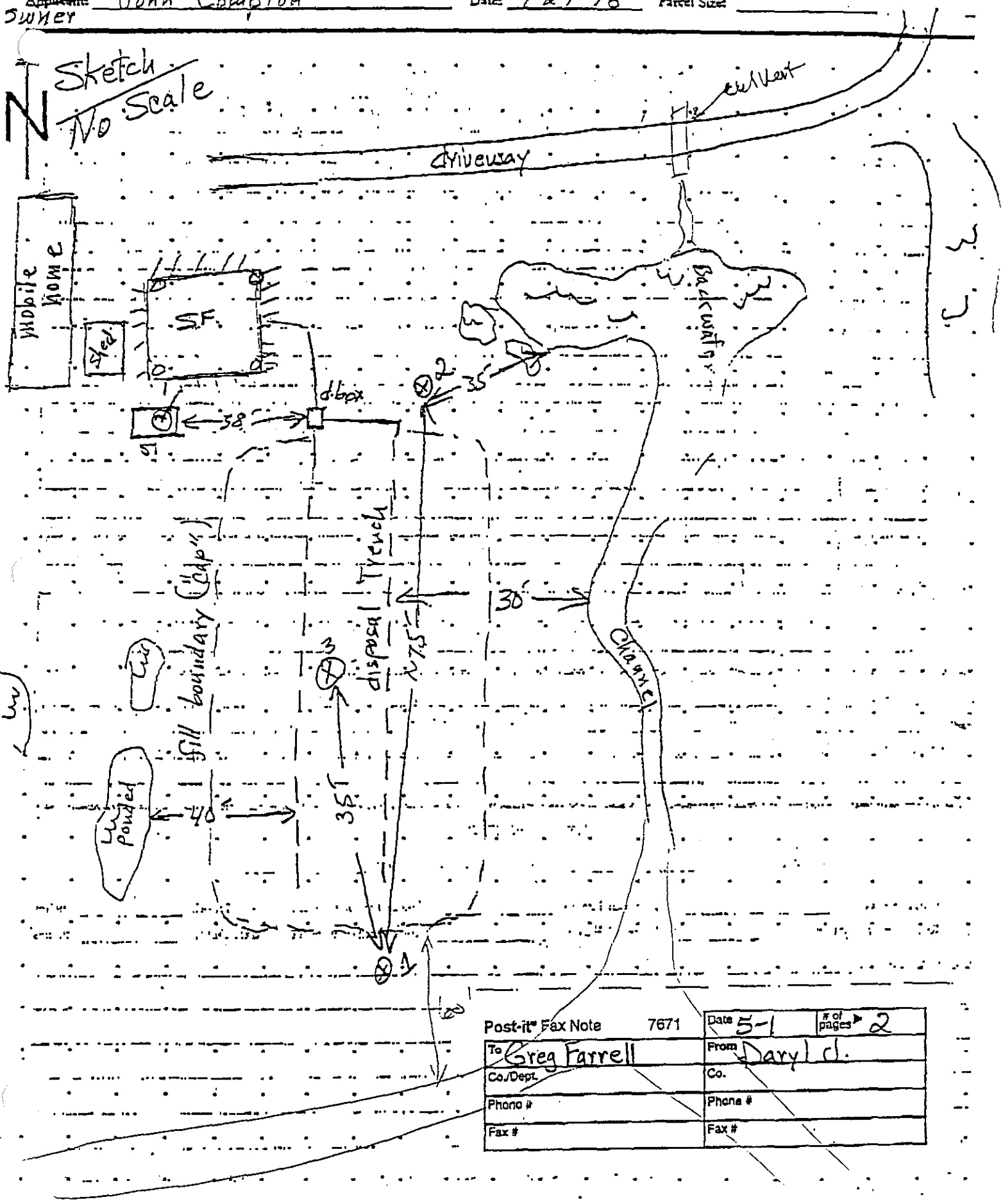
IW\TABLE\WH4933.S (10/91)

sketch →

Tax Reference: 18-4-9; TL. 1400 -1401 Evaluator: G. Farrell, D. Darold

Applicant: John Compton Date: 4-29-96 Parcel Size:

Owner



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To Greg Farrell	From Daryl d.
Co./Dept.	Co.
Phone #	Phone #
Fax #	Fax #

Oregon
DEPARTMENT OF
ENVIRONMENTAL
QUALITY
WESTERN REGION
ROSEBURG BRANCH OFFICE
725 SE Main St.
Roseburg OR 97470

CERTIFIED

Z 710 387 875

MAIL

EUGENE OR 974 PM 06/10/96

USA $2.90

Mr. John M. Compton
2990 Kinney Loop
Eugene OR 97408

NV
6-11-96

97408-5023 06

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 18, 1997

To: Environmental Quality Commissioners

From: Langdon Marsh

Subject: Director's Report

DEQ Enters Ways and Means Process

As you might guess, much of what I want to discuss today relates to the legislature. The most pressing activity right now is the DEQ appearance before the Ways and Means Subcommittee which began yesterday and will likely extend through next week. We will keep you posted on the schedule in case one or all of you would like to attend.

Yesterday began with an introduction and budget overview. We will be proceeding by program area from this point on. Now, I will highlight a couple specific legislative issues of interest.

HB 3457 - Environmental Excellence Program Agreements

A bill has been introduced in this session which would allow businesses to enter into agreements with the Commission and DEQ, in which firms meeting certain requirements for superior environmental performance may receive waivers or modification to environmental regulation. The bill was initiated by Weyerhaeuser and is sponsored by Rep. Lewis, at the request of NW Pulp & Paper Ass. and AOI.

DEQ supports the basic concepts in the bill, which promote higher levels of environmental performance, but has serious objections to the bill as drafted. We have proposed changes which would correct these concerns, to which the sponsors seem open. The environmental community is opposed to the original bill, but may be willing to accept a modified bill. The Governor's office has expressed support of the concept, but reservations about the form and timing. The bill is quite similar in effect to DEQ's Green Permits program, which will start pilots in early 1998.

Under HB 3457, the EQC would have sole authority to approve any EEPA proposals submitted to either DEQ or LRAPA. Rulemaking may or may not be necessary under the bill.

VIP Privatization

As you know, a bill that would privatize the DEQ vehicle inspection program passed out of committee a few weeks ago and was forwarded to Ways and Means. We expect to be

discussing that proposal next week as part of our Ways and Means Subcommittee appearance.

The Department of Administrative Services in Salem has put together a team to develop a Request for Proposals seeking potential vendors of vehicle testing services. We are working closely with DAS to assure that the RFP has the necessary specifications to deliver a high-quality, enhanced program. We are also taking care to avoid getting too closely involved in RFP development. Keeping this separation will allow DEQ to be a prospective bidder to provide these services.

As we proceed through the Ways and Means process, we will also be providing our best estimates of actual costs and several different approaches for phasing in the enhanced program while also shifting to a contract vendor. If all goes as we currently project, the enhanced inspection program should be in place in Portland by fall. If privatization does occur, then the vendor would likely take over after January 1, 1998.

There are also some other bills in the system dealing with vehicle inspection fees, testing boundaries and caps on car repair costs.

Umatilla Appeal Filed

You may have noticed in the news earlier this week that two environmental organizations and the Hermiston citizens group GASP have filed a petition to the EQC for reconsideration of the permit you granted for chemical weapons incineration at Umatilla. I won't go into the details now, but wanted to give you a heads up.

The Department is reviewing the petition and will be developing recommendations for the commission. The commission has 60 days (until June 15th in this case) in which to take action on the motion for reconsideration. This item will be placed on the EQC agenda for June, and a copy of the Department's staff report will be available to the public at that time.

If the EQC denies the petition, then the petitioners would be able to seek review of the original permit within 60 days of the order denying the request for reconsideration. The petition for review would have to filed with the Oregon Circuit Court.

401 Certification Applications for Forest Service Grazing Permits

To date we have received 40 applications for Section 401, water quality, certification for grazing permits/leases on U.S. Forest Service lands. While we do not know the entire universe of potential applications, we expect to receive no more than 50 in total for this season.

A Few Words About Great People Doing Great Work

It seems much of what you receive in my periodic reports focuses on controversy and problems. I realize that is information you need. Beginning with this report, however, I am also including a closing section to recognize the truly fine work and excellent public service of people within DEQ. I hope you will agree that this is information you need as well.

Last month, the agency honored the work of five individuals during the recognition segment of our Quarterly Managers Meeting. These honorees included:
Morgan Allara, Lab – recognized for his dedicated attention to meteorological monitoring, interpretation and forecasting in support of advancing air quality and pollution analysis.
Curtis Cude, Lab – recognized for his perseverance and leadership in developing and implementing the Water Quality Index as a key indicator for the Water Quality Program.
Bruce Gilles, WMC – recognized for his outstanding work not just for implementing an effective cleanup remedy at the East Multnomah County site, but also his successful effort to involve diverse community interests in the solution.
Kevin Masterson, NWR – recognized for excellent work performed as NW Region Pollution Prevention Coordinator. Notable projects included agency contact for Multnomah County's Strategic Investment Program, outreach to the business community on pollution prevention strategies and MLK Blvd. Revitalization project.
Tom Rosetta, WQ – recognized for excellent work in handling, often alone, the agency 401 Certification process. This heavy and often controversial work load requires outstanding organizational skills and strong knowledge of related science.

The Air & Waste Management Association annual "Hawkeye Award" went this year to DEQ's **Fritz Skirvin** of Western Region for his "willingness to go beyond the traditional regulator's role and to find the best answer."

And finally…a note to me from a satisfied customer (a local realtor) praising **Andree Pollock** of the NW Region Tanks Program: The letter read in part – "I expected a bureaucratic putoff…..Instead, I received a listening interested person who gave out sound information and helped us immensely to meet our time line on a real estate transaction involving two young families that would have lost their loans if your office could not perform in a rapid manner. As pressed for time as you all are, Andree and your staff restored my faith in government agencies."