

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 07/17/1997**



**State of Oregon
Department of
Environmental
Quality**

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A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

July 17, 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.

The Meeting Will Begin at 9:00 a.m.

- A. **Approval of Minutes**
- B. **†Rule Adoption:** Amending Oregon Hazardous Waste Administrative Rules for Generator and Treatment, Storage and Disposal Fees, Generator Certification Requirements, Late Fee Billing Procedures and Federal Rules
- C. **†Rule Adoption:** Solid Waste Rules Composting Operations
- D. **†Rule Adoption:** Amending Solid Waste Rules for Local Government Municipal Landfill Financial Assurance and Delayed Effective Date of Requirements for Certain Very Small Landfills
- E. **Action Item:** Petition by JELD-WEN, INC for Declaratory Ruling Concerning Availability of Sewer as Defined in OAR 340-71-160(5)(f)
- F. **Informational Item:** Total Dissolved Gas (TDG) Update
- G. **Informational Item:** Healthy Streams Partnership Report

H. Informational Item: Legislative and Budget Update

I. Commissioners' Report

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 will have lunch at 12:00 noon. No Commission business will be discussed.

The Commission has set aside August 21-22, 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.

June 26, 1997

Approved
Approved with Corrections

Minutes are not final until approved by the EQC

**Environmental Quality Commission
Minutes of the Two Hundred and Sixtieth Meeting**

**June 5, 1997
Regular Meeting**

The Environmental Quality Commission meeting was convened at 1:05 pm on Thursday, June 5, 1997, at the Department of Environmental Quality, 811 SW Sixth Ave, Portland, Oregon. The following members were present:

Henry Lorenzen, Chair
Carol Whipple, Vice Chair
Linda McMahan, Member
Tony Van Vliet, Member
Melinda Eden, Member

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice, Langdon Marsh, Director, DEQ and other staff.

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

Chair Lorenzen called the meeting to order at 1:05 pm.

A. Approval of Minutes

The minutes for the February 8, 1997, special phone meeting; the February 28, 1997, regular meeting and the April 18, 1997, regular meeting were reviewed. Commissioner Van Vliet moved that the minutes be approved as written. Commissioner McMahan seconded the motion. The motion was carried by five "yes" votes for the February 8 and 28, 1997, meetings and four "yes" votes for the April 18, 1997, meeting. Chair Lorenzen abstained from voting on the motion for the April 18 minutes as he was not in attendance for that meeting.

B. Approval of Tax Credits

Maggie Vandehey with the Department's Management Services Division presented this item to the Commission. The Department recommended the Commission approve certification of the following tax credit applications:

Applications for Pollution Prevention Pilot Program

All equipment is used in the normal course of doing business. However, the owners would not have replaced their existing systems at this time or with this particular equipment had it not been required by the National Emission Standards for Hazardous Pollutants (NESHAP) and to avoid monitoring and record-keeping requirements.

| TC No. | Applicant | Description of Facility | Certified Cost | Certificate Value |
|--------|----------------------------|--|-----------------|-------------------|
| 4743 | The Cleanery - Santa Clara | New dry-cleaning machine using Exxon DF 2000 solvent. Eliminates emissions of perc to the atmosphere by replacing a perc machine. | \$72,898 | \$ 36,449 |
| 4762 | Campbell's Cleaners, Inc. | Multiprocess wet cleaning system which was installed as a replacement for about 55% cleaning capacity of existing perc dry cleaning machine. | \$21,605 | \$ 10,803 |
| | | Total Prevention | \$94,503 | \$ 47,252 |

Applications for Reclaimed Plastic Tax Credit

All facilities are a normal part of doing business. It is unknown if the applicant would have installed these particular facilities at this particular time without the incentive provided by the Reclaimed Plastic Tax Credit.

| TC No. | Applicant | Description of Facility | Certified Cost | % Allocable | Certificate Value |
|--------|------------------------------|---|------------------|-------------|-------------------|
| 4353 | D & O Garbage Service INC | 2 Kohlman-Hill, Inc. model KP2600F compactor units to collect recycled plastic on the collection truck; 2 20% portions of modified collection trucks; 1 30-yard drop-box; 2 20-yard drop-boxes for storage & transport of recycled plastic. | \$54,418 | 100% | \$ 27,209 |
| 4626 | Dinihanian Manufacturing Inc | Injection molding die used to manufacture floral card holders from reclaimed plastic. | \$39,379 | 100% | \$ 19,690 |
| 4710 | WWDD Partnership | 42', 1979 Hobbs trailer used for collecting reclaimed plastic. | \$2,975 | 100% | \$ 1,488 |
| 4639 | Willamette Beverage Co. | REM model PERF-10 plastic bottle perforator and associate conveyor belt system. | \$25,872 | 100% | \$ 12,936 |
| | | Total Reclaimed Plastic | \$122,644 | | \$61,323 |

Applications for Pollution Control Facilities Tax Credit

| TC No. | Applicant | Description of Facility | Certified Cost | % Allocable | Certificate Value |
|-------------------------------|------------------------|---|-------------------|----------------|----------------------|
| Pollution Control: Air | | | | | |
| 4373 | Wacker Siltronic Corp | Viron wet scrubber rated at 15,000 cfm, ductwork, structural support and chemical delivery system Facility controls ammonia, hydrochlorofloric acid, potassium hydroxide and hydrogen peroxide emissions. | \$227,825 | 100% | \$ 113,913 |
| 4650 | Universal Seed Inc | P.M. Hagel & Associates bag house system to control new vegetable seed cleaning e equipment. The baghouse is designed to operate with a particulate removal efficiency of 99%. | \$62,326 | 100% | \$ 31,163 |
| 4676 | Smurfit Newsprint Corp | Press vent wet scrubbing system installed to control emissions of particulate matter and formaldehyde. | \$366,710 | 100% | \$ 183,355 |
| 4677 | Smurfit Newsprint Corp | Principal Purpose: Cladwood Division - Philomath – Baghouse | \$245,846 | 100% | \$ 122,923 |
| 4711 | DOUBLE J FARMS | Self contained air conditioner coolant recycling equipment (R-134A.) | \$4,199 | 83% | \$ 1,743 |
| 4719 | LARRY LAUNDRER INC | AUTO AIR COOLANT RECYCLING EQUIPMENT | \$3,790 | 82% | \$ 1,554 |
| Sub-Total Air | | | \$902,707 | | \$ 451,354 |

Pollution Control: Water

| | | | | | |
|------------------------|------------------|--|-----------------|------|----------------|
| 4720 | BERNARD VAN DYKE | Animal waste management system which consists of an underground reinforced concrete tank with a reinforced concrete apron connecting tank to barn. | \$15,582 | 100% | \$ 7,791 |
| Sub-Total Water | | | \$15,582 | | \$7,791 |

Pollution Control: Solid Waste

| | | | | | |
|------|-------------------|--|-----------|------|-----------|
| 4679 | S & H Logging Inc | John Deere 690E Excavator with model 42 Piranha Grapple, serial # DW69 EL546757 used to handle yard debris which is being processed into grade mulch | \$159,600 | 100% | \$ 79,800 |
|------|-------------------|--|-----------|------|-----------|

| | | | | | |
|------|---------------------------------------|---|------------------|------|------------------|
| 4724 | United Disposal Service Inc | 5 30-yard drop-boxes, serial # 9230 to 9234 | \$14,959 | 100% | \$ 7,480 |
| 4730 | Corvallis Disposal Co. | 10 2-yard front load containers with lids for cardboard recycling, model # M73T, serial # 127674 to 127683 | \$3,111 | 100% | \$ 1,556 |
| 4738 | Corvallis Disposal Co. | 20 2-yrd & 5 4-yrd front load containers with lids, model # M73T, serial # 130879-13888 & 130938-130947; 9 4-yrd front load containers, model # M75T, serial # 130948-130957; 5 6-yrd front load containers, model # M76T, serial # 130958-130962 | \$13,851 | 100% | \$ 6,926 |
| 4739 | Corvallis Disposal Co | 2 Vulcan on-board Scale systems for cardboard recycling collection trucks, model # R100, Epson computer model # M-H804AEW, serial # 470001788. | \$17,874 | 100% | \$ 8,937 |
| 4740 | Corvallis Disposal Co | 576 101-gallon Toter carts, model # 60501, serial # YW008206 - YW008782 and 100 90-gallon semi-automated TOTER carts, model # 74096, serial # Q71582-Q07168 | \$43,199 | 100% | \$ 21,600 |
| 4741 | United Disposal Service Inc | One Marathon V-6030HD Baler, Serial # 91901 | \$9,191 | 100% | \$ 4,596 |
| 4748 | Albany-Lebanon Sanitation Inc | 20 2-yrd. front load containers model # M73T, serial # 127267-127276 & 127501-127510; 20 4-yrd front loader containers, model #75T | \$13,242 | 100% | \$ 6,621 |
| 4750 | Albany-Lebanon Sanitation Inc | 360 95-gallon Schaefer yard debris collection carts, model # USD-C95, serial # 11337-11696 | \$18,720 | 100% | \$ 9,360 |
| 4757 | Lehl Disposal Co., Inc. | GMC Truck with 18 Foot Dump Bed | \$ 34,946 | 100% | \$ 17,473 |
| 4758 | Tri County Construction Clean-up Inc. | 1994 GMC collection truck equipped with 18 foot dump box., model # C7H042, serial #1GDM7HIJRJ519791, license # 513321 compartmented bed | \$34,866 | 100% | \$ 17,433 |
| 4760 | Albany-Lebanon Sanitation, Inc. | 576 101-gallon Toter wheeled carts, model # 60501, serial # YB008053 through YB 008629 | \$37,152 | 100% | \$ 18,576 |
| 4761 | United Disposal Service Inc. | Marathon TC-2.5 Garbage Compactor System | \$23,779 | 100% | \$ 11,890 |
| | | Sub-Total Solid Waste | \$400,711 | | \$200,358 |

| TC No. | Applicant | Description of Facility | Certified Cost | % Allocable | Certificate Value |
|---|------------------------|---|--------------------|-------------|-------------------|
| Pollution Control: Storage Tanks | | | | | |
| 4648 | Lou Dobbins Inc | Facility upgrade for two underground tank systems including Stage II vapor recovery. | \$120,576 | 92% | \$ 55,465 |
| 4653 | Troutwood Inc | Three protected tank systems with double-wall fiberglass/steel tanks, double-wall flexible plastic piping, spill containment basins, tank gauge system, overfill alarm, turbine leak detectors, sumps, automatic shutoff equipment. | \$194,738 | 91% | \$ 88,606 |
| 4759 | Burns Junction Station | Upgrade from underground to protected aboveground storage tank system. | \$18,482 | 100% | \$ 9,241 |
| | | Sub-Total Storage Tanks | \$333,796 | | \$ 153,312 |
| | | Pollution Control Total | \$1,652,796 | | \$ 812,815 |

All Tax Credits 6/5/97 EQC

\$1,869,943

\$ 921,390

Commissioner McMahan moved to approve the Department's recommendation on the tax certifications. Vice-chair Whipple seconded the motion and it was approved with five "yes" votes.

On March 27, 1997, Raymond Richmond of Richmond's Service requested Tax Credit 2268 issued 9/21/90 be transferred to Rodney A. Woodside (dba Richmond's Service). Commissioner Whipple moved to approve the Department's recommendation on the tax certification transfer. Commissioner Van Vliet seconded the motion and it was approved with five "yes" votes.

C. The Petition for Reconsideration Regarding the Environmental Quality Commissions' Approval of the Umatilla Chemical Depot Permit for the Treatment and Storage of Hazardous Materials and Air Contaminant discharge Permit

Mr. Stuart Sugarman, attorney representing the Petitioners, and Ms. Mary O'Brien, representing in part the Sierra Club, provided testimony to the Commission regarding their Petition and the Department's staff report. Testimony included a belief that the Army is insincere about constructing carbon filters for the pollution abatement systems; the Department did not review the SET (solvated electron technology) process for best available technology; and the recent Greenpeace report indicating current scientific thought regarding chlorine feed and dioxin emissions is wrong and therefore Professor Lisa's report to the Commission is in error; and, failure to consider

environmental crimes at Aberdeen. Richard Condit, attorney from Washington DC representing the Petitioners, later joined the proceedings via telephone.

Major David Mayfield, Mr. Raj Malhotra, and Mr. Rick Holmes, all representing the US Army Program for Chemical Demilitarization, provided testimony to the Commission. Major Mayfield stated that the Army agrees with the Department's recommendation in the staff report in denying the Petition.

Mr. Brett McKnight, Manager of the Eastern Region Hazardous Waste Program, provided testimony to the Commission regarding the Department's staff report. Mr. McKnight stated how the report was researched and written by Department staff, and reiterated that the Department recommends denial of the Petition.

The Commission then asked several questions from the Petitioners, Army, and the Department. One concern discussed was the federal need to provide Operation Verification Testing (OVT) for the Dunnage incinerator, Brine Reduction Area units, and carbon filters for the pollution abatement systems. Petitioners claimed OVT testing is necessary, the Army claimed that it was not.

Vice-Chair Whipple moved to deny the petition and Commissioner Eden seconded the motion. A roll-call vote was taken and it was carried with five "yes" votes to deny the petition.

In closing, Mr. McKnight provided two Umatilla updates for the Commission: The status of the permit modification to incorporate Raytheon as a Co-Permittee to the hazardous waste permit, and, a notification that in the future the Army would be submitting a permit modification for engineering changes to the carbon filters and it would be processed as a Class 2 modification determined by the Department.

D. Adoption of the Attorney General's Model Rules

Susan Greco of the Deputy Director's Office presented the proposal of the adoption of the most recent Attorney General Model Rules. The Administrative Procedures Act requires all agencies to adopt rules of procedure for use in rulemaking and contested cases. The adoption of the model rules meets this legal requirement.

Commissioner Eden moved to approve the Department's recommendation. Commissioner Van Vliet seconded the motion and it was passed with five "yes" votes.

E. Adoption of Amendments to the On-Site Sewage Disposal Rules and On-Site Holding Tank Temporary Rule

Stephanie Hallock, Administrator of the Eastern Region Division, presented two On-site Sewage Disposal rule making proposals to the Environmental Quality Commission for adoption. The first amends the permanent rule with respect to portable holding tanks, variance appeal procedures, certification requirements and 17 housekeeping changes. The second is a temporary rule relating to permanent holding tanks.

Martin Loring, Manager, Community Assistance Section of the Water Quality Division, and Larry Edelman, Department of Justice, were also at the table to assist in responding to the Commission's questions.

Ms. Hallock distributed four replacement pages amending the Department's permanent rule recommendation to include the option of obtaining certification through training. Ms. Hallock and the Commission briefly discussed why change is needed in the way variance appeals are handled.

Ms. Hallock and Mr. Edelman both advised that the statute and legislative history are unusually clear in their direction that only appeals of variance approvals may be heard by the Commission. Several Commissioners noted the unusual nature of this appeals process and expressed concern about its fairness to applicants before concluding that Legislative direction must be followed.

Ms. Hallock also pointed out that draft rule language taken to hearing with respect to whether or not sand filters disposal trenches may be installed in temporary ground water was removed from the final rule. She explained that this decision was based upon comments received from the Oregon Water Resources Department and Jefferson County and the lack of time to resolve their concerns. This issue will go back to a rules advisory committee for additional work.

Commissioner Melinda Eden moved approval of the Department's recommended permanent on-site rules, as amended. The motion was seconded by Vice-Chair Carol Whipple and approved by five "yes" votes.

A replacement Attachment A was distributed for the temporary rule. The new Attachment A included the same proposed temporary rule language, but placed it in the holding tanks rules (OAR 340-71-340) as they were amended by the permanent rule amendments just approved by the Commission. After discussion, Commissioner Van Vliet moved adoption of the statement of need, justification and findings for the temporary rule and approval of the temporary rule as proposed by the Department (including the revised Attachment A). The motion was seconded by Vice-Chair Carol Whipple and passed by five "yes" votes.

Report on Total Dissolved Gas (TDG)

Gene Foster of the Water Quality Division was joined by Margaret Filardo, Fish Passage Center, and Mark Schneider, National Marine Fisheries Service, for this report.

The percentage of flow spilled at the Lower Columbia dams continued at a high level due to river flows, flood control operations, and system management. Spill averaged 67.9%, 34.9%, 64%, and 55.9% of average daily river flow at McNary, John Day, The Dalles, and Bonneville dams, respectively. The mid-Columbia dams continue to spill high volumes of water, mostly in excess of hydraulic capacity.

Most sites report levels of total dissolved gas (TDG) above the state's TDG water quality waiver. The highest levels of TDG measured continue to be in the tailrace of the John Day dam where TDG levels were above 140%. There continues to be a high incidence of gas bubble signs in fish collected at the John Day and Bonneville Dams. The levels of gas bubble disease signs exceed the action criteria established by the National Marine Fisheries Service for the controlled spill program.

Current considerations for reducing spill could include changes in the present plan for flood control operations or passing more flow through the turbines which could result in increased turbine mortality. There is disagreement between the fisheries managers and the project operators on the amount of flow that should be passed through the power house turbines.

F. Modification of OAR 340-41-120(12) Effluent Limitations for Bacteria, to Allow Reduced Monitoring for Bacteria for Smaller Sewage Treatment Plants

Dick Nichols, Water Quality Manager, Eastern Region Bend Office, provided a short presentation concerning the need for the proposed rule modification. The rule is needed to allow the Department flexibility in establishing bacteria monitoring requirements for small sewage treatment plants. There were no questions by the Commission and no discussion of the issue. Vice-Chair Whipple moved to adopt the proposed rule. Commissioner Van Vliet seconded the motion and it was passed with five "yes" votes.

G. Commissioners' Report

Chair Lorenzen received a letter from Robert Shahl, Committee Chair of the Klamath River TMDL Citizen's Advisory Committee. He has passed the letter on to Director Marsh. Chair Lorenzen's term is up June 30, 1997. He indicated he would stay on in his capacity as Chair of the Commission until a new Commissioner is appointed.

H. Director's Report

Mike Llewelyn began his duties as Water Quality Division Administrator on May 12. Director Marsh acknowledged his arrival and said how pleased he was that he has chosen to join us. Mike has been Water Quality Program Manager at the Washington Department of Ecology in Olympia since 1990. Director Marsh took this opportunity to express his appreciation for Stephanie Hallock's hard work in the Water Quality Division, and also thank Eastern Region Managers who filled in ably as acting DAs during her interim assignment.

Hyundai America asked last fall for modifications in their original 401 Certification covering their microchip manufacturing facility in Eugene. DEQ has sent to the Corps of Engineers the final, amended certification that evolved from the original Hyundai request. Director Marsh indicated the changes adequately address the company's desire for clarity of wording and intent while continuing to protect the environment at a very high level.

Opal Creek, in the Willamette National Forest, drew considerable public attention in the debate over old-growth forest management. Work is now in progress to remove toxic materials and preserve that special environment. Director Marsh applauded the work of DEQ staff for actively working with the U.S. Forest Service and concerned public on this contentious issue. He also indicated that before Senator Hatfield left Congress, he secured additional federal funding that now allows removal of the tailings to suitable permanent storage. Removal should be complete by early to mid July.

In April, the Legislature and Governor Kitzhaber approved the Oregon Plan for Coho recovery and the Healthy Streams Initiative. This plan provides DEQ with 19 new positions to implement our components of the plan which include development of Total Maximum Daily Load allotments for waterways and help with monitoring Plan performance. We will have a full report on Healthy Streams Partnership at the next EQC meeting.

Since March of this year state natural resource agencies have been working together to prepare the Steelhead supplement to the Oregon Plan. The supplement will be organized to address fisheries management (harvest and hatcheries), water quality, water quantity and physical habitat issues the Lower Columbia River, Oregon Coast, Klamath Mountains Province, Snake River Basin and Upper Willamette River ESUs to obviate the need for a listing and restore Steelhead to productive levels.. DEQ has taken the lead for preparation of the water quality chapter of the supplement. A draft plan should be ready to submit to the National Marine Fisheries Service by the end of June.

The mixing zone rule amendment for point source dischargers has been delayed for two reasons. First: The amendment will likely increase workload above levels required under the existing rule. Therefore, waiting until we have a budget and an accurate fix on available staffing seems reasonable. Second: Incorporating

comments received during public review will change the amendment enough that additional internal review will be necessary before bringing the matter before the Commission.

We have received 62 applications for Forest Service grazing permits which require 401 Certification. So far, DEQ and Department of Agriculture have completed review of 48 applications, and DEQ has issued certifications for each of them.

Director Marsh updated the Commission regarding the budget and legislation. It appears our budget will be one of the last to go before the legislature. Privatization of the Vehicle Inspection Program continues to attract legislative interest. DEQ is working with the agricultural and the environmental community to come up with a bill for the development of an alternative to the temperature standard. DEQ agreed on a final version of a bill initially introduced by Weyerhaeuser, to define an environmental excellence program in exchange for certain commitments made by the facility or company that certain standards or requirements might be waived in an agreement that would supplement any permits that were issued for that facility. The latest version builds very strongly on our ongoing project for green permits to provide benefits for companies that agree to superior environmental performance.


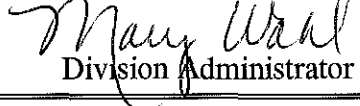
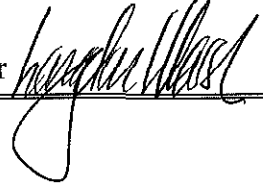

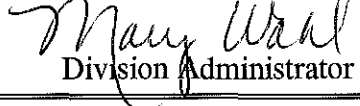
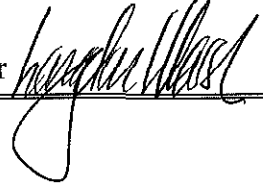

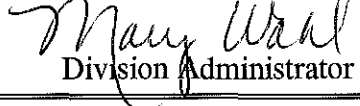
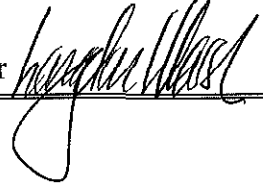
Answers to the question raised by Larry Tuttle at the last EQC meeting regarding general water quality permits are attached to the Director's Report.

There being no further business, the meeting was adjourned at 3:53 pm.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item B
July 17, 1997 Meeting

| | | | |
|--|--|--|--|
| Title: Amend Oregon Hazardous Waste Administrative Rules | | | |
| Summary: Amend hazardous waste generator and treatment, storage and disposal facility compliance determination fees to address a projected funding shortfall in the FY 1997-99 biennium for the hazardous waste management program; delete generator certification requirements for qualifying for the fee cap; amend late-fee billing procedures to make them clearer and more equitable; and update the hazardous waste regulations by adopting with certain state-only amendments changes to federal hazardous wastes rules through June 6, 1997. | | | |
| Department Recommendation: Adopt the rule amendments as presented in Attachment A of the Department Staff Report. | | | |
| <table style="width: 100%; border: none;"><tr><td style="width: 33%; text-align: center;"> Report Author</td><td style="width: 33%; text-align: center;"> Division Administrator</td><td style="width: 33%; text-align: center;"> Director</td></tr></table> |  Report Author |  Division Administrator |  Director |
|  Report Author |  Division Administrator |  Director | |

Date: July 17, 1997
To: Environmental Quality Commission
From: Langdon Marsh, Director
Subject: Agenda Item B, EQC Meeting July 17, 1997

Background

On April 15, 1997, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing to amend the Oregon hazardous waste administrative rules for hazardous waste fees and billing procedures and to adopt some federal rules by reference.

The rulemaking hearing was scheduled for May 21, 1997, and notice of the hearing was published in the Secretary of State's Bulletin on May 1, 1997. On April 15, 1997, the Hearing Notice and informational materials were mailed to persons who asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action. On May 8, 1997, notice was sent to the interested parties regarding two informational sessions on the proposed rulemaking on May 16, 1997 and May 21, 1997. The notice also indicated the public comment period deadline was extended from May 21, 1997 to June 6, 1997. Additional notice of the extended public comment period was sent to interested parties on May 23, 1997, and was published in the Bulletin on June 1, 1996.

The Public Hearing was held May 21, 1997 with Gary Calaba serving as Presiding Hearing's Officer. Written comment was received through 5:00 p.m. on June 6, 1997. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and provides a list of those parties who submitted written comments. (Copies of the actual comments are available upon request.). Department staff have summarized and evaluated the comments received (Attachment D). Based upon that evaluation, the Department recommends modifications to the initial rulemaking proposal. These modifications are summarized below and detailed in Attachment E.

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

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

Issue this Proposed Rulemaking Action is Intended to Address

This rulemaking is to:

- amend the hazardous waste generator and treatment, storage and disposal facility compliance determination fees to address a projected funding shortfall in the 1997-99 biennium revenue for the hazardous waste management program;
- delete generator certification requirements for qualifying for the generator fee cap;
- amend late-fee billing procedures to make them clearer and more equitable; and
- update the hazardous waste rules by adopting with certain state-only amendments, changes to federal hazardous waste rules through June 6, 1997.

Relationship to Federal and Adjacent State Rules

The proposed rule amendments are more stringent than federal requirements in the following ways:

- There is no federal requirement for hazardous waste generators and treatment, storage and disposal facilities to pay fees; the state must assess fees to support a viable program,
- The federal Military Munitions rule allows a permittee to receive munitions from off-site for treatment or disposal, utilizing simplified Class 1 and 2 permit modification procedures. The Department proposes to prohibit the receipt of off-site waste munitions for incineration and disposal at the facility, thereby limiting wastes available for destruction at Umatilla to only waste munitions stockpiled on-site as of February 12, 1997.

Other states, such as Washington State and California, implement more stringent, state-only versions of the RCRA rules and intend to adopt a version of the munitions rule in the future. Idaho has not decided whether to adopt the rule, and in Alaska, the rule will be implemented by the EPA.

Surrounding states assess fees to pay for their programs. California assesses fees for virtually any activity related to hazardous waste; Washington State has a toxics fee; Idaho assess fees on wastes disposed at the hazardous waste facility; and Alaska's program is implemented by the EPA.

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Authority to Address the Issue

The Department has the statutory authorities to address these issues under ORS 466.015, 466.020, 466.045, 466.070, 466.075, 466.086, 466.100, 466.150, 466.160, 466.165, and 466.215.

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

The Hazardous Waste Program Fee Rulemaking Advisory Group¹ met three times specifically to evaluate the Department's proposal to raise generator compliance determination fees by 54 percent, and to raise treatment, storage and disposal compliance fees to more closely represent the Department's workload at these facilities. Although there was not unanimous support for the Department's proposal, the Group generally supported two principles upon which the new fees are based:

- any impact in generator fees should have an equal impact on all generator types (i.e., generator fee percentage increase should be equal across all generator categories); and
- treatment, storage and disposal facility fees should more closely reflect the Department's workload associated with oversight of each type of facility's hazardous waste management activity.

The Department also held two informational sessions with the public to discuss the proposed fee increases.

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

This rulemaking proposal would:

- amend the hazardous waste generator and treatment, storage and disposal facility compliance determination fee schedules to address a projected funding shortfall in the 1997-99 biennium

¹ The group included Richard L. Angstrom, Jr., Oregon Concrete and Aggregate Producers Association; David Barrows, Dave Barrows Associates; Jim Craven, American Electronics Association; Kathleen C. Dotten, Dotten and Associates, Inc.; John Ledger, Associated Oregon Industries; Kathryn Van Natta, Northwest Pulp and Paper Association; Thomas J. Gallagher, Ball, Janik and Novack; Eric Medenhall, Safety-Kleen Corporation; Randy Tucker, OSPIRG; Terry Witt, Oregonians for Food and Shelter; and Scott Ashcom, Ted Hughes and Associates.

revenue for the hazardous waste management program;

- delete certification requirements for qualifying for the generator fee cap;
- amend late-fee billing procedures to make them clearer and more equitable; and
- update the hazardous waste regulations by adopting changes, with state-only amendments, to federal hazardous waste rules through June 6, 1997.

Why is there a need for rule amendments?

I. Amend Hazardous Waste Generator and Treatment, Storage and Disposal Facility (TSDF) Compliance Fee Schedules: Declining revenues from several program funding sources are projected to result in a total projected shortfall for the 1997-99 biennium of \$1,600,000. The bulk of the projected shortfall is due to declining receipts, and the resultant tipping fees at the Arlington commercial hazardous waste landfill. In response to the projected shortfall, the Department reduced its projected expenditures by \$400,000 through cuts in contractor spending, eliminating temporary staff and slowing staff recruitment, and reducing travel and training opportunities. However, the remaining \$1,200,000 will not be met without raising TSDF and generator compliance determination and generator status fees.

The treatment, storage and disposal compliance determination fees have not been raised since 1989. The overall range of generator fees (from least to most) also has not changed significantly since 1989. In fact, if the fee increases had been indexed to inflation increases since 1989, the fees would have experienced a 43 percent increase.

The \$1,200,000 shortfall represents funding for seven existing hazardous waste staff positions in the compliance portion of the program. This reduction will prevent the Department from maintaining current service levels. The Department anticipates that the impact of this funding reduction will increase the risk to human health and the environment by an approximate one-third reduction in generator and TSDF compliance activities equaling approximately 80 fewer inspections annually, 100 fewer complaint follow-up actions, and less enforcement follow-up for each of the compliance actions.

The compliance workload for the hazardous waste program has not declined. The overall number of regulated generators in Oregon has remained relatively constant, although the composition shifts over time with some generators exiting the universe and others incoming or new. The number of non-regulated generators has increased significantly. This group represents

a technical assistance, complaint response and general administrative workload for the Department. See Table 1.

Table 1. Generator Numbers - Five Years

| Description | 1991 | 1992 | 1993 | 1994 | 1995 | Average |
|---|-------|-------|-------|-------|-------|---------|
| Number of Generators Reporting by Status | | | | | | |
| Large Quantity | 212 | 204 | 196 | 225 | 222 | 212 |
| Small Quantity | 694 | 544 | 465 | 476 | 508 | 537 |
| Conditionally Exempt | 1,623 | 1,657 | 1,690 | 2,211 | 2,526 | 1,941 |
| Total | 2,529 | 2,405 | 2,351 | 2,912 | 3,256 | 2,691 |

In addition, while the Department's experience with the Toxics Use Reduction Program has resulted in reductions in toxics use and waste generation at individual facilities, state-wide manufacturing or process waste generation totals have remained nearly constant. See Table 2.

Table 2. Oregon Hazardous Waste Generation - Five Years²

| Description | 1991 | 1992 | 1993 | 1994 | 1995 | Average |
|---|-----------|-----------|-----------|-----------|-----------|-----------|
| Overall Comparison - Wastewaters, Process and Non-Recurrent Wastes (Metric Tons) | | | | | | |
| Wastewaters | 1,217,957 | 1,795,365 | 2,260,452 | 2,488,144 | 2,807,437 | 2,113,871 |
| Process Waste | 37,329 | 42,915 | 41,283 | 34,763 | 41,133 | 39,485 |
| Non-Recurrent | 45,463 | 32,638 | 13,496 | 14,343 | 27,637 | 26,715 |
| Total | 1,300,749 | 1,870,918 | 2,315,231 | 2,537,250 | 2,876,207 | 2,180,071 |
| Wastewaters | 93.64% | 95.96% | 97.63% | 98.06% | 97.61% | 96.96% |
| Process Waste | 2.87% | 2.29% | 1.78% | 1.37% | 1.43% | 1.81% |
| Non-Recurrent | 3.50% | 1.74% | 0.58% | 0.57% | 0.96% | 1.23% |

II. Delete Certification Requirement for Generator Fee Cap; Amend Late Fee Billing Procedures; and Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection: An individual annual hazardous waste generator compliance fee may be capped at \$15,000, if the generator certifies that it has filed a timely Annual Hazardous Waste Generation Report and a timely Notice of Plan Completion for the Toxics Use Program, and has paid its previous years' fees. Without the certification, a fee

² Non-recurrent waste is one-time or cleanup waste generated in the State of Oregon. These waste quantities are difficult to project. Hazardous wastewaters have increased significantly in the last five years. Appropriate management of hazardous wastewaters represent a compliance workload for the Hazardous Waste Program.

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larger than the cap could be imposed. It has been the Department's experience that the certification requirement does not compel more timely reporting or payment of fees. In addition, as written, the certification criteria are vague and have resulted in considerable administrative time in arguing application issues at specific facilities. The Department proposes to delete the certification requirements and to raise the cap amount to \$22,500.

Hazardous waste generators are assessed a late fee if they do not pay on time. Currently, the fee is assessed if a generator's payment is not postmarked by the due date on the invoice. There have been instances where the mail is postmarked several days after the generator has claimed to have deposited their mail. The Department proposes to amend the rule and require instead that late fees be assessed if generator fees are not received by the Department by the due date shown on the invoice. This more clearly places the responsibility for ensuring timely payment on the generator. In addition, it should be easier to verify timely payment.

The Department currently refers accounts which are 90-days past-due to the Department of Revenue for collection. The Department is proposing to refer some past-due accounts to Small Claims Court as an additional collection option. Referral of accounts to either the Department of Revenue or Small Claims Court for collection would occur only after every effort is made to collect the outstanding fee within the first 90 days after payment is due. On any account referred, the Department proposes to assess a \$100 fee, if that amount is more than 20 percent of the total due (plus late fees), to cover administrative costs associated with referring the past-due account to either the Department of Revenue or to Small Claims Court for collection.

III. Adopt Changes with Amendments to the Federal Hazardous Waste Rules through June 6, 1997: The Department periodically adopts changes to federal hazardous waste rules to maintain an equivalent hazardous waste program and to implement the program in lieu of EPA. The Department proposes to adopt by reference changes to federal rules promulgated through June 6, 1997, such as Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Wastes and Spent Potliners; technical corrections and amendments to the Land Disposal Restrictions and Universal Waste Treatment Standards; suspended and revised Organic Air Emission Standards for Tanks, Containers and Surface Impoundments; Extension of Capacity Variance for K088 Spent Potliner; and Military Munitions rule. With the exception of the Military Munitions rule, which sets forth new regulatory territory, most of the proposed changes are to federal rules that are currently in effect in Oregon.

The Department intends to adopt the federal Military Munitions rule with state-specific more stringent changes. Specifically, the Department proposes to amend the rule to ensure it meets the intent of the permit that was issued on February 12, 1997, to allow thermal destruction

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(incineration) of only the on-site stockpile of waste munitions at the U.S. Army Umatilla Chemical Depot, near Hermiston, Oregon. The munitions rule, as written, would allow the U.S. Army to receive hazardous waste from off-site through a self-implementing Class 1 and 2 permit modification process. The Department views the Class 1 and 2 procedures as insufficient to allow meaningful public participation or Department review, considering the existing hazardous waste thermal treatment permit condition prohibiting receipt of such wastes at the facility. Therefore, the Department initially proposed to amend the Class 1 and 2 permit modification procedures by requiring instead that any proposal by the U.S. Army to receive wastes from off-site be addressed by a Class 3 permit modification process, which requires more extensive public participation and an Environmental Quality Commission determination on the proposed permit modification to allow wastes to be received from off-site. Based on public comment, the Department now proposes to more clearly meet the intent of the permit, the Governor, the direction of the Environmental Quality Commission, and the expectation of the public to limit what may be incinerated at the facility to only those on-site waste munitions inventoried (stockpiled) at the facility as of February 12, 1997. These changes are discussed more fully below.

Summary of Significant Public Comment and Changes Proposed in Response

The Department received eight public comments on its proposal to increase hazardous waste generator compliance fees by 50 percent, and to increase treatment, storage and disposal facility compliance determination fees to more closely approximate workload at these facilities. Comments ranged from conditional support to rejection of the proposal. The main comment themes were as follows:

- Waste generation in Oregon is decreasing, thus the Hazardous Waste Program should adjust accordingly;
- Concern about not being able to pass the fee increases on to customers because of tight markets;
- The Department should look for efficiencies to reduce costs, rather than increase revenue; and
- Increasing generator fees to cover 40 percent increase in inflation is acceptable, but an additional increase of 10 percent is not justified, because generation volumes are down.

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The Department proposes no changes to its proposals to increase generator compliance fees and treatment, storage and disposal facility fees based on these comments. The reduction in the volume of hazardous remediation waste from Washington State disposed at the Arlington facility is the major reason for loss of revenue. Data show that the average volume of hazardous process wastes generated in Oregon has remained fairly constant year after year. (See Table 1). In addition, some facilities have significantly increased their volumes of hazardous wastewaters. Overall, the increase in wastewaters represents an additional 2,000,000 metric tons of hazardous waste generated in 1996. Thus, the workload in the Hazardous Waste Program remains at least constant and any loss of revenue would undermine Department oversight of hazardous waste activity in the State. Since 1989, when the last major adjustment to the fee structure occurred, there has been a 43 percent increase in inflation. However, holding the proposed fee increase only to this inflation increase would result in a cut in program services.

The Department received five public comments on its proposal to require Class 3 permit modification procedures, instead of the Class 1 and 2 procedures in the federal Military Munitions rule, should the U.S. Army desire to receive waste munitions from off-site. Commentors stated that the Department's initial proposal did not clearly meet the intent of the permit, and in fact, could provide a means for off-site wastes to be incinerated and disposed at the facility. The Department agrees and has rewritten its original proposal. (See Section III above).

The Department is not, however, proposing to prohibit any on-site or off-site movement of non-agent munitions currently allowed under other permits. The Army manages military munitions at the Depot for reasons other than preparation for incineration; these munitions will be allowed to move in accordance with permit conditions. However, any proposed changes to these permit conditions must meet the appropriate permit modification procedures already in the Oregon hazardous waste regulations and not the procedures in the federal Military Munitions rules.

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

The fee increases will be included in the Summer 1997 billing to be mailed by the end of July. A fact sheet detailing the changes to the fee collection rules and a description of the increases will be provided in the invoice mailings. Updated regulations will be published that include the new federal regulations adopted by reference. No changes to the Umatilla permit will occur as a result of the adoption of the federal Military Munitions rule. Information fact sheets regarding the new rules will be developed, as appropriate, for distribution to affected businesses, interested parties, and agency personnel.

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Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments as presented in Attachment A of this Department Staff Report.

Attachments


- A. Rule Amendments Proposed for Adoption
- B. Supporting Procedural Documentation
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing
- D. Summary and Evaluation of Public Comments Received
- E. Changes to Original Rulemaking Proposal Made in Response to Public Comment
- F. Summary of Federal Rules Proposed for Adoption

Reference Documents (available upon request)

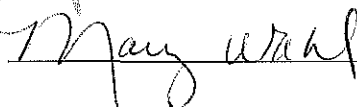
Written Comments Received (as listed in Attachment C)

Approved:

Section:



Division:



Report Prepared By: Gary Calaba, Hazardous Waste
Policy and Program Development, Waste Management and
Cleanup Division

Phone: (503) 229-6534

Date Prepared: June 26, 1997

Proposed Rule Amendments

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

In the Matter of Amending) Proposed Amendments
OAR Chapter 340, Divisions)
100, 102 and 105)

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

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

340-100-002 (1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 108, 109, 111, 113 and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, 273 and Subpart A and Subpart B of Part 124 promulgated through ~~March 31~~ June 6, 1996 are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215.¹

As specified in the Federal Register, the effective date of the 40 CFR Parts are as follows: Federal Register, Vol. 60, November 13, 1995, 40 CFR Parts 260, 262, 264, 265, 270 and 271, effective October 6, 1996 as amended.

(2) Except as otherwise modified or specified by OAR Chapter 340, Division 111, the rules and regulations governing the standards for the management of used oil,

¹ Note: On March 3, 1992, in 57 Federal Register 7628, EPA promulgated a re-adoption of 40 CFR 261.3, the mixture and derived-from rules, because the rules had been vacated as a result of federal litigation. The EQC did not adopt this amendment at that time because the State had independently and legally adopted mixture and derived-from rules under state law in 1984, and has indicated its intent to maintain the mixture and derived-from rules with each annual rulemaking update.

prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 279 promulgated through ~~March 31~~ June 30, 1996², except the administrative stay to the used oil mixture rule, 40 CFR 279.10(b)(2), published in the Federal Register (FR) Vol. 60, No. 209, pg. 55202², are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

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

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

Stat. Auth.: ORS Ch 183.337 , 465.009, 466.020, 468.020

Stat. Implemented: ORS Ch. 466.015, 466.075, 466.086

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 10-1987, f. & ef. 6-11-87; DEQ 23-1987, f. & ef. 12-16-87; DEQ 19-1988, f. & cert. ef. 7-13-88; DEQ 12-1989, f. & cert. ef. 6-12-89; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 11-1993, f. & cert. ef. 7-29-93; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 31-1994(Temp), f. 12-6-94, cert. ef. 12-19-94

2. Rule 340-102-065 hazardous waste generator fees are proposed to be amended as follows:

Hazardous Waste Generator Fees

340-102-065

(1) Each person generating more than 100 kilograms (220 pounds) of hazardous waste, or more than 1 kilogram (2.2 pounds) of acutely hazardous waste, in any calendar month, or accumulating more than 1,000 kilograms (2,200 pounds) of hazardous waste at any time in a calendar year, shall be subject to an annual hazardous waste generation fee. Fees shall be assessed annually for hazardous waste management activities in the previous year and shall be paid by the due date shown on the invoice.

(2) A late charge equal to ten percent of the fee due shall be ~~assessed~~ paid if the fees are not received by the Department ~~postmarked~~ by the due date shown on the invoice. An additional late charge of ten percent of the invoice amount shall also be ~~assessed~~ paid each 30 days ~~or fraction thereof~~ that the invoice remains unpaid. Invoices 90 days or more ~~past~~ overdue may be referred to the Department of Revenue for collection or collected in Small Claims Court

² Note: On January 19, 1996, the District of Columbia Circuit Court vacated EPA's administrative stay of the "used oil mixture rule," issued by EPA, which in effect voided the mixture stay.

for collection. Accounts so referred to the Department of Revenue for collection or collected in Small Claims Court shall be increased by 20 percent of the total due (original fee plus late charges) or \$100, whichever is greater, to recover a portion of the costs for referral or collection.

(32) A base hazardous waste generation fee, expressed in mills per kilogram, shall be fixed by rule by the Commission, based on reports from the Department on the total amount of hazardous waste generated in the state and the methods by which the waste was managed:

(a) The Department may use the base fee, or any lesser fee, to determine annual generation fee invoices. Any increase in the base fee must be fixed by rule by the Commission;

(b) Beginning with hazardous waste generated and managed during 1992~~6~~, the base fee is fixed at ~~6~~90 mills per kilogram (\$~~6~~90 per metric ton).

(43) Each person's hazardous waste generation fee shall be calculated by multiplying the base fee by the weight of each hazardous waste stream and by the fee factors listed below for the management method reported in the annual generation report (OAR 340-102-041) as follows:

Management Method Fee Factor

| | |
|--|------|
| Metals Recovery (For Reuse) | 0.50 |
| Solvents Recovery | 0.50 |
| Other Recovery | 0.50 |
| Incineration | 1.00 |
| Energy Recovery (Reuse as Fuel) | 0.75 |
| Fuel Blending | 0.75 |
| Aqueous Inorganic Treatment | 1.00 |
| Aqueous Organic Treatment | 1.00 |
| Aqueous Organic and Inorganic Treatment (Combined) | 1.00 |
| Sludge Treatment | 1.00 |
| Stabilization | 1.00 |
| Other Treatment | 1.00 |
| Neutralization (off-site) | 0.75 |
| Land Disposal | 1.50 |
| Management Method Unknown or Not Reported | 2.00 |

RCRA-Exempt Management

| | |
|--------------------------|------|
| Neutralization (on-site) | 0.00 |
|--------------------------|------|

Permitted Discharge under 0.00
Clean Water Act Section 402

In order to determine annual hazardous waste generation fees, the Department may use generator reports required by OAR 340-102-041; facility reports required by OAR 340-104-075; information derived from manifests required by **40 CFR 262.20**; and any other relevant information. For wastes reported in units other than metric tons kilograms, the Department will use the following conversion factors: ~~1.0~~ metric ton = 1,000 kilograms = 2,2050 pounds = 1.10 short tons = ~~35.25~~ 1.31 -cubic yards ~~feet~~ = 264 gallons = ~~1.10 tons (English)~~ = 4.810 drums (55 gallon).

~~(54) A generator subject to the~~ The maximum annual hazardous waste generation fee may apply to the Department to limit the amount of the on any initial fee invoice shall be limited to \$22,500~~15,000~~. Applications must be submitted by the due date shown on the invoice and must contain a signed certification of:

- ~~_____ (a) Timely filing of annual generator reports required under OAR 340-102-041 covering the previous year;~~
- ~~_____ (b) Timely filing of a toxics use reduction and hazardous waste reduction Notice of Plan Completion under OAR 340-135-050(4) or an Annual Progress Report under OAR 340-135-070(3), as applicable, during the previous calendar year; and~~
- ~~_____ (c) Timely payment of fees assessed under this rule and under OAR 340-105-113 in the previous calendar year.~~

~~(65)~~ In addition to the annual hazardous waste generation fee, effective January 1, 1994~~7~~, each hazardous waste generator shall be subject to an annual hazardous waste activity ~~re-registration~~ verification fee, upon billing by the Department, as follows:

- (a) Large Quantity Generator: ~~\$525~~350;
- (b) Small Quantity Generator: ~~\$300~~200;
- (c) Conditionally Exempt Small Quantity Generator: No Fee.
- (6) All fees shall be made payable to the Department of Environmental Quality.

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

Stat. Auth.: ORS 466.165

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 14-1987, f. & ef. 7-28-87; DEQ 11-1988, f. & cert. ef. 5-19-88; DEQ 19-1989(Temp), f. & cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 33-1989, f. & cert. ef. 12-14-89; DEQ 13-1991, f. & cert. ef. 8-5-91; DEQ 11-1992, f. & cert. ef. 6-9-92; DEQ 2-1994, f. & cert. ef. 2-2-94

[ED. NOTE: The text of Temporary Rules is not printed in the Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

3. Rule 340-105-110 facility permit fees are proposed to be amended as follows:

Facility Permit Fees

340-105-110. (1) Each person required to have a hazardous waste storage, treatment or disposal permit (management facility permit) shall be subject to a three-part fee consisting of a filing fee, an application processing fee and an annual compliance determination fee as listed in OAR 340-105-113. The amount equal to the filing fee, application processing fee and the first year's annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and application processing fee shall be submitted as a required part of any application for renewal or modification of an existing permit.

(2) As used in this rule, the following definitions shall apply:

(a) The term management facility includes:

(A) Hazardous waste storage facility;

(B) Hazardous waste treatment or recycling facility; and

(C) Hazardous waste disposal facility.

(b) The term hazardous wastes includes any residue or hazardous wastes as defined in OAR Chapter 340, Division 101 or **40 CFR Part 261** handled under the authority of a management facility permit;

(c) The term license and permit shall mean the same thing and will be referred to in this rule as permit.

(3) The annual compliance determination fee shall be paid for each year a management facility is in operation and, in the case of a disposal facility, for each year that post-closure care is required. Fees shall be assessed annually for hazardous waste management activities in the previous year. A late charge equal to ten percent of the fee due shall be assessed if the fees are not received by the Department on the due date shown on the invoice. An additional late charge of ten percent of the invoice amount shall also be assessed each 30 days that the invoice remains unpaid. Invoices 90 days or more past due may be referred to the Department of Revenue for collection or collected in Small Claims Court. Accounts referred to the Department of Revenue for collection or collected in Small Claims Court shall be increased by 20 percent of the total due (original fee plus late charges) or \$100, whichever is greater, to recover a portion of the costs for referral or collection. ~~The fee period shall be the calendar year and shall be paid annually within 30 days of the invoice date. A late charge equal to ten percent of the fee due shall be paid if the fees are not postmarked by the due date on the invoice. An additional late charge of 10 percent of the total due (original fee plus the ten percent late charge) shall also be paid each 90 days that the invoice remains unpaid. Invoices 90 days or more overdue shall also be increased by 20 percent of the total due (original fee plus ten percent and 15 percent late charges) and referred to the state Department of Revenue for collection.~~ Any annual compliance determination fee submitted as part of an application for a new permit shall apply to the calendar year the

permitted management facility is put into operation. For the first year's operation, the full fee shall apply if the management facility is permitted on or before April 1. Any new management facility permitted after April 1 shall not owe a compliance determination fee until the invoice due date of the following year. The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee.

~~(4) For the purpose of determining appropriate fees, each management facility shall be assigned to a category in OAR 340-105-113 based upon the amount of hazardous waste received and upon the complexity of each management facility. Each management facility which falls into more than one category shall pay whichever fee is higher. The Department shall assign a storage and treatment facility to a category on the basis of design capacity of the facility. The Department shall assign a new disposal facility to a category on the basis of estimated annual cubic feet of hazardous waste to be received and an existing disposal facility on the basis of average annual cubic feet of hazardous waste received during the previous three calendar years.~~

~~(45) Where more than one hazardous waste management activity takes place at a single facility exists on a single site, in addition to the compliance determination fee required by sections (3) and (4) of this rule, a flat fee of \$250 shall be assessed for each additional management facility all of the applicable category compliance determination fees in 340-105-113(3) will be assessed.~~

(56) Modifications of existing, unexpired permits which are instituted by the Department due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and do not require re-filing or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.

(67) Upon the Department accepting an application for filing, the filing fee shall be nonrefundable.

(78) The application processing fee, except for disposal permits, may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

- (a) The Department determines that no permit will be required;
- (b) The applicant withdraws the application before the Department has approved or denied the application.

(89) The annual compliance determination fee may be refunded in whole or in part when submitted with a new permit application if either of the following conditions exist:

- (a) The Department denies the application;
- (b) The permittee does not proceed to construct and operate the permitted facility.

(940) All fees shall be made payable to the Department of Environmental Quality.

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

Stat. Auth.: ORS Ch. 183, 459, 466.020, 466.075, 466.165, 466.195 & Ch. 468
Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 11-1988, f. & cert. ef. 5-19-88; DEQ 19-1989(Temp), f. & cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 33-1989, f. & cert. ef. 12-14-89; DEQ 13-1991, f. & cert. ef. 8-5-91

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

4. Rule 340-105-113 fee schedule is proposed to be amended as follows:

Fee Schedule

340-105-113 (1) Filing Fee. A filing fee of \$50 shall accompany each application for issuance, reissuance or modification of a hazardous waste management facility or PCB treatment or disposal facility, permit. This fee is nonrefundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) **Application Processing Fee.** An application processing fee shall be submitted with each hazardous waste management facility or PCB treatment or disposal facility permit application or Authorization to Proceed request, if such a request is required under OAR 340-120-005. The intent of the application processing fee is to cover the Department's costs in investigating and processing the application. For all applications, any portion of the application processing fee which exceeds the Department's expenses in reviewing and processing the application shall be refunded to the applicant. In the case of permit reissuance, a fee is not initially required with the application. Within 60 days of receipt of the application, the Department will estimate its costs to reissue the permit and will bill the applicant for those costs, up to the amount specified in subsection (2)(b) of this rule. The application will be considered incomplete and processing will not proceed, until the fee is paid, or until other arrangements have been made with the Department. In the event that the Department underestimates its costs, the applicant will be assessed a supplemental fee. The permit shall not be reissued until all required fees are paid. The total fees paid shall not exceed the amount specified in subsection (2)(b) of this rule. The amount of the fee shall depend on the type of facility and the required action as follows:

| <u>Category</u> | <u>Fee</u> |
|-----------------|------------|
|-----------------|------------|

(a) A new permit:

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 Amending Oregon Hazardous Waste Rules
 Rule Amendments Proposed for Adoption
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- (A) Storage facility \$70,000;
- (B) Treatment facility 70,000;
- (C) Disposal Facility 70,000;
- (D) Disposal facility — Post closure 70,000.
- (b) Permit Reissuance:
 - (A) Storage facility 50,000;
 - (B) Treatment Facility 50,000;
 - (C) Disposal facility 50,000;
 - (D) Disposal facility — Post closure 50,000.
- (c) Permit Modification:
 - (A) Storage facility No Fee;
 - (B) Treatment facility No Fee;
 - (C) Disposal facility No Fee;
 - (D) Disposal facility — Post closure No Fee.

(3) Annual Compliance Determination Fee. ~~Except as provided in OAR 340 105 110(5), in any case where a facility fits into more than one category, the permittee shall pay only the highest fee as follows:~~

| <u>Category</u> | <u>Fee</u> |
|--|--|
| (a) Storage facility: | <u>\$18,750</u> |
| (A) 5 — 55 gallon drums or 250 gallons total or 2,000 pounds | — \$1,940; |
| (B) 5 to 250 — 55 gallon drums or 250 to 10,000 gallons total or 2,000 to 80,000 pounds | — 3,420; |
| (C) > 250 — 55 gallon drums or > 10,000 gallons total or > 80,000 pounds | — 7,980; |
| (D) Closure | — 3,990. |
| (b) Treatment Facility: | |
| (A) <u>Single Technology</u> | <u>\$37,500</u> < 25 gallons/hour or 50,000 gallons/day or 6,000 pounds/day — 1,940; |
| (B) <u>Multiple Technology</u> | <u>\$75,000</u> 25 — 200 gallons/hour or 50,000 to 500,000 gallons/day or 6,000 to 60,000 pounds/day — 3,420; |
| (C) > 200 gallons/hour or > 500,000 gallons/day or > 60,000 pounds/day | — 7,980; |
| (D) Closure | — 7,980. |
| (c) Disposal Facility: | |
| (A) <u>Single Disposal Unit</u> | <u>\$75,000</u> < 750,000 cubic feet/year or < 37,500 tons/year 100,000; |
| (B) <u>Multiple Disposal Units</u> | <u>\$150,000</u> 750,000 to 2,500,000 cubic feet/year or 37,500 to 125,000 tons/year — 150,000; |
| (C) > 2,500,000 cubic feet/year or > 125,000 tons/year | 200,000; |
| (D) Closure | — 13,680. |

(d) ~~Any Disposal Facility~~ — Post-Closure Facility: All categories 13, 680 \$18,750.

Stat. Auth.: ORS Ch. 183, 466.020, 466.075, 466.165, 466.195 & Ch. 468
Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 22-1986, f. & ef. 12-19-86; DEQ 14-1987,
f. & ef. 7-28-87; DEQ 11-1988, f. & cert. ef. 5-19-88; DEQ 19-1989(Temp), f. &
cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 33-1989, f. & cert. ef. 12-14-89; DEQ
13-1991, f. & cert. ef. 8-5-91

5. Rule 340-105-041 modification or revocation and reissuance of permits is proposed
to be amended as follows:

Modifications or Revocation and Reissuance of Permits

340-105-041 (1) The phrase “or except when Division 120 applies” is added to the
end of and made part of the provision in **40 CFR 270.41(c)**.

(2) The duties of the “Director” as described in **40 CFR 270.42** shall be assumed by
the Director or the Director’s designee of the Department of Environmental Quality
unless the Commission must make the decision in accordance with ORS 466.025 or
466.055.

(3) The provisions of 40 CFR 270.42(h) are deleted and replaced with section (4) of
this rule.

(4) The United States Army Umatilla Chemical Depot facility (OR6 213 820 917) shall
not accept for incineration any materials from off-site, including military munitions,
chemical agents or agent-contaminated materials. No materials may be incinerated at
the facility other than those materials inventoried (stockpiled) as of February 12, 1997.

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

Stat. Auth.: ORS Ch. 183, 459, 466.020(1), (2) & (7) & Ch. 468
Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 12-1989, f. & cert. ef. 6-12-89; DEQ
11-1993, f. & cert. ef. 7-29-93

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NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340, Divisions 100, 102 and 105

DATE: May 21, 1997 **TIME:** 10:00 A.M. to 3:00 P.M. **LOCATION:** Division of State Lands, 775 Summer St. N.E. Salem, Oregon, 97310-1337

HEARINGS OFFICER(s): Gary Calaba, DEQ, Waste Management and Cleanup Division

STATUTORY AUTHORITY: ORS 466.020, 466.045, 466.160, 466.165, and 466.215
STATUTES IMPLEMENTED: ORS 466.015, 466.020, 466.070, 466.075, 466.086, 466.100, 466.150, 466.165, and 466.215

ADOPT:

AMEND: OAR 340-100-002, 340-102-065, 340-105-110, 340-105-113, 340-105-041

REPEAL:

RENUMBER:
(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER:
(prior approval from Secretary of State REQUIRED)

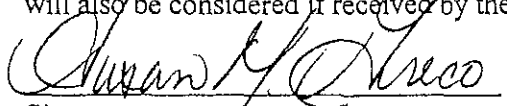
- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY: Amend hazardous waste generator and treatment, storage and disposal facility compliance fee schedules to address a projected funding shortfall in FY 1997-99 for the hazardous waste management program; delete generator certification requirements for qualifying for the fee limit; amend late-fee billing procedures to make them clearer and more equitable, and update the hazardous waste rules by adopting federal changes with amendments through June 30, 1997.

LAST DATE FOR COMMENT: May 21, 1997

AGENCY RULES COORDINATOR: Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL: Gary Calaba, Waste Management and Cleanup Division
ADDRESS: 811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: (503)229-6534/1-800-452-4011

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


Signature

4/15/97
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
for Amending Oregon Hazardous Waste Administrative Rules

Fiscal and Economic Impact Statement

Introduction

This rulemaking addresses three parts of the Department's Hazardous Waste Rules:

- **Amend Hazardous Waste Generator and Treatment, Storage and Disposal Facility Compliance Fee Schedule.**
- **Delete Generator Certification Requirements for Qualifying for the Fee Limit; Amend Late Fee Billing Procedures; and Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection.**
- **Adopt Changes with Amendments to Federal Hazardous Waste Rules through June 30, 1997.**

1. Amend Hazardous Waste Generator and Treatment, Storage and Disposal Facility Compliance Fee Schedule.

Background

- **Hazardous Waste Generator Compliance Fees**

The hazardous waste program is funded primarily through federal grants, and compliance fees. Hazardous waste generator and treatment, storage and disposal facility (TSDF) compliance determination fees account for approximately 56 percent of program funding. Compliance is determined during hazardous waste inspections. Declining revenues, resulting in a total projected shortfall for FY 1997-99 of \$1,600,000, will leave the program unable to maintain current service levels. The Department anticipates that the impact of not funding the program will increase the risk to human health and the environment by conducting approximately one-third fewer generator and treatment, storage and disposal facility compliance efforts, or approximately 80 fewer inspections annually; 100 fewer complaint follow-up actions; and less enforcement follow-up for each of the compliance actions. In response to the

projected shortfall, the Department is proposing to reduce its projective expenditures by \$400,000 and to seek \$1,200,000 in restoration funding by raising compliance and generation status determination fees.

- **Treatment, Storage and Disposal Facility Compliance Fees**

The proposed rulemaking affects approximately 21 regulated facilities that treat, store or dispose of hazardous waste. The current fee amounts are based on the design capacity of each facility and may not accurately reflect the number and complexity of operations at each site and the Department's required level of oversight. Under the proposed rule, most facilities will see a sharp increase in their fees. Under the current schedule, invoices range from \$3,420 to \$200,500; under the proposed rule, they would range from \$18,750 to \$206,250. Because many of the facilities subject to this fee are transitioning to the Department's Voluntary Cleanup program, fewer than 21 will be affected by this increase: it is projected that by fiscal year 1999, only seven facilities will be subject to this fee. None of the facilities is a small business.

General Public

There is no direct fiscal or economic impact on the general public from amending the hazardous waste generator and treatment, storage and disposal facility fee schedule.

Small Businesses

- **Hazardous Waste Generator Compliance Fees**

The Department does not maintain complete records of the size of the facilities subject to fees, but estimates that at least 47 percent are not small businesses. However, since the fees are based on the actual amount of hazardous waste generated, these rules are eminently fair to small businesses.

- **Treatment, Storage and Disposal Facility Compliance Fees**

None of the facilities affected by treatment, storage and disposal facilities compliance fees is a small business.

Large Businesses

- **Hazardous Waste Generator Compliance Fees**

Each year, approximately 720 facilities pay hazardous waste generator fees, based on their reported generator category, the volume of waste they generate, and how they manage their waste. Fees are

calculated individually for each facility, and vary from year to year depending on the facility's practices. The proposed rulemaking would increase each generator's annual fee by 50 percent. Currently, the smallest fee is \$260 and the largest is \$15,350; under the proposed rule, the smallest fee would be \$390 and the largest would be \$23,025. All facilities subject to the fees would be identically affected.

- **Treatment, Storage and Disposal Facility Compliance Fees**

The 21 regulated facilities that treat, store or dispose of hazardous waste are all large businesses. Under the proposed rule, most of these facilities will see a sharp increase in fees. Under the current schedule, invoices range from \$3,420 to \$200,500. Under the proposed rule, they would range from \$18,750 to \$206,250. Because many of the facilities subject to these fees are transitioning to the Department's Voluntary Cleanup program, fewer than 21 will be affected by this increase. It is projected that by fiscal year 1999, only seven will be subject to this fee.

Local Governments

- **Hazardous Waste Generator Compliance Fees**

Local governments that generate hazardous waste in regulated quantities pay the generator fees, and like private sector generators, would be subject to a 50 percent increase under the proposed rule. Based on recent hazardous waste generator data, the Department estimates that 33 facilities operated by local governments may be affected, because these entities paid fees in the past. However, most fees are associated with one-time hazardous waste cleanups, and only one is in the top 24 facilities which would experience the largest dollar increase in fees. The majority of the other public sector generators would see annual generator fee increases between \$500 and \$1,000, assuming they are generating the same volumes of hazardous waste as in the past.

- **Treatment, Storage and Disposal Facility Compliance Fees**

Among local governments, only Marion County, which operates a disposal site undergoing post-closure care, would be affected by the proposed rule. Their annual compliance determination fee would increase by 35 percent, from \$13,930 to \$18,750.

State Agencies

- **Hazardous Waste Generator Compliance Fees**

State agencies that generate hazardous waste in regulated quantities pay the generator fees and, like private sector generators, would be subject to a 50 percent increase under the proposed rule. Based on

recent hazardous waste generator data, the Department estimates that 18 facilities operated by state agencies may be affected, because these agencies paid fees in the past. The majority of state agency generators would see annual generator fee increases between \$500 and \$1,000, assuming they are generating the same volumes of hazardous waste as in the past..

- **Treatment, Storage and Disposal Facility Compliance Fees**

No state agencies currently own or operate facilities that treat, store or dispose of hazardous waste.

Between Fy98 and Fy99, the Department anticipates moving fourteen cleanup sites from its Corrective Action authority to its Cleanup authority. The environmental results will be equivalent; however, the sites will no longer be subject to hazardous waste treatment, storage or disposal facility compliance determinations fees.

Housing Cost Impact Statement

The Department has determined that the 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.

2. Delete Generator Certification Requirements for Qualifying for the Fee Limit; Amend Late Fee Billing Procedures; and Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection.

General Public

- **Delete Generator Certification Requirements for Qualifying for the Fee Limit**

There is no direct fiscal and economic impact on the general public from deleting the certification requirements for qualifying for the fee limit.

- **Amend Late-Fee Billing Procedures**

There is no direct fiscal and economic impact on the general public from amending the late-fee billing procedures.

- **Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection**

There is no direct fiscal and economic impact on the general public from referring past-due accounts to the Department of Revenue or Small Claims Court for collection.

Small Businesses

- **Delete Generator Certification Requirements for Qualifying for the Fee Limit**

No economic and fiscal impact will be experienced by not having to certify compliance with fee limit eligibility requirements.

- **Amend Late-Fee Billing Procedures.**

No additional economic and fiscal impact should be experienced from amending late-fee billing procedures.

- **Recover Some Costs from Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection.**

No additional economic and fiscal impact will be experienced if the Department refers accounts to the Department of Revenue or Small Claims Court for collection.

Large Businesses

- **Delete Generator Certification Requirements for Qualifying for the Fee Limit**

No economic and fiscal impact will be experienced by not having to certify compliance with fee limit eligibility requirements.

- **Amend Late-Fee Billing Procedures.**

No additional economic and fiscal impact should be experienced from amending late-fee billing procedures.

- **Recover Some Costs from Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection.**

No additional economic and fiscal impact will be experienced if the Department refers accounts to the Department of Revenue or Small Claims Court for collection.

Local Governments

No additional fiscal or economic impact is anticipated from adopting changes to federal hazardous waste rules that are currently in effect in Oregon.

State Agencies

- **Delete Generator Certification Requirements for Qualifying for the Fee Limit**

There is no direct fiscal and economic impact on state agencies from deleting the certification requirements for qualifying for the fee limit.

- **Amend Late-Fee Billing Procedures**

There is no direct fiscal and economic impact on state agencies from amending the late-fee billing procedures.

- **Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection**

The Department of Revenue charges fees to referring agencies for collection of past-due accounts. As a result, the Department will receive less money than if it had been able to collect these accounts directly while the Department of Revenue will receive the same amount in added fee income.

Housing Cost Impact Statement

The Department has determined that the 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.

3. Adopt Changes with Amendments to Federal Hazardous Waste Rules through June 30, 1997.

General Public

There is no direct fiscal and economic impact on the general public from adopting changes with amendments to federal hazardous waste rules that are currently in effect in Oregon.

Small Businesses

No additional fiscal or economic impact is anticipated from adopting changes to federal hazardous waste rules that are currently in effect in Oregon.

Large Businesses

No additional fiscal or economic impact is anticipated from adopting changes to federal hazardous waste rules that are currently in-effect in Oregon.

Local Governments

No additional fiscal or economic impact is anticipated from adopting changes to federal hazardous waste rules that are currently in effect in Oregon.

State Agencies

All facilities except one should not experience additional fiscal or economic impact from adopting changes to federal hazardous waste rules that are currently in effect in Oregon. The Umatilla Chemical Depot, a federal facility, may experience additional costs of having to comply with the proposed Class 3 permit modification procedures, rather than less onerous, self implementing, Class I and 2 processes should the U.S. Army desire to receive munitions from off-site. Currently,

the Hazardous Waste Incinerator Permit that was recently issued to the U.S. Army prohibits the Army from receiving munitions from off-site.

Housing Cost Impact Statement

The Department has determined that the 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.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Amending Oregon Hazardous Waste Administrative Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

I. Amend Hazardous Waste Generator and Treatment, Storage and Disposal Facility Compliance Fee Schedule:

The purpose of the proposed changes to the fee rates is to address a revenue shortfall projected in FY 1997-99.

II. Delete Generator certification Requirement for Qualifying for the Fee Limit; Amend Late Fee Billing Procedures; and Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue and Small Claims Court for Collection:

The purpose for removing the certification requirements as a prerequisite for qualifying for the fee limit is to eliminate unnecessary and unworkable administrative procedures for generators before they may qualify for the fee limit.

The purpose of amending the current fee billing procedures is to clarify and make more equitable certain areas of agency policy that have caused confusion or have lead to inequitable application.

The purpose of recovering some costs associated with referring past-due accounts to the Department of Revenue or Small Claims Court is to collect administrative costs from the responsible party.

III. Adopt Changes with Amendments to Federal Hazardous Waste Rules through June 30, 1997:

The purpose of adopting the proposed changes to current federal hazardous waste rules is to maintain equivalency with the federal hazardous waste program and to implement that program in lieu of EPA. The proposed amendment to the Military Munitions Rule affects only the Umatilla Chemical Depot, near Hermiston, Oregon. The proposed amendment makes the federal munitions rule conform with state regulations and with the Hazardous Waste Incinerator Permit conditions issued to the U.S. Army to allow thermal destruction of the on-site stockpile of chemical weapons.

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

Yes No

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

The hazardous waste treatment, storage and disposal permit program has been identified is a program affecting land use. OAR 340-18-030.

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

Yes No (see explanation below):

The majority of the amendments address only fee and collection issues and therefore have no effect on land use goal compliance or plan compatibility procedures. Similarly, amendments to incorporate changes to federal regulations and to amend state rules relating to munition facilities do not require new or additional procedures. In addition, it should be noted that local land use jurisdiction over the Umatilla Chemical Depot may be substantially preempted by federal law. Umatilla County has determined that the Depot is not subject to its jurisdiction and Morrow County has determined that the Depot complies with local plans and regulations.

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.

N/A

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

N/A

Waste Management and Cleanup Division Intergovernmental Coord.
Amending Oregon Hazardous Waste Administrative Rules

Date

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

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

No federal requirements apply to the proposed amendments to current generator and treatment, storage and disposal facility compliance and determination fee structure; to deleting the generator certification requirement for qualifying for the fee limit; or to the proposed amendments to current fee billing procedures.

The proposed changes to current federal rules are federal amendments, except for the Department's proposal to amend the permit modification procedures if the permittee at the Umatilla Chemical Depot, near Hermiston, Oregon, requests to receive waste munitions from off-site. The Department proposes to change the permit modification procedures from a Class 1 and 2 process to a Class 3 modification procedure.

The federal permit modification requirement covers the broad spectrum of military munitions, not just chemical warfare weapons. The requirement also applies to the various types of Department of Defense hazardous waste permitted facilities that treat the many varied types of munitions. However, because Oregon just has the Umatilla Chemical Depot as the only facility designed to treat munitions, and only designed to treat chemical warfare weapons, the added flexibility of the federal requirement is not warranted and in conflict with the EQC-issued Hazardous Waste Incinerator Permit to allow thermal destruction of chemical weapons.

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

The proposed changes to current federal requirements are both performance and technology 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?

Most proposed changes to current federal requirements address the issues that are of concern in Oregon. It is not known whether data or information specific to Oregon was considered in the establishment of the federal requirements. However, the federal

permit modification procedures in 40 Code of Federal Regulations 270.42(h) do not support the Hazardous Waste Incinerator Permit recently issued to the U.S. Army to thermally destroy hazardous waste chemical weapons at the Umatilla Chemical Depot, near Hermiston, Oregon.

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?

Some of the proposed changes to current federal requirements are less onerous than those being currently implemented in Oregon.

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

No

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

Yes

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

Yes

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

N/A

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

Yes, there is a provision in the Military Munitions Rule, February 12, 1997, that the Department proposes to amend. This rule is 40 CFR 270.42(h) which appears to authorize the permittee, in this case the U.S. Army, to accept waste military munitions notwithstanding any permit conditions barring the facility from accepting munitions from off-site. The condition to accept or continuing to accept munitions wastes is a Class 1 permit modification followed by a Class 2 when such wastes become subject to the hazardous waste regulations. This federal regulation does not conform with the permit conditions prohibiting the Umatilla Chemical Depot from receiving hazardous wastes, chemical agent, or munitions containing chemical agents from off-site. To correct this discrepancy, the Department proposes to amend 40 CFR 270.42(h) requiring instead that should Umatilla Chemical Depot desire to receive any wastes from off-site the permit modification process would be according to Class 3 procedures with full public involvement, Department review and issuance of the modification by the EQC (see OAR 340-105-041).

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

Yes

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

Yes

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 17, 1997

To: Environmental Quality Commission
From: Gary Calaba, Hearings Officer
Subject: Report of Public Hearing on Proposed Amendments to the Hazardous Waste Rules

On April 15, 1997, the Director authorized a public hearing to consider amending the hazardous waste generator and treatment, storage and disposal facility compliance fee schedules to address a projected funding shortfall in the 1997-99 biennium for the hazardous waste management program. In addition, deleting generator certification requirements for qualifying for the fee limit; amending late-fee billing procedures to make them clearer and more equitable; and adopting with amendments federal changes to hazardous waste regulations through June 6, 1997 to maintain equivalency.

Public notice was published in the May edition of the *Bulletin*, and separately distributed to a Department mailing list of approximately 1,200 potential interested parties, including the universe of hazardous waste generators and treatment, storage and disposal facilities to be impacted by the rule, and parties interested in issues surrounding the U.S. Army Umatilla Chemical Depot, near Hermiston, Oregon.

On May 21, 1997 the Department held a public hearing at the Division of State Lands building in Salem, Oregon. The hearing began at approximately 10:17 a.m. and officially ended at approximately 2:30 p.m. Written comment was received through June 6, 1997.

Both written and oral testimony was presented at the hearing by the following persons:

1. Mr. Mark Brown, The Oregon Clearing House for Pollution Reduction, 3816 N.E. Glisan St. Portland, OR 97232.
2. Ms. Jane Haley, Oregon Center for Environmental Health, 2931 N.E. Shaver, Portland, OR 97212.

Additional written comments were received as listed below. The Department's responses to all comments are included in Attachment D in the staff report to the Commission, dated July 17, 1997.

1. Mr. Tom Badrick, TomB@Oeco.Com.
2. Mr. James E. Benedict, Associated Oregon Industries, Cable Huston Benedict & Haagensen LLP, Suite 2000, 1001 SW Fifth Ave., Portland, OR 97204-1136.

Attachment C
Amending Oregon Hazardous Waste Rules
Presiding Officer's Report on Public Hearing
EQC Agenda Item
July 17, 1997

3. Mr. Dick Briggs, Dick Briggs Consulting Services, 80 W. 23rd Ave., Eugene, OR 97405.
4. Mr. James R. Divine, PhD, PE, Chem Met, LTD., PC, P.O. Box 4068, West Richland, WA 99353-0017.
5. Ms. Johnni Freeborn, Women's International League for Peace and Freedom, 1819 N.W. Everett, Portland, OR 97209.
6. Mr. Vince Gulette, Taylor Lumber & Treating, Inc., P.O. Box 158, Sheridan, OR 973738.
7. Mr. Dennis Hayward, Western Wood Preservers Institute, 601 Main Street, Suite 405, Vancouver, WA 98660.
8. Mr. Robert Okren, Anodizing Inc., 7933 N.E. 21st Avenue, P.O. Box 11263, Portland, OR 97211.
9. Bruce N. Stennett, Conrad Wood Preserving Co., 3998 Wildwood Dr., North Bend, OR 97459.
10. Ms. Barbara R. Swett, Lazerquick, 27375 S.W. Parkway Ave., Wilsonville, OR 97070.
11. Mr. Joe Walicki, Oregon Environmental Council, 520 S.W. 6th Ave., Suite 940, Portland, OR 97204-1535.
12. Mr. Steve Wilcox, Pioneer Implement Corp., P.O. Box 726, Hermiston, OR 97838.

The comments are available upon request, and detailed response to comments is Attachment D.

To summarize the most significant comments, most commentors did not agree with the Department's proposal to increase generator and treatment, storage and disposal fees, arguing instead that the Department should institute efficiencies; and that raising fees would be counterproductive, possibly even driving some small businesses out of Oregon. However, one commentor accepted raising fees by 40 percent to cover inflation, but rejected an additional 10 percent increase, arguing that generation volumes in Oregon are down. In addition, commentors stated that changing the permit modification procedures at the U.S. Army Umatilla Chemical Depot facility from a Class 1 and Class 2 procedure to a Class 3 procedure did not meet the intention of the permit, the direction from the Environmental Quality Commission and the Governor, and the expectations of the Public to restrict the volume of materials incinerated to the stockpile at the facility. One commentor requested that a Department attorney be present anytime Umatilla issues are discussed.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 17, 1997

To: Environmental Quality Commission

From: Anne R. Price, Hazardous Waste Policy and Program Development
Waste Management and Cleanup Division

Subject: Summary and Evaluation of Public Comments Received

The Department received two oral comments at the May 21, 1997 hearing and a total of fourteen written comments pertaining to the Department's proposal to amend Oregon Hazardous Waste Administrative Rules for generator and treatment, storage and disposal fees, generator certification requirements, late fee billing procedures, referring past-due accounts to the Department of Revenue or Small Claims Court for Collection, and federal rules. Each public comment and the Department's response is presented below.

**Amend Hazardous Waste Generator and Treatment, Storage and Disposal
Facility Compliance Fee Schedule**

The Department proposes to increase generator compliance determination fees by 50 percent, and to raise treatment, storage and disposal compliance fees to more closely represent the Department's workload at those facilities.

Public Comment: Supports, with reservation, the increase in treatment, storage and disposal facility fees, but suggests a tiered system that rewards firms that reduce wastes and requires firms that do not to pay the most. The commentor also suggested looking at long-term at COLAs to allow fees to be indexed to inflation. Then if the cost for running the program is less, the excess can be refunded.

Made by: Tom Badrick, OEEO

Department Response: The Department agrees. The current generator compliance fee is calculated on total annual volume of hazardous waste generated; management method; and generator category. These three fee variables all "reward" generators who reduce waste volume or use a preferred waste management method. A generator's fee is increased with each additional ton generated (\$90/ton). The generator category fee increases for larger quantity generators (LQG - \$525 and SQG - \$300). The management methods fee factors range from a high for disposal to a low for recycling, thus those who recycle materials pay a lower fee than those who do not.

Current statutory authority does not authorize the Department to index fee increases to inflation. In addition, the Department is compelled by statutes to collect only enough revenue to operate the program. In fact, in 1993, the Department did not charge generator fees because of excess revenue from other sources. Over the course of the next biennium, the Department will be evaluating a number of different funding alternatives to provide a long term, stable funding source for the program. The suggestions made above will be considered during this process.

Public Comment: Supports increasing the hazardous waste generator fees by 40 percent, which represents an inflation adjustment to the fees since the date of the last generator fee increase. However, objects to any increase above the adjustment for inflation, considering diminishing volumes of waste generated and disposed within the state.

Made by: Jim Benedict, Associated Oregon Industries (AOI)

Department Response: The quantity of waste generated in Oregon is not decreasing. Department data indicate that hazardous waste generation has remained relatively constant over the past five years. While some individual generators have undoubtedly reduced their hazardous waste volumes, other have not. Additionally, new generators are regularly added to the universe of regulated companies.

The level of inflation since the last significant change in the fee structure is actually closer to 43 percent. The Department's proposal to increase generator hazardous waste determination fees by 50 percent, however, is to ensure continuation of current service levels for the FY 1997-99 biennium. Without the full 50% increase, the compliance program will experience a one-third reduction in overall service.

Public Comment: Objects to proposed fee increases. Views additional fees as unfair, unduly burdensome, and creates a competitive disadvantage as compared to its non-Oregon competitors. This particular commentor is also experiencing costs under a RCRA clean-up decree. Believes that there are inefficiencies in DEQ organization that should be addressed. If fees are not increased these funds could be used on economic development, such as new hires, plant improvements, product development or pollution prevention; therefore, the proposed increase does directly affect the public.

Made by: Vince Gullette, Taylor Lumber & Treatment, Inc.
Robert F. Okren, Anodizing Inc.

Department Response: The Department has already absorbed \$400,000 of the total projected shortfall in the form of cost-cutting measures. The costs associated with the cleanup program are independent from the hazardous waste activities and represent a burden associated with past mismanagement practices. The prevention of waste mismanagement is the primary

reason the hazardous waste program exists and why it is important to maintain a strong field presence in the form of both compliance and technical assistance. The Department strongly believes that a reduction in current program service levels will have a long term negative environmental impact. The Hazardous Waste Program currently provides compliance oversight on approximately 730 regulated hazardous waste generators and 21 treatment, storage and disposal facilities.

In addition, most surrounding states assess fees to help pay for their programs. Thus, Oregon's business competitors may not have a competitive advantage.

Public Comment: Where does the rest of the program funding come from and would it be possible for that source to bear the increase? Which income sources are declining and why? Do inspections and follow-up work cost \$8,800 each (80 fewer generator and TSDF inspections and 100 fewer complaint follow-up actions ... $\$1,600,000/180 \text{ actions}=\$8,800$)? Where did DEQ reduce projected expenditures? Has DEQ done all it can do to reduce them?

Made by: Robert F. Okren, Anodizing Inc.

Department Response: The Department's hazardous waste compliance program is primarily funded through compliance determination fees from hazardous waste small and large quantity generators and treatment, storage and disposal facilities, and the federal RCRA Grant. Currently, there are approximately 730 generators who pay fees based on status, volume of waste generated, and management method used. The fees currently range from \$0 to \$15,000 (the current cap) with an average of \$870. Twenty-one TSD facilities pay fees, of which 20 range from \$3,420 to \$123,930. One TSD facility pays \$200,500 annually. The projected budget shortfall for FY 1997-99 is \$1,600,000. Declining revenue sources primarily include the Arlington disposal tipping fees and the federal RCRA Grant.

The Department reduced projected expenditures by \$400,000 through cuts in contractor spending, eliminating temporary staff and slowing staff recruitment, and reducing travel and training opportunities, resulting in a revised shortfall in the compliance program of \$1,200,000. This constitutes funding for seven existing positions. The total compliance fees and RCRA Grant comprise approximately 54 percent of fungible program funding. Remaining fungible funding is provided by the General Fund and non-dedicated disposal tipping fees from the Arlington Hazardous Waste Disposal site.

Historically, approximately 80 percent of the Arlington disposal revenue has been from the disposal of out-of-state remediation wastes, mostly from Washington State. This volume was quite large, but has declined considerably in the last few years due to changes in waste management requirements for remediation wastes. Thus, continuing to base program funding on these out-of-state wastes is unrealistic. Remediation waste generation and disposal is

unpredictable and certainly uncontrollable. General Funds have decreased 50 percent since 1993 and are not projected to increase significantly in the 1997-99 biennium.

While it is accurate that approximately one-third of the compliance program would suffer if compliance funding is not restored, it is not accurate to simply divide the projected budget shortfall (\$1,600,000/180) by the projected number of inspections and complaint response follow-ups that would be affected to produce a \$8,800/event cost. The shortfall impacts the full range of activities that support compliance work(e.g., data collection, lab work and enforcement case development) that go beyond the standard field inspection or complaint follow-up.

Public Comment: The most important issue to the wood treatment industry is the elimination from the definition of solid waste wood preserving wastewaters and spent wood preserving solutions which are reused in the treatment process. The Department has agreed and has suspended fees for those wastewaters. In light of the upcoming change in the federal definition of reused waters, we assume that the suspension on the fees will remain intact until the rules are finalized and adopted by the State.

Made by: R. Dennis Hayward, The Western Wood Preservers Institute
Bruce N. Stennett, Conrad Wood Preserving Co.

Department Response: The Department supports recycling and reuse of hazardous wastes. The pesticide drippage and wastewaters generated from wood preservation may be very large. In 1994, one facility reported that it had generated six million gallons of hazardous waste pesticide-contaminated wastewater. The company explained that five million gallons were filtered and reused in the wood preservation process. Generally, the Department considers filtering such wastewaters for reuse as incidental management, more manufacturing-like than an indicator of waste management. Rather than charge generator fees on the wastewaters being reused, the Department chose not too. Also, at this time, fees are not charged on most management of hazardous wastewaters.

Public Comment: Objects to paying fees, but recognizes that complying with the rules regarding the use of chemicals and management of hazardous wastes is important and that fees will be assessed. The Company would like to see the fees used to keep the industry informed of changes in the law, and a short, annual on-site compliance review would help the Company keep from inadvertently falling out of compliance. Currently, the company is reviewed about once every four years. Requests that wood preserving wastewaters be excluded from classification as solid wastes and that EPA is currently considering this proposed change. Also, fees for small business may go up 50 percent, whereas the fee increase for the largest storage facility is 2.87 percent, and this will have the greatest impact on the small treaters, and that the general public does end up paying fees through increased pricing.

Made by: Bruce N. Stennett, Conrad Wood Preserving Co.

Department Response: The proposed increases in the TSD compliance determination fees were based on an assessment of the actual workload associated with the Department's work at the different types of facilities. Consequently, the increases were based on a number of factors, including size of the facility. Revenues collected from assessing compliance determination fees supports the compliance program of monitoring, surveillance and inspection. This work includes enforcement, complaint response and inspections, including follow-up work related to these activities; development of fact sheets describing program requirements; outreach to the regulated community; and general program administration. The Department has been criticized in the Secretary of State Audit for not conducting inspections more frequently. In fact the auditor found that some inspections occur only every four or five years. In response to this finding, the Department intends on facilitating more outreach to the regulated community, and has investigated the use of a streamlined inspection program to permit more frequent inspections. The Department agrees that there should be more outreach to the community to ensure that there is understanding of requirements and to serve as a resource for resolving program issues in the regulated community.

While some facilities may elect to pass along the fee increases to their customers, the proposed fee increases do not directly affect the public.

Public Comment: The proposed fee increases will place a burden on small businesses and that costs may not be passed onto consumers because of intense price competition in the print-for-pay market. Also, as costs go up and prices remain fixed, margins are squeezed. Lazerquick does not index wastes to cost of living increases. Wages are tied to performance and supply and demand in the market place. Cost of living increases cannot be tied to program fee increases. Finally, do not make the cost of doing business in Oregon so burdensome for small businesses that it drives them away.

Made by: Barbara R. Swett, Lazerquick

Department Response: The Department has not had a significant fee increase since 1989. In order to implement an adequate hazardous waste compliance determination program in lieu of EPA, and to maintain current service levels, the Department needs to restore funding for seven existing positions vital to the program. The Hazardous Waste Program Fee Rulemaking Advisory Group met three times to evaluate the Department's proposal to raise the fees and generally supported two principles upon which the new fees were based: any impact in generator fees should have an equal impact on all generator types (i.e., generator fee percentage increase should be equal across all generator categories), and treatment, storage and disposal facility fees should reflect the Department workload associated with oversight of each type of facility's hazardous waste management activity. The Department believes the proposed fee increases meet these objectives. In addition, the Department

estimates that the vast majority of generators will only have to pay approximately an additional \$100 total over what they currently pay in fees.

The Department does not believe that that increase in the cost of doing business in Oregon will drive away small businesses. What is gained by the proposed fee increase is the assurance of an intact hazardous waste compliance program designed to ensure protection of the environment in which the small business may thrive.

Public Comment: A 50 percent increase in generator fees in one jump is totally out of line. Private businesses do not raise prices at that rate, and requests the Department to reconsider such a large increase. The increase is not realistic and the Department should hold the line on increasing the fees as proposed.

Made by: Steve Wilcox, Pioneer Implement Corp.

Department Response: The Department agrees and wishes that a fee increase of this size were not necessary. However, given the projected shortfall, the Department would be unable to support existing service levels and ensure adequate management of hazardous wastes, if the funding deficit is not filled. The Department has already absorbed \$400,000 of the shortfall in cost savings efforts in order to reduce the impact to the fee-paying community as much as is currently possible. The proposed fee increases will ensure continuation of the program at current service levels, which will result in a compliance program that meets Oregon's needs, no more or no less.

Delete Generator Certification Requirement for Qualifying for Fee Cap

There were no comments on the Department's proposal to delete the generator certification requirements as a requisite for receiving the fee cap.

Amend Late Fee Billing Procedures

No comments were received on the Department's proposal to amend late-fee billing procedures by changing the date that a late-fee will be assessed from the postmarked date to the receipt due date on the invoice.

Recover Some Costs for Referring Past-Due Accounts to the Department of Revenue or Small Claims Court for Collection

Among other things, the Department proposes to refer past-due accounts to Small Claims Court for collection. This would occur only after every effort is made to collect outstanding fees within the first 90 days after the fee is due. An additional fee would be assessed to cover a portion of the administrative costs for referring the account.

Public Comment: Adding a cost prior to the small claims court may be legal, but it would be better to add the referral or collection cost in the action to the court. To add this cost twice would reduce effectiveness of the small claims process. Recommends that the wording be changed to say that referral and collection costs may be added to the Small Claims Court action.

Made by: Dick Briggs, Dick Briggs Consulting Service

Department Response: The Department will work with legal counsel to best implement this portion of the rules. It is not the intention of the Department to double charge for administrative expenses. The exact implementation of this procedure will be communicated through a subsequent Department policy or fact sheet.

Public Comment: The commentor asserts that in-state facilities managing out-of-state hazardous wastes may be required to pay generator fees. Oregon Administrative Rule (OAR) 340-102-065(2) requires generators to pay fees on hazardous waste generated in Oregon. A 1993 Hazardous Waste Reference Guidebook states that "any waste that is imported into Oregon from another state must be managed as a hazardous waste in Oregon". The implication is that if an out-of-state hazardous waste must be managed as a hazardous waste in Oregon, then the waste is generated in Oregon and thus subject to fees.

Made by: Dick Briggs, Dick Briggs Consulting Service

Department Response: If out-of-state wastes that are hazardous wastes in the state of origin are imported into Oregon, and they are not federal or Oregon hazardous wastes, then Oregon hazardous waste rules do not apply, unless the originating state specifies otherwise. When such wastes are brought into Oregon, Oregon Solid Waste law (OAR 340-93-040(b)) prohibits management (treatment, storage or disposal) of the wastes at a solid waste disposal site. If the wastes are being imported for management, then this prohibition has the practical effect of requiring the wastes be disposed at a hazardous waste disposal facility, if that is the intent of the receiving facility. Facilities that receive out-of-state, state-only hazardous wastes for purposes other disposal are regulated according to the solid waste regulations. Unless the facility generates an Oregon hazardous waste from managing the out-of state hazardous waste, then Oregon's hazardous wastes regulations and generator fees do not apply.

**Adopt Changes with Amendments to the Federal Hazardous Waste Rules
through June 6, 1997**

The Department proposes to adopt federal changes to the hazardous waste rules to maintain an equivalent program. The federal Military Munitions rule is one of the rules DEQ proposes

to adopt; however, the Department proposes a more stringent change to one rule provision. The federal rule would allow wastes to be brought in from off-site for treatment or disposal through simple permit modification procedures known as Class 1 and 2 requirements and without prior notice to or consent of the Department or the EQC. The Department initially proposed to require instead the most intensive Class 3 Permit Modification procedure, which would require EQC approval for the receipt of any off-site material.

The Department received comments from five individuals. The comment themes and the source commentor are listed below, with the Department's response.

Public Comment: The intent of the incinerator permit granted to the U.S. Army Umatilla Chemical Incineration Depot is to prohibit the importation of any additional off-site wastes to the Depot for incineration, beyond those that were present in the inventory as of February 12, 1997. Therefore, the commentor requests the Department prohibit any permit modification that would allow any importation of any off-site waste.

Made by: Mark Brown, The Oregon Clearinghouse for Pollution Reduction
Jane Haley, Oregon Center for Environmental Health

Public Comment: Opposed to the Umatilla Chemical Depot treating or storing any wastes other than the existing on-site stockpile, but supports the adoption of Class 3 permit modification procedures that would allow public participation in addition to that of the DEQ.

Made by: Johnni Freeborn, Women's International League for Peace and Freedom
Joe Walicki, Oregon Environmental Council

Department Response: The Department concurs with the commentors that the Governor's, the Department's and the EQC's intent was to limit the wastes to be incinerated at the Depot to those already stockpiled at the Depot, as of the date of permit issuance, and not to receive chemical munitions or agents from off-site for disposal or treatment at the Depot. The Department reevaluated whether the use of the Class 3 permit modification procedure would sufficiently reflect the permit intent and has decided to more clearly reflect this intent through language that specifically prohibits the receipt of additional off-site wastes for incineration and disposal at the Depot. The new proposed language is included in Attachment A to the staff report.

Public Comment: The Department may allow off-site wastes to be accepted at the Depot if an equal amount that is currently off-site is shipped off-site, and if the incoming material does not provide a greater hazard than existing material. The Army should provide written notice to the DEQ.

Made by: James R. Divine, Chem Met, Ltd.,

Department Response: As stated above, the Department has reevaluated its approach to reflecting the permit intent of prohibiting additional off-sites wastes for incineration or disposal at the Depot. However, the stated prohibition centers on the wastes that the permitted facility may destroy and not on other operations at the Depot. Currently, there are three hazardous waste management permits at the Umatilla Army Depot: (1) an incinerator permit to incinerate chemical agents; (2) an interim status storage permit to store leaking chemical munitions; and (3) a storage permit for storing other waste munitions. These permits allow certain munitions-related activity that is not associated with the destruction activities at the Depot and the Army may receive wastes from off-site within the limits of the permit for these purposes. For example, the Army routinely moves munitions between storage depots, or may move waste munitions between facilities for eventual disposal or recycling at another location. However, any modification to these permit provisions would be governed by Oregon's more stringent permit modification requirements and not by the current federal munitions rule.

State of Oregon

Department of Environmental Quality

Memorandum

Date: July 17, 1997
To: Environmental Quality Commission
From: Anne R. Price, Hazardous Waste and Program Development, Waste Management and
Subject: Changes to the Original Rulemaking Proposal Made in Response to Public Comment

The Department proposes changes to only one of the proposed rule packages. The Department originally proposed to adopt the federal Military Munitions Rule with one change. The federal rule, as written, would allow hazardous wastes to be brought to the U.S. Army Chemical Depot facility from off-site, regardless of any permit conditions. Consequently, the Department of Defense would have been allowed to ship waste military munitions to the Chemical Depot through the existing regulations for Class 1 and Class 2 permit modification procedures without prior notification or approval by the Department or the EQC.

Given that the Depot permit expressly prohibits the receipt of additional off-site wastes at the facility for incineration, the Department found this simplified permit modification approach to be in conflict with the intent of the permit.

To address the issue, the Department initially proposed to require a more vigorous Class 3 Permit Modification procedure. This procedure is reserved for major permit modifications, and involves the most intensive public participation process, including requiring EQC approval for any permit modification. This more stringent change to the rule would have had the practical effect of requiring a thorough airing of any request or intention by the Department of Defense to bring wastes to the facility, before that event could happen.

Commentors suggested that the proposal would not meet the intent of the Governor, the direction of the EQC, and the expectation of the public, to prohibit incineration of off-site materials at the facility. The commentors opposed the facility treating or storing any wastes other than the existing on-site stockpile, and stated that even allowing the Department of Defense the possibility of utilizing the permit modification process to receive off-site wastes for incineration, even if that modification process is the most stringent provided for in the rules, is not in keeping with the intent of the permit.

The Department agrees and has modified the original proposal to limit incineration to only those chemical agents and waste military munitions inventoried (stockpiled) at the facility as of February 12, 1997.

Attachment E
Amending Oregon Hazardous Waste Rules
Changes to Original Rulemaking Proposal Made in Response to Public Comment
EQC Agenda Item
July 17, 1997

The Department believes that this newly proposed rule language (Attachment A, OAR 340-105-041(3) and (4)) more clearly meets the intent the EQC, the Governor, the permit conditions, and the commentors.

The Department does not believe that it was the intent of the EQC to prohibit other munitions-related activities from occurring (i.e., storage not related to incineration) at the Depot. For example, the U.S. Army routinely moves usable munitions between storage depots, or may move waste munitions between facilities¹ for eventual disposal or recycling somewhere else. Therefore, while the Department is not proposing to prohibit such activities, the Department will be requiring appropriate Class 1, Class 2 or Class 3 permit modification procedures under current state law.

¹ The Depot has three hazardous waste management permits: (1) the recently issued incinerator permit to incinerate currently stockpiled materials; (2) an interim status hazardous waste storage permit to store leaking chemical munitions; and (3) a hazardous waste storage permit for storing other waste munitions. The storage permits are for waste munitions generated on-site, however, the U.S. Army could request a modification of storage (3) to allow receipt of off-site waste military munitions for eventual shipment elsewhere for disposal.

**Summary of Federal Rules Proposed for Adoption
through June 6, 1997**

61 Federal Register (FR) 15566 --- April 8, 1996

Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

ACTION: Final rule.

EFFECTIVE DATE: This final rule is effective on April 8, 1996, except:

Sections 148.18(a), 268.39(a), (b), and (f), which are effective on July 1, 1996; and

Sections 148.18(b) and 268.39(c), which are effective on January 8, 1997; and

Sections 148.1 (a), (b), and (d), 148.3, 148.4, 148.18 (c) and (d), 148.20(a), 268.1(e), 268.2 (k) and (l), 268.3 (a) and (b), 268.9 (d), (e), (f), and (g), 268.39 (d) and (e), 268.44(a), and 403.5 (c) and (d), which are effective on April 8, 1998.

AFFECTED REGULATIONS: 40 CFR Parts 148, 268, 271, and 403

RIN 2050-AD38 [EPA # 530-Z-96-002; FRL-5438-3]

SUMMARY: EPA is promulgating treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production under its Land Disposal Restrictions (LDR) program. The purpose of the LDR program, authorized by the Resource Conservation and Recovery Act (RCRA), is to minimize short- and long-term threats to human health and the environment due to land disposal of hazardous wastes.

The Agency is also amending the treatment standards for hazardous wastes that exhibit the characteristic of reactivity. The rule also begins the process of amending existing treatment standards for wastewaters which are hazardous because they display the characteristic of ignitability, corrosivity, reactivity, or toxicity. These wastes are sometimes treated in lagoons whose ultimate discharge is regulated under the Clean Water Act, and sometimes injected into deepwells which are regulated under the Safe Drinking Water Act. Prior to today's rule, the treatment standard for these wastes required only removal of the characteristic property. Today's revised treatment standards require treatment, not only to remove the characteristic, but also to treat any underlying hazardous constituents which may be present in the wastes. Therefore, these revised treatment standards will minimize threats from exposure to hazardous constituents which may potentially migrate from these lagoons or wells.

Finally, EPA is codifying as a rule its existing Enforcement Policy that combustion of inorganic wastes is an impermissible form of treatment because hazardous constituents are being diluted rather than effectively treated.

61 FR 15660 --- April 8, 1996

Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

ACTION: Partial withdrawal and amendment of final rule.

EFFECTIVE DATE: April 5, 1996.

AFFECTED REGULATIONS: 40 CFR Parts 148, 268 and 403
[EPA # 530-Z-96-002; FRL-5452-7] RIN 2050-AD38

SUMMARY: Elsewhere in this Federal Register, EPA is promulgating a final rule which, among other things, revises treatment standards for hazardous wastewaters that exhibit the characteristic of ignitability, corrosivity, reactivity, or toxicity. The revised treatment standards were promulgated to implement the mandate of the opinion of the Circuit Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management (CWM) v. EPA*, 976 F. 2d 2 (D.C. Cir. 1992) cert. denied 507 U.S. 1057 (1993). On March 26, 1996, President Clinton signed into law the Land Disposal Program Flexibility Act of 1996 which, among other things, provides that the wastes in question are no longer prohibited from land disposal so long as they are not hazardous wastes at the point they are land disposed. By operation of the statute, this provision is made effective immediately and therefore essentially overrules this portion of the CWM opinion. EPA accordingly is incorporating the statutory provision into the regulations by amending and/or withdrawing the portions of the regulations that are superseded by the new legislation. The amendment/withdrawal of these standards does not affect any other part of the final rule; and the effective dates of the other actions in the final rule likewise will not change. Furthermore, EPA is amending parts of the LDR Phase II final rule, published on September 19, 1994 (59 FR 47982) which are also overruled by the legislation.

61 FR 16290 --- April 12, 1996

Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations

ACTION: Final rule.

EFFECTIVE DATE: This rule is effective on July 11, 1996. The OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) were approved by the Director of the Federal Register to be incorporated by reference in today's rule on July 11, 1996.

AFFECTED REGULATIONS: 40 CFR Parts 9, 260, 261, 262, 263, 264, 265, 266 and 273
[FRL-5447-1] RIN 2050-AD87

SUMMARY: The rule identifies the wastes, under the Resource Conservation and Recovery Act (RCRA), that are subject to a graduated system (green, amber, red) of procedural and substantive controls when they move across national borders within the OECD for recovery. (EPA may, in the future, identify wastes under other statutes that are subject to the OECD Decision). It seeks to make the transactions fully transparent and to prevent or minimize the possibility of such wastes being abandoned or otherwise illegally handled. These requirements will apply only to U.S. exporters and importers of RCRA hazardous wastes destined for recovery in OECD countries (except for Canada and Mexico; waste shipments to and from these countries will continue to move under the current bilateral agreements and regulations). Those U.S. exporters and importers transacting hazardous waste movements outside the scope of today's rule will remain subject to EPA's current waste export and import regulations at 40 CFR part 262, subparts E and F.

This rule does not increase the scope of wastes subject to U.S. export and import controls; it does, however, modify the procedural controls governing their export and import when shipped for recovery among OECD countries. Today's rule will assist in harmonizing the new OECD requirements, reducing confusion to U.S. importers and exporters and increasing the efficiency of the process.

61 FR 28508 --- June 5, 1996

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

ACTION: Amendment of final rule to postpone requirements.

EFFECTIVE DATES: These amendments are effective June 5, 1996.

AFFECTED REGULATIONS: 40 CFR Parts 264, 265, 270, and 271
[FRL-5509-4] RIN 2060-AB94

SUMMARY: This document amends the EPA standards to postpone the effective date of the requirements in the December 6, 1994 final rule entitled, "Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers" until October 6, 1996.

61 FR 33680 --- June 28, 1996

Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

ACTION: Technical correction.

EFFECTIVE DATE: This rule is effective on June 28, 1996.

AFFECTED REGULATIONS: 40 CFR Parts 148 and 268
[EPA # F-96-PH3F-FFFFF; FRL-5528-1] RIN 2050-AD38

SUMMARY: On April 8, 1996, EPA published regulations covering both congressionally-mandated and court-ordered prohibitions on land disposal of certain hazardous wastes. On the same day, EPA published a partial withdrawal and correction of those regulations to the extent the Land Disposal Program Flexibility Act (LDPFA) (signed by the President on March 26, 1996) revoked most of the court-ordered prohibitions. This notice corrects technical errors in the final regulations and the partial withdrawal notice.

61 FR 33691 --- June 28, 1996

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

ACTION: Final rule, notice of judicial vacatur of administrative stay.

EFFECTIVE DATE: June 28, 1996.

AFFECTED REGULATIONS: 40 CFR Part 279
[FRL-5529-1]

SUMMARY: On January 19, 1996, the United States Court of Appeals for the District of Columbia Circuit vacated the Environmental Protection Agency's (EPA) October 30, 1995, administrative stay of part of the regulatory provision, known as the "used oil mixture rule", set forth in 40 CFR 279.10(b)(2). The provisions of the used oil mixture rule at issue relate to mixtures of used oil destined for recycling and characteristic hazardous waste (including waste listed as hazardous because it exhibits a hazardous waste characteristic). This action clarifies the regulatory status of mixtures of used oil and the hazardous wastes destined for recycling described above in light of the Court's vacatur of the administrative stay and eliminates the explanatory note to 40 CFR 279.10(b)(2) that was included in the notice of the administrative stay. In addition it notifies the public as to the provisions of a recent EPA proposal that may affect such mixtures.

61 FR 34252 --- July 1, 1996

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs

ACTION: Final rule.

EFFECTIVE DATES: January 1, 1998, except §§257.21 through 257.28 which are effective July 1, 1998, and §§261.5(f), 261.5(g) and 271.1 which are effective January 1, 1997, but which have a compliance date of January 1, 1998. The information collection requirements contained in §§257.24, 257.25, and 257.27 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

AFFECTED REGULATIONS: 40 CFR Parts 257, 261, and 271
[FRL-5528-4] RIN 2050-AE11

SUMMARY: The Environmental Protection Agency today is promulgating revisions to the existing criteria for solid waste disposal facilities and practices. These revisions were developed in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). Today's final revisions establish that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive conditionally exempt small quantity generator (CESQG) hazardous wastes. Today's final revisions establish standards pertaining to location restrictions, ground-water monitoring and corrective action.

The EPA is also finalizing revisions to regulations for hazardous wastes generated by CESQGs. Today's final language will clarify acceptable disposal options under Subtitle D of RCRA by specifying that CESQG hazardous waste may be managed at municipal solid waste landfills subject to Part 258 and at nonmunicipal non-hazardous waste disposal units subject to today's revised Criteria.

61 FR 43924 --- Aug. 26, 1996

Emergency Revision of the Land Disposal Restrictions (LDR) Phase III Treatment Standards for Listed Hazardous Wastes From Carbamate Production

ACTION: Immediate final rule.

EFFECTIVE DATE: August 26, 1996.

AFFECTED REGULATIONS: 40 CFR Parts 268 and 271
[EPA # 530-Z-96-002; FRL-5560-1] RIN 2050-AD38

SUMMARY: On April 8, 1996, EPA published treatment standards (the "Phase III" final rule) for a number of hazardous wastes associated with the production of carbamate pesticides ("carbamate wastes") (61 FR 15566, April 8, 1996). The treatment standards were expressed as levels of chemical constituents that had to be measured in treatment residues before land disposal. They became effective July 8, 1996.

The Agency recently has become aware, however, of a serious analytic monitoring problem associated with the carbamate constituent treatment standards. Laboratory standards (chemicals used to calibrate

laboratory instruments) do not exist for every carbamate constituent. Since commercial laboratories currently are unable to analyze all of the carbamate waste constituents, treatment facilities cannot certify that the LDR treatment standards have been achieved. Today's final rule revises the carbamate waste treatment standards for one year from the date of publication by allowing carbamate wastes to be treated either by any technology which achieves the constituent concentration levels promulgated in the Phase III rule, or by treatment technologies specified in this final rule as alternative treatment standards. This rule also suspends the requirement to treat carbamate waste constituents when they are expected to be present in ignitable, corrosive, reactive or toxic hazardous wastes as "underlying hazardous constituents."

The Agency believes that these temporary alternative treatment standards will assure that carbamate wastes are adequately treated prior to land disposal, while providing time for analytic chemical standards to be developed. At the end of the year EPA expects that laboratories will be able to perform the analyses necessary to measure compliance with treatment levels. At that time, therefore, the LDR treatment standards for carbamate wastes will revert to those originally promulgated in the Phase III rule.

61 FR 59932 --- Nov. 25, 1996

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

ACTION: Final rule.

DATES: These amendments are effective October 6, 1996. The applicability and implementation of Subpart CC of Parts 264 and 265 is suspended from October 6, 1996, to December 6, 1996.

AFFECTED REGULATIONS: 40 CFR Parts 261, 262, 264, 265, 270, and 271
[IL-64-2-5807; FRL-5634-4] RIN 2060-AG44

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has published standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards apply to certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

The EPA previously has stayed the effective date of those rules administratively in order to receive and evaluate comments and ultimately to revise the rules in an appropriate manner. Today's action amends and clarifies the regulatory text of the final standards, clarifies certain language in the preamble to the final rule, and in doing so provides additional options for compliance that give owners and operators increased flexibility in meeting the requirements of the rules while still providing sufficient controls to be protective of human health and the environment. In addition, today's action suspends the applicability and implementation of subpart CC of Parts 264 and 265 from October 6, 1996, to December 6, 1996.

62 FR 1992 --- Jan. 14, 1997

Land Disposal Restrictions Phase III-Emergency Extension of the K088 Capacity Variance

ACTION: Final rule.

EFFECTIVE DATE: January 8, 1997.

AFFECTED REGULATIONS: 40 CFR Part 268
[EPA # 530-Z-96-PH3F-FFFFF; FRL-5676-4]

SUMMARY: Under the Land Disposal Restrictions (LDR) program of the Resource Conservation and Recovery Act (RCRA), EPA is extending the current national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) for six (6) months. Thus, K088 wastes do not have to be treated to meet LDR treatment standards until July 8, 1997, six months from the current treatment standard effective date of January 8, 1997. EPA is extending the national capacity variance due to unanticipated performance problems by the treatment technology which provides most of the available treatment capacity for these wastes. As a result, the Agency does not believe that sufficient treatment capacity which minimizes short and long-term threats to human health and the environment posed by land disposal of the potliners is presently available. The length of the extension of the national capacity variance is based on EPA's best current estimate of the time it will take to modify, evaluate, and correct the current deficiencies in treatment performance.

62 FR 6622 --- Feb. 12, 1997

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties

ACTION: Final rule.

EFFECTIVE DATE: This rule is effective on August 12, 1997.

AFFECTED REGULATIONS: 40 CFR Parts 260, 261, 262, 263, 264, 265, 266, and 270
[EPA 530-Z-95-013; FRL-5686-4] RIN 2050-AD90

SUMMARY: In response to section 107 of the Federal Facility Compliance Act (FFCA) of 1992, EPA is today finalizing a rule that identifies when conventional and chemical military munitions become a hazardous waste under the Resource Conservation and Recovery Act (RCRA), and that provides for the safe storage and transport of such waste. Today's final rule also amends existing regulations regarding emergency responses involving both military and non-military munitions and explosives. This rule also

exempts all generators and transporters of hazardous waste, not just the military, from the RCRA manifest for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways. This revision is expected to reduce the paperwork burden, for hazardous waste generators whose property is divided by right-of-ways without loss in protection of public health.

62 FR 7502 --- Feb. 19, 1997

Land Disposal Restrictions: Correction of Tables; Treatment Standards for Hazardous Wastes and Universal Treatment Standards

ACTION: Technical amendment of final rule.

EFFECTIVE DATE: This rule is effective on February 19, 1997.

AFFECTED REGULATIONS: 40 CFR Part 268
[EPA #530-296-002; FRL-5681-4] RIN 2050-AD38

SUMMARY: On April 8, 1996, EPA published Land Disposal Restrictions Phase III; Final Rule and Partial Withdrawal and Amendment of Final Rule, including the complete tables "Treatment Standards for Hazardous Wastes" at §268.40, and "Universal Treatment Standards" at §268.48. The Agency is today publishing updated and corrected versions of these two tables, incorporating all revisions to the treatment standards promulgated since the Phase III Final Rule. The updated tables also incorporate additional technical corrections which the Agency is making today, including the removal of treatment standards for the 25 waste codes whose listings were vacated by the November 1, 1996 court decision, *Dithiocarbamate Task Force v. Environmental Protection Agency* (DTC Court Case), *F.3d (D.C.Cir. November 1, 1996)*. These corrected tables will eliminate confusion as to what levels of treatment must be achieved by the regulated community as they comply with the LDR requirements.

62 FR 8632 --- Feb. 26, 1997

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion; Correction

ACTION: Final rule; correction.

EFFECTIVE DATE: July 18, 1996.

AFFECTED REGULATIONS: [FRL-5694-6]

SUMMARY: On July 18, 1996, the Environmental Protection Agency (EPA or Agency) published a final rule granting a petition submitted by United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, to exclude (or "delist"), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, from the lists of hazardous wastes in §§261.31 and 261.32. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency concluded that UTA's petitioned waste will not adversely affect human health and the environment. Delisting levels for cadmium, chromium, lead, nickel, and cyanide which would be protective of human health and the environment were calculated and promulgated. This action addresses the fact that the actual volume of waste to be disposed is 39,400 cubic yards, instead of the 20,500 cubic yards estimated by the petitioner prior to publication of the final rule. Therefore, today's document corrects the delisting levels for the constituents of concern by using the dilution attenuation factor (DAF) of 79 for 40,000 cubic yards, instead of the DAF of 96 for 20,500 cubic yards.

62 FR 25998 -- May 12, 1997

Land Disposal Restrictions-Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions

ACTION: Final rule.

EFFECTIVE DATE: This final rule is effective on August 11, 1997 except §§148.18(b) and 268.30(b), which are effective on May 12, 1999.


AFFECTED REGULATIONS: 40 CFR Parts 148, 261, 268, and 271
RIN 2050 AE05 [FRL 5816-5]

SUMMARY: The Agency is finalizing treatment standards for hazardous wastes generated from wood preserving operations, and is making a conforming amendment to the standard for wastes from production of chlorinated aliphatics which carry the F024 hazardous waste code. These treatment standards will minimize threats to human health and the environment posed by these wastes. In addition, this final rule revises the land disposal restrictions (LDR) program to significantly reduce paperwork requirements by 1.6 million hours. This rule also finalizes both the decision to employ polymerization as an alternative method of treatment for certain ignitable wastes as well as the decision not to ban certain wastes from biological treatment because there is no need to classify these wastes as "nonamenable." It also clarifies an exception from LDR requirements for de minimis amounts of characteristic wastewaters. Finally, this rule excludes processed circuit boards and scrap metal from RCRA regulation which is intended to promote the goal of safe recycling.

State of Oregon
Department of Environmental Quality

Memorandum

Date: 7/11/97

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Corrections to Attachment A: Draft Solid Waste Rules
Relating to Composting Operations

My staff has notified me that the following corrections need to be made to Attachment A of the EQC packet entitled "Draft solid waste rules relating to composting." With your approval, my staff will make these changes prior to filing the rules with the Secretary of State's office. Thank you.

| Page number in Attachment A | Change to be made is highlighted |
|---|--|
| 1) pg. 3, number (38) Definition of "green feedstock" and pg. 5 number (74) Definition of "reload facility" | 1) Change ORS 340-93-030 to OAR 340-93-030 |
| 2) pg. 5, number (58) Definition of "material recovery facility" | 2) Delete this phrase: " Material recovery facility " includes composting facilities. |
| 3) pg. 6, number (74) Definition of "reload facility" | 3) Place quotes around the term: "Reload facility." Insert ... facility or site ... |
| 4) pg. 7, number (86) Definition of "supplemental feedstocks" | 4) Insert: ... green feedstocks ... |
| 5) pg. 7, number (95) Definition of "wood waste" | 5) Insert: ...sawdust, ... stumps, bark ... |
| 6) pg. 9, (2) (d) "Permit Required" | 6) Insert: ... shall abide by OAR 340-96-020, 340-96-024 and 340-96-028 "Special Rules Pertaining to Composting;" |

c: Paul Slyman, Oregon DEQ
Lauren Ettlin, Oregon DEQ

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Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C
July 17, 1997 Meeting

Title:

Draft Solid Waste Rules Relating to Composting Operations

Summary:

DEQ determined there was a need to develop solid waste rules relating to composting after receiving numerous complaints from citizens about odor and water quality issues at many of the approximately 45 composting facilities in the state. Staff were also concerned that existing rules were not appropriate for composting facilities and, if implemented, would discourage composting in Oregon. DEQ is charged with encouraging recycling (composting) in Oregon in order to achieve 50% waste recovery.

A Work Group of compost experts was formed in January 1996 to work with a DEQ facilitator to research existing composting rules from other states and to review and make recommendations for changes to DEQ's existing solid waste rules. The Work Group forwarded their recommendation to DEQ's managers in August 1996.

Five public hearings were held around the state in November 1996; fifty-three people attended the hearings and 19 provided testimony. In addition, 40 written comment letters were received by DEQ. The comment deadline was extended for five months, at the request of those testifying, so that nine issues raised at the hearings could be resolved. The issues were diverse and covered: "grandfathering in" for existing composters, exemptions for agricultural composting, authority of DEQ to regulate on-farm composting, determination of which DEQ water quality permit should apply to composters and issues related to compost product quality standards.


DEQ staff conducted five additional "informational" meetings in April so interested parties could ask questions and find out about changes made as a result of discussion during the comment period extension. Thirty-seven people attended these meetings and two people provided testimony.

DEQ staff provided information to EQC members at a work session held on April 18, 1997.

Implementation of the rules will include development by staff of guidance documents and permit applications and templates. Staff will provide informational workshops for composters and training for DEQ regional staff on how to comply with the rules and best management practices in composting. Staff will notify composters of the new rules, respond to questions, inspect permitted facilities, follow-up on complaints and take enforcement action when necessary.

Department Recommendation:

Adopt rules as drafted


Report Author


Division Administrator

Director 

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

State of Oregon
Department of Environmental Quality Memorandum

Date: June 26, 1997

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item C: **Draft Solid Waste Rules Relating to Composting Operations**
EQC Meeting: July 17, 1997

Background

On October 14, 1996, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which 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 (proposed fees are listed in Attachment A, pages 26 and 27).

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on November 1, 1996. The Hearing Notice and informational materials were mailed on October 22, 1996 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, a total of about 1200 people.

Five Public Hearings were held in Portland, Corvallis, Klamath Falls and The Dalles between November 22 and 26, 1996 with DEQ staff serving as Presiding Officers. Written comment was received during a total of 6 months because the original comment deadline, November 29, 1996, was extended to January 3, 1997, then the comment period was extended again to May 2, 1997. Presiding Officers' Reports (Attachment C) summarize the oral testimony presented at the hearings. An additional sheet summarizes the written comments received. (A copy of the written comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment E.

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

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of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Why is there a need for the proposed rulemaking action?

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 environmental and human health risk 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 feedstocks¹ - 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" for large composting facilities handling only green feedstocks. This general permit can be

¹ "Green feedstocks" are materials used to produce a compost. Green feedstocks are 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, wood waste (as defined in ORS 340-93-030 (92)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products, and crop residue. Green feedstocks may also include other materials that can be shown by the composter to be low in or unlikely to support human pathogens and substances that pose a present or future hazard to human health or the environment.

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 who compost only green feedstocks generated on-site and use the finished compost on-site (this might include prisons, college campuses, etc.);
- exclude reload facilities, providing no composting occurs at the site.

Relationship to federal and adjacent state rules?

Because sewage sludge composters must comply with federal regulations, they are excluded from the proposed solid waste rules if they have a water quality permit for a sewage sludge treatment works. All composting operations permitted under the proposed rules will also be subject to existing applicable DEQ solid waste and water quality rules.

Authority to address the issue?

DEQ has authority to address regulation of composting operations under ORS 459.205 and ORS 459.005(8).

Process for development of the rulemaking proposal (including advisory committee and alternatives considered).

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

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

Bob Barrows, DEQ Solid Waste Program, Salem

A Compost Work Group was formed in January 1996. It is composed of 11 members representing compost operators, farmers, OSU Extension Service, county staff and DEQ solid waste and water quality staff. Two members of the Work Group are also members of DEQ's Solid Waste Advisory Committee (SWAC).

The Work Group met 12 times between January 1996 and February 1997 to review existing solid waste rules relating to composting operations and to develop the draft rules recommended and approved by DEQ's solid waste managers. The Work Group also reviewed regulations regarding compost operations from Metro and from the states of Washington, California and Texas.

Each Work Group meeting attracted between 15 and 35 people in the audience who provided feedback and represented compost operators, consultants, city and county staff and interested parties. In addition, an interested party list of 280 people received agendas and summaries of all of the meetings.

Summary of rulemaking proposal presented for public hearings/information meetings (include discussion of significant issues involved).

DEQ held five public hearings regarding the proposed composting facility rules in November 1996. Fifty-three people attended the hearings and 19 people provided public testimony (see Attachment C). In response to their testimony, DEQ extended the comment period twice, for a total of five months, to allow time to work on resolution of the following issues brought up at the hearings:

1. compost operators with "good environmental records" requested they be "grandfathered in," so they wouldn't have to comply with local government land use and public hearing requirements;
2. compost operators requested that DEQ water quality staff determine which water quality permits would apply to their facilities prior to finalization of the solid waste compost rules, so operators would know "the entire picture" of DEQ regulation;
3. poultry farmers composting dead birds on their farms requested that they be exempted from DEQ's solid waste rules.

Regarding issue #1, DEQ staff researched the requirement for the Department's land use compatibility statement (lucs), the form that must be signed by the local government planning official prior to a DEQ permit being issued. Compost operators requested to be "grandfathered in" by DEQ so they could avoid a land use public hearing in their home town. Staff research concluded that DEQ doesn't have authority to "grandfather in" to avoid land use compliance. DEQ is required by the Department of Land Conservation and Development (DLCDD) to allow local governments to decide if a solid waste disposal site facility is compatible with "comprehensive plans and land use regulations." The Department has chosen the lucs form as the method for achieving "sign off" by local governments. This is substantiated in a State Agency Coordination Agreement, which lists "disposal site permits" as one of 23 "Department actions determined to affect land use."

Since DEQ didn't have authority to "grandfather in" existing composting operations but did want to reduce the burden of getting the lucs form signed by local government, DEQ agreed to do the following:

- a) DEQ will develop a fact sheet that the compost facility could submit to the county with its land use compatibility statement. The fact sheet will include information about why the rules were developed, why composting is an important part of the recycling industry and the names and phone numbers of DEQ's technical assistants in each DEQ region of the state.
- b) DEQ will provide technical assistance. If requested by the composter, the DEQ technical assistant from the regional office will call the county planning staff to provide information.
- c) DEQ will revise its public notice template to say "Solid Waste Disposal Site: Composting Facility" instead of "Solid Waste Disposal Site."
- d) DEQ will assist existing compost facilities by revising the land use compatibility statement form to say "Composting Registration or Permit" instead of just "Solid Waste Disposal Site." This revision will clearly delineate composting facilities as being an activity separate from other solid waste disposal sites.

Memo To: Environmental Quality Commission
Agenda Item C: Draft Solid Waste Rules Relating to Composting Operations
EQC Meeting: July 17, 1997

Page 5

A response letter was mailed on May 13, 1997 from the DEQ section manager to the chairman of the Compost Council of Oregon describing the information listed in a through d above.

Regarding issue #2, after the public hearings DEQ staff continued to meet with water quality staff and managers to achieve consensus on which water quality permit should apply to composting operations. This discussion had begun six months earlier but it took another three months before the water managers agreed to support their staff's suggestion that composting facilities receive a general 1200H storm water permit. The 1200H permit requires that compost operators sample storm water runoff twice a year and submit test results to DEQ. In January 2000, DEQ water quality staff will review these test results and meet with solid waste staff to determine if the 1200H permit is appropriate and adequate, or if a new general composting permit should be developed. This information was provided to interested parties at the February 12, 1997 meeting of the Compost Work Group and was fully supported.

Regarding issue #3, regulation of composting of dead poultry, DEQ met with the affected farmers and the Oregon Department of Agriculture (ODA) beginning in November 1996. After four meetings it was agreed that most types of on-farm composting, including composting of dead poultry, would be exempted from DEQ's compost rules *if* the on-farm composter developed a composting management plan that addressed DEQ's environmental concerns. The plan must be approved by and be on file at the Oregon Department of Agriculture and the composter must implement the plan in order for the DEQ exemption to apply (for details, see Attachment A, page 9, (3)(d)). Farmers were informed of this decision at the February 12, 1997 Compost Work Group meeting and at a subsequent "farmer only" meeting convened by the ODA. They largely supported the plan. The ODA has since formed a Composting Management Task Force of farmers, ODA staff and DEQ staff to hammer out the details of the composting management plan criteria and format.

Once resolution was achieved on the issues listed above, DEQ conducted five "informational meetings" in April 1997 in Portland, Corvallis, Medford, Bend and The Dalles to allow interested people to get information and ask questions about changes to the proposed rules. These meetings were attended by 37 people and two people provided public testimony (see Attachment H).

Summary of rulemaking proposal presented for public hearing and discussion of significant issues.

There are three levels of regulation proposed, based on the type and amount of materials composted.

1) Composting Facility Registration.

Regulation: This is a registration, not a permit, for small facilities which accept only "green feedstocks." 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 wood waste *only*:² between 20 and 5,000 tons in a calendar year

²Yard debris and wood waste are a subset of and included in the green feedstock category.

Who is affected? DEQ estimates there are currently about 20 compost facilities in Oregon that would fit within the registration category; 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."

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 conditions are listed in Attachment A, pages 19-21). 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 wood waste *only*: more than 5,000 tons in a calendar year

Who is affected? DEQ estimates there are currently 22 composting facilities in Oregon that fit within the general permit category; 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."

3) Composting Facility Full 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 composting facility in the state that fits within the full permit category; 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."

Summary of significant public comment and changes proposed in response.

Twenty-one people provided oral comments and 40 people provided written comment letters, for a total of 61 comments received regarding the proposed composting facility rules. The significant issues, defined as those receiving more than three comments, included the following. Resolution to issues 1 through 6 is described on pages 4 and 5 of this memo. Resolution of issues 7, 8 and 9 is described below. Summary of Significant Public Comment:

1. Compost operators with "good environmental records" requested they be "grandfathered in" so they wouldn't have to comply with local government land use and public hearing requirements;
2. Compost operators requested that DEQ water quality staff determine which water quality permits would apply to their facilities prior to finalization of the solid waste compost rules, so operators would know "the entire picture" of DEQ regulation;
3. Poultry farmers composting dead birds on their farms requested that they be exempted from DEQ's solid waste rules and regulated only by the Oregon Department of Agriculture;
4. Poultry farmers were not included in rulemaking process;
5. Farmers who compost only their own materials should be exempted from DEQ's rules;
6. DEQ should extend comment period so agricultural interests may be heard;
7. DEQ may not have authority to regulate on-farm composting because of the "right to farm" act;
8. Compost product quality standards are important and should be developed for Oregon. They should be developed by industry; DEQ should only be involved in development of those standards related to health and safety;
9. Rules are unclear about facilities accepting non-vegetative waste (non-green feedstocks); composting of non-vegetative food waste should include pathogen reduction requirement but not a liner (because the cost of a liner is so high it will discourage composting).

Regarding issue #7, the Attorney General's office advised DEQ staff that the Department does have sufficient authority to adopt the rules in question. They said pursuant to ORS 459.205, DEQ has authority to require a permit of disposal sites. Pursuant to ORS 459.005(8), "composting plants" are defined as disposal sites. Therefore, DEQ has authority to require a permit of composting operations.

Under the "right to farm" statute, ORS 30.930 to ORS 30.947, farming operations must comply with applicable laws (ORS 30.930 (2) (d)). In November 1996, Assistant Attorneys General for DEQ and the Oregon Department of Agriculture (ODA) concluded that the "right to farm act" generally does not impact DEQ's ability to impose regulations on on-farm composting facilities except with regard to certain air and water quality issues. The Department's authority to regulate some aspects of agricultural water pollution has been transferred to the ODA. While ORS 215.253 says no state agency shall do anything that restricts farm activity, this does not affect the state's ability to safeguard human health or the environment. Since the goal of the proposed composting rules is to safeguard human health and the environment, DEQ has authority to regulate on-farm composting facilities with regards to health and environmental issues.

Regarding issue #8, DEQ removed the sentence regarding "compost product standards" from the rules and agreed that industry should take the lead in development of the standards and that DEQ should be involved and supportive, especially concerning standards that protect human health and the environment.

Regarding issue #9, DEQ wrote a letter on April 24, 1997 to the president of Recycling Advocates, proponents of this issue. DEQ staff also met with the president of Recycling Advocates on May 13, 1997 at her request and with Metro composting staff to further discuss the issue. We explained that the rules for *vegetative* waste composting *are* clear and the rules allow composters of non-vegetative waste to show DEQ that they do not have pathogen or water quality issues and therefore can be permitted with the lesser environmental protections of vegetative waste composters (a general permit with no liner requirement). We reminded Recycling Advocates and Metro that health officials had consistently informed DEQ that non-vegetative waste has a human pathogen potential and can contaminate surface water. To protect human health and the environment, DEQ must require a liner of facilities accepting these feedstocks, unless the facilities can show that pathogens are not a concern. The liner required by DEQ can be one of four types, varying from a simple clay liner using existing soils to an elaborate and costly concrete liner.

Summary of how the proposed rule will 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 (new and existing facilities must comply within 18 months of rule adoption). 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 general permit applications.
8. Review and approve completed full permit applications.
9. Respond to questions from applicants for registrations and permits.
10. Inspect permitted facilities within the permit timeline; site inspections will occur for registered facilities only if necessary to resolve environmental issues.
11. Respond to complaints about composting facilities.

Recommendation for Commission action.

It is recommended that the Commission adopt the rule amendments regarding solid waste rules relating to composting operations as presented in Attachment A of the Department Staff Report.

Attachments

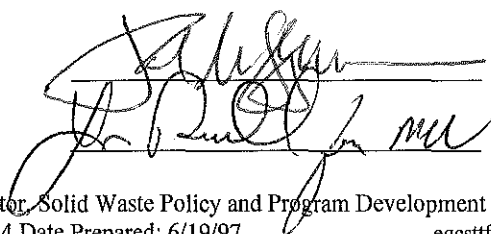
- A. Rule (Amendments) Proposed for Adoption: Final Draft
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice: Cover Memorandum and Draft Rulemaking Statements as Sent to Interested Parties
 - 3. Public Notice: Fiscal and Economic Impact Statement as Sent to Interested Parties
 - 4. Public Notice: Land Use Evaluation Statement as Sent to Interested Parties
 - 5. Public Notice: Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements as Sent to Interested Parties
- C. Presiding Officers' Reports on Public Hearings
- D. Department's Evaluation of Public Comments
- E. Detailed Changes to Original Rulemaking Proposal Made in Response to Public Comment
- F. Advisory Committee Membership and Report
- G. Rule Implementation Plan
- H. Other Attachments
 - Summary of five information meetings held after the comment deadline was extended and issues (raised at public hearings) were resolved.
 - Flow Chart

Reference Documents (available upon request)

- Written Comments Received (as listed in Attachment C)
Approved:

Section:

Division:



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DIVISION 93
SOLID WASTE: GENERAL PROVISIONS

Definitions

340-93-030 As used in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97 unless otherwise specified:

(1) "Access Road" means any road owned or controlled by the disposal site owner which terminates at the disposal site and which provides access for users between the disposal site entrance and a public road.

(2) "Agricultural Waste" means residues from agricultural products generated by the raising or harvesting of such products on farms or ranches.

(3) "Agricultural Composting" means composting as an agricultural operation (as defined in ORS 467.120 (2)(a)) conducted on lands employed for farm use (as defined in ORS 215.203). Agricultural composting operations may include supplemental feedstocks to aid in composting feedstocks generated on the farm.

(4) "Agronomic Application Rate" means land application of no more than the optimum quantity per acre of compost, sludge or other materials designed to:

(a) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;

(b) Condition and improve the soil comparable to that attained by commonly used soil amendments; or

(c) Adjust soil pH to desired levels. In no case shall the waters of the state be adversely impacted.

(5) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(6) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(7) "Asphalt paving" means asphalt which, has been applied to the land to form a street, road, path, parking lot, highway, or similar paved surface and which is weathered, consolidated, and does not contain visual evidence of fresh oil.

(8) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(9) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(10) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

(11) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suction-ings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(12) "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 chemically stabilize solids to the extent that they do not attract vectors.

(13) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.

(14) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment, and which are not hazardous wastes as defined by ORS 466.005.

(15) "Closure Permit" means a document issued by the Department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the Department.

(16) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other nonmanufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

(17) "Commission" means the Environmental Quality Commission.

(18) "Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste. It does not include composting for the purposes of soil remediation. Compost is the product resulting from the composting process.

(19) "Composting Facility" means a site or facility which utilizes organic solid waste or mixed solid waste to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture, vermicomposting and agricultural composting operations are considered composting facilities.

(20) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

(21) "Construction and Demolition Landfill" means a landfill which receives only construction and demolition waste.

(22) "Corrective Action" means action required by the Department to remediate a release of constituents above the levels specified in 40 CFR §258.56 or OAR Chapter 340, Division 40, whichever is more stringent.

(23) "Cover Material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.

(24) "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.

(25) "Current Assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(26) "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

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

(28) "Designated Well Head Protection Area" means the surface and subsurface area surrounding a public water supply well or wellfield, through which contaminants are likely to move toward and reach the well(s), and within which waste management and disposal, and other activities, are regulated to protect the

quality of the water produced by the well(s). A public water supply well is any well serving 14 or more people for at least six months each year.

(29) "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

(30) "Director" means the Director of the Department of Environmental Quality.

(31) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (74)(b) of this rule), transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(32) "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic or industrial solid wastes;

(c) Industrial waste going to an industrial waste facility; or

(d) Waste received at an ash monofill from an energy recovery facility.

(33) "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

(34) "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(35) "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

(36) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.

(37) "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.

(38) "Green Feedstocks" are materials used to produce a compost. Green feedstocks are low in a) substances that pose a present or future hazard to human health or the environment and b) low in and unlikely to support human pathogens. Green feedstocks include but are not limited to: yard debris, animal manures, wood waste (as defined in ORS 340-93-030(95)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products and crop residue. Green feedstocks may also include other materials that can be shown to DEQ by the composter to be low in substances that pose a present or future hazard to human health or the environment and low in and unlikely to support human pathogens. This term is not intended to include materials fed to animals and not used for composting.

(39) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

(40) "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.

(41) "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

(42) "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(43) "Home composting" means composting operated and controlled by the owner or person in control of a single family dwelling unit and used to dispose of food waste and yard debris.

(44) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

(45) "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/ demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.

(46) "Industrial Waste Landfill" means a landfill which receives only a specific type or combination of industrial waste.

(47) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

(48) "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

(49) "Institutional Composting" means the composting of green feedstocks generated from the facility's own activities. It may also include supplemental feedstocks. Feedstocks must be composted on-site, the compost produced must be utilized within the contiguous boundaries of the institution and not offered for sale or use off-site. Institutional composting includes but is not limited to: parks, apartments, universities, schools, hospitals, golf courses and industrial parks.

(50) "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

(51) "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

(52) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(53) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

(54) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(55) "Local Government Unit" means a city, county, metropolitan service district formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

(56) "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the Department determines to be unlikely to adversely impact the waters of the State or public health.

(57) "Material Recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose.

(58) "Material Recovery Facility" means a solid waste management facility which separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected. "Material recovery facility" includes composting facilities.

(59) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

(60) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

(61) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction and demolition waste and industrial solid waste.

(62) "Net Working Capital" means current assets minus current liabilities.

(63) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

(64) "Non-green Feedstocks" are materials used to produce a compost. Non-green feedstocks are high in a) substances that pose a present or future hazard to human health or the environment and b) high in and likely to support human pathogens. Non-green feedstocks include but are not limited to: animal parts and by-products, mixed materials containing animal parts or by-products, dead animals and municipal solid waste. This term is not intended to include materials fed to animals and not used for composting.

(65) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(66) "Permit" means a document issued by the Department, bearing the signature of the Director or his authorized representative which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

(67) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(68) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

(69) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not

combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(70) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(71) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(72) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means that metropolitan service district boundary.

(73) "Release" has the meaning given in ORS 465.200(14).

(74) Reload facility means a facility that accepts and reloads only yard debris and wood waste (as defined in ORS 340-93-030 (95) for transport to another location.

(75) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

(76) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(77) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(78) "Sensitive Aquifer" means any unconfined or semiconfined aquifer which is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

(79) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

(80) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(81) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

(82) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

(83) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

(84) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

(85) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

(86) "Supplemental Feedstocks" are feedstocks from off-farm or off-site used to produce a compost at an agricultural or institutional operation, are the minimum amount necessary to allow composting of on-farm and on-site feedstocks, and can be shown by the composter to DEQ to be necessary to maintain porosity, moisture level or carbon to nitrogen ratio in the farm or institution's composting operation. The goal of these feedstocks is to supplement those feedstocks generated on the farm or at the institution so that composting may occur.

(87) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(88) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

(89) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

(90) "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (16) of this rule, "material recovery" as defined in section (52) of this rule, nor does it apply to a "material recovery facility" as defined in section (53) of this rule.

(91) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

(92) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

(93) "Vegetative" means feedstocks used for composting which are derived from plants including but not limited to: fruit and vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil, grease or dairy products such as milk, mayonnaise or ice cream.

(94) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

(95) "Wood waste" means chemically untreated wood pieces or particles generated from processes commonly used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing or treated with chemical additives, glue resin or chemical preservatives.

(96) "Wood waste Landfill" means a landfill which receives primarily wood waste.

(97) "Zone of Saturation" means a three dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

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

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.420 & 468.065

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-010; DEQ 10-1994, f. & cert. ef. 5-4-94

Prohibited Disposal

340-93-040 (1) No person shall dispose of or authorize the disposal of solid waste except at a solid waste disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted by OAR 340-93-050(3) from the requirement to obtain a solid waste permit.

(2) Wastes prohibited from disposal at solid waste disposal sites:

(a) Hazardous Wastes. Wastes defined as hazardous wastes must be managed in accordance with ORS 466.005 et seq. and applicable regulations;

(b) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.

[Subsection on lead-acid batteries deleted, and replaced with (3)(e) below]

(3) No person shall dispose of and no disposal site shall knowingly accept for disposal at a solid waste disposal site:

(a) Used oil as defined in ORS 468.850(5), including liquid used oil and used oil purposely mixed with other materials for the purpose of disposal, but not including cleanup materials from incidental or accidental spills where the used oil spilled cannot feasibly be recovered as liquid oil;

(b) Discarded or abandoned vehicles;

(c) Discarded large metal-jacketed residential, commercial or industrial appliances such as refrigerators, washers, stoves and water heaters;

(d) Whole tires, except as provided in OAR 340-64-052. Tires processed to meet the criteria in OAR 340-64-052 may be landfilled. For purposes of this subsection, "tire" shall have the meaning given in OAR 340-64-010(26);

(e) Lead-acid batteries.

(4) Notwithstanding any other provision of law relating to solid waste disposal, if the state of origin prohibits or restricts the disposal of any kind of solid waste within the state of origin, such prohibition or restriction also shall apply to the disposal of the out-of-state solid waste in Oregon.

Stat. Auth.: ORS 459.005 - 459.418, 459.045(1) & (3), 459A.100 - 459A.120, 459.235(2), 459.420 & 468.065

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 30-1988(Temp), f. & cert. ef. 11-17-88; DEQ 6-1989, f. 4-24-89, cert. ef. 5-4-89; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-060

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilations. Copies may be obtained from the adopting agency or the Secretary of State.]

Permit Required

340-93-050 (1) Except as provided by section (3) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

(2) Persons owning or controlling the following classes of disposal sites shall abide by the requirements in the following rules:

(a) Municipal solid waste landfills shall abide by OAR 340, Division 94 "Municipal Solid Waste Landfills;"

(b) Industrial Solid Waste Landfills, Demolition Landfills, Wood Waste Landfills and other facilities not listed in OAR 340, Division 96 shall abide by OAR 340, Division 95 "Land Disposal Sites Other Than Municipal Solid Waste Landfills;"

(c) Energy recovery facilities and incinerators receiving domestic solid waste shall abide by OAR 340, Division 96 "Special Rules Pertaining to Incineration;"

(d) Composting facilities except as excluded in OAR 340-93-050 (3)(d) shall abide by OAR 340-96-020 "Special Rules Pertaining to Composting;"

(e) Land used for deposit, spreading, lagooning or disposal of sewage sludge, septage and other sludges shall abide by OAR 340-96-030 "Special Rules Pertaining to Sludge and Land Application Disposal Sites;"

(f) Transfer stations and Material Recovery Facilities shall abide by OAR 340-96-040 "Transfer Stations and Material Recovery Facilities;"

(g) Petroleum contaminated soil remediation facilities and all other solid waste treatment facilities shall abide by OAR 340-96-050 "Solid Waste Treatment Facilities."

(3) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Divisions 93 through 97, but shall comply with all other provisions of OAR Chapter 340 Divisions 93 through 97 and other applicable laws, rules, and regulations regarding solid waste disposal:

(a) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(b) Disposal sites, facilities or disposal operations operated pursuant to a permit issued under ORS 468B.050;

(c) A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the Department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety;

NOTE: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the Department with such information as the Department may require to evaluate the request for exemption, pursuant to OAR 340-93-080.

(d) Composting facilities. The following are exempted from the above requirements to obtain a permit:

(A) Sites, facilities or agricultural composting operations utilizing an amount of green or non-green feedstocks less than or equal to 20 tons in a calendar year;

(B) Agricultural composting operations that are:

(i) Composting green feedstocks generated and composted at the same agricultural operation; and

(I) All the compost produced is used at the same agricultural operation at an agronomic rate or less; or

(II) If any of the compost produced is sent off-farm, the operation is described in a composting management plan on file at the Oregon Department of Agriculture. The composting management plan must be approved by the Oregon Department of Agriculture and implemented by the composter for this exclusion to apply;

(ii) Composting non-green feedstocks:

(I) Generated and composted at the same agricultural operation; and

(II) The operation is described in a composting management plan on file at the Oregon Department of Agriculture. The composting management plan must be approved by the Oregon Department of Agriculture and implemented by the composteer in order for this exclusion to apply;

(C) Production of silage on a farm for animal feed;

(D) Home composting, unless the Department determines there's an adverse impact on ground water, surface water or public health and safety;

(E) Institutional composting, provided there's no adverse impact on ground water, surface water or public health or safety;

(F) Reload facilities, providing no composting occurs at the site.

(e) Site or facility utilizing any amount of sewage sludge or biosolids under a valid water quality permit, pursuant to ORS 468B.050;

(f) Facilities which receive only source separated materials for purposes of material recovery, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health;

(g) A site used to transfer a container, including but not limited to a shipping container, or other vehicle holding solid waste from one mode of transportation to another (such as barge to truck), if:

(A) The container or vehicle is not available for direct use by the general public;

(B) The waste is not removed from the original container or vehicle; and

(C) The original container or vehicle does not stay in one location longer than 72 hours, unless otherwise authorized by the Department.

(4) The Department may, in accordance with a specific permit containing a compliance schedule, grant reasonable time for solid waste disposal sites or facilities to comply with OAR Chapter 340 Divisions 93 through 97.

(5) If it is determined by the Department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the Department may waive any or all requirements of OAR 340-93-070, 340-93-130, 340-93-140, 340-93-150, 340-94-060(2) and 340-95-030(2) and issue a letter authorization in accordance with OAR 340-93-060.

(6) Each person who is required by sections (1) and (4) of this rule to obtain a permit shall:

(a) Make prompt application to the Department therefor;

(b) Fulfill each and every term and condition of any permit issued by the Department to such person;

(c) Comply with OAR Chapter 340 Divisions 93 through 97;

(d) Comply with the Department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby;

(e) Allow the Department or an authorized governmental agency to enter the property under permit at reasonable times to inspect and monitor the site and records as authorized by ORS 459.385 and 459.272. [Renumbered from 340-94-100(9) and 340-95-050(9)]

(7) Failure to conduct solid waste disposal according to the conditions, limitations, or terms of a permit or OAR Chapter 340 Divisions 93 through 97, or failure to obtain a permit is a violation of OAR Chapter 340 Divisions 93 through 97 and shall be cause for the assessment of civil penalties for each violation as provided in OAR Chapter 340, Division 12 or for any other enforcement action provided by law. Each and every day that a violation occurs is considered a separate violation and may be the subject of separate penalties.

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 14-1984, f. & ef. 8-8-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-020; DEQ 10-1994, f. & cert. ef. 5-4-94

Letter Authorizations

340-93-060 Pursuant to OAR 340-93-050(5), the Department may authorize the short-term operation of a disposal site by issuing a permit called "letter authorization" subject to the following:

(1) A letter authorization may be issued only on the basis of a complete written application which has been approved by the Department. Applications for letter authorizations shall be complete only if they contain the following items:

- (a) The quantity and types of material to be disposed;
- (b) A discussion of the need and justification for the proposed project;
- (c) The expected amount of time which will be required to complete the project;
- (d) The methods proposed to be used to insure safe and proper disposal of solid waste;
- (e) The location of the proposed disposal site;
- (f) A statement of approval from the property owner or person in control of the property, if other than the applicant;

(g) Written verification from the local planning department that the proposal is compatible with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(h) Any other relevant information which the Department may require.

(2) Upon receipt of a complete written application the Department may approve the application if it is satisfied that:

- (a) The applicant has demonstrated sufficient need and justification for the proposal;
- (b) The proposed project is not likely to cause a public nuisance, health hazard, air or water pollution or other environmental problem.

(3) The Department may revoke or suspend a letter authorization on any of the following grounds:

- (a) A material misrepresentation or false statement in the application;
- (b) Any relevant violation of any statute, rule, order, permit, ordinance, judgment or decree.

(4) The Department may issue letter authorizations for periods not to exceed six months. If circumstances have prevented the holder of a letter authorization from completing the action allowed under the letter authorization, he or she may request a one-time six-month renewal from the Department. Further renewals are not allowed. A letter authorization shall not be used for any disposal actions requiring longer than a total of one year to complete; such actions are subject to a regular solid waste land disposal permit.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-027; DEQ 10-1994, f. & cert. ef. 5-4-94

Applications for Permits

340-93-070 (1) Applications for permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

(2) Applications for a permit, including those required for a composting facility general permit, shall be accepted by the Department only when complete, as detailed in section (4) of this rule.

(3) General permit: Composting facilities as defined in OAR 340-96-024 (2) are considered to be "lower risk disposal sites" and thus subject to general permits. General permits are permits and permittees shall comply with all pertinent rules except subsections (4) (e) and (f) of this rule, and the requirements of OAR 340-93-150, 340-93-210, 340-94-060 (2) and 340-95-030 (2). In order to comply with requirements, persons applying for a general permit must submit to DEQ items listed in (4) (a), (b), (c) and (d) of this rule prior to receiving a permit. To comply with the remainder of all pertinent rules, these composting facilities must have procedures in place and documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met. A composting facility for which a general permit has been issued, but DEQ determines has inadequate or incomplete plans, specifications, operations and maintenance manuals, operational procedures, or other requirements, may be required to revise documents or operational procedures to comply with current technological practices and pertinent rules of the Department.

(4) Applications for a registration or permit shall be complete only if they:

(a) Are submitted in triplicate on forms provided by the Department, are accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the Department, and are signed by the property owner or person in control of the premises;

(b) Include written recommendations of the local government unit or units having jurisdiction with respect to new or existing disposal sites, or alterations, expansions, improvements or changes in method or type of disposal at new or existing disposal sites. Such recommendations shall include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) Identify any other known or anticipated permits from the Department or other governmental agencies. If previously applied for, include a copy of such permit application and if granted, a copy of such permit;

(d) Include payment of application fees as required by OAR 340-97-110 and 340-97-120;

(e) Include a site characterization report(s) prepared in accordance with OAR 340-93-130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report(s) have been met by other prior submittals;

(f) Include detailed plans and specifications as required by OAR 340-93-140;

(g) For a new land disposal site:

(A) Include a written closure plan that describes the steps necessary to close all land disposal units at any point during their active life pursuant to OAR 340-94-110 to 340-94-120 or OAR 340-95-050 to 340-95-060; and

(B) Provide evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance, of the land disposal site, pursuant to OAR 340-94-140 or OAR 340-95-090, unless the Department exempts a non-municipal land disposal site from this requirement pursuant to OAR 340-95-050(3).

(h) Include any other information the Department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the Department.

(5) If the Department determines that a disposal site is a "low-risk disposal site" or is not likely to adversely impact the waters of the State or public health, the Department may waive any of the requirements of subsections (4)(e) and (f) of this rule, OAR 340-93-150, 340-94-060(2) and 340-95-030(2). In making this judgment, the Department may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factor. The applicant must submit any

information the Department deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(6) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the Department, there is sufficient public concern regarding the proposed disposal site, the Department may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

(7) Permit or registration renewals:

(a) Notwithstanding OAR 340-14-020(1), any permittee intending to continue operation beyond the permitted period must file a complete renewal application for renewal of the permit at least 180 days before the existing permit expires;

(b) A complete application for renewal must be made in the form required by the Department and must include the information required by this Division and any other information required by the Department;

(c) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (4)(b) of this rule;

(d) If a completed application for renewal of a permit is filed with the Department in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until the Department takes final action on the renewal application;

(e) If a completed application for renewal of a permit is not filed 180 days prior to the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-94-100 or 340-95-050;

(f) Permits continued under subsection (7)(d) of this rule remain fully effective and enforceable until the effective date of the new permit.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-025; DEQ 10-1994, f. & cert. ef. 5-4-94

Variations and Permit Exemptions

340-93-080 (1) Variations. The Commission may by specific written variance waive certain requirements of OAR Chapter 340 Divisions 93 through 97 when circumstances of the solid waste disposal site location, operating procedures, and/or other conditions indicate that the purpose and intent of OAR Chapter 340 Divisions 93 through 97 can be achieved without strict adherence to all of the requirements.

(2) Permit exemptions. Pursuant to OAR 340-93-050(3), a person wishing to obtain an exemption from the requirement to obtain a solid waste permit for disposal of an inert waste in specified locations may submit a request to the Department. The applicant must demonstrate that the waste is substantially the same as "clean fill." The request shall include but not be limited to the following information:

(a) The exact location (including a map) at which the waste is to be disposed of and a description of the surrounding area;

(b) The monthly rate of disposal;

(c) A copy of the Material Safety Data Sheet (or equivalent, if a MSDS is not available) for all applicable raw materials used at the facility generating the waste;

(d) A description of the process generating the waste and how that process fits into the overall operation of the facility;

(e) Documentation that the waste is not hazardous as defined in OAR Chapter 340, Division 101. The procedure for making a hazardous waste determination is in OAR 340-102-011;

(f) A demonstration that the waste is inert, stable, non-putrescible, and physically similar to soil, rock, concrete, brick, building block, tile, or asphalt paving;

(g) A demonstration that the waste will not discharge constituents which would adversely impact the waters of the state or public health.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-080; DEQ 10-1994, f. & cert. ef. 5-4-94

Preliminary Approval

340-93-090 (1) The Department may issue written preliminary approval to any applicant for a Solid Waste Disposal Permit, prior to submission of detailed engineering plans and specifications, based on the material submitted in a site characterization report(s) in accordance with the requirements of OAR 340-93-070.

(2) The purpose of the preliminary review and approval process is to inform the applicant of the Department's concerns, if any, regarding the proposal and to provide guidance in the development of the detailed plans and specifications required to complete the permit application. Receipt of preliminary approval does not grant the applicant any right to begin construction or operation of a disposal site.

(3) Request for preliminary approval shall be made to the Department in writing. Within 45 days of receipt of such request, the Department shall either grant or deny preliminary approval or request additional information.

(4) Granting of preliminary approval shall not prevent the Department from denying or conditionally approving a completed permit application.

(5) If the Department denies preliminary approval, it shall clearly state the reasons for denial. Failure to receive preliminary approval shall not prevent an applicant from completing a permit application. Any application completed after denial of preliminary approval shall specifically address those concerns listed in the Department's letter of denial.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-031; DEQ 10-1994, f. & cert. ef. 5-4-94

Site Characterization Report(s)

340-93-130 The purpose of the site characterization report(s) required by OAR 340-93-070(4)(e) is to demonstrate that the proposed facility will be located in a suitable site and will use appropriate technology in design, construction and operation. The site characterization report(s) shall describe existing site conditions and a conceptual engineering proposal in sufficient detail to determine whether the facility is feasible and protects the environment. The site characterization report(s) shall include, but not be limited to, the following:

(1) Information on site location and existing site conditions, including:

(a) A site location description, including a location map and list of adjacent landowners;

(b) An Existing Conditions Map of the area showing land use and zoning within 1/4 mile of the disposal site; and

(c) Identification of any siting limitations and how those limitations will be addressed.

(2) A description of the scope, magnitude, type, and purpose of the proposed facility, including but not limited to the following:

(a) Estimated capacity and projected life of the site;

(b) Identification of the communities, industries and/or markets to be served;

(c) Anticipated types and quantities of solid wastes to be received, disposed of and/or processed by the facility;

(d) Summary of general design criteria and submittal of conceptual engineering plans;

(e) Description of how the proposed technology compares to current technological practices, or to similar proven technology, including references to where similar technology has been effectively implemented;

(f) Demonstration that the proposed facility is compatible with the local solid waste management plan and the state solid waste management plan;

(g) Planned future use of the disposal site after closure;

(h) Key assumptions used to calculate the economic viability of the proposed facility; and

(i) The public involvement process that has been and will be implemented.

(3) A proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, methane gas, litter and vectors, and control of other discharges, emissions and activities which may result in a public health hazard, a public nuisance or environmental degradation.

(4) For a landfill, the following shall be included:

(a) A detailed soils, geologic, and groundwater report of the site prepared and stamped by a professional Engineer, Geologist or Engineering Geologist with current Oregon registration. The report shall include consideration of surface features, geologic formations, soil boring data, water table profile, direction of groundwater flow, background quality of water resources in the anticipated zone of influence of the landfill, need and availability of cover material, climate, average rates of precipitation, evapotranspiration, runoff, and infiltration (preliminary water balance calculations);

(b) Information on soil borings to a minimum depth of 20 feet below the deepest proposed excavation and lowest elevation of the site or to the permanent groundwater table if encountered within 20 feet. A minimum of one boring per representative landform at the site and an overall minimum of one boring per each ten acres shall be provided. Soil boring data shall include the location, depth, surface elevation and water level measurements of all borings, the textural classification (Unified Soil Classification System), permeability and cation exchange capacity of the subsurface materials and a preliminary soil balance;

(c) For all water wells located within the anticipated zone of influence of the disposal site, the depth, static level and current use shall be identified;

(d) Background groundwater quality shall be determined by laboratory analysis and shall include at least each of the constituents specified by the Department.

(5) Any other information the Department may deem necessary to determine whether the proposed disposal site is feasible and will comply with all applicable rules of the Department.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-030; DEQ 10-1994, f. & cert. ef. 5-4-94

Detailed Plans and Specifications Required

340-93-140 Except as provided in OAR 340-93-070(4):

(1) Any person applying for a Solid Waste Disposal Permit shall submit plans and specifications conforming with current technological practices, and sufficiently detailed and complete so that the Department may evaluate all relevant criteria before issuing a permit. The plans and specifications shall follow the organizational format, and include the level of information detail, as required by the Department. The Department may refuse to accept plans and specifications that are incomplete and may request such additional information as it deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(2) Engineering plans and specifications submitted to the Department shall be prepared and stamped by a professional engineer with current Oregon registration.

(3) If in the course of facility construction any person desires to deviate significantly from the approved plans, the permittee shall submit a detailed description of the proposed change to the Department for review and approval prior to implementation. If the Department deems it necessary, a permit modification shall be initiated to incorporate the proposed change.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81;; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-035; DEQ 10-1994, f. & cert. ef. 5-4-94

Construction Certification

340-93-150 Except as provided in OAR 340-93-070(5):

(1) The Department may require, upon completion of major or critical construction at a disposal site, that the permittee submit to the Department a final project report signed by the project engineer or manager as appropriate. The report shall certify that construction has been completed in accordance with the approved plans including any approved amendments thereto.

(2) If any major or critical construction has been scheduled in the plans for phase development subsequent to the initial operation, the Department may require that the permittee submit additional certification for each phase when construction of that phase is completed.

(3) Solid waste shall not be disposed of in any new waste management unit (such as a landfill cell) of a land disposal site unless/until the permittee has received prior written approval from the Department of the required engineering design, construction, operations, and monitoring plans. Only after the Department has accepted a construction certification report prepared by an independent party, certifying to the Department that the unit was constructed in accordance with the approved plans, may waste be placed in the unit. If the Department does not respond to a certified construction certification report within 30 days of its receipt, the permittee may proceed to use the unit for disposal of the intended solid waste.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-036; DEQ 10-1994, f. & cert. ef. 5-4-94

Place for Collecting Recyclable Material

340-93-160 (1) All solid waste permittees shall ensure that a place for collecting source separated recyclable material is provided for every person whose solid waste enters the disposal site. The place for collecting recyclable material shall be located either at the disposal site or at another location more convenient to the population served by the disposal site.

(2) Any disposal site that identifies a more convenient location for the collection of recyclable materials as part of providing the opportunity to recycle shall provide information to users of the disposal site about the location of the recycling collection site, what recyclable materials are accepted and hours of operation.

(3) Exemption. Any disposal site meeting one of the following criteria is not required to provide a place for collecting source separated recyclable material:

- (a) Receives only feedstocks for composting; or
- (b) Does not receive source separated recyclable material; or
- (c) Does not receive solid waste containing recyclable material.

(4) Small Rural Sites. Any disposal site from which marketing of recyclable material is impracticable due to the amount or type of recyclable material received or geographic location shall provide information to the users of the disposal site about the opportunity to recycle at another location serving the watershed. Such information shall include the location of the recycling opportunity, what recyclable materials are accepted and hours of operation.

(5) The Department may modify the requirements in this rule if the Department finds that the opportunity to recycle is being provided through an acceptable alternative method.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-60-065; DEQ 10-1994, f. & cert. ef. 5-4-94

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DIVISION 96

SOLID WASTE: SPECIAL RULES FOR SELECTED SOLID WASTE DISPOSAL SITES

Special Rules Pertaining to Composting Facilities

340-96-020 (1) Applicability. This rule applies to all composting facilities, except as exempted in OAR 340-93-050(3) (d) and (e). Composting facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable. Composting facilities commencing operation prior to January 31, 1999 shall submit an application to the Department for a composting facility registration or permit within 18 months of the effective date of these rules. Following that date, composting facilities must apply for and receive a permit or registration prior to commencement of operation.

Types of Composting Facilities

340-96-024 Composting facilities are categorized by the following criteria and shall meet the portions of this rule as listed in (1)(c), (2)(c) or (3) below:

(1) Composting facility registration: For facilities utilizing as feedstocks for composting:

(a) More than 20 tons and less than or equal to 2,000 tons of green feedstocks in a calendar year;

or

(b) More than 20 tons and less than or equal to 5,000 tons of feedstocks which are exclusively yard debris and wood waste in a calendar year.

(c) Composting facilities receiving a registration shall comply with only the following items of OAR 340-96-028: (1)(d), (2)(c), (3)(a), (3)(b), (3)(c) and (4) and are not subject to the remaining requirements of OAR 340-96-028;

(d) Persons applying for a composting facility registration shall submit to DEQ items listed in OAR 340-93-070 (4) (a), (b), (c) and (d) prior to receiving their registration. These facilities are subject to the procedures and requirements of OAR 340-93-070 (1), (6) and (7), (application processing, public hearings, registration renewal), but are exempted from the remaining requirements of OAR 340-93-070;

(e) A composting facility registration will be treated as a permit only for purposes of OAR 340-18-030 and not for other purposes;

(f) Upon determination by the Department that a registered facility is adversely affecting human health or the environment, a registered facility may be required to apply for and meet the requirements of a composting facility general permit.

(2) Composting facility general permit: For facilities utilizing as feedstocks for composting:

(a) More than 2,000 tons of green feedstocks in a calendar year; or

(b) More than 5,000 tons of green feedstocks which are exclusively yard debris and wood waste in a calendar year.

(c) Persons receiving a composting facility general permit shall comply with all items of OAR 340-96-028 except (2)(b), (3)(g) and (3)(i). In order to meet these requirements, composters shall have procedures in place and written documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met.

(d) Persons applying for a composting facility general permit shall comply with the requirements of "General Permit," pursuant to OAR 340-93-070 (3);

(e) Upon determination by the Department that a facility with a composting facility general permit is adversely affecting human health or the environment, that facility may be required to apply for and meet the requirements of a composting facility full permit.

(3) Composting facility full permit: For facilities utilizing as feedstocks for composting more than 20 tons of feedstocks during a calendar year that includes any amount of non-green feedstocks.

Persons applying for a composting facility full permit shall comply with all items of OAR 340-96-028. In order to meet these requirements, these persons must submit written documents to the Department for review and approval prior to receiving their permit, as described in OAR 340-93-050 and OAR 340-93-070.

(4) Composting facilities exempted from requirements to obtain a permit are listed in OAR 340-93-050 (3)(d).

(5) The Director may issue a different level of composting regulation to a facility upon receipt of a request and justification regarding special conditions based on the amount and type of unique feedstocks which do not justify scrutiny of a higher level of regulation. Justification must be substantiated by results from testing, documentation of operational procedures or other methods. Applications shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR 340, Division 14.

Conditions

340-96-028 (1) Feasibility Study Report shall include but not be limited to:

(a) Location and design of the physical features of the site and composting plant, surface drainage control, wastewater facilities, fences, residue disposal, controls to prevent adverse health and environmental impacts, and design and performance specifications for major composting equipment and detailed descriptions of methods to be used. Agricultural composting operations need only provide information regarding surface drainage control and wastewater facilities as required by ORS 468B.050 (1)(b), administered by the Oregon Department of Agriculture;

(b) A proposed plan for utilization of the processed compost or other evidence of assured utilization of composted feedstocks;

(c) A proposed facility closure plan of a conceptual "worst case" scenario (including evidence of financial assurance, pursuant to OAR 340-95-090(1)) to dispose of unused feedstocks, partially processed residues and finished compost, unless exempted from this requirement by the Department pursuant to OAR 340-95-090 (2). The plan will include a method for disposal of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes;

(d) A mass balance calculation showing all feedstocks and amendments and all products produced. For facilities applying for a composting facility full permit, the mass balance calculation shall be detailed and utilize a unit weight throughout.

(2) Composting Facility Plan Design and Construction shall include but not be limited to:

(a) Scale drawings of the facility, including the location and size of feedstock and finished storage area(s), composting processing areas, fixed equipment, and appurtenant facilities (scales, surface water control systems, wells, offices and others). Upon determination by the Department that engineered drawings are necessary, drawings will be produced under the supervision of a licensed engineer with current registration;

(b) Lining system design: If leachate is present, composter must provide a protective layer beneath compost processing and feedstock areas, leachate sumps and storage basins to prevent release of leachate to surface water or ground water. The lining system required would be dependent on leachate characteristics, climatic conditions and size of facility and shall be capable of resisting damage from movement of mobile operating equipment and weight of stored piles. Facility operators shall monitor all water releases and document no release to ground water. A construction quality assurance plan shall be included detailing monitoring and testing to assure effectiveness of liner system;

(c) Water Quality: Composting facilities shall have no discharge of leachate, wastewater, or wash water (from vehicle and equipment washing) to the ground or to surface waters, except in accordance with permit(s) from the Water Quality Program of the Department issued under ORS 468B.050. Agricultural

composters must meet water quality requirements pursuant to ORS 468B.050 (1)(b), administered by the Oregon Department of Agriculture;

(d) Access Roads: When necessary to provide public access, all-weather roads shall be provided from the public highway or roads to and within the compost operation and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(e) Fire Protection: Fire protection shall be provided in compliance with pertinent state and local fire regulations;

(f) Control of access to the site: Effective barriers to unauthorized entry and dumping shall be provided (such as fences, gates and lock(s));

(g) Control of noise, vectors, dust and litter: Effective methods to reduce or avoid noise, vectors, dust and litter shall be provided.

(3) Composting Facility Operations Plan shall include:

(a) Operations and Maintenance Manual which describes normal facility operations and includes procedures to address upset conditions and operating problems. The manual shall include monitoring of compost processing parameters including: feedstocks (C:N ratio), moisture content, aeration, pH and temperature;

(b) Odor Minimization Plan shall be developed to address odor within the confines of the composting site and include methods to address:

(A) A management plan for malodorous loads;

(B) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problems at the facility;

(C) Additional odor-minimizing measures, which may include the following:

(i) Avoidance of anaerobic conditions in the composting material;

(ii) Use of mixing for favorable composting conditions;

(iii) Formation of windrow or other piles into a size and shape favorable to minimizing odors;

and

(iv) Use of end-product compost as cover to act as a filter during early stages of composting.

(D) Specification of a readily-available supply of bulking agents, additives or odor control agents;

(E) Procedures for avoiding delay in processing and managing feedstocks during all weather conditions;

(F) Methods for taking into consideration the following factors prior to turning or moving composted material:

(i) Time of day;

(ii) Wind direction;

(iii) Percent moisture;

(iv) Estimated odor potential; and

(v) Degree of maturity.

(c) Methods for measuring and keeping records of incoming feedstocks;

(d) Removal of Compost: Other than for compost used on-site at an agronomic rate, compost shall be removed from the composting facility as frequently as possible, but not later than two years after processing is completed;

(e) Incorporation of feedstock(s): Feedstocks shall be incorporated into active compost piles within a reasonable time;

(f) Use of Composted Solid Waste: Composted solid waste offered for use by the public shall be relatively odor free and shall not endanger public health or safety;

(g) Pathogen reduction: Composting facilities accepting any amount of non-green feedstocks shall document and implement a pathogen reduction plan that addresses requirements of the Code of Federal Regulations, 40 CFR Part 503. The plan shall include a Process to Further Reduce Pathogen (PFRP), pursuant to 40 CFR Part 503 Appendix B, item (B) (1), dated February 19, 1993, that shall include:

(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for three days;

(B) Using the windrow composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there shall be a minimum of five turnings of the windrow; or

(C) An alternative method that can be demonstrated by permittee to achieve an equivalent reduction of human pathogens.

(h) Storage:

(A) All feedstocks deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of feedstocks shall not exceed one month's production capacity and undisposed residues shall be kept to minimum practical quantities;

(C) Facilities and procedures shall be provided for handling, recycling or disposing of feedstocks that are non-biodegradable by composting;

(i) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the composting facility only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) Salvaging shall be controlled so as not to interfere with optimum composting operation and not create unsightly conditions or vector harborage;

(j) Methods to minimize vector attraction (such as rats, birds, flies) shall be used in order to prevent nuisance conditions or propagation of human pathogens in the active or finished compost.

(4) Records: Annual reporting of the weight of feedstocks utilized for composting is required on a form provided by the Department. The Department may also require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a registration or permit or OAR 340, Divisions 93 through 97.

DIVISION 97
SOLID WASTE: PERMIT FEES

Solid Waste Permit and Disposal Fees

340-97-110 (1) Each person required to have a Solid Waste Disposal Permit shall be subject to the following fees:

(a) An application processing fee for new facilities which shall be submitted with the application for a new permit or registration as specified in OAR 340-97-120(2);

(b) A solid waste permit or registration compliance fee as listed in OAR 340-97-120(3); and

(c) The 1991 Recycling Act permit fee as listed in OAR 340-97-120(4).

(2) Each disposal site receiving domestic solid waste shall be subject to the per-ton solid waste disposal fees on domestic solid waste as specified in OAR 340-97-120(5).

(3) Out-of-state solid waste. Each disposal site or regional disposal site receiving solid waste generated out-of-state shall pay a per-ton solid waste disposal fee as specified in OAR 340-97-120(5).

(4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste shall pay the per-ton solid waste disposal fees as specified in OAR 340-97-120(5):

(a) For purposes of this rule and OAR 340-97-120(5), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

(A) A solid waste collection service or any other person who hauls, under an agreement, solid waste out of Oregon;

(B) A person who hauls his or her own industrial, commercial or institutional waste or other waste such as cleanup materials contaminated with hazardous substances;

(C) An operator of a transfer station, when Oregon waste is delivered to a transfer station located in Oregon and from there is transported out of Oregon for disposal;

(D) A person who authorizes or retains the services of another person for disposal of cleanup materials contaminated with hazardous substances; or

(E) A person who transports infectious waste.

(b) Notification requirement:

(A) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department in writing on a form provided by the Department. The persons identified in subsection (4)(a) of this rule are subject to this notification requirement;

(B) The notification shall include a statement of whether the person will transport the waste on an on-going basis. If the transport is on-going, the person shall re-notify the Department by January 1 of each year of his or her intention to continue to transport waste out-of-state for disposal.

(c) As used in this section, "person" does not include an individual transporting the individual's own residential solid waste to a disposal site located out of the state.

(5) Fees. The solid waste permit or registration compliance fee must be paid for each year a disposal site is in operation or under permit. The 1991 Recycling Act permit fee, if applicable, must be paid for each year the disposal site is in active operation. The fee period shall be prospective and is as follows:

(a) New sites:

(A) Any new disposal site shall owe a solid waste permit or registration compliance fee and 1991 Recycling Act permit fee, if applicable, 30 days after the end of the calendar quarter in which solid waste is received at the facility, except as specified in paragraph (5)(a)(B), (C) or (D) of this rule;

(B) For a new disposal site receiving less than 1,000 tons of solid waste a year. For the first year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before September 1. Any new facility placed into operation after September 1 shall not owe a permit compliance fee until the following January 31. An application for a new disposal site receiving less than 1,000 tons of solid waste a year shall include the applicable permit compliance fee for the first year of operation;

(C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year. These facilities shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;

(D) For a new transfer station, material recovery facility or composting facility. For the first fiscal year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 shall not owe a permit compliance fee until the Department's annual billing for the next fiscal year. An application for a new transfer station, material recovery facility or composting facility shall include the applicable permit or registration compliance fee for the first year of operation.

(b) Existing sites. Any existing disposal site that is in operation or receives solid waste in a calendar year must pay the solid waste permit or registration compliance fee and 1991 Recycling Act permit fee, if applicable, for that year as specified in OAR 340-97-120(3)(a), (b), (c) and (4);

(c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee shall pay the solid waste permit or registration compliance fee for the "year of closure" as specified in OAR 340-97-120(3)(d)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee shall pay the solid waste permit compliance fee for closed sites as specified in OAR 340-97-120(3)(d);

(d) The Director may alter the due date for the solid waste permit or registration compliance fee and, if applicable, the 1991 Recycling Act permit fee upon receipt of a justifiable request from a permittee.

(6) Tonnage reporting. Beginning on July 31, 1994, the permit or registration compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees, if applicable, shall be submitted together with a form approved by the Department. Information reported shall include the amount and type of solid waste and any other information required by the Department to substantiate the tonnage or to calculate the state material recovery rate.

(7) Calculation of tonnage. Permittees and registrants are responsible for accurate calculation of solid waste tonnage. For purposes of determining appropriate fees under OAR 340-97-120(3) through (5), annual tonnage of solid waste received shall be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including demolition sites and municipal solid waste composting facilities, receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required or not available, estimated annual tonnage for municipal solid waste, including that at municipal solid waste composting facilities will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received. If yardage is not

known, the solid waste facility may use one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section shall be used;

(b) Industrial facilities. Annual tonnage of solid waste received at off-site industrial facilities receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required, or at those sites receiving less than 50,000 tons a year if scales are not available, industrial sites shall use the following conversion factors to determine tonnage of solid waste disposed. Composting facilities shall use the following conversion factors for those material appropriate for composting:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and landclearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste:

(i) Wood waste, mixed (as defined in OAR 340-93-030 (95)): 1,200 pounds per cubic yard;

(ii) Wood chips, green: 473 pounds per cubic yard;

(iii) Wood chips, dry: 243 pounds per cubic yard;

(E) Yard debris:

(i) Grass clippings: 950 pounds per cubic yard;

(ii) Leaves: 375 pounds per cubic yard;

(iii) Compacted yard debris: 640 pounds per cubic yard; and

(iv) Uncompacted yard debris: 250 pounds per cubic yard;

(F) Food waste, manure, sludge, septage, grits, screenings and other wet wastes: 1,600 pounds per cubic yard;

(G) Ash and slag: 2,000 pounds per cubic yard;

(H) Contaminated soils: 2,400 pounds per cubic yard;

(I) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

(J) For wastes other than the above, the permittee or registrant shall determine the density of the wastes subject to approval by the Department;

(K) As an alternative to the above conversion factors, the permittee or registrant may determine the density of their own waste, subject to approval by the Department.

(8) The application processing fee may be refunded in whole or in part, after taking into consideration any costs the Department may have incurred in processing the application, when submitted with an application if either of the following conditions exists:

(a) The Department determines that no permit or registration will be required;

(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

(9) Exemptions:

(a) Persons treating petroleum contaminated soils shall be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) The soil is being treated as part of a site cleanup authorized under ORS Chapters 465 or 466;
and

(B) The Department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the Department for oversight of the cleanup and for processing of the Letter of Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

(10) All fees shall be made payable to the Department of Environmental Quality.

(11) Submittal schedule.

(a) The solid waste permit or registration compliance fee shall be billed by the Department to the holder of the following permits: transfer station, material recovery facility, composting facility and closed solid waste disposal site. The fee period shall be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee shall be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (9)(a) of this rule, beginning on July 1, 1994 the solid waste permit or registration compliance fee and the 1991 Recycling Act permit fee, if applicable, are not billed to the permittee by the Department. These fees shall be self-reported by the permittee to the Department, pursuant to sections (5) and (6) of this rule. The fee period shall be either the calendar quarter or the calendar year, and the fees are due to the Department as follows:

(A) For municipal solid waste disposal sites (including incinerators, energy recovery facilities), construction and demolition landfills: on the same schedule as specified in subsection (11)(c) of this rule. The July 31, 1994 submittal for solid waste disposal sites receiving less than 1,000 tons of solid waste a year shall be for the half-year fee period of July 31, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A);

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and solid waste treatment facilities:

(i) For sites receiving over 20,000 tons of waste a year: quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year: annually, on the 31st day of January beginning on January 31, 1995. A July 31, 1994 submittal shall be paid for the half-year fee period of July 1, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A) or based on the tonnage received from January 1 through June 30, 1994, whichever is more;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the Department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the Department will require the site to report tonnage and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic solid waste and the Orphan Site Account fee are not billed by the Department. They are due on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994.

(d) The fees on Oregon solid waste disposed of out of state are due to the Department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR

340-97-120(5)(e)(C). The fees shall be submitted together with a form approved by the Department, which shall include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.297, 459.298, 459.420 & 468.065

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-120; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94

Permit/Registration Categories and Fee Schedule

340-97-120 (1) For purposes of OAR Chapter 340, Division 97:

(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial disposal site";

(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. An application processing fee shall be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-93-090. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, construction and demolition landfill, incinerator, energy recovery facility, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: \$10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: \$5,000;

(b) A new captive industrial facility (other than a transfer station or material recovery facility): \$1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: \$500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: \$200;

(C) Receiving less than 10,000 tons of solid waste per year: \$100;

(d) Letter Authorization (pursuant to OAR 340-93-060):

(A) New site: \$500;

(B) Renewal: \$500;

(e) A new composting facility (pursuant to OAR 340-96-024):

(A) Composting facility registration: \$100;

(B) Composting facility general permit: \$500;

(C) Composting facility full permit. For facilities utilizing feedstocks for composting:

(i) Over 20 tons and less than or equal to 7,500 tons per year: \$1,000;

(ii) More than 7,500 tons per year: \$5,000;

(f) Permit Exemption Determination (pursuant to OAR 340-93-080(2)): \$500.

(3) Solid Waste Permit and Registration Compliance Fee. The Commission establishes the following fee schedule including base per-ton rates to be used to determine the solid waste permit

compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this fee schedule. To determine the solid waste permit compliance fee, the Department may use the base per-ton rates, or any lower rates if the rates would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) All facilities accepting solid waste except transfer stations, material recovery facilities and composting facilities:

(A) \$200, if the facility receives less than 1,000 tons of solid waste a year; or

(B) A solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: \$21 per ton;

(ii) Captive industrial facilities: \$21 per ton;

(iii) Energy recovery facilities. \$13 per ton.

(C) If a disposal site (other than a municipal solid waste facility) is not required by the Department to monitor and report volumes of solid waste collected, the solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

(b) Transfer stations and material recovery facilities:

(A) Facilities accepting over 50,000 tons of solid waste per year: \$1,000;

(B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: \$500;

(C) Facilities accepting less than 10,000 tons of solid waste per year: \$50;

(c) Composting facilities:

(A) Facilities with a registration: \$100;

(B) Facilities with a general permit:

(i) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;

(ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,000;

(iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: \$500;

(C) Facilities with a full permit:

(i) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;

(ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,500;

(iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: \$500;

(d) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the Department shall determine a pro-rated permit compliance fee for those quarters of the fiscal year not covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection;

(B) Each land disposal site which closes after July 1, 1984: \$150; or the average tonnage of solid waste received in the three most active years of site operation multiplied by \$.025 per ton, whichever is greater; but the maximum permit compliance fee shall not exceed \$2,500.

(4) 1991 Recycling Act permit fee:

(a) A 1991 Recycling Act permit fee shall be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities, composting facilities and captive industrial facilities. The Commission establishes the 1991 Recycling Act permit fee as \$.09 per ton for each ton of solid waste received in the subject calendar quarter or year;

(b) The \$.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act permit fee, the Department may use this rate, or any lower rate if the rate would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) This fee is in addition to any other permit fee and per-ton fee which may be assessed by the Department.

(5) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste (except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-97-110(4)(c), shall submit to the Department of Environmental Quality the following fees for each ton of domestic solid waste received at the disposal site:

(a) A per-ton fee of 50 cents;

(b) An additional per-ton fee of 31 cents;

(c) Beginning January 1, 1993, an additional per-ton fee of 13 cents for the Orphan Site Account.

(d) Submittal schedule:

(A) These per-ton fees shall be submitted to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on July 31, beginning in 1994, and on January 31, beginning in 1995. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fees shall be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out of state for disposal, the per-ton fees shall be paid to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee shall be paid to the Department within 60 days after the disposal occurs.

(e) As used in this rule and in OAR 340-97-110, the term "domestic solid waste" does not include source separated recyclable material, or material recovered at the disposal site.

(f) Solid waste that is used as daily cover at a landfill in place of virgin soil shall not be subject to the per-ton solid waste fees in this section, provided that:

(A) The amount of solid waste used as daily cover does not exceed the amount needed to provide the equivalent of six inches of soil used as daily cover;

(B) If disposed of in Oregon, the solid waste is not being used on a trial basis, but instead has received final approval from the Department for use as daily cover; and

(C) If disposed of in a landfill outside of Oregon, the solid waste has received final approval from the appropriate state or local regulatory agency that regulates the landfill.

(g) For solid waste delivered to disposal facilities owned or operated by a metropolitan service district, the fees established in this section shall be levied on the district, not on the disposal site.

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.297, 459.298, 459.420 & 468.065

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-120; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94

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NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340-Divisions 93, 96 and 97

| Location of Public Hearings | Date and Time |
|--|---|
| a. Klamath Falls, Oregon Oregon Institute Technology (OIT) 3201 Campus Drive Campus Union Bldg., Second Floor, Mt. Shasta Room | a. Friday, Nov. 22, 1996 time: 7 to 7:20 informational presentation 7:20 to 8:30 pm public hearing |
| b. The Dalles, Oregon Columbia Gorge Community College 400 E. Scenic Drive Building 1, First Floor, Room 62 | b. Monday, Nov. 25, 1996 time: 7 to 7:20 pm informational presentation 7:20 to 8:30 pm public hearing |
| c. Corvallis, Oregon Oregon State University LaSells Stewart Center 100 LaSells Stewart Center Ag Production Room | c. Monday, Nov. 25, 1996 time: 7 to 7:30 pm informational presentation 7:30 to 9 pm public hearing |
| d. Portland, Oregon <u>1st hearing:</u> DEQ Headquarters 811 SW 6th Ave. Third Floor, Room 3A (Parking is cheapest in the 5 Smart Park Garages located within a 5 block radius of DEQ.) <u>2nd hearing:</u> State Office Building 800 NE Oregon St. First Floor, Room 140 (Free parking adjacent.) | d. Tuesday, Nov. 26, 1996 time: 1st hearing: 3 to 5 pm / 2nd hearing: 7 to 9 pm (see details below) <u>1st hearing:</u> 3 to 3:30 informational presentation 3:30 to 5 pm public hearing <u>2nd hearing:</u> 7 to 7:30 pm informational presentation 7:30 to 9 pm public hearing |

HEARINGS OFFICER(s): Staff of Oregon Department of Environmental Quality

STATUTORY AUTHORITY: ORS 459.205 and ORS 459.005 (8)

or **OTHER AUTHORITY:**

STATUTES IMPLEMENTED:

ADOPT:

AMEND: OAR 340, Division 93: Sections 030, 050, 060, 070, 130, 140, 150 and 160.
 OAR 340, Division 97: Sections 110 and 120.

REPEAL:

RENUMBER: **AMEND & RENUMBER:** OAR 340, Division 96: Renumber portions of
 existing 340-96-020 to new 340-96-024 and 340-96-028.

(prior approval from
 Secretary of State
 REQUIRED)

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

SUMMARY: The proposed rulemaking regards regulation of composting facilities to protect air and water quality and human health. It would establish three classes of regulation based on amount and type of materials composted. Small facilities composting only "green feedstocks" would be registered; large facilities composting "green feedstocks" and facilities composting any amount of "non-green feedstocks" would be permitted. It would establish fees for each type of regulation reflecting the potential environmental risk of the facility and amount of DEQ staff oversight needed. Home composting and several other composting activities would be excluded from these regulations.

LAST DATE FOR COMMENT: Friday, November 29, 1996

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

AGENCY CONTACT FOR THIS PROPOSAL: Lauren Ettlin, Solid Waste Program, (503)229-5934

ADDRESS: Oregon Dept. of Environmental Quality
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.

Signature

Date

attachB1.doc

Date: October 21, 1996
To: Interested and Affected Public
Subject: Rulemaking Proposal and Rulemaking Statements -
Solid Waste Rules Relating to Composting Facilities

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules and rule amendments regarding OAR 340, Divisions 93, 96 and 97. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

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 commercial composting. In summary, the proposed rules would require that:

- small facilities composting "green feedstocks"¹ 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"² be permitted because they have a greater environmental impact.

The Department has the statutory authority to address this issue under ORS Chapter 459.

¹ "Green feedstocks" are materials used to produce a compost that is relatively low in 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, manure from herbivorous animals, woodwaste, 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 permittee to be relatively low in human pathogens and substances that pose a present or future hazard to human health or the environment.

² "Non-green feedstocks" are materials used to produce a compost that are relatively high:

- a) in human pathogens or
- b) substances that pose a present or future hazard to human health or the environment.

Non-green feedstocks include but are not limited to: animal parts and byproducts, municipal solid waste, dead animals and manure from carnivorous animals.

What's in this Package?

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

Attachment A: The Statement of Fiscal and Economic Impact of the proposed rule.

Attachment B: Land Use Evaluation Statement

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

Attachment D: Proposed Rule Language:

Division 93: Definitions; Permit Required

Division 96: Special Rules Pertaining to Composting

Division 97: Permit Fee Schedule

Attachment E: Flow Chart; Oregon DEQ Compost Facility Permit Decision Tree

Your Chance to Comment: Public Hearing Details

You are invited to review these materials and attend a public hearing to provide oral comment and/or present written comment in accordance with the following:

| Location of Public Hearing | Date and Time |
|---|---|
| a. Klamath Falls, Oregon Oregon Institute Technology (OIT) 3201 Campus Drive Campus Union Bldg., Second Floor, Mt. Shasta Room | a. Friday, Nov. 22, 1996 time: 7 to 7:20 informational presentation 7:20 to 8:30 pm public hearing |
| b. The Dalles, Oregon Columbia Gorge Community College 400 E. Scenic Drive Building 1, First Floor, Room 62 | b. Monday, Nov. 25, 1996 time: 7 to 7:20 pm informational presentation 7:20 to 8:30 pm public hearing |
| c. Corvallis, Oregon Oregon State University LaSells Stewart Center Corner of 26th St. and Western Blvd. Ag Production Room | c: Monday, Nov. 25, 1996 time: 7 to 7:30 pm informational presentation 7:30 to 9 pm public hearing |
| d. Portland, Oregon <u>1st hearing:</u> DEQ Headquarters 811 SW 6th Ave. Third Floor, Room 3A (Parking is cheapest in the 5 Smart Park Garages located within a 5 block radius of DEQ.) <u>2nd hearing:</u> State Office Building 800 NE Oregon St. First Floor, Room 140 (Free parking adjacent.) | d. Tuesday, Nov. 26, 1996 time: 1st hearing: 3 to 5 pm / 2nd hearing: 7 to 9 pm (see details below) <u>1st hearing:</u> 3 to 3:30 informational presentation 3:30 to 5 pm public hearing <u>2nd hearing:</u> 7 to 7:30 pm informational presentation 7:30 to 9 pm public hearing |

Deadline for submittal of Written Comments: Received at DEQ by Friday, November 29, 1996 (see address at the end of this memo). 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 at the address at the end of this memo prior to the close of the comment period. The Department recommends that comments be submitted as early as possible to allow adequate review and evaluation of the comments submitted.

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

If you wish to be kept advised of this proceeding and receive a copy of the recommendation that is presented to the EQC for adoption, you should request that your name be placed on the mailing list for this rulemaking proposal by contacting the staff person listed at the end of this memo.

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 January 10, 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 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?

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. The types of feedstocks composted is also diversifying. Currently about 15 feedstocks

are composted including yard debris, crop residue, manure, 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.

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, 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. Each Work Group meeting 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 140 interested people received agendas and summaries of all of the meetings.

Compost Work Group Members

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

The following documents were provided as background information to members of the Compost Work Group:

- Interim Guidelines for Compost Quality, Washington State Department of Ecology, 1994
- Composting Regulations, California Code of Regulations, Title 14, Division 7, 1995
- Compost Rules, Texas Natural Resource Conservation Commission, 1995
- Licensing Standards for Yard Debris Processing and Yard Debris Reload Facilities, Metro, 1995
- DEQ Solid Waste Rules, OAR 340, Divisions 93, 96 and 97, 1996

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

Summary of Content of Proposed Rule Language

Three classes of regulation are proposed for composting facilities. The regulation tiers vary by size of facility and type(s) of feedstocks composted. Fees reflect potential environmental risk of the facility and amount of DEQ staff oversight needed.

Class 1 - Composting Facility Registration.

Regulation: This is a registration, not a permit, for small facilities which accept only "green feedstocks."³ These feedstocks have relatively low risk of containing unwanted substances and 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*:⁴ 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 "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. Facilities are privately or publicly owned and employ less than 10 people.

Class 2: Composting Facility Permit by Rule

Regulation: This is a permit by rule for larger facilities which accept only "green feedstocks" and thus have relatively low risk of unwanted substances and 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 permit by rule 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 composteer and DEQ. Instead, the composteer 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. This class also includes farmers with large amounts of on-site crop residue/manure and farmers importing feedstocks for composting. Because commercial composting requires large machinery and few people to run those machines, these medium to large facilities usually employ less than 50 people.

³ "Green feedstocks" are materials used to produce a compost that is relatively low in 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, manure from herbivorous animals, woodwaste, 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 permittee to be relatively low in human pathogens and substances that pose a present or future hazard to human health or the environment.

⁴(footnote revised 11-5-96)

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

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 are three Class 3 facilities in the state; we estimate that number will 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, manure from carnivorous animals and municipal solid waste (garbage). Currently, most of these compost facilities are on farms.

Items Still Under Discussion

These proposed rules have been reviewed by the Compost Work Group and DEQ's solid waste managers and Solid Waste Advisory Committee. The following issues are still under discussion and your input is desired:

1. Exclusions from these rules (see Division 93, Attachment D, page 8):
 - Should institutions that compost feedstocks from on-site (see definition for "institutional composting" Attachment D, pg. 4) be excluded outright, or not? If there is an exclusion for institutional composters, should there be a size limit where institutions accepting up to x tons/year are excluded, but those larger than that *are* regulated under these rules? What would that upper size limit be (in tons/year)?
 - Should compost research facilities be excluded from these rules? Why? What would be the definition for a compost research facility?
 - Should reload facilities (see definition, Attachment D, pg. 6) be listed as an exclusion or should this sentence be omitted from the rules because reload facilities, by definition, are not compost facilities?
2. In Division 96 (Attachment D, pg. 18), should "Compost Product Quality Standards" be listed, even though the Department currently has no standards for finished compost? The Compost Work Group felt strongly that statewide product quality standards are desirable and would promote composting in Oregon.

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. 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).
3. Offer information sessions to composters regarding how to comply with the new regulations.
4. Receive and file completed registration and permit by rule applications from Class 1 and 2 facilities.
5. Review and approve completed Class 3 permit applications.
6. Respond to questions from applicants for registration and permit categories.
7. 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.
8. Respond to complaints about composting facilities.

Are there time constraints

None

Contact for more information

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

Lauren Ettlin
Oregon Department of Environmental Quality
Compost Project Coordinator
811 SW 6th
Portland, OR 97204
phone (503) 229-5934
FAX (503)229-5830

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

AttachB2.doc

DISCUSSION DRAFT - DO NOT CITE 10/10/96

[OARSW] {STATE} 93 - Solid Waste: General Provisions
[OAR93]

** {STATE} means that
** This OAR Division is as the Secretary of State has
** published it except for some font and format changes.
**

Text that is *italicized and underlined* is new.
Deletions are indicated by ~~strikeouts~~.

DIVISION 93

SOLID WASTE: GENERAL PROVISIONS

Purpose and Applicability

340-93-005 The purpose of OAR Chapter 340, Divisions 93 through 97 is to prescribe requirements, limitations, and procedures for storage, collection, transportation, treatment and disposal of solid waste. All persons storing, collecting, transporting, treating and disposing of solid waste in this state are subject to the provisions of OAR Chapter 340, Division 93 ("General Provisions"), in addition to any other rules in OAR Chapter 340, Divisions 94, 95, 96 and 97 governing the appropriate specific type of solid waste disposal site.

Stat. Auth.: ORS 459.005 - 459.418 & 459A.100 - 459A.120
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93;
Renumbered from 340-61-005

Policy

340-93-010

...

State of Oregon Solid Waste Plan

340-93-020

...

Definitions

340-93-030 As used in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97 unless otherwise specified:

- (1) "Access Road" means any road owned or controlled by the disposal site owner which terminates at the disposal site and which provides access for users between the disposal site entrance and a public road.
- (2) "Agricultural Waste" means residues from agricultural products generated by the raising or harvesting of such products on farms or ranches.
- (3) "Agronomic Application Rate" means ~~a rate of sludge or other solid waste~~ land application of no more than the optimum quantity per acre of compost, sludge or other materials designed to:
 - (a) provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;
 - (b) condition and improve the soil comparable to that attained by commonly used soil amendments; or

~~(c) adjust soil pH to desired levels, which improves tilth comparable to other soil amendments commonly used in agricultural practices, matches or does not exceed nutrient requirements for projected crop patterns, or changes soil pH to desired levels for projected crop patterns.~~

In no case shall the waters of the state be adversely impacted.

(4) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(5) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(6) "Asphalt paving" means asphalt which, has been applied to the land to form a street, road, path, parking lot, highway, or similar paved surface and which is weathered, consolidated, and does not contain visual evidence of fresh oil.

(7) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(8) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(9) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

(10) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suction-ings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(11) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.

(12) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment, and which are not hazardous wastes as defined by ORS 466.005.

(13) "Closure Permit" means a document issued by the Department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the Department.

(14) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other nonmanufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

(15) "Commission" means the Environmental Quality Commission.

(16) "Composting" means the process of controlled biological decomposition of organic *or mixed* solid waste. It does not include composting for the purposes of soil remediation.

(17) "Composting facility" means a site or facility which utilizes *organic* solid waste or mixed solid waste ~~and source separated materials~~ to produce a useful product through a process of controlled biological decomposition.

Composting may include amendments beneficial to the composting process. Vermiculture and vermicomposting are considered composting facilities.

(18) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

(19) "Construction and Demolition Landfill" means a landfill which receives only construction and demolition waste.

(20) "Corrective Action" means action required by the Department to remediate a release of constituents above the levels specified in 40 CFR §258.56 or OAR Chapter 340, Division 40, whichever is more stringent.

- (21) "Cover Material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.
- (22) "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.
- (23) "Current Assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.
- (24) "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.
- (25) "Department" means the Department of Environmental Quality.
- (26) "Designated Well Head Protection Area" means the surface and subsurface area surrounding a public water supply well or wellfield, through which contaminants are likely to move toward and reach the well(s), and within which waste management and disposal, and other activities, are regulated to protect the quality of the water produced by the well(s). A public water supply well is any well serving 14 or more people for at least six months each year.
- (27) "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.
- (28) "Director" means the Director of the Department of Environmental Quality.
- (29) "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (74)(b) of this rule), transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.
- (30) "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:
- (a) Sewage sludge or septic tank and cesspool pumpings;
 - (b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic or industrial solid wastes;
 - (c) Industrial waste going to an industrial waste facility; or
 - (d) Waste received at an ash monofill from an energy recovery facility.
- (31) "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.
- (32) "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.
- (33) "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.
- (34) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.
- (35) "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.
- (36) "Green feedstocks" are materials used to produce a compost that are relatively low in 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, manure from herbivorous animals, woodwaste, 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 permittee to be relatively low in human pathogens and substances that pose a present or future hazard to human health or the environment.

(37) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

(38) "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.

(39) "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

(40) "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(41) "Home composting" means composting operated and controlled by the owner or person in control of a single family dwelling unit and used to dispose of food waste, garden wastes, weeds, lawn cuttings, leaves, and prunings and operated with no adverse impact on ground water, surface water or public health and safety.

~~(40)~~(42) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

~~(41)~~(43) "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.

~~(42)~~(44) "Industrial Waste Landfill" means a landfill which receives only a specific type or combination of industrial waste.

~~(43)~~(45) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

~~(44)~~(46) "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

(47) "Institutional composting" means the composting of yard debris and vegetative food waste generated from the facility's own activities with no adverse impact on groundwater, surface water or public health and safety. The compost product must be utilized on the facility grounds and not offered for off-site sale or use. Institutional composting includes but is not limited to: parks, apartments, universities, schools, hospitals, golf courses, industrial parks.

~~(45)~~(48) "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

~~(46)~~(49) "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

~~(47)~~(50) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

~~(48)~~(51) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

~~(49)~~(52) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

~~(50)~~(53) "Local Government Unit" means a city, county, metropolitan service district formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

- (51)(54) "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the Department determines to be unlikely to adversely impact the waters of the State or public health.
- (52)(55) "Material Recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused, or recycled or composted for some purpose.
- (53)(56) "Material Recovery Facility" means a solid waste management facility which separates materials for the purposes of reusing, recycling or composting from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected. ~~"Material recovery facility" includes composting facilities.~~
- (54)(57) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.
- (55)(58) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.
- (56)(59) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction and demolition waste and industrial solid waste.
- (57)(60) "Net Working Capital" means current assets minus current liabilities.
- (58)(61) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.
- (62) "Non-green feedstocks" are materials used to produce a compost that are relatively high:
(a) in human pathogens or
(b) substances that pose a present or future hazard to human health or the environment.
Non-green feedstocks include but are not limited to: animal parts and byproducts, municipal solid waste, dead animals and manure from carnivorous animals.
- (59)(63) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.
- (60)(64) "Permit" means a document issued by the Department, bearing the signature of the Director or his authorized representative which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.
- (61)(65) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.
- (62)(66) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.
- (63)(67) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.
- (64)(68) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.
- (65)(69) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.
- (66)(70) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means that metropolitan service district boundary.

~~(67)~~(71) "Release" has the meaning given in ORS 465.200(14).

~~(72)~~ "Reload facility" means a facility or site that accepts and reloads only yard debris and woodwaste for transport to another location.

~~(68)~~(73) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

~~(69)~~(74) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

~~(70)~~(75) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

~~(71)~~(76) "Sensitive Aquifer" means any unconfined or semiconfined aquifer which is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

~~(72)~~(77) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

~~(73)~~(78) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

~~(74)~~(79) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

~~(75)~~(80) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

~~(76)~~(81) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

~~(77)~~(82) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

~~(78)~~(83) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

~~(79)~~(84) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

~~(80)~~(85) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

~~(81)~~(86) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

~~(82)~~(87) "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (15) of this rule, "material recovery" as defined in section (51) of this rule, nor does it apply to a "material recovery facility" as defined in section (52) of this rule.

~~(83)~~(88) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

~~(84)~~(89) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

(90) "Vegetative material" means feedstocks used for composting which are derived from plants including but not limited to fruit or vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil or grease.

(85)(91) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

(86)(92) "Woodwaste" means chemically untreated wood pieces or particles generated from processes used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing chemical additives, glue resin or chemical preservatives.

(87)(93) "Woodwaste Landfill" means a landfill which receives primarily woodwaste.

(88)(94) "Zone of Saturation" means a three dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

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

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.420 & 468.065

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-010; DEQ 10-1994, f. & cert. ef. 5-4-94

Prohibited Disposal 340-93-040

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Permit Required

340-93-050 (1) Except as provided by section (3) ~~(2)~~ of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

(2) Persons owning or controlling the following classes of disposal sites shall abide by the requirements in the following rules:

(a) Municipal solid waste landfills shall abide by OAR 340, Division 94 "Municipal Solid Waste Landfills."

(b) Industrial Solid Waste Landfills, Demolition Landfills, Woodwaste Landfills and other facilities not listed in OAR 340, Division 96 shall abide by OAR 340, Division 95 "Land Disposal Sites Other Than Municipal Solid Waste Landfills."

(c) Energy recovery facilities and incinerators receiving domestic solid waste shall abide by OAR 340-96-010 "Special Rules Pertaining to Incineration."

(d) Composting facilities except as excluded in OAR 340-93-050 (3)(d) shall abide by OAR 340-96-020 "Special Rules Pertaining to Composting."

(e) Land used for deposit, spreading, lagooning or disposal of sewage sludge, septage and other sludges shall abide by OAR 340-96-030 "Special Rules Pertaining to Sludge and Land Application Disposal Sites."

(f) Transfer stations and Material Recovery Facilities shall abide by OAR 340-96-040 "Transfer Stations and Material Recovery Facilities."

(g) Petroleum contaminated soil remediation facilities and all other solid waste treatment facilities shall abide by OAR 340-96-050 "Solid Waste Treatment Facilities."

~~(3)~~ ~~(2)~~ Person owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340, Divisions 93 through 97, *but* shall comply with other applicable laws, rules and regulations ~~regarding solid waste disposal.~~

(a) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(b) Disposal sites, facilities or disposal operations operated pursuant to a permit issued under ORS 468B.050;

(c) A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the Department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety.

NOTE: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the Department with such information as the Department may require to evaluate the request for exemption, pursuant to OAR 340-93-080.

~~(d) Composting operations used only by the owner or person in control of a dwelling unit to dispose of food scraps, garden wastes, weeds, lawn cuttings, leaves, and prunings generated at that residence and operated in a manner approved by the Department;~~

(d) Composting facilities. The following are exempted from the above requirements to obtain a permit:

(A) site or facility utilizing an amount of feedstock less than or equal to 20 tons in a calendar year.

(B) home composting.

(C) institutional composting.

(D) reload facilities, providing no composting occurs at the site.

(E) production of silage on a farm for animal feed.

(e) Site or facility utilizing any amount of biosolids under a current water quality permit, pursuant to ORS 468B.050.

(f) Site or facility composting wastes from confined animal feeding operations under a current CAFO permit, pursuant to ORS 468B.050.

~~(e)~~ ~~(g)~~ Facilities which receive only source separated materials for purposes of material recovery ~~or for composting~~, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state.

~~(f)~~ ~~(h)~~ A site used to transfer a container, including but not limited to a shipping container, or other vehicle holding solid waste from one mode of transportation to another (such as barge to truck), if:

(A) The container or vehicle is not available for direct use by the general public;

(B) The waste is not removed from the original container or vehicle; and

(C) The original container or vehicle does not stay in one location longer than 72 hours, unless otherwise authorized by the Department.

~~(3)~~ ~~(4)~~ The Department may, in accordance with a specific permit containing a compliance schedule, grant reasonable time for solid waste disposal sites or facilities to comply with OAR Chapter 340, Divisions 93 through 97.

~~(4)~~ ~~(5)~~ If it is determined by the Department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the Department may waive any or all requirements of OAR 340-93-070, 340-93-130, 340-93-140, 390-93-150, 340-94-060(2) and 340-95-030(2) and issue a letter authorization in accordance with OAR 340-93-060.

~~(5)~~ ~~(6)~~ Each person who is required by sections (1) and (4) of this rule to obtain a permit shall:

(a) Make prompt application to the Department therefor;

(b) Fulfill each and every term and condition of any permit issued by the Department to such person;

(c) Comply with OAR Chapter 340, Divisions 93 through 97;

(d) Comply with the Department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby.

~~(6)~~ ~~(7)~~ Failure to conduct solid waste disposal according to the conditions, limitations, or terms of a permit or OAR Chapter 340, Divisions 93 through 97, or failure to obtain a permit is a violation of OAR Chapter 340, Divisions 93 through 97 and shall be cause for the assessment of civil penalties for each violation as provided in OAR Chapter

340, Division 12 or for any other enforcement action provided by law. Each and every day that a violation occurs is considered a separate violation and may be the subject of separate penalties.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 14-1984, f. & ef. 8-8-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-020; DEQ 10-1994, f. & cert. ef. 5-4-94

Letter Authorizations

340-93-060 Pursuant to OAR 340-93-050~~(4)~~ (5), the Department may authorize the short-term operation of a disposal site by issuing a permit called "letter authorization" subject to the following:

(1) A letter authorization may be issued only on the basis of a complete written application which has been approved by the Department. Applications for letter authorizations shall be complete only if they contain the following items:

- (a) The quantity and types of material to be disposed;
- (b) A discussion of the need and justification for the proposed project;
- (c) The expected amount of time which will be required to complete the project;
- (d) The methods proposed to be used to insure safe and proper disposal of solid waste;
- (e) The location of the proposed disposal site;
- (f) A statement of approval from the property owner or person in control of the property, if other than the applicant;
- (g) Written verification from the local planning department that the proposal is compatible with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;
- (h) Any other relevant information which the Department may require.

(2) Upon receipt of a complete written application the Department may approve the application if it is satisfied that:

- (a) The applicant has demonstrated sufficient need and justification for the proposal;
- (b) The proposed project is not likely to cause a public nuisance, health hazard, air or water pollution or other environmental problem.

(3) The Department may revoke or suspend a letter authorization on any of the following grounds:

- (a) A material misrepresentation or false statement in the application;
- (b) Any relevant violation of any statute, rule, order, permit, ordinance, judgment or decree.

(4) The Department may issue letter authorizations for periods not to exceed six months. If circumstances have prevented the holder of a letter authorization from completing the action allowed under the letter authorization, he or she may request a one-time six-month renewal from the Department. Further renewals are not allowed. A letter authorization shall not be used for any disposal actions requiring longer than a total of one year to complete; such actions are subject to a regular solid waste land disposal permit.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-027; DEQ 10-1994, f. & cert. ef. 5-4-94

Applications for Permits

340-93-070 (1) Applications for permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

(2) Applications for a permit, including those required for permit by rule, shall be accepted by the Department only when complete, as detailed in section ~~(3)~~ (4) of this rule.

(3) Permit by Rule: Class 2 composting facilities are considered by the Department to be "lower risk disposal sites" and thus are permitted by rule. A Class 2 composting facility permit by rule is considered a permit and shall comply with all pertinent rules except Class 2 composting facilities are not subject to the requirements of subsections ~~(3)~~ (4) (e) and (f) of this rule, OAR 340-93-150, 340-93-210, 340-94-060(2), and 340-95-030(2).

~~(3)~~ (4) Applications for permits shall be complete only if they:

(a) Are submitted in triplicate on forms provided by the Department, are accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the Department, and are signed by the property owner or person in control of the premises;

(b) Include written recommendations of the local government unit or units having jurisdiction to establish a new disposal site or to substantially alter, expand, or improve a disposal site or to make a change in the method or type of disposal. Such recommendations shall include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) Identify any other known or anticipated permits from the Department or other governmental agencies. If previously applied for, include a copy of such permit application and if granted, a copy of such permit;

(d) Include payment of application fees as required by OAR 340-97-110 and 340-97-120;

(e) Include a site characterization reports prepared in accordance with OAR 340-93-130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report(s) have been met by other prior submittals;

(f) Include detailed plans and specifications as required by OAR 340-93-140;

(g) For a new land disposal site:

(A) Include a written closure plan that describes the steps necessary to close all land disposal units at any point during their active life pursuant to OAR 340-94-110 to 340-94-120 or 340-95-050 to 340-95-060; and

(B) Provide evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance of the land disposal site, pursuant to OAR 340-94-140 or 340-95-090, unless the Department exempts a non-municipal land disposal site from this requirement pursuant to OAR 340-95-050(3);

(h) Include any other information the Department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the Department.

~~(4)~~ (5) If the Department determines that a disposal site is a "low-risk disposal site" or one that is not likely to adversely impact the waters of the State or public health and may waive any of the requirements of subsections ~~(3)~~ (4) (e) and (f) of this rule, OAR 340-93-150, 340-94-060(2) and 340-95-030(2). In making this judgment, the Department may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factors. The applicant must submit any information the Department deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

~~(5)~~ (6) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the Department, there is sufficient public concern regarding the proposed disposal site, the Department may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

~~(6)~~ (7) Permit renewals:

(a) Notwithstanding OAR 340-14-020(1), any permittee intending to continue operation beyond the permitted period must file a complete renewal application for renewal of the permit at least 180 days before the existing permit expires;

(b) A complete application for renewal must be made in the form required by the Department and must include the information required by this Division and any other information required by the Department;

(c) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (3)(b) of this rule;

(d) If a completed application for renewal of a permit is filed with the Department in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until the Department takes final action on the renewal application;

(e) If a completed application for renewal of a permit is not filed 180 days prior to the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-94-100 or 340-95-050;

(f) Permits continued under subsection (6)(d) of this rule remain fully effective and enforceable until the effective date of the new print.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-025; DEQ 10-1994, f. & cert. ef. 5-4-94

Variances and Permit Exemptions

340-93-080

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Preliminary Approval

340-93-090

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Public Notice and Public Comment

340-93-100

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Denial of Permits

340-93-110

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Violations

340-93-120

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Site Characterization Report(s)

340-93-130 The purpose of the site characterization report(s) required by OAR 340-93-070~~(3)~~(4)(e) is to demonstrate that the proposed facility will be located in a suitable site and will use appropriate technology in design, construction and operation. The site characterization report(s) shall describe existing site conditions and a conceptual engineering proposal in sufficient detail to determine whether the facility is feasible and protects the environment. The site characterization report(s) shall include, but not be limited to, the following:

(1) Information on site location and existing site conditions, including:

- (a) A site location description, including a location map and list of adjacent landowners;
- (b) An Existing Conditions Map of the area showing land use and zoning within 1/4 mile of the disposal site; and
- (c) Identification of any siting limitations and how those limitations will be addressed.

(2) A description of the scope, magnitude, type, and purpose of the proposed facility, including but not limited to the following:

- (a) Estimated capacity and projected life of the site;
- (b) Identification of the communities, industries and/or markets to be served;
- (c) Anticipated types and quantities of solid wastes to be received, disposed of and/or processed by the facility;
- (d) Summary of general design criteria and submittal of conceptual engineering plans;
- (e) Description of how the proposed technology compares to current technological practices, or to similar proven technology, including references to where similar technology has been effectively implemented;
- (f) Demonstration that the proposed facility is compatible with the local solid waste management plan and the state solid waste management plan;
- (g) Planned future use of the disposal site after closure;
- (h) Key assumptions used to calculate the economic viability of the proposed facility; and
- (i) The public involvement process that has been and will be implemented.

(3) A proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, methane gas, litter and vectors, and control of other discharges, emissions and activities which may result in a public health hazard, a public nuisance or environmental degradation.

(4) For a landfill, the following shall be included:

- (a) A detailed soils, geologic, and groundwater report of the site prepared and stamped by a professional Engineer, Geologist or Engineering Geologist with current Oregon registration. The report shall include consideration of

surface features, geologic formations, soil boring data, water table profile, direction of groundwater flow, background quality of water resources in the anticipated zone of influence of the landfill, need and availability of cover material, climate, average rates of precipitation, evapotranspiration, runoff, and infiltration (preliminary water balance calculations);

(b) Information on soil borings to a minimum depth of 20 feet below the deepest proposed excavation and lowest elevation of the site or to the permanent groundwater table if encountered within 20 feet. A minimum of one boring per representative landform at the site and an overall minimum of one boring per each ten acres shall be provided. Soil boring data shall include the location, depth, surface elevation and water level measurements of all borings, the textural classification (Unified Soil Classification System), permeability and cation exchange capacity of the subsurface materials and a preliminary soil balance;

(c) For all water wells located within the anticipated zone of influence of the disposal site, the depth, static level and current use shall be identified;

(d) Background groundwater quality shall be determined by laboratory analysis and shall include at least each of the constituents specified by the Department.

(5) Any other information the Department may deem necessary to determine whether the proposed disposal site is feasible and will comply with all applicable rules of the Department.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-030; DEQ 10-1994, f. & cert. ef. 5-4-94

Detailed Plans and Specifications Required

340-93-140 Except as provided in OAR 340-93-070(4) (5):

(1) Any person applying for a Solid Waste Disposal Permit shall submit plans and specifications conforming with current technological practices, and sufficiently detailed and complete so that the Department may evaluate all relevant criteria before issuing a permit. The plans and specifications shall follow the organizational format, and include the level of information detail, as required by the Department. The Department may refuse to accept plans and specifications that are incomplete and may request such additional information as it deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(2) Engineering plans and specifications submitted to the Department shall be prepared and stamped by a professional engineer with current Oregon registration.

(3) If in the course of facility construction any person desires to deviate significantly from the approved plans, the permittee shall submit a detailed description of the proposed change to the Department for review and approval prior to implementation. If the Department deems it necessary, a permit modification shall be initiated to incorporate the proposed change.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81;; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-035; DEQ 10-1994, f. & cert. ef. 5-4-94

Construction Certification

340-93-150 Except as provided in OAR 340-93-070(4)-(5):

(1) The Department may require, upon completion of major or critical construction at a disposal site, that the permittee submit to the Department a final project report signed by the project engineer or manager as appropriate. The report shall certify that construction has been completed in accordance with the approved plans including any approved amendments thereto.

(2) If any major or critical construction has been scheduled in the plans for phase development subsequent to the initial operation, the Department may require that the permittee submit additional certification for each phase when construction of that phase is completed.

(3) Solid waste shall not be disposed of in any new waste management unit (such as a landfill cell) of a land disposal site unless/until the permittee has received prior written approval from the Department of the required engineering design, construction, operations, and monitoring plans. Only after the Department has accepted a

construction certification report prepared by an independent party, certifying to the Department that the unit was constructed in accordance with the approved plans, may waste be placed in the unit. If the Department does not respond to a certified construction certification report within 30 days of its receipt, the permittee may proceed to use the unit for disposal of the intended solid waste.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-036; DEQ 10-1994, f. & cert. ef. 5-4-94

Place for Collecting Recyclable Material

340-93-160 (1) All solid waste permittees shall ensure that a place for collecting source separated recyclable material is provided for every person whose solid waste enters the disposal site. The place for collecting recyclable material shall be located either at the disposal site or at another location more convenient to the population served by the disposal site.

(2) Any disposal site that identifies a more convenient location for the collection of recyclable materials as part of providing the opportunity to recycle shall provide information to users of the disposal site about the location of the recycling collection site, what recyclable materials are accepted and hours of operation.

(3) Exemption: Any disposal site ~~that does not receive source separated recyclable material or solid waste containing recyclable material~~ meeting one of the following criteria is not required to provide a place for collecting source separated recyclable material-;

(a) Receives only feedstocks for composting or

(b) Does not receive source separated recyclable material or

(c) Does not receive solid waste containing recyclable material.

(4) Small Rural Sites. Any disposal site from which marketing of recyclable material is impracticable due to the amount or type of recyclable material received or geographic location shall provide information to the users of the disposal site about the opportunity to recycle at another location serving the watershed. Such information shall include the location of the recycling opportunity, what recyclable materials are accepted and hours of operation.

(5) The Department may modify the requirements in this rule if the Department finds that the opportunity to recycle is being provided through an acceptable alternative method.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-60-065; DEQ 10-1994, f. & cert. ef. 5-4-94

Cleanup Materials Contaminated with Hazardous Substances

340-93-170

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Wastes Requiring Special Management

340-93-190

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Storage and Collection

340-93-210

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Transportation

340-93-220

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Landfill Siting: Request for DEQ Assistance

340-93-250

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Note: This page will NOT be in rule, it is here to make OAR 340-96-028** easier to understand.

Summary of Special Rules Pertaining to Composting Facilities

DISCUSSION DRAFT OAR 340-96-028 - DO NOT CITE

March 1997

| Condition* | Class 1 Registration | Class 2 Composting General Permit | Class 3 Composting Full Permit |
|--|-------------------------|---|--------------------------------------|
| 1: Feasibility Study Report | | x | x |
| 1a: Location and design of physical features... | | | |
| 1b: A proposed plan for utilization of finished compost... | | x | x |
| 1c: A proposed plan to dispose of unmarketable compost... | | x | x |
| 1d: A mass balance calculation... | x | x | x |
| 2: Compost Plan Design and Construction | | x | x |
| 2a: Scale drawings | | | |
| 2b: Lining system design | | | x |
| 2c: Water Quality Plan | x | x | x |
| 2d: Access Roads | | x | x |
| 2e: Fire Protection | | x | x |
| 2f: Control of Access to the Site | | x | x |
| 2g: Control of noise, vectors, dust and litter | | x | x |
| 3: Compost Facility Operations Plan | x | x | x |
| 3a: Operations maintenance manual | | | |
| 3b: Odor minimization | x | x | x |
| 3c: Measurement | x | x | x |
| 3d: Removal of compost | | x | x |
| 3e: Incorporation of feedstocks | | x | x |
| 3f: Use of composted solid waste | | x | x |
| 3g: Pathogen reduction | | | x |
| 3h: Storage | | x | x |
| 3i: Salvage | | | x |
| 3j: Minimize vectors | | x | x |
| 3k: Product Quality Standards | | x | x |
| 4: Records | x | x | x |

*For registered facilities and those receiving Class 2 General Composting Permit, documents would be on file at the composting site and available upon request to DEQ staff. For composting facilities receiving the Class 3 Composting Full Permit, documents would be submitted to DEQ for approval.

Note: A land use compatibility statement (LUCS) will be required for the Class 1 Registration and Classes 2 and 3 Permits.

AttachB23.doc

DISCUSSION DRAFT - DO NOT CITE 10/10/96

[OARSW] {STATE} 96 - Spl Rules for Selected Solid Waste Disposal Sites
[OAR96]

** {STATE} means that
** This OAR Division is as the Secretary of State has
** published it except for some font and format changes.
**

Text that is *italicized and underlined* is new.
Deletions are indicated by ~~strikeouts~~.

DIVISION 96

SOLID WASTE:
SPECIAL RULES FOR SELECTED SOLID WASTE DISPOSAL SITES

Applicability

340-96-001 OAR Chapter 340, Division 96 applies to energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service, composting facilities, sludge disposal sites, land application disposal sites, transfer stations, material recovery facilities and solid waste treatment facilities.

Stat. Auth.: ORS 459.005 - 459.418 & 459A.100 - 459A.120

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93

Special Rules Pertaining to Incineration

340-96-010

...

Special Rules Pertaining to Composting Facilities

340-96-020¹ (1) Applicability. This rule applies to all composting facilities, except as exempted in OAR 340-93-050 ~~(2)-(3)(d) and (e)~~. Composting facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97, as applicable. Proposed new composting facilities shall submit an application to the Department for a permit upon the effective date of these rules. Existing composting facilities shall submit an application to the Department within 18 months of the effective date of these rules.

Classes of Composting Facilities

340-96-024

Composting facilities are categorized by the following criteria and shall meet the portions of the rule outlined below:

(1) Class 1 Composting facility registration: For facilities utilizing as feedstock for composting:

(a) more than 20 tons and less than or equal to 2,000 tons of green feedstocks in a calendar year or

(b) more than 20 tons and less than or equal to 5,000 tons of feedstocks which are exclusively yard debris and woodwaste in a calendar year.

(c) Class 1 composting facilities shall meet items 1d, 2c, 3a, 3b, 3c and 4 of OAR 340-96-028** and 340-93-070 (4)

(b).

(d) Upon determination by the Department that a registered facility is adversely affecting human health or the environment, a registered facility may be required to apply for a composting facility permit.

¹ Some information originally listed in 340-96-020 has been moved to 340-96-024 and 340-96-028.

** This was revised on 11-5-96 to from 340-96-026 to 028 due to error in numbering.

(2) Class 2 Composting facility permit by rule: For facilities utilizing as feedstock for composting:

(a) more than 2,000 tons of green feedstocks in a calendar year or

(b) more than 5,000 tons of feedstocks which are exclusively yard debris and woodwaste in a calendar year.

(c) Class 2 composting facilities shall meet all items except 2b, 3g and 3i of OAR 340-96-028**. In order to meet these requirements, Class 2 composting facilities shall have procedures in place and written documentation at the composting site available to Department staff upon request that shows all requirements have been met.

(d) Upon determination by the Department that a facility with a Class 2 composting facility is adversely affecting human health or the environment, a Class 2 facility may be required to apply for a Class 3 Composting Permit.

(3) Class 3 Composting facility permit: For facilities utilizing as feedstock for composting:

(a) more than 20 tons that includes any amount of non-green feedstocks during a calendar year.

(b) Class 3 composting facilities shall meet items all items of OAR 340-96-028**. In order to meet the requirements of this rule, these facilities must submit written documents to the Department for review and approval.

Conditions

340-96-028

(2) Detailed Plans and Specifications (1) Feasibility Study Report shall include but not be limited to:

(a) Location and design of the physical features of the site and composting plant, surface drainage control, waste water wastewater facilities, fences, residue disposal, odor controls to prevent adverse health and environmental impacts, and design and performance specifications of the for major composting equipment and detailed description of methods to be used;

(b) A proposed plan for utilization of the processed compost including copies of signed contracts for utilization or other evidence of assured utilization of composted solid waste feedstocks.

(c) A proposed plan (including evidence of financial assurance) to dispose of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes, and finished compost which has been stored for one year since processing was completed.

(d) A mass balance calculation showing all feedstocks and amendments and all products produced. For Class 3 facilities, the mass balance calculation shall be detailed and utilize a unit weight throughout.

(3)(2) Composting Facility Plan Design and Construction shall include but not be limited to:

(a) Non Compostable Wastes. Facilities and procedures shall be provided for handling, recycling or disposing of solid waste that is non biodegradable by composting;

(b) Odors. The design and operational plan shall give consideration to keeping odors to lowest practicable levels. Composting operations, generally, shall not be located in odor sensitive areas;

(a) Scale drawings of the facility, including location and size of feedstock and finished compost storage area(s), compost processing areas, fixed equipment, and appurtenant facilities (scales, surface water control systems, wells, offices and others). Upon determination by the Department that engineered drawings are necessary, drawings will be produced under the supervision of a licensed engineer with current registration.

(b) Lining system design: to provide a protective layer beneath compost processing and feedstock areas, leachate sumps and storage basins, to prevent release of leachate to surface water or ground water. Lining system required would be dependent on leachate characteristics, climatic conditions and size of facility and shall be capable of resisting damage from movement of mobile operating equipment and weight of stored piles. Facility operators shall monitor all water releases and document no release to ground water. A construction quality assurance plan shall be included detailing monitoring and testing to assure effectiveness of liner system.

(c) Water Quality: Composting facilities shall have no discharge of leachate, wastewater or wash water (from vehicle and equipment washing) to the ground or to surface waters, except in accordance with permit(s) from the Water Quality Program of the Department, issued under ORS 468B.050. Composting facilities with certain Standard Industrial Classification (SIC) codes shall need a water quality permit from the Department if storm water associated with composting activities is discharged to surface waters.

(e) Drainage Control. Provisions shall be made to effectively collect, treat, and dispose of leachate or drainage from stored compost and the composting operation;

** This was revised on 11-5-96 from 340-96-026 to 028 due to error in numbering.

(d) Waste Water Discharges. There shall be no discharge of waste water to public waters, except in accordance with a permit from the Department, issued under ORS 468.740;

~~(e)(d)~~ Access Roads. When necessary to provide public access, All-weather roads shall be provided from the public highway or roads to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

~~(f)~~ Drainage. A composting site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

~~(g)(e)~~ Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department in compliance with pertinent state and local fire regulations;

~~(h)(f)~~ Fences. Control of access to the site. Effective barriers to unauthorized entry and dumping shall be provided (such as fences, gates and locks). Access to the composting site shall be controlled by means of a complete perimeter fence and gates which may be locked;

~~(i)~~ Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

~~(j)~~ Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(g) Control of noise, vectors, dust and litter. Effective methods to reduce or avoid noise, vectors, dust or litter shall be provided.

(4)(3) Composting Plant Facility Operations Plan shall include:

(a) Supervision of Operation:

~~(A)~~ A composting plant shall be operated under the supervision of a responsible individual who is thoroughly familiar with the operating procedures established by the designer;

(a) Operations and Maintenance Manual which describes normal facility operations and includes procedures to address upset conditions and operating problems. The manual shall include monitoring of compost processing parameters including: feedstocks (C:N ratio), moisture content, aeration, pH and temperature.

(b) Odor Minimization Plan shall be developed to address odor within the confines of the composting site and include methods to address:

(A) A management plan for malodorous loads;

(B) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility;

(C) Additional odor-minimizing measures, which may include the following:

(i) avoidance of anaerobic conditions in the composting material;

(ii) Use of mixing for favorable composting conditions;

(iii) Formation of windrow or other piles into a size and shape favorable to minimizing odors; and

(vi) Use of end-product compost as cover to act as a filter during early stages of composting.

(D) Specification of a readily-available supply of bulking agents, additives or odor control agents;

(E) Procedures for avoiding delay in processing and managing feedstocks during all weather conditions;

(F) Methods for taking into consideration the following factors prior to turning or moving composted material:

(i) Time of day;

(ii) Wind direction;

(iii) Percent moisture;

(iv) Estimated odor potential; and

(v) Degree of maturity.

~~(B)~~ All compostable waste shall be subjected to complete processing in accordance with the equipment manufacturer's operating instructions or patented process being utilized.

(c) Methods for measuring and keeping records of incoming feedstocks.

~~(b)(d)~~ Removal of Compost. Other than for compost used on-site at an agronomic rate, Compost shall be removed from the composting plant site facility as frequently as possible, but not later than one year after ~~treatment~~ processing is completed;

(e) Incorporation of feedstock(s). Feedstocks shall be incorporated into active compost piles within a reasonable time;

~~(e)(f)~~ Use of Composted Solid Waste. Composted solid waste offered for use by the general public shall ~~contain no~~ pathogenic organisms, shall be relatively odor free and shall not endanger the public health or safety-;

(g) Pathogen Reduction. Composting facilities accepting any amount of non-green feedstocks shall have a pathogen reduction plan that addresses requirements of the Code of Federal Regulations 40 CFR Part 503. The plan shall include a Process to Further Reduce Pathogens (PFRP), pursuant to 40 CFR Part 503 Appendix B, item (B)1, dated February 19, 1993, that shall include:

(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for three days;

(B) Using the windrow composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there shall be a minimum of five turnings of the windrow; or

(C) An alternative method that can be demonstrated by permittee to achieve an equivalent reduction of human pathogens.

~~(d)~~ (h) Storage:

(A) All ~~solid waste~~ feedstocks deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of ~~solid wastes~~ feedstocks and undisposed residues shall be kept to minimum practical quantities.

~~(a) Non-Compostable Wastes~~

(C) Facilities and procedures shall be provided for handling, recycling or disposing of ~~solid waste feedstocks that are is non-biodegradable by composting.~~

~~(e)~~ (i) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the composting facility only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) Salvaging shall be controlled so as to not interfere with optimum ~~disposal~~ composting operation and not create unsightly conditions or vector harborage;

~~(C) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.~~

(j) Methods to minimize vector attraction (such as rats, birds, flies) in order to prevent nuisance conditions or propagation of human pathogens in the active or finished compost.

(k) Compost Product Quality Standards. Permittee must test for and meet applicable compost product quality standards, as adopted by the Department.

~~(4)~~ (4) Records. Annual reporting of the weight of feedstocks utilized for composting is required on a form provided by the Department. The Department may also require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340, Divisions 93 through 97.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-050; DEQ 10-1994, f. & cert. ef. 5-4-94

Special Rules Pertaining to Sludge and Land Application Disposal Sites
340-96-030

...
Transfer Stations and Material Recovery Facilities
340-96-040

...
Solid Waste Treatment Facilities
340-96-050

... attachB24.doc

DISCUSSION DRAFT - DO NOT CITE 10/10/96

[OARSW] {STATE} 97 - Permit Fees
[OAR97]

** {STATE} means that
** This OAR Division is as the Secretary of State has
** published it except for some font and format changes.
**

Text that is *italicized and underlined* is new.

Deletions are indicated by ~~strikeouts~~.

DIVISION 97

SOLID WASTE: PERMIT FEES

Applicability

340-97-001 OAR Chapter 340, Division 97 applies to persons owning or operating, or applying to the Department to own or operate, a municipal solid waste landfill, a non-municipal land disposal site, an energy recovery facility or an incinerator receiving solid waste delivered by the public or by a solid waste collection service, a composting facility, a sludge disposal site, a land application disposal site, a transfer station, a material recovery facility, a solid waste treatment facility or any other solid waste disposal site required to obtain a solid waste permit from the Department. It also applies to persons who transport solid waste out of Oregon to a disposal site that receives domestic solid waste.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93; DEQ 10-1994, f. & cert. ef. 5-4-94

Solid Waste Permit and Disposal Fees

340-97-110 (1) Each person required to have a Solid Waste Disposal Permit shall be subject to the following fees:

(a) An application processing fee for new facilities which shall be submitted with the application for a new permit as specified in OAR 340-97-120(2);

(b) A solid waste permit compliance fee as listed in OAR 340-97-120(3); and

(c) The 1991 Recycling Act permit fee as listed in OAR 340-97-120(4).

(2) Each disposal site receiving domestic solid waste shall be subject to the per-ton solid waste disposal fees on domestic solid waste as specified in OAR 340-97-120(5).

(3) Out-of-state solid waste. Each disposal site or regional disposal site receiving solid waste generated out-of-state shall pay a per-ton solid waste disposal fee as specified in OAR 340-97-120(5).

(4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste shall pay the per-ton solid waste disposal fees as specified in OAR 340-97-120(5):

(a) For purposes of this rule and OAR 340-97-120(5), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

(A) A solid waste collection service or any other person who hauls, under an agreement, solid waste out of Oregon;

(B) A person who hauls his or her own industrial, commercial or institutional waste or other waste such as cleanup materials contaminated with hazardous substances;

- (C) An operator of a transfer station, when Oregon waste is delivered to a transfer station located in Oregon and from there is transported out of Oregon for disposal;
- (D) A person who authorizes or retains the services of another person for disposal of cleanup materials contaminated with hazardous substances; or
- (E) A person who transports infectious waste.
- (b) Notification requirement:
- (A) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department in writing on a form provided by the Department. The persons identified in subsection (4)(a) of this rule are subject to this notification requirement;
- (B) The notification shall include a statement of whether the person will transport the waste on an on-going basis. If the transport is on-going, the person shall re-notify the Department by January 1 of each year of his or her intention to continue to transport waste out-of-state for disposal.
- (c) As used in this section, "person" does not include an individual transporting the individual's own residential solid waste to a disposal site located out of the state.
- (5) Permit fees. The solid waste permit compliance fee must be paid for each year a disposal site is in operation or under permit. The 1991 Recycling Act permit fee, if applicable, must be paid for each year the disposal site is in active operation. The fee period shall be prospective and is as follows:
- (a) New sites:
- (A) Any new disposal site shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, 30 days after the end of the calendar quarter in which solid waste is received at the facility, except as specified in paragraph (5)(a)(B), (C) or (D) of this rule;
- (B) For a new disposal site receiving less than 1,000 tons of solid waste a year. For the first year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before September 1. Any new facility placed into operation after September 1 shall not owe a permit compliance fee until the following January 31. An application for a new disposal site receiving less than 1,000 tons of solid waste a year shall include the applicable permit compliance fee for the first year of operation;
- (C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year. These facilities shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;
- (D) For a new transfer station, ~~or~~ material recovery facility or composting facility. For the first fiscal year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 shall not owe a permit compliance fee until the Department's annual billing for the next fiscal year. An application for a new transfer station, ~~or~~ material recovery facility or composting facility shall include the applicable permit compliance fee for the first year of operation.
- (b) Existing sites. Any existing disposal site that is in operation or receives solid waste in a calendar year must pay the solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, for that year as specified in OAR 340-97-120(3)(a), (b) and (4);
- (c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee shall pay the solid waste permit compliance fee for the "year of closure" as specified in OAR 340-97-120(3)(c)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee shall pay the solid waste permit compliance fee for closed sites as specified in OAR 340-97-120(3)(c);
- (d) The Director may alter the due date for the solid waste permit compliance fee and, if applicable, the 1991 Recycling Act permit fee upon receipt of a justifiable request from a permittee.
- (6) Tonnage reporting. Beginning on July 31, 1994, the permit compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees, if applicable, shall be submitted together with a form approved by the Department. Information reported shall include the amount and type of solid waste and any other information required by the Department to substantiate the tonnage or to calculate the state material recovery rate.

(7) Calculation of tonnages. Permittees are responsible for accurate calculation of solid waste tonnages. For purposes of determining appropriate fees under OAR 340-97-120(3) through (5), annual tonnage of solid waste received shall be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including demolition sites, receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required or not available, estimated annual tonnage for municipal solid waste will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section shall be used;

(b) Industrial facilities. Annual tonnage of solid waste received at off-site industrial facilities receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required, or at those sites receiving less than 50,000 tons a year if scales are not available, industrial sites shall use the following conversion factors to determine tonnage of solid waste disposed of:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and landclearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste:

(i) Mixed woodwaste (as defined in ORS 340-93-030 (92)): 1,200 pounds per cubic yard;

(ii) Wood chips, green: 473 pounds per cubic yard;

(iii) Wood chips, dry: 243 pounds per cubic yard.

(E) Yard debris. Grass clippings: 950 pounds per cubic yard; Leaves: 375 pounds per cubic yard; Compacted yard debris: 640 pounds per cubic yard and Uncompacted yard debris: 250 pounds per cubic yard;

~~(F)~~(F) Food waste, manure, sludge, septage, grits, screenings and other wet wastes: 1,600 pounds per cubic yard;

~~(G)~~(G) Ash and slag: 2,000 pounds per cubic yard;

~~(H)~~(H) Contaminated soils: 2,400 pounds per cubic yard;

~~(I)~~(I) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

~~(J)~~(J) For wastes other than the above, the permittee shall determine the density of the wastes subject to approval by the Department;

~~(K)~~(K) As an alternative to the above conversion factors, the permittee may determine the density of their own waste, subject to approval by the Department.

(8) The application processing fee may be refunded in whole or in part, after taking into consideration any costs the Department may have incurred in processing the application, when submitted with an application if either of the following conditions exists:

(a) The Department determines that no permit will be required;

(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

(9) Exemptions:

(a) Persons treating petroleum contaminated soils shall be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) The soil is being treated as part of a site cleanup authorized under ORS Chapters 465 or 466; and

(B) The Department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the Department for oversight of the cleanup and for processing of the Letter of Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

(10) All fees shall be made payable to the Department of Environmental Quality.

(11) Submittal schedule:

(a) The solid waste permit compliance fee shall be billed by the Department to the holder of the following permits: transfer station, material recovery facility, composting facility and closed solid waste disposal site. The fee period

shall be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee shall be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (9)(a) of this rule, beginning on July 1, 1994 the solid waste permit compliance fee and the 1991 Recycling Act permit fee, if applicable, are not billed to the permittee by the Department. These fees shall be self-reported by the permittee to the Department, pursuant to sections (5) and (6) of this rule. The fee period shall be either the calendar quarter or the calendar year, and the fees are due to the Department as follows:

(A) For municipal solid waste disposal sites (including incinerators *and* energy recovery facilities ~~and composting facilities~~), construction and demolition landfills: On the same schedule as specified in subsection (11)(c) of this rule. The July 31, 1994 submittal for solid waste disposal sites receiving less than 1,000 tons of solid waste a year shall be for the half-year fee period of July 31, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A);

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and solid waste treatment facilities:

(i) For sites receiving over 20,000 tons of waste a year: Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year: Annually, on the 31st day of January beginning on January 31, 1995. A July 31, 1994 submittal shall be paid for the half-year fee period of July 1, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A) or based on the tonnage received from January 1 through June 30, 1994, whichever is more;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the Department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the Department will require the site to report tonnages and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic solid waste and the Orphan Site Account fee are not billed by the Department. They are due on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994.

(d) The fees on Oregon solid waste disposed of out-of-state are due to the Department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR 340-97-120(5)(e)(C). The fees shall be submitted together with a form approved by the Department, which shall include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

Stat. Auth.: ORS 459.297, 459.298 & Ch. 468

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-115; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the Secretary of State.]

Permit/Registration Categories and Fee Schedule

340-97-120 (1) For purposes of OAR Chapter 340, Division 97:

(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial disposal site";

(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. An application processing fee shall be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-93-090. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, construction and demolition landfill, incinerator, energy recovery facility, ~~composting facility for mixed solid waste~~, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: \$10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: \$5,000;

(b) A new captive industrial facility (other than a transfer station or material recovery facility): \$1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: \$500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: \$200;

(C) Receiving less than 10,000 tons of solid waste per year: \$100.

(d) Letter Authorization (pursuant to OAR 340-93-060):

(A) New site: \$500;

(B) Renewal: \$500.

(e) A new composting facility pursuant to OAR 340, Division 96: A Class 1 facility is a registered facility and is not a permit; Classes 2 and 3 are permitted facilities.

(A) Class 1 - Composting Registration: \$100

(B) Class 2 - Composting General Permit: \$500

(C) Class 3 - Composting Permit: For facilities utilizing as feedstock for composting:

(i) more than 20 tons and less than or equal to 7,500 tons during a calendar year; or \$1,000

(ii) more than 7,500 tons during a calendar year. \$5,000

(e)(f) Permit Exemption Determination (pursuant to OAR 340-93-080(2)) \$500.

(3) Solid Waste Permit Compliance Fee. The Commission establishes the following fee schedule including base per-ton rates to be used to determine the solid waste permit compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this fee schedule. To determine the solid waste permit compliance fee, the Department may use the base per-ton rates, or any lower rates if the rates would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) All facilities accepting solid waste except transfer stations, ~~and~~ material recovery facilities and composting facilities:

(A) \$200, if the facility receives less than 1,000 tons of solid waste a year; or

(B) A solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: \$.21 per ton;

(ii) Captive industrial facilities: \$.21 per ton;

(iii) Energy recovery facilities: \$.13 per ton;

~~(iv) Composting facilities receiving mixed solid waste: \$.10 per ton.~~

(C) If a disposal site (other than a municipal solid waste facility) is not required by the Department to monitor and report volumes of solid waste collected, the solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

- (b) Transfer stations and material recovery facilities:
- (A) Facilities accepting over 50,000 tons of solid waste per year: \$1,000;
 - (B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: \$500;
 - (C) Facilities accepting less than 10,000 tons of solid waste per year: \$50.

(c) Composting facilities:

(A) Facilities with a Class 1 composting registration: \$100

(B) Facilities with a Class 2 composting general permit:

(i) Facilities utilizing over 50,000 tons of feedstocks for composting per year: \$5,000

(ii) Facilities utilizing between 7,500 and 50,000 tons of feedstocks for composting per year: \$1,000

(iii) Facilities utilizing less than 7,500 tons of feedstocks for composting per year: \$500

(C) Facilities with a Class 3 composting permit:

(i) Facilities utilizing over 50,000 tons of feedstocks for composting per year: \$5,000

(ii) Facilities utilizing between 7,500 and 50,000 tons of feedstocks for composting per year: \$1,500

(iii) Facilities utilizing less than 7,500 tons of feedstocks for composting per year: \$500

~~(e)~~ (d) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the Department shall determine a pro-rated permit compliance fee for those quarters of the fiscal year not covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection;

(B) Each land disposal site which closes after July 1, 1984: \$150, or the average tonnage of solid waste received in the three most active years of site operation multiplied by \$.025 per ton, whichever is greater; but the maximum permit compliance fee shall not exceed \$2,500.

(4) 1991 Recycling Act permit fee:

(a) A 1991 Recycling Act permit fee shall be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities, composting facilities and captive industrial facilities. The Commission establishes the 1991 Recycling Act permit fee as \$.09 per ton for each ton of solid waste received in the subject calendar quarter or year;

(b) The \$.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act permit fee, the Department may use this rate, or any lower rate if the rate would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) This fee is in addition to any other permit fee and per-ton fee which may be assessed by the Department.

(5) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste (except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-97-110(4)(c), shall submit to the Department of Environmental Quality the following fees for each ton of domestic solid waste received at the disposal site:

(a) A per-ton fee of 50 cents;

(b) An additional per-ton fee of 31 cents;

(c) Beginning January 1, 1993, an additional per-ton fee of 13 cents for the Orphan Site Account.

(d) Submittal schedule:

(A) These per-ton fees shall be submitted to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on July 31, beginning in 1994, and on January 31, beginning in 1995. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994. If the

disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fee shall be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out-of-state for disposal, the per-ton fees shall be paid to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee shall be paid to the Department within 60 days after the disposal occurs.

(e) As used in this rule and in OAR 340-97-110, the term "domestic solid waste" does not include source separated recyclable material, or material recovered at the disposal site.

(f) Solid waste that is used as daily cover at a landfill in place of virgin soil shall not be subject to the per-ton solid waste fees in this section, provided that:

(i) The amount of solid waste used as daily cover does not exceed the amount needed to provide the equivalent of six inches of soil used as daily cover;

(ii) If disposed of in Oregon, the solid waste is not being used on a trial basis, but instead has received final approval from the Department for use as daily cover; and

(iii) If disposed of in a landfill outside of Oregon, the solid waste has received final approval from the appropriate state or local regulatory agency that regulates the landfill.

(g) For solid waste delivered to disposal facilities owned or operated by of a metropolitan service district, the fees established in this section shall be levied on the district, not on the disposal site.

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.297, 459.298, 459.420 & 468.065

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90;

DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef.

12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-120;

DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the Secretary of State.]

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rules Relating to Composting Facilities

Fiscal and Economic Impact Statement

Introduction

Existing DEQ 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. The types of feedstocks composted is also diversifying. Currently about 15 feedstocks are composted including yard debris, crop residue, manure, fish waste, restaurant food waste and sawdust.

While the number of facilities and types of feedstocks composted has increased, so have the number of issues and complaints regarding environmental problems at these facilities. These proposed rules were designed to promote composting while protecting air and water quality and human health and were created by a Work Group of composters, private industry representatives, OSU extension and DEQ staff.

Commercial composting facilities in the state that fit within the definition of "composting facility" and are not excluded in these rules, will be registered or permitted by DEQ. In summary, in order to protect environmental quality, these draft rules require that:

- small facilities composting "green feedstocks"¹ 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"² be permitted because they have a greater environmental impact.

¹ "Green feedstocks" are materials used to produce a compost that is relatively low in 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, manure from herbivorous animals, woodwaste, 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 permittee to be relatively low in human pathogens and substances that pose a present or future hazard to human health or the environment.

² "Non-green feedstocks" are materials used to produce a compost that are relatively high:

- a) in human pathogens or
- b) substances that pose a present or future hazard to human health or the environment.

Non-green feedstocks include but are not limited to: animal parts and byproducts, municipal solid waste, dead animals and manure from carnivorous animals.

A "registration" is a simple form, has few conditions and lower fees because of less need for DEQ oversight. A "permit" has many conditions under which a facility must operate to protect the environment and higher fees for DEQ oversight. Within the permit option, Class 2 facilities are "permitted by rule." This means the facility operator must comply with conditions of the permit but does *not* have to submit documents for DEQ review, reducing time and cost to both the composter and DEQ staff. 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 finished compost, scale drawings, water quality plan, access roads, fire protection, control of vectors, odor minimization and recordkeeping.

Exclusions: The proposed compost rules exclude the following from regulation:

- home composting
- very small composting operations (less than 20 tons per year)
- reload facilities
- production of silage on a farm for animal feed
- institutional composting (yard debris and food wastes only; generated and used on-site; no adverse impacts; for parks, schools, universities, apartments, golf courses, etc.).
- composting operations covered by other DEQ regulation (sewage treatment works under water quality permit or farmer under confined animal feeding operation permit)

Fees: The proposed fees for DEQ oversight for permit review and compliance were determined by:

- reviewing existing fees for similar solid waste permits, and
- estimating the number of staff hours to provide oversight for composting facilities.

Costs and Benefits of Regulation of Commercial Composting

Benefits of placing conditions on composting facilities to protect air and water quality and human health are many. Registered and permitted facilities must comply with between six and 23 conditions to protect the environment; the majority of these conditions focus on minimizing odor, dust and vectors, as outlined in Tables 1 - 3 on the following pages. Because approximately 25% of existing composters in the state have experienced serious odor problems in the last three years, conditions to avoid creation of such problems are especially important.

Because of the many recent odor issues at composting facilities, many cities and counties are reluctant to allow composting facilities within their jurisdictions. However, in order to remain economically viable, composting facilities must be sited near the source of the feedstocks. Yard debris generated from residences in the city should be composted close to the city to avoid the economic burden of hauling tons of yard debris long distances from the source. These new rules will assist in minimizing odor issues at composting facilities and should provide local jurisdictions a "comfort level" so they will be more willing to site composting facilities within their jurisdictions.

Benefits of a reporting requirement for registered or permitted composters include establishment of a statewide database of who is composting what and where in Oregon. Oregon's goal is to achieve a recovery rate of 50% by the year 2000; the predominant waste still being landfilled is organic materials, the same ones that could be composted if a system was in place to get the feedstocks to the composters. Once this database is established, DEQ staff can match feedstocks currently headed for the landfill with composters. Staff can work proactively with compost facilities to respond earlier and more effectively to complaints regarding odor, dust and vectors.

DEQ is also required by law to determine annually the recovery rate for organic materials such as yard debris and food waste. By asking facilities to register or get a permit, which includes a requirement to report tonnages annually to DEQ, the agency can accurately determine the recovery rate for those feedstocks utilized for composting.

Summary of Content of Draft Rule Language

There are three classes of regulation proposed for composting facilities. These vary by size of facility and type(s) of feedstocks composted. Both new and existing facilities must comply with these proposed regulations.

Class 1 - Composting Facility Registration.

Regulation: This is a registration, not a permit, for small facilities which accept only “green feedstocks.” These feedstocks have relatively low risk of unwanted substances and human pathogens, pose a lesser risk of air and water quality issues and are regulated by six conditions to protect the environmental 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*: between 20 and 5,000 tons in a calendar year

Who is affected? DEQ estimates there are currently about 20 Class 1 composting 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. Most of the “start-up companies” are privately owned, with fewer than 5 employees, most of the seasonal leaf composting operations are operated by a city or county, and most of the crop residue composting operations are seasonal in nature and located on farms.

How are Class 1 facilities affected? Although these are solid waste disposal sites, they are largely unregulated by DEQ’s solid waste rules. These new rules would require Class 1 facilities to complete an application and annually report tonnages to DEQ. Conditions to protect the environment are listed in Table 1 but are, for the most part, activities already in place at these facilities and are not expected to add a lot of cost to operation of the facility. Documents addressing these conditions are not submitted to DEQ but must be on site if DEQ wants to review them.

Table 1

| Conditions required of Class 1 facilities | Estimated cost (hours to do work by compost operator calculated at \$20/hour) |
|--|---|
| A. Operations: | \$10 |
| Complete a registration application | |
| Mass balance calculation showing quantity of all feedstocks and amendments and all products produced | \$40 |
| Water Quality Plan | \$40, still under discussion, but will probably <i>not</i> be required to get a DEQ water quality permit unless there’s a significant water quality problem |
| Operations maintenance manual | \$0 , should already exist at the facility |

| | |
|--|---|
| Methods for odor minimization | \$0, may entail changing the way incoming loads are handled, how finished product is stored |
| Records, annual reporting of tonnages to DEQ | \$40, to set up measurement in a way that can be recorded for DEQ purposes may entail changing current system |
| Operations subtotal | one-time cost: \$90 annual cost: \$40 |
| B. Fees: Registration fee to DEQ solid waste section | \$100 application and \$100 annual compliance fee |
| total | one-time cost: \$190 annual cost: \$140 |

Class 2: Composting Facility Permit by Rule

Regulation: This is a permit by rule for larger facilities which accept only “green feedstocks” and thus have relatively low risk of unwanted substances and human pathogens. These facilities pose a moderate risk of air and water quality issues and are regulated by twenty conditions to protect the environment and human health. The permit by rule option means the facility operator must comply with conditions of the permit but does not have to submit the materials for DEQ review, reducing time and cost to both the composteer and DEQ. Instead, the composteer must have the documents available at the site for DEQ review upon request.

Feedstock 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 companies accepting “green feedstocks” for composting. These are all established companies that have grown to be quite large over years of operation. Most of these facilities are privately owned. This class also includes farmers with large amounts of on-site crop residue/manure and farmers importing feedstocks for composting. Because commercial composting requires large machinery and few people to run those machines, these medium to large facilities usually employ less than 50 employees.

Some composting facilities are part of larger landfill operations, which employ more than 50 people. DEQ expects there will be an increase in the number of large landfill operations expanding to operate composting facilities in the future in Oregon.

How are Class 2 facilities affected? Although these are solid waste disposal sites, they are largely unregulated by DEQ’s solid waste rules. These proposed rules will require Class 2 facilities to complete an application for a permit (by rule) and report annual tonnages to DEQ. Permit by rule conditions to protect the environment are listed in Table 2; costs are kept down by the permit by rule option, which does *not* require the composteer to submit materials to DEQ for review but only to have the documents on site for DEQ review upon request.

Table 2

Conditions required of Class 2 facilities

Estimated cost (hours to do work by a compost operator calculated at \$20/hr)

| | |
|--|--|
| A. Operations: | \$20 |
| Complete a permit by rule application | |
| Feasibility study report | \$400 |
| Scale drawing of the facility | \$80 if done by composter, \$320 if done by an engineer (usually not required) |
| Water Quality Plan (only required if DEQ water quality permit has not been issued) | Still under discussion, but it appears that a general DEQ water quality permit will be required and fees will be \$500 application fee and \$250 annual compliance fee |
| Access roads for public | \$0, these are established facilities with adequate access roads already in place |
| Fire protection | \$0, these are established facilities that should have adequate fire protection in place to meet local codes |
| Control of access to the site to avoid unauthorized dumping | \$0, these are established facilities with fences, gates already in place |
| Control of noise, vectors, dust and litter | \$0, these methods should already be in place as these are established facilities. Noise reduction methods include: tailoring hours of operation to needs of neighbors, enclose chipping machinery. Dust can be reduced by watering dirt roads and compost piles and paving high-use areas close to neighbors. Litter reduction can be addressed through fencing and litter pickup by staff. |
| Operations maintenance manual | \$0, should already exist at the facility |
| Odor minimization | \$0, may entail changing the way incoming loads are handled, how finished product is stored |
| Measurement of tonnages of feedstock composted | \$40, to set up measurement in a way that can be recorded for DEQ purposes may entail changing current system |
| Removal of compost within one year | \$0, these established facilities generally sell their finished compost within 6 months |
| Incorporation of feedstocks into active compost piles | \$0, as this is standard operation procedure, may entail changing the way incoming loads are handled |
| Use of finished compost by public | \$0, if facility maintains high quality end-product; up to \$1,000/year for testing if facility produces an inferior product that endangers human health or safety |
| Storage of compost feedstocks | \$0, these established facilities should already have a designated dumping area for compost feedstocks |
| Minimize vectors | \$600/year, may entail increased "housekeeping" by existing personnel such as |

| | |
|--|---|
| | sweeping dumping area daily, installing pest strips, etc. |
| Product quality standards, if and when adopted by the Department | \$0, standards have not been adopted by the Department |
| Records; annual reporting of tonnages to DEQ | \$40/year |
| Operations subtotal | one-time cost: \$1,040 annual cost: \$890 |
| B. Fees: Permit fees to DEQ solid waste section: | \$500 application and \$500 - \$5,000 permit compliance fee/year, depending on the size of the facility |
| total | one-time cost: \$1,540 annual cost: \$1,390 to \$5,890, depending on the size of the facility |

Class 3 - Compost Facility Permit

Regulation: This is a full permit regulation 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 would be regulated by 23 conditions to protect the environment and human health. None of these facilities are currently under a solid waste disposal site permit.

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

Who is affected? DEQ estimates there are three Class 3 facilities in the state; we estimate that number will increase to about five facilities by the year 2001. These are small to large facilities composting non-green feedstocks such as animal parts and products, manure from carnivorous animals and municipal solid waste (garbage). Currently, most of these facilities are on farms.

How are Class 3 facilities affected? Although these are solid waste disposal sites, they are largely unregulated by DEQ's solid waste rules. These new rules will require Class 3 facilities to complete an application for a permit and report annual tonnages to DEQ. Conditions in the permit to protect the environment are listed in Table 3 below. Because these facilities accept non-green feedstocks, which have the greatest potential to adversely affect air and water quality and human health, they may need to substantially alter their current composting operations to protect air and water quality and minimize the possibility of transmission of pathogens to humans from their feedstocks and finished compost.

Table 3

Conditions required of Class 3 facilities
compost

Estimated cost (hours to do work by operator calculated at \$20/hr)

| | |
|---|---|
| A. Operations: Class 3 facilities are required to meet the same conditions as Class 2 facilities (outlined in Table 2, above) PLUS the following additional conditions: | one-time cost: \$1,240 annual cost: \$2,540 (these costs from Table 2 above) |
| Lining system design to prevent release of leachate to surface or ground water | \$1 to \$4.25 per square foot, depending on type of liner needed, see Table L below for specifics |

| | |
|---|---|
| Pathogen reduction | \$120/year, current standard operating procedure includes composting temperatures of 140 degrees F during a six to twelve week period. Pathogen reduction requirements are 132 degrees F which must be measured for a given amount of time, depending on the method of composting employed. |
| Salvage of metal, paper and glass from incoming feedstocks, this is an option not a requirement | \$0, if the facility operator decides to salvage recyclables it means minimal operational changes |
| Operations subtotal | <ul style="list-style-type: none"> • For a small (1 acre) composting facility: one-time cost: \$31,732 to \$130,831, depending on the type of liner needed annual cost: \$2,660 • For a medium (4 acre) composting facility: one-time cost: \$123,208 to \$519,604, depending on the type of liner needed annual cost: \$2,660 • For a large (9 acre) composting facility: one-time cost: \$275,668 to \$1,167,546, depending on the type of liner needed annual cost: \$2,660 |
| B. Fees: Permit fee to DEQ solid waste section | \$1,000 to \$5,000 application fee and \$500 - \$5,000 annual compliance fee, depending on the size of the facility |
| total | <ul style="list-style-type: none"> • For a small (1 acre) composting facility: one-time cost: \$32,732 to \$131,831, depending on the type of liner needed annual cost: \$3,160 • For a medium (4 acre) composting facility: one-time cost: \$128,208 to \$524,604, depending on the type of liner needed annual cost: \$4,160 • For a large (9 acre) composting facility: one-time cost: \$280,668 to \$1,172,546, depending on the type of liner needed annual cost: \$7,660 |

**Table L
COMPOST FACILITY -- LINER CONSTRUCTION COSTS³**

The following are options to meet the requirement for lining a Class 3 compost facility in Oregon. Each facility may also have site specific costs.

| <u>LINER TYPE</u> | <u>Range of Costs (\$ per square foot)</u> |
|---|--|
| 1) Low Permeability Soil (hydrologic conductivity of 1×10^{-6} , commonly is soil high in clay content) | 1.00 -- 1.75 |
| 2) Geomembrane with Leachate Collection (geomembrane is 60 ml density polyethylene; leachate collection system is a network of perforated pipes in gravel filled trenches with a lined leachate collection sump) | 2.00 -- 2.30 |
| 3) Asphalt (4 inches thick with a 6 inch aggregate base) | 1.75 -- 2.10 |
| 4) Concrete (4 inches thick with a 4 inch aggregate base) | 3.75 -- 4.25 |

Assumptions:

1. These costs reflect the type of liner:
 - a) needed specifically at a compost facility
 - b) needed to support heavy machinery such as that used at a compost facility.
2. A medium sized compost facility covers approximately 4 acres of land.
3. There are 43,560 square feet in an acre.
4. Approximately 70% of an average compost facility is used for incoming feedstock dumping/temporary storage and for active compost processing. Therefore, the liner requirement for a Class 3 compost facility, which applies only to the feedstock and active composting areas of the facility, would apply to 50% of the total acreage of the facility.

Note: Consideration was given to the large variation in rainfall at facilities in eastern and western Oregon. Facilities would select from the menu of options above depending on the potential leachate produced from their facility.

General Public

While not directly subject to the provisions of these proposed rules, the general public will be affected in the following ways:

- Experience fewer odor problems associated with composting facilities adjacent to residences and businesses.

³ Estimated costs do not include costs for mobilization, and initial site preparation such as clearing and grubbing, earthmoving, and grading.

- Experience less problems with dust and particulate from composting facilities adjacent to residences and businesses.
- Increased costs incurred by compost processors are likely to be passed through to the public buying compost products (this increase expected to be significant only for products from Class 3 composting facilities).
- Receive assurance that finished compost made from non-green feedstocks does not harbor human pathogens.

Small Business

Composting facilities in the state are currently all small businesses with less than 50 employees. These proposed rules require that they be registered or permitted by DEQ. These proposed rules will affect composting facilities in the following ways:

- The 45 existing composting facilities, and the 20 new composting facilities forecast to begin operation in the next five years, are small businesses and will incur costs under this rule as designated in Tables 1, 2 and 3 of this document.
- Permitted facilities will be able to be sited in exclusive farm use zones, which is currently not possible because most composting facilities are unpermitted. This is because facilities permitted as solid waste disposal sites are allowed to be sited in exclusive farm use zones, pursuant to ORS 215.283 (2) (j).
- There will be a “level playing field” so all facilities in the state will be regulated consistently. The current DEQ rules are difficult to interpret regarding composting facilities which means regulation is not consistent.

Large Business

Currently there are no compost facilities in the state with greater than 50 employees. The industry is land-intensive, utilizing large machines, rather than people, to turn and manipulate compost feedstocks and finished product. A facility would have to cover enormous amounts of land to require more than 50 employees for operation. It is unlikely the state will ever have a compost facility with more than 50 employees due to the cost of land and machinery to operate a facility of that size.

Some composting facilities are part of larger landfill operations, which employ more than 50 people. DEQ expects there will be an increase in the number of large landfill operations expanding to operate composting facilities in the future in Oregon.

Local Governments

While not directly subject to the provisions of the draft compost rules, local governments will be affected in the following ways:

- Should be more willing to site composting facilities within their jurisdictions because they know DEQ’s permits require facilities address issues with odor, dust, vectors and others.

- Can confidently refer complaints regarding composting facilities to DEQ staff for resolution.
- Should be more willing to consider siting of composting facilities within their jurisdictions that choose to compost feedstocks other than just yard debris and woodwaste.

State Agencies

The Department of Environmental Quality is the implementing agency. DEQ must do the following:

- prepare application forms for registering or permitting composting facilities
- write permits
- provide information sessions to existing compost facility operators concerning how to comply the new rules
- receive and review applications
- develop guidance documents for DEQ managers and staff regarding compost facility operation, maintenance and resolution of concerns regarding environmental issues
- inspect Class 2 and Class 3 composting facilities
- respond to complaints, work with all classes of facilities to resolve issues

Staff Required: No new staff are required to implement these rules. Since existing staff are already responding to complaints and environmental issues at 25% of existing composting facilities, this same amount of staff time can now be utilized to work proactively with permitted facilities to avoid and minimize issues related to air and water quality and human health.

Other Agencies: None

Assumptions

- There are currently 45 composting facilities in Oregon. (DEQ survey, December 1995)
- DEQ estimates there will be 65 composting facilities in Oregon by 2001. (Informal DEQ phone survey, June 1996)
- Larger facilities and those composting non-green feedstocks have greater environmental impact than small facilities composting green feedstocks. (Washington Dept. Ecology Compost Quality Guidelines/ California Integrated Waste Management Board Title 14, Division 7 Composting Regulations)
- Minimizing DEQ fees as much as possible will help promote composting, especially for new "start up" companies. (Oregon Composters Association)

Housing Cost Impact Statement

The Department has determined that this proposal will not have an 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.

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rules Relating to Composting Facilities

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

Existing DEQ 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. While the number of facilities and types of feedstocks composted has increased, so have the number of issues and complaints regarding environmental problems at these facilities. These proposed rules were designed to promote composting while protecting air and water quality and human health and were created by a Work Group composed of composters, private industry representatives, OSU extension and DEQ staff.

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

Yes No

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

Composting facilities permitted under these proposed rules fit within the solid waste disposal site permit program, pursuant to 340-18-030 (3) (a).

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

Yes No (if no, explain):

Permit and registration applications submitted by composting facilities to DEQ must be accompanied by a local government compatibility statement (LUCS) that shows the local government has reviewed the plans of the applicant.

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.

The proposed rules will affect land use. However, within the solid waste disposal site permit program, land use is addressed by the land use compatibility statement (LUCS), which must be signed by the local government and accompany the permit or registration application to DEQ.

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

No new procedures, will use existing procedures.

Division

Intergovernmental Coord.

Date

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rules Relating to Composting Facilities

**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?

None

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

None

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

Not applicable

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

Not applicable

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

Not applicable

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

Not applicable

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

Existing DEQ 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. The types of feedstocks composted is also diversifying. Currently about 15 feedstocks are composted including yard debris, crop residue, manure, fish waste, restaurant food waste and sawdust.

While the number of facilities and types of feedstocks composted has increased, so have the number of issues and complaints regarding environmental problems at these facilities. These draft rules were designed to promote composting while protecting air and water quality and human health and were created by a Work Group of composters, private industry representatives, OSU extension and DEQ staff.

There are three proposed classes of regulation for composting facilities. These proposed rules should "level the playing field" for composters in the state so within a given class all facilities will be regulated consistently. Fees and DEQ oversight are adjusted consistent with the potential for operation of the facility to adversely affect air and water quality and human health. Small facilities accepting only "green feedstocks" ¹ have low fees and little DEQ staff oversight, large facilities and those accepting "non-green feedstocks" ² have higher fees and more DEQ staff oversight.

¹ "Green feedstocks" are materials used to produce a compost that is relatively low in 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, manure from herbivorous animals, woodwaste, 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 permittee to be relatively low in human pathogens and substances that pose a present or future hazard to human health or the environment.

² "Non-green feedstocks" are materials used to produce a compost that are relatively high:

a) in human pathogens or

b) substances that pose a present or future hazard to human health or the environment.

Non-green feedstocks include but are not limited to: animal parts and byproducts, municipal solid waste, dead animals and manure from carnivorous animals.

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

Not applicable

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

Not applicable

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

Yes. There are methods to implement small and large scale composting. They include compost windrows, aerated static piles and moving large piles of compost with heavy machinery, like front-end loaders. All three methods can be implemented and achieve the requirements proposed by this regulation.

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

The number of composting facilities in Oregon has increased from 15 to 45 facilities in the last five years and is expected to grow to 65 facilities by the year 2001. While the number of facilities has increased, so have the number of issues and complaints regarding environmental problems at these facilities. Approximately 25% of the composters in the state experienced serious odor problems in the last three years. Conditions to avoid creation of such problems are outlined in these proposed rules. The goal of the proposed rules is to promote composting while protecting air and water quality and human health.

Conditions in the proposed rules address minimization of odor, vectors, dust and noise and will contribute to prevention of pollution by these sources at composting facilities.

Oregon's goal is to achieve a recovery rate of 50% by the year 2000 through recycling and composting activities. The predominant waste still being landfilled is organic materials, the same materials that composters seek for feedstocks at their facilities. These rules are designed to promote composting which should assist in promoting the flow of feedstocks to composters instead of to landfills.

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Date: 11/26/96

To: Environmental Quality Commission

From: Ken Lucas

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: November 25, 1996, beginning at 7:00 PM
Hearing Location: The Dalles, Oregon

Title of Proposal: **Solid Waste Rules Relating to Composting Facilities**

The rulemaking hearing on the above titled proposal was convened at 7:00. 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.

Only two people were in attendance. The two people did not wish to give oral or written testimony during the hearing. They stated that they were in attendance to gather specific information about the proposed rule in regards to cattle farming. One of the individuals said that he would be submitting written comments prior to the deadline of January 3, 1997.

Lauren Ettlin of the DEQ explained the proposed rules and discussed in detail the rule's affect on cattle farmers. The audience was satisfied with their understanding of the proposed rule and the opportunity to discuss their concerns with the DEQ.

There was no formal testimony and the hearing was closed at 8:30 PM.

Date: November 26, 1996

To: Environmental Quality Commission

From: Linda Hayes-Gorman, Eastern Region Solid Waste

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: November 22, 1996, beginning at 7:00 p.m.
Hearing Location: Klamath Falls, Oregon Institute of Technology

Title of Proposal: Compost Facility Rules

The rulemaking hearing on the above titled proposal was convened at 7:20 p.m., at the Oregon Insitutue of Technology in Klamath Falls, Oregon. 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 (2) people were in attendance, and both people signed up to give testimony.

Prior to receiving testimony, Lauren Ettlin briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the people in attendance.

Summary of Oral Testimony

Keith Read, Director, Klamath County Solid Waste Department
3735 Shasta Way, Klamath Falls, OR 97603

Mr. Read stated that he supports the exemption for institutions from the proposed composting facility rules. He also stated that there should not be an upper limit on the volume that the institutions are allowed to compost under the exemption.

Robert Gardner, City of Klamath Falls, Wastewater Treatment Manager.
4441 Frieda Street, Klamath Falls, OR 97603

Mr. Gardner expressed his support for composting that is conducted correctly. He also expressed his support for compost quality standards. He described composting methods that can be utilized to reduce odor and summarized composting activities at his facility.

Written Testimony

No written testimony was submitted at the hearing.

There was no further testimony and the hearing was closed at 8:05 p.m.

Date: November 27, 1996

To: Environmental Quality Commission

From: William R. Bree

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: November 26, 1996, beginning at 7:20 PM
Hearing Location: Room 140
State Office Building
800 N.E. Oregon St.
Portland, Oregon

Title of Proposal: Solid Waste Rules Relating to Composting Facilities

The rulemaking hearing on the above titled proposal was convened at 7:20 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. People were also advised that the deadline for submission of written comments to the Department had been extended to January 3, 1997.

Three people were in attendance. Two people presented testimony.

Prior to receiving testimony, Lauren Ettlin, Compost Project Coordinator, briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

Summary of Oral Testimony

1. Ray Smith, 48430 N.W. Strohmayer Rd., Forest Grove, Oregon 97116-8220

Mr. Smith is a fryer grower in Washington County in the Dairy Creek Watershed. He raises 50,000 birds to a batch with approximately 7 batches per year. He has an existing composting facility which was built and is used under the supervision of the Soil and Conservation Service. He noted that Neil Rambo of the USDA is involved in his project. The plans and development of his composting facility were furnished by the US Department of Agriculture. They also assisted in the financing of his facility. His facility was built with a roof and concrete floor and is used for both composting and dry storage of feedstock. There are three concrete bins, 8' x 8' x 6', which are used to compost dead birds. All of the compost finished is used on-site in an orchard under a plan supervised by soil conservation service. By using chicken compost he is able to use less commercial fertilizer and gets better tree growth.

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In the past he has used a series of disposal method for dead chickens. In-ground pits have problems with water, odor and vectors. Propane fired incineration is expensive and can cause an air pollution problem. The present composting system was developed in the eastern United States. The compost process heats up the material to 150 or 160 degrees and destroys all of the bacteria. The compost process and the dry storage do not have an odor problem.

He feels that he is supervised by the Soil and Conservation Service and does not feel that he needs another layer of supervision. Another layer of supervision is not necessary and the members of the industry cannot stand the fee of a class 3 permit. There are only some 60 fryer grower and 5 egg producers in the state. The industry is trying to do it right.

Jim Hermes of the extension service has gone out and tested the wells on all of the fryer growing sites and there are not well water problems. We are trying to be good and do the right thing and certainly don't need any additional costs added.

He cannot testify to exactly what the rest of the industry is doing but he thinks that most of them use a composting system. The egg producers use an entirely different system involving liquid waste.

2. Michelle Miller, Pacific Soil Company, 6655 Palomino Circle, West Linn, Oregon 97068

Ms. Miller represent Pacific Soils Company which was formerly known as Black Gold. Her company purchases compost from a substantial number of Oregon composters of all sizes. She presently deals with class 1 and class 2 sites. She is considering starting their own composting facility because they are not getting enough compost from other suppliers.

She is concerned about the impact of the rules on the small to medium sized facilities, especially those which are family owned. There is a concern among the composter that they will have to go through a public hearing, including land use issues. They are extremely reluctant to invest the time and money in such a process. Is there any way for small to medium sized composters who comply with the requirements of the rules to avoid a public hearing process. It is essentially starting over. This may be a situation which they cannot cope with because of the growth of urban activities into formerly rural areas.

Written Testimony

There was no additional written testimony presented to the public hearing.

Hearing closed

There was no further testimony and the hearing was closed at 8:30 PM.

State of Oregon
Department of Environmental Quality

Memorandum

Date: November 27, 1996

To: Environmental Quality Commission

From: William R. Bree

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: November 26, 1996, beginning at 4:00 PM
Hearing Location: Room 3A
Department of Environmental Quality Offices
811 S.W. 6th Ave.
Portland, Oregon

Title of Proposal: Solid Waste Rules Relating to Composting Facilities

The rulemaking hearing on the above titled proposal was convened at 4:00 PM. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed. People were also advised that the deadline for submission of written comments to the Department had been extended to January 3, 1997.

Twenty one people were in attendance, seven people presented testimony.

Prior to receiving testimony, Lauren Ettlin, Compost Project Coordinator, briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

Summary of Oral Testimony

1. Art Bell, P. O. Box 470, Aurora, Oregon 97002

Mr. Bell operates a container nursery business in Aurora. He is happy to see the establishment of rules governing compost facilities. He uses compost in his operation and does not object in general to companies which produce compost. He thinks that composting has a very important future.

He is concerned with the environmental and economic impact of a specific composting facility. The composting activities at Mike Kenagy's facility have a significant odor and vector impact on his business. This has gone on for a number of years. The odor problem affects his ability

to carry out his business and has impacted property value appraisals in the area. He is also concerned about the possible impact of the composting activity on Rock Creek and on ground water. He is also concerned about truck traffic and the possible impact of birds attracted to the composting site on a local airport. This composting activity is not a small farm, self use, facility as is has been portrayed.

He feel that composting sites should be subject to inspection and that problem site should be moved to higher levels of regulation. Composting sites should be subject to immediate compliance. He does not support the 18 month period for compliance by existing sites. He stresses that the new rules need to have an effective enforcement program.

2. Glenn Zimmerman, Composting Council of Oregon, P.O. Box 934, Aumsville, Oregon 97325

Glenn Zimmerman represents the Composting Council of Oregon, a nonprofit trade organization comprised primarily of composters. The Council is concerned about the process of "grandfathering" of existing facilities, OAR 340-96-020, that says proposed new composting facilities shall submit an application and that existing facilities have 18 months to submit the application. OAR 340-96-120 states the a new facility is a facility which has not been previously permitted. So, every existing facility would have to go through every part of the process.

The Council does not have a general objection to the permitting process except for the following:

- Existing facilities would have to go through a public notice and comment process.
- The requirement for a landuse compatibility statement for existing facilities is just inviting a whole lot more controversy on issues which have already been dealt with. If a facility is already in the wrong zoning it should have already been dealt with at the local level.
- The requirement for public notice which will identify the composting facilities as solid waste disposal site will be inflammatory.

With regard to Section 340-93-110, denial of permits and compatibility with local solid waste management plans, these are private businesses and don't necessarily belong in the solid waste management plan. The requirement of "no demonstrated need" is not appropriate standard for this type of competitive business. He would like existing composters to be exempted from both these requirements.

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The water quality rules associated with composting have not been completed. He doesn't think the Department should go on without this portion of the total rule packet being completed. The Department needs to know what standards will be before moving forward. These rules should not be adopted until we know what the water quality requirements will be.

There are no product quality standards at this time so reference to them should be dropped from these rules. When product standards are developed the Department should deal with contaminant standards but product quality standards should be left to the industry if they are needed.

3. Jay Boggess, 2222 Floral Hill Dr., Eugene, Oregon 97403

Mr. Boggess is doing graduate work at the University of Oregon in vermiculture in vermiculture ecotechnology. He has a 4500 square foot vermiculture ecotechnology bed at the University that was started in 1995. Vermiculture ecotechnology encourages earthworms to manage soil bacterial which breakdown feedstock resulting in a healthy pH balanced, nutrient rich, soil amendment. Vermicomposting uses earthworms, red wigglers to break down the feedstock resulting in an acidic red worm casting. Composting allows the unrestricted growth of bacteria in piles resulting in the bio-incineration of organic feedstock.

He recommends:

- That the composting rules be a separate entity outside of the solid waste regulations;
 - That the compost committee meet annually to evaluate and update the compost regulations;
 - The term leachate should be redefined with levels of pollutants rather than just reference to the source. Leachate describes water coming from a landfill and water coming from a pile of leaves is not the same thing;
 - The regulations should limit the size of commercial operations to 10,000 tons per year. There will be bigger problems from bigger operations;
 - The lower limit for regulation should be increase to 40 tons per year; and
 - Institutions should be excluded even though they bring in outside bulking agents.
4. Jeanne Roy, Recycling Advocates, 2420 S.W. Boundary St., Portland, Oregon 97201

Ms. Roy represents Recycling Advocates a group which promotes waste reduction, recycling and composting in the Portland area. She feels that the proposed regulation are too strict and in some cases discourage the composting of food waste.

Composting has positive long term human health value. These long term values must be weighed against short term human health risks. We should encourage the composting of food. Food composting will only be successful if meat is allowed in the feedstock. The

requirement of liner systems for even very small facilities which accept meat will inhibit development of food composting.

She has questions about whether there is a need to have pathogen protection of ground water from small facilities. She also has questions about the need for land use compatibility statements or existing composting facilities. Why add additional red tape for a facility which does not have problems and is of no concern? Meeting the six conditions of registration should be enough.

She recommends:

- A new category of compost facility be established between the proposed class 2 and class 3 for small facilities which accept food waste from restaurants and households. The criteria could set a percentage of meat allowed in the feed stock. The criteria could require pathogen reduction but not a liner system;
- On-site composting at institutions should be excluded and should be allowed to compost meat scraps. The reference to "vegetative" should be removed from the exemption;
- Pilot programs should be exempt from the rules and should be allowed to continue to get letters of authorization; and,
- Take adequate time to adopt these regulations.

5. Ken Helm, 1727 N. W. Hoyt St., Portland, Oregon 97209

Mr. Helm represented McFarlane's Bark. McFarlane generally supports the proposed rules. He had comments in three general areas water quality standards, product standards, and Class 1 facilities. The present balanced approach in the proposed rules could be "headed off" if the water quality standards are too strict. He encourages the Department to develop a "one size fits all" permit for water quality issues. It make sense to dovetail the solid waste and water quality permits.

Product quality standards are a good idea. They will promote the use of composting by consumers by assuring them that products are uniform and of high quality. He is concerned about how DEQ will promulgate the product quality standards. The Department should rely heavily upon the compost association for development of product quality standards.

The design and operation of class 1 composting facilities has the potential to create nuisances which cause problems and make it more difficult for composters to operate and more importantly will make more difficult in the future for composters to site new facilities. It is already difficult to site a new facility. Present restrictions under regulate the class 1 facilities

because they allow the possibility that nuisance conditions could be created. This would reflect badly on the composting industry as a whole.

He recommends:

- Add language to OAR 340-96-028(3)(k). "In adopting compost quality standards the Department shall seek and consider the comments of state and local composting associations."
- Change the language of OAR 360-96-024(1)(c) "Class 1 composting facilities shall meet items 1d, 2c, 2e, 2g, 3a, 3b, 3c, 3d, 3e, 3hb, 3hc, 3j, 3k, and 4 of OAR 340-96-028."
The topics covered were are: 2e, fire protection; 2g, control of noise vectors dust and litter; 3d, removal of compost after it is processed; 3e, incorporation of feedstock into composting process; 3h, storage; 3j, vector attraction; and, 3k, product standards.

The reason he is suggesting these changes is that regardless of size these are issues that have the potential to create nuisance problems and place composters and the industry in a bad light and should apply equally to all facilities regardless of size.

- With regard to product quality for class 1 facilities, class 1 facilities should be required to have the same quality in their product as class 2 and 3. The potential maximum production of future class 1 facilities it is about as much as the large facilities produce.
- It is an excellent idea to provide a method to allow new class 1 facilities on EFU land. However it would be much more helpful to the composter to have an expressed statement in the rules to the effect that "our intent is to provide composting facilities with the ability to site on EFU land in accordance with ORS 215.283." That way composter don't have to fight with local governments for a year.

6. Jeff Grimm, Grimm's Fuel, 1631 South Shore Blvd., Lake Oswego, Oregon 97034

He has concerns about the following:

- Excluding reload facilities is risky. They have the potential to cause problems with water runoff, dust, and odors.
- On page 16, the one year limit on holding finished product is too short and should be extended. Finished product is not detrimental to health or the environment.
- On page 16. the two references to groundwater appear to be redundant.
- On page 17 the requirement regarding moving finished product is not necessary.

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- On page 18, storage, item b, there needs to be some definitive limits. Unprocessed feed stock is the cause of major problems and complaints.
- On page 18, Records, the impression here is that you have to weigh the feed stocks. A reference to "weight or volume" would be more appropriate.
- Regarding fees, the annual compliance fee is higher than the application fee. It seems that once the facility is up and running there would be less cost of regulation involved.

7. Alex Sifford, P O Box 760, Neskewin, Oregon 97149

Mr. Sifford represents the Tillamook Methane and Agricultural Waste Project which intends to digest manure and food waste and then compost the digested product. This group will submit written comments. At this time he is speaking for Sifford Energy Group.

He recommends:

- The solid waste and water quality requirements be folded into one permit process.
- Facilities which take only a small quantity of food waste should be relieved of the burdensome requirements of a class 3 permit. He suggest that 10% food waste might be a good cutoff point.
- Existing facilities which have not had any complaints should be grandfathered in to the new permit structure
- Product quality standards should be done by industry.

Written Testimony

There was no additional written testimony presented to the public hearing.

Hearing closed

There was no further testimony and the hearing was closed at 5:00 PM.

Date: 12/2/96

To: Environmental Quality Commission

From: Bob Barrows
Solid Waste Reduction Analyst

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: 11/25/96, beginning at 7:30 PM
Hearing Location: Oregon State University
LaSells Stewart Center
Corvallis, OR
Presiding Officer: Nancy Sawka
Solid Waste Hydrogeologist

Title of Proposal: Solid Waste Rules Relating to Composting Facilities

The rulemaking hearing on the above titled proposal was convened at 7:40 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.

25 people were in attendance, 8 people signed up to give testimony.

Prior to receiving testimony, Bob Barrows briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

Summary of Oral Testimony

Seven people orally testified at the hearing. The following is a summary of the oral testimony in bullet form.

EXISTING FACILITY EXEMPTION

- Three people wanted consideration for existing facilities. Provide a "grandfather clause" for existing facilities without problems. This would mean existing facilities that have a good record (few complaints and operating properly) would not need to go through a Land Use Review or a public hearing but would need to meet all other requirements of Rule.
- One person felt existing composters should be exempted from requirements in OAR 340-93-110 (4) & (5) which provides guidelines for denial of permits if the facility is not compatible with local solid waste management plan or there is no clearly demonstrated need for the facility.

SOLID WASTE DISPOSAL SITE DESIGNATION

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- Two people objected to the term *solid waste disposal site*. They prefer not to call a composting site a solid waste disposal site. The term *solid waste disposal site* can be "inflammatory" to the public, cause public outrage and lead to the "Not In My Backyard" (NIMBY) syndrome.
 - One person wanted composting facilities to be considered Agricultural facilities, not solid waste facilities.

STORM WATER PERMIT

- Two people wanted a delay in composting Rule adoption until storm water permit issues for composting sites is resolved. Reason: A solid waste permit is only half the regulation a composter faces and he would rather not finalize until both halves of regulation is known. His view of the composting facility permit is dependent on the outcome of the storm water permit.
- One person supported the "General Storm Water Permit" concept.
- Two people supported combining water quality regulation and solid waste regulation in one permit.

RESEARCH FACILITIES

- One person indicated research facilities should not be exempted from the Rules. If composting more than 20 tons per year then should be regulated.

PRODUCT QUALITY STANDARDS

- One person indicated support for keeping the reference to product quality standards in the rules. He indicated they are important and necessary.
- Two people suggested DEQ not be involved in product quality standards and there should be no product quality standards adopted by the state.
- One person suggested DEQ not be involved in product quality standards, but should be involved in contaminant standards.

INSTITUTIONAL COMPOSTING

- One person felt Institutional composting should have a size limit and indicated the use of the material should have nothing to do with regulation of the composting activity. Large institutions could have a significant problem if composting grass clippings improperly. "All composting operations should be regulated by size not the end use of the product."

RELOAD FACILITIES

- Reload facilities should be omitted from the rules because they do not compost onsite.

COMPOSTING DEAD CHICKENS

- Four people indicated DEQ should not be regulating composting of chicken waste on chicken farms. Reason:
 - 1) Dept. of Agriculture already regulates under CAFO regulations and other regulations.
 - 2) Contract with Fir Crest Farms requires proper management.

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- 3) ORS 30.930 - .947, Farming Practices Act, exempts farms from nuisance complaints of their normal farming practices.
- One person suggested DEQ make the minimum size of composting operation larger for exclusion from composting regulation. Raise the minimum size from 20 tons per year to something larger.
- One person objected to listing of all chicken waste (dead chickens and manure) as a class three feedstock and provided supporting documentation. Suggested composting of chicken waste should be a class 2 operation.
- One person provided supporting evidence to illustrate the successes of composting in the poultry industry, particularly in other states with much larger poultry industries. He indicated composting dead chickens and chicken manure is standard practice in other states such as Arkansas and Alabama that produce more waste in one day than is produced in Oregon in one year.
- Four people stated composting poultry waste in Oregon has a good track record; it has occurred very successfully for a number of years. Odor, vector, water quality and pathogen issues are well managed already by existing practices.

Written Testimony

The following people handed in written comments but did not present oral testimony:

- Dave Garcia

There was no further testimony and the hearing was closed at 8:40 PM.

**Summary of Written Comments Received Regarding the
Draft Solid Waste Rules Relating to Composting**

| Comment Received From: | Outline of comment(s) |
|---|---|
| 1. Metro Regional Env. Mgt. Dept., Portland, OR* | Suggestions for revisions to definitions. Wants clearer delineation between env. protections for vegetative and non-vegetative food waste. |
| 2. Daniel Banke, Representative, Oregon Cattlemen's Assn., Hermiston, OR | Wants "animal agriculture" exempted from rules. Definition of "feedstock" should be revised so doesn't sound like it's feed for animals. |
| 3. Jim Parr, President, Clackamas Broiler Growers Assn, Molalla, OR 97038 | Wants composting of dead poultry exempted from rules. If rules not revised, industry will no longer compost. |
| 4. Spencer McGuire, President, South Willamette Broiler Growers Assn., Creswell, OR | Wants composting of dead poultry exempted from rules. If rules not revised, industry will no longer compost. |
| 5. David Johnson, President, Oregon Broiler Growers Assn., Oakland, OR | Poultry farmers not included in rulemaking process. Composting of dead poultry and poultry manure already regulated under Ore. Dept. Agriculture. Env. protections addressed in proposed rules are irrelevant because farmers are exempt under "right to farm" act. |
| 6. Curt Johnson, Mid-Willamette Broiler Growers Assn., no address given | If rules go forward as drafted, dead poultry composting in Oregon will cease. |
| 7. Diane Williams, Eugene, OR | Thinks DEQ is regulating backyard composting and says this is "highly impractical." |
| 8. Paul Rains, Manager, Oregon Fryer Commission, Portland, OR | Poultry industry not included in rulemaking process. Industry already regulated under Ore. Dept. Agriculture. Farmers are exempt from need to have env. protections under "right to farm" act. |
| 9. Wallace Eubanks, Myrtle Point, OR | DEQ should allow exemption from regulation for farmers using up to 50 tons of their own feedstocks for composting. |
| 10. Carolyn Burke, City of Eugene, OR | Do not exempt institutions from regulation. Tonnage threshold of 5,000 tons for permitting is too high. Fees are too low for registered category. Compost product quality standards should be adopted. |
| 11. Dennis Thorpe, Thorpe Valley Farms, Noti, OR | DEQ must determine which water quality permits apply to composter prior to finalizing solid waste rules. Temperature requirements in rules for pathogen reduction are too high. Existing composters should be "grandfathered in" so they don't have to go through the public hearing process. |
| 12. Vince Pavlicek, Realty World, Canby, OR | Supports any change in rule that will allow composting of manure to occur on EFU zoned land. |
| 13. Barbara Marta, Sherwood, OR | Temperature requirements for pathogen reduction should be required of all composters, not just those under the full permit category. |
| 14. Bernadine Ward, Aurora, OR | Supports composting operations occurring in EFU zoned lands. |
| *DEQ received 2 comment letters from this source | |

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| 15. Dave Nelson, Executive Secretary, Oregon Seed Council, Salem, OR | On-farm composting of grass straw residues should be exempt from rules. |
| 16. Art Bell, Bell Family Nursery, Canby, OR* | He lives adjacent to an on-farm composter who has had many composting-related problems including: flies, periodic explosions in barns, contamination of surface water, traffic and road deterioration due to large trucks going to composting site, large numbers of birds. He's very happy to see establishment of these rules. Does not want on-farm composting exempted. If on-farm composter is in violation, he should be moved to next higher level of regulation. Wants to make sure DEQ enforces these rules. |
| 17. Jack Hoeck, Vice President, Rexius Forest ByProducts, Eugene, OR | Wants existing composters to be "grandfathered in." DEQ must determine which water quality permits apply to composter prior to finalizing solid waste rules. |
| 18. Forrest Blum, dairy farmer, Sand Lake, OR | DEQ is a communist organization. It is none of DEQ's business what a taxpayer does on his own land. |
| 19. J.Val Toronto and Kalvin Garton, Pendleton, OR | Exempt from regulation farmers who compost own materials. DEQ should encourage on-farm composting. Proposed rules are not needed because env. protections are already covered in other areas of DEQ rules. |
| 20. Bill Webber, Valley Landfills, Inc., Corvallis, OR | All composting operations should be regulated by size not the end use of product. There should not be any compost product quality standards because they would be difficult to enforce or verify. |
| 21. Dave Garcia, OSU Recycling Coordinator, Corvallis, OR | Offers a new definition, "government composting," in lieu of the definition "institutional composting." |
| 22. Dr. James Hermes, OSU Extension Poultry Specialist, Corvallis, OR | Exempt dead poultry composting from rules because vectors, odor, pathogens are not a problem. Rules under Ore. Dept Agriculture are adequate to address env. protections for dead poultry composting. |
| 23. Jeff Grimm, Vice President, Grimm's Fuel Co., Lake Oswego, OR | Reload facilities should not be exempted because have same env. problems as composting facilities. Suggests changes to two sections of rules regarding how long feedstock and finished compost can be left on-site. Fee for application should be higher than annual compliance fee. |
| 24. Wali David Via, Winter Green Farm, Noti, OR | Exempt from rules farmers composting own materials. |
| 25. Chuck Craig, Administrator, Ore. Dept. of Agriculture, Salem, OR | Requests extension to comment period so agricultural interests have time to be heard. Questions whether DEQ has authority to regulate composting. Further consultation with legal counsel is desirable. Proposed exemption for farmers with CAFO permits needs revision so farmers don't just apply for a CAFO permit and put in "token wastewater system" just to escape DEQ fees and regulation. Recommends on-farm composting be |

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| | exempted. Wants DEQ to meet with Ore. Dept Agriculture to discuss issues. |
| 26. Douglas Peters, DEQ Water Quality Program, Portland, OR* | Term "manure from herbivorous animals" needs clarification because it raises question of which animals are herbivorous. Suggests more specific language for vector attraction reduction. All agricultural operations should be required to submit a composting management plan. Because manure has pathogens, all facilities composting manure should be in a permitted (not registered) category. |
| 27. Jay Boggess, Urban Farm, Eugene, OR | Vermiculture will not pass any standard based on heat requirement. Suggests testing for toxicity and pathogens be required. Increase low level for exemption from 20 to 40 tons. Disappointed there were no vermiculture experts on the Compost Work Group. |
| 28. Mark Ronayne, City of Portland Biosolids Pgm. Mgr., Portland, OR | All permitted composting facilities should be regulated according to same standards as OAR 340, Division 50 (biosolids composting). Monitoring for a few trace inorganic pollutants for permitted facilities should be considered. |
| 29. Jean McCrae, Newport, OR | Proposed rules are a big improvement over existing rules. Fish waste should be listed in the definition for "non-green feedstock." The goal of odor management should be to keep odors from leaving the composting site. |
| 30. William Gehr, Oregon Soil Corporation, Corvallis, OR* | Revise rules from tiered approach to performance-based regulation. Vermiculture facilities should be regulated similar to composting facilities. Do not exempt large institutions. Do not require heat-based method for pathogen reduction for vermiculture. Institutional exemption should include non-green feedstocks. Supports composting management plan requirement for on-farm composting. 20 ton/year limit for exemption is too low. |
| 31. Janet Gillaspie, Assn. Of Clean Water Agencies, Portland, OR | Confirms that facilities engaged in composting of sewage sludge are not affected by these proposed rules. |
| 32. Pete Test, Oregon Farm Bureau, Salem, OR | Requests extension to comment period so agricultural interests have time to comment. On-farm composting should be exempt from rules. |
| 33. Renee Kimball, Portland, OR | Applauds these rules because they ensure public safety and business standardization. Suggests a new permit category for post-consumer non-green feedstock composting. |
| 34. Tom Fitzgerald, Oregon Poultry Industries Council, Aurora, OR | Rules are unnecessary because CAFO program, administered by Ore. Dept. Agriculture is already providing adequate env. protections. Poultry farmers who compost should be exempt. |
| 35. Glenn Zimmerman, Chairman, Compost Council of Oregon, Aumsville, OR | Concerned about public notice requirement. Wants existing facilities "grandfathered in." DEQ must determine which water quality permits apply to composter prior to finalizing solid waste rules. |

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| 36. Jeanne Roy, President, Recycling Advocates* | Liner should not be required for composting of non-vegetative food waste. Concerned about requirement for sign-off by local government for land use compatibility for registered sites. Thinks there's a disparity between exempted agricultural sites and composting facilities. Wants clarification of criteria facility must prove to show they are a general permitted site instead of a full permitted site. |
| 37. Max Brittingham, Executive Director, Oregon Recycling and Refuse Assn., Salem, OR | All composting operations should be regulated by size not use of end product. There should be no compost product quality standards. Suggests change to definition of "supplemental feedstock." Agricultural operations should not be allowed purchase feedstocks, or accept them at no charge. |
| 38. Timm Schimke, Solid Waste Pgm. Mgr., Deschutes County, Bend, OR | Questions whether a permitted landfill that also composts would need a separate composting permit or just an addendum to their existing landfill permit. Thinks all composters should be allowed to take "supplemental feedstocks." |
| 39. Mildred McWhorter, Persist Ranch, Trail, OR | Fees are too high. Is concerned that composting rules will extend to regulation of feed for animals. |
| 40. Susan McHenry, Pendleton Sanitary Service, Pendleton, OR | Concerned with proposed exemptions for on-farm composting because they could be potential illegal dumpsites. |

*DEQ received 2 comment letters from this source

attachC.doc

Draft Solid Waste Rules Relating to Composting

Attachment D: Department's Evaluation of Public Comments

DEQ held five public hearings regarding the proposed composting facility rules in November 1996. Fifty-three people attended the hearings and 19 people provided public testimony (see Attachment C). In response to their testimony and at their request, DEQ extended the comment period twice, for a total of five months, to allow time to work on resolutions to the following issues. During the comment deadline extension period, DEQ held an additional five public information meetings; 37 people attended these meetings and two people provided public testimony (see Attachment H). Written comments were received from 40 people and are summarized in Attachment C; some of the written comments were from the same people providing public testimony.

Significant issues raised during public hearings, public information meetings or in written comment letters. (Significant issues are defined as those receiving three or more comments.)

1. Compost operators with "good environmental records" requested they be "grandfathered in" so they wouldn't have to comply with local government land use and public hearing requirements;
2. Compost operators requested that DEQ water quality staff determine which water quality permits would apply to their facilities prior to finalization of the solid waste compost rules, so operators would know "the entire picture" of DEQ regulation
3. Poultry farmers composting dead birds on their farms requested that they be exempted from DEQ's solid waste rules.
4. Poultry farmers were not included in rulemaking process;
5. Farmers who compost only their own materials should be exempted from DEQ's rules;
6. DEQ should extend comment period so agricultural interests may be heard;
7. DEQ may not have authority to regulate on-farm composting because of the "right to farm" act;
8. Compost product quality standards are important and should be developed for Oregon. They should be developed by industry; DEQ should only be involved in development of those standards related to health and safety;
9. Rules are unclear about facilities accepting non-vegetative waste (non-green feedstocks); composting of non-vegetative food waste should include pathogen reduction requirement but not a liner (because the cost of a liner is so high it will discourage composting).

Regarding issue #1, DEQ staff researched the requirement for the Department's land use compatibility statement (lucs), the form that must be signed by the local government planning official before a DEQ permit is issued. Compost operators requested to be "grandfathered in" by DEQ so they could avoid a land use public hearing in their home town. Staff research concluded that DEQ doesn't have authority to "grandfather in" to avoid land use compliance. DEQ is required by the Department of Land Use Conservation and Development (DLCD) to allow local governments to decide if a solid waste disposal site facility is compatible with "comprehensive plans and land use regulations." The Department has chosen the lucs form as the method for achieving "sign off" by local governments. This is substantiated in a State Agency Coordination Agreement, which lists "disposal site permits" as one of 23 "Department actions determined to affect land use."

Since DEQ didn't have authority to "grandfather in" existing composting operations but did want to reduce the burden of getting the lucs form signed by local government, DEQ agreed to do the following:

- a) DEQ will develop a fact sheet that the compost facility could submit to the county with its land use compatibility statement. The fact sheet will include information about why the rules

were developed, why composting is an important part of the recycling industry and the names and phone numbers of DEQ's technical assistants in each DEQ region of the state.

b) DEQ will provide technical assistance. If requested by the composter, the DEQ technical assistant from the regional office will call the county planning staff to provide information.

c) DEQ will revise its public notice template to say "Solid Waste Disposal Site: Composting Facility" instead of "Solid Waste Disposal Site."

d) DEQ will assist existing compost facilities by revising the land use compatibility statement form to say "Composting Registration or Permit" instead of just "Solid Waste Disposal Site." This revision will clearly delineate composting facilities as being an activity separate from other solid waste disposal sites.

A letter was mailed on May 13, 1997 from the DEQ section manager to the chairman of the Compost Council of Oregon describing the information listed above.

Regarding issue #2, after the public hearings DEQ staff continued to meet with water quality staff and managers to achieve consensus on which water quality permit should apply to composting operations. This discussion had begun six months earlier but it took another three months before the water managers agreed to support their staff's suggestion that composting facilities receive a general 1200H storm water permit. The 1200H permit requires that compost operators sample storm water runoff twice a year and submit test results to DEQ. In January 2000, DEQ water quality staff will review these test results and meet with solid waste staff to determine if the 1200H permit is appropriate and adequate, or if a new general composting permit should be developed. This information was provided to interested parties at the February 12, 1997 meeting of the Compost Work Group and was fully supported.

Regarding issue #3, regulation of composting of dead poultry, DEQ met with the affected farmers and the Oregon Department of Agriculture (ODA) beginning in November 1996. After four meetings it was agreed that most types of on-farm composting, including composting of dead poultry, would be exempted from DEQ's compost rules *if* the on-farm composter developed a composting management plan that addressed DEQ's environmental concerns. The plan must be approved by and be on file at the Oregon Department of Agriculture and the composter must implement the plan in order for the DEQ exemption to apply (for details, see Attachment A, page 9, (3)(d)). Farmers were informed of this decision at the February 12, 1997 Compost Work Group meeting and at a subsequent "farmer only" meeting convened by the ODA. They largely supported the plan. The ODA has since formed a Composting Management Task Force of farmers, ODA staff and DEQ staff to hammer out the details of the composting management plan criteria and format.

Once resolution was achieved on the issues listed above, DEQ conducted five "informational meetings" in April 1997 in Portland, Corvallis, Medford, Bend and The Dalles to allow interested people to get information about and ask questions about changes to the proposed rules. These meetings were attended by 37 people and two people provided public testimony (see Attachment C).

Regarding issue #7, DEQ staff requested an opinion from Attorney General Larry Edelman several times. Mr. Edelman said that pursuant to ORS 459.205, DEQ has authority to require a permit of disposal sites. Pursuant to ORS 459.005 (8), "composting plants" are defined as disposal sites and therefore DEQ has authority to regulate composting. In November 1996, at the request of DEQ and ODA, Larry Edelman spoke with Jane Ard, Attorney General for the ODA. Mr. Edelman told the author they concluded that the "right to farm act" does not impact DEQ's ability to impose regulations on on-farm composting except in regards to water quality issues, which have been delegated by DEQ to ODA. He

said they agreed that the "right to farm act" says "no state agency shall do anything that restricts farm activity but that this shall not affect the agencies of state ability to safeguard human health or the environment." Since the goal of the proposed composting rules is to safeguard human health and the environment, DEQ has authority to impose these rules on on-farm composters.

Regarding issue #8, DEQ removed the sentence regarding "compost product standards" from the rules and agreed that industry should take the lead in development of the standards. DEQ also agreed to be involved in and supportive of the process, especially concerning standards that protect human health and the environment.

Regarding issue #9, DEQ wrote a letter on April 24, 1997 to the president of Recycling Advocates, proponents of this issue. DEQ staff also met with the president of Recycling Advocates on May 13, 1997 at her request and with Metro composting staff to further discuss the issue. We explained that the rules for *vegetative* waste composting *are* clear and the rules allow composters of non-vegetative waste to show DEQ that they do not have pathogen or water quality issues and therefore can be permitted with the lesser environmental protections of vegetative waste composters (a general permit with no liner requirement). We reminded Recycling Advocates and Metro that health officials had consistently informed DEQ that non-vegetative waste has a human pathogen potential and can contaminate surface water. To protect human health and the environment, DEQ must require a liner of facilities accepting these feedstocks, unless the facilities can show that pathogens are not a concern. The liner required by DEQ can be one of four types, varying from a simple clay liner using existing soils to an elaborate and costly concrete liner.

AttachD.doc

Draft Solid Waste Rules Relating to Composting
Attachment E: Detailed Changes Made to Original Rulemaking
Proposal (made in response to public comment)

There were a lot of changes made to the original rulemaking proposal as a result of the 61 oral and written comments received by DEQ.

Division 93: Solid Waste General Provisions

1. As a result of discussion with affected farmers and with the Department of Agriculture, we added definitions for “agricultural composting” and “supplemental feedstocks” and added exemptions for most types of on-farm composting (OAR 340-93-050 (3) (d) (B)).
2. The definitions for “green” and “non-green feedstocks” were revised to include “...*relatively low in or unlikely to support* human pathogens...”
3. The definitions for “agricultural composting” and “institutional composting” were revised to clearly show that supplemental feedstocks could be included in the composting process.
4. The definition for “composting facility means a site or facility... through a process of controlled biological decomposition...” was revised to “through a *managed* process of controlled biological decomposition...”
5. The definition for “wood waste” was revised to say “generated from processes *commonly used in* the timber products industry...” and “but do not include wood pieces or particles containing *or treated with* chemical additives...”
6. 340-93-070 (4) (b) was revised to clarify the requirement of a land use compatibility form.

Division 96: Special Rules for Selected Solid Waste Disposal Sites

1. 340-96-024 was revised to clarify that registration is not a permit except for purposes of the land use compatibility form pursuant to OAR 340-18-030.
2. 340-96-028 (1) (a) and 340-96-028 (2) (c) were revised to clarify that “agricultural composting operations need only provide information regarding surface drainage control and wastewater facilities as required by ORS 468B.050 (1) (b) administered by the Oregon Department of Agriculture.”
3. In 340-96-028 (2) (d), the term “disposal site” was deleted and “composting operation” was inserted in its place.
4. 340-96-028 (3) (d) “Compost shall be removed” changed from “...but not later than one year” to “but not later than two years.”
5. 340-96-028 (3) (h) “Accumulation of feedstocks...” changed from “shall be kept to minimum practical quantities” to “shall not exceed one month’s production capacity...”
6. 340-96-028 (3) (k) has been deleted so it no longer says “Compost Product Quality Standards. Permittee must test for and meet applicable compost product quality standards, as adopted by the Department.”

Division 97: Solid Waste: Permit Fees

340-97-120 (2) (e) (D) “The Director may issue a different level of permit...” was revised to “different level of regulation...” and this whole section of rule was moved to Division 96 (340-96-024 (5)).

In addition, in order to clarify sections of rule and to make the rules easier to read, the following changes were made:

Division 93: Solid Waste: General Provisions

1. In appropriate places where “permit” was listed in rule, the words “*registration or permit*” were inserted.
2. Section 340-93-070 (3) “General Permit” was added to clarify requirements of permittees receiving the new composting general permit.

Division 96: Solid Waste: Special Rules For Selected Solid Waste Disposal Sites

1. In appropriate places where “permit” was listed in rule, the words “*registration or permit*” were inserted.
2. The title of 340-96-024 was revised from “Classes of Composting Facilities” to “Types of Composting Facilities.”
3. 340-96-024 (2) (d) was added to clarify requirements of a composting general permit.
4. 340-96-028 (1) (c) was revised to clarify requirements regarding facility closure plans and financial assurance.

AttachE.doc

Draft Solid Waste Rules Relating to Composting

Attachment F: Advisory Committee Membership and Report

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

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

Bob Barrows, DEQ Solid Waste Program, Salem

A Compost Work Group was formed in January 1996. It is composed of 11 members representing compost operators, farmers, OSU Extension Service, county staff and DEQ solid waste and water quality staff. Two members of the Work Group are also members of DEQ's Solid Waste Advisory Committee (SWAC).

The Work Group met 12 times between January 1996 and February 1997 to review existing solid waste rules relating to composting operations and to develop the draft rules recommended and approved by DEQ's solid waste managers. The Work Group also reviewed regulations regarding compost operations from Metro, the National Compost Council and from the states of Washington, California and Texas.

Each Work Group meeting attracted between 15 and 35 people in the audience who provided feedback and represented compost operators, consultants, city and county staff and interested parties. In addition, an interested party list of 280 people received agendas and summaries of all of the meetings.

The Work Group was facilitated by Lauren Ettlin of DEQ and was a cohesive and supportive group that was able to achieve consensus on most issues. The Work Group achieved consensus on the final proposed rule language which they forwarded to DEQ's solid waste managers in August 1996. Following the November 1996 public hearings and at the request of DEQ, the Work Group met again in February 1997 to review changes to rules proposed as a result of testimony at the public hearings and comments in letters received by DEQ. The Work Group supported all the changes as proposed by DEQ, with minor revisions.

attachF.doc

Draft Solid Waste Rules Relating to Composting

Attachment G: Rule Implementation Plan

Summary of the Proposed Rule

The 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.

Proposed Effective Date of the Rule

These rules will be adopted on July 18, 1997. Composting facilities commencing operation prior to January 31, 1999 shall submit an application to the Department for a registration or permit within 18 months of the effective date of these rules. Following that date, composting facilities must apply for and receive a permit or registration prior to commencement of operation.

Proposal for Notification of Affected Persons

DEQ plans to notify affected persons regarding the new rules with a letter mailed in September 1997.

Proposed Implementing Actions/Training and Assistance to Affected Parties

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 (new and existing facilities must comply within 18 months of rule adoption). Develop a "fact sheet" for those composters who want to send it to their local planning official with their land use compatibility statement.
6. Offer information sessions to composters regarding how to comply with the new regulations.
7. Revise its public notice template to say "Solid Waste Disposal Site: Composting Facility" instead of "Solid Waste Disposal Site."
8. Assist existing compost facilities by revising the land use compatibility statement form to say "Composting Registration or Permit" instead of just "Solid Waste Disposal Site." This revision will clearly delineate composting facilities as being an activity separate from other solid waste disposal sites.
9. Receive and file completed registration and general permit applications.

10. Review and approve completed full permit applications.
11. Respond to questions from applicants for registrations and permits.
12. Inspect permitted facilities within the permit timeline; site inspections will occur for registered facilities only if necessary to resolve environmental issues.
13. Respond to complaints about composting facilities.

attachG.doc

Date: 4/8/97

To: File

From: Lauren Ettlin, Compost Project Coordinator,
Solid Waste Policy and Program Development

Subject: **Summary of Comments made at the Compost Information Meeting on
4/3/97 in Portland, Oregon**

Seventeen people attended the compost information meeting held on April 3, 1997 from 6 to 8 pm in Portland, Oregon. Attendees included compost operators, land use attorneys, county solid waste staff, DEQ water and air quality staff, farmers, health officials, members of Recycling Advocates, engineers and interested parties.

Everyone introduced themselves. For the first one hour and 15 minutes of the meeting, Lauren Ettlin summarized the proposed compost facility rules and answered questions from the audience. Then she invited people to come forward to the tape recorder to have their comments taped.

The following comments were taped and will be considered in finalization of the rules:

1) Jeanne Roy, Recycling Advocates

Recycling Advocates would like to see food waste composted so organic materials can replenish the soil. They participated in development of Metro's solid waste management plan that includes collection of food waste from stores, restaurants and food processors, then later from the residential sector. DEQ's proposed compost rules require a Class 3 permit for composting feedstocks including meat, dairy and grease. Since a Class 3 permit requires a liner, this type of facility would be very expensive. It is possible that food waste composting in Metro's plan would not be carried out because of the cost of designing and operating a Class 3 facility. Jeanne would like to see DEQ develop a class of permit that is less costly than a full Class 3 permit that could allow feedstocks that include some meat, dairy and grease. If a temperature requirement would provide the necessary environmental protection, Recycling Advocates would support that.

2) Larry Eisele, Washington County Dept. of Public Health, Solid Waste and Recycling Section

Most of Larry's concerns dealt with communicable diseases. He referred to Attachment D:

- page 3: "well head protection area" This is not the correct definition of a public water supply. DEQ should consult the Oregon State Health Division, Water Quality section for the correct definition.

- page 4: “green feedstocks” This category has the potential for pathogens. Larry would like to see testing required of these feedstocks to see if all of the items on this list really are “relatively low” in human pathogens. He suggests DEQ test for salmonella, Q fever, and cryptosporidium. Q fever and cryptosporidium are very stable, can come from manure, and can get into surface waters. Disinfectants and time do not affect them so they are difficult to minimize.
- page 15: list agricultural composting facilities at the beginning of Division 96;
- page 15: (1) (d) be more specific about what type of composting facility;
- page 18: (3) (d) What does this mean, “once processing is complete?” When is compost finished composting?
- page 16: (2) (b) What does this mean, “document no release to groundwater?” Shouldn’t they be documenting *releases* to groundwater?

Larry is also concerned with use of finished compost, especially if the compost was not composted correctly. For example, he would not want to see improperly composted Class 3 compost placed on strawberries that are then eaten by humans. DEQ or Oregon Department of Agriculture should regulate how and where compost is used. He would not want to see poor quality compost placed on crops eaten by dairy cows and then the milk is consumed by people. There should be barriers in place in the rules that don’t allow transmission of disease from compost to humans.

Although no else wanted to have their comments taped, there were several other comments made that would be of interest to DEQ as the rules are finalized. Comments included:

- the term “industrial parks” in the definition of institutional composting should be defined in guidance to include campuses such as Nike and other large businesses;
- the two health officials reiterated that feedstocks containing animal parts will always have a high risk of human pathogens;
- farmers owning several pieces of land and wishing to compost feedstocks from all the sites at one main site, should be allowed to do so. Rule language was suggested for the exclusions for agricultural composting operations, page 8 of Attachment D, “*under the control of the same agricultural operation...*”

attachHI.doc

DEQ MEMORANDUM

Date: 04/16/97
To: File
From: Bob Barrows
Subject: Summary of Comments made at the Compost Information Meeting
on 4/3/97 in Corvallis, Oregon

Four people attended the compost information meeting held on April 3, 1997 in Corvallis, Oregon. The meeting was scheduled for 6 - 8 PM and actually lasted until 9 PM. Attendees included two composters, one of them proposing to conduct agricultural composting as well as commercial, one consultant and one person from the Oregon Dept. of Agriculture. Bob Barrows made the presentation and conducted the meeting and Charles Hensley assisted and provided valuable comments on permitting requirements and process.

Everyone introduced themselves and all attendees signed the "sign-in" sheet; a copy is included with this memo. From 6:15 PM to 8:15 PM Bob Barrows summarized the proposed compost facility rules, answered questions from the audience and facilitated discussions. He then invited people to make public comments on tape. No one provided oral testimony. One person indicated he either had previously or will provide written comment (I'm not sure if he had already submitted comment or indicated he would).

Topics discussed during the meeting included:

- Eliminating the tiered system since all composting represents similar environmental threats.
- How DEQ's solid waste permitting system works in general. Charles Hensley provided expert information; this included what-if scenarios. For example, multiple farm properties belonging to the same farm, etc.
- Land application of materials (composted and otherwise) and compost quality standards. Consensus was compost quality standards are necessary, at least human health aspects.
- Agricultural Composting Management Plan standards - farmers will be held to same standards as all other composters. Plan requirements are currently being developed.

AttachH2.doc

DEQ MEMORANDUM

Date: 04/16/97
To: File
From: Bob Barrows
Subject: Summary of Comments made at the Compost Information Meeting
on 4/10/97 in Medford, Oregon

Thirteen people attended the compost information meeting held on April 3, 1997 in Medford, Oregon. The meeting was scheduled for 6 - 8 PM and actually lasted until 9 PM. Attendees included ten composters (including agricultural composters, organic farmers, biosolids composters and commercial composters), one master composter instructor, one person from the Jackson County Air Quality program, one person from the Jackson Soil and Water Conservation District and one worm composter. Bob Barrows made the presentation and conducted the meeting and Bob Guerra assisted.

Everyone introduced themselves and all attendees signed the "sign-in" sheet; a copy is included with this memo. From 6:15 PM to 8:15 PM Bob Barrows summarized the proposed compost facility rules, answered the many questions from the audience and facilitated discussions - many lively discussions. He then invited people to make public comments on tape. No one provided oral testimony.

Topics discussed during the meeting included:

- Product Quality Standards - two people thought product quality is extremely important for the growth of the composting industry and suggested standards be adopted for human health and other standards.
- Non-green feedstocks should include animal manures. One woman is a microbiologist and is concerned animal manures, which have pathogens, will not be required to meet time and temperature standards and felt they should be included in class 3.
- Composting Rules may discourage composting
 - DEQ stigma - Fear that DEQ will come down on composters.
 - Fees - a couple people expressed concern the fees would discourage folks from composting. I got the impression they felt any amount of fee would be a discouragement.
- Food waste - discussion about pre-consumer and post-consumer; classes 1&2 vs. class 3.
- What-if's - How will stables be regulated? Not an agricultural operation (ODA does not regulate). Consequently DEQ will regulate. Jackson Soil, Water Conservation District is attempting to get stables to compost their waste.
- Two people felt state government writes too many rules in general and should only write rules with a vote of the people.

attachH3.doc

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 15, 1997

To: Lauren Ettlin

From: William R. Bree

Subject: Bend, composting informational meeting, April 10, 1997

The Bend informational meeting was completed without incident. There were two participants and two staff in attendance. There was no additional "testimony". All of the discussion related to yard debris and land clearing composting at the landfill site. There was no discussion of agricultural composting.

Tim Schimke, from Deschutes County, will be contacting you regarding the following three issues which were discussed at the meeting.

- 1) The county now composts yard debris at their landfill.
 - a) If they take in 4000 tons of yard debris, which tend to be very dry and high in carbon, but need a supplemental nitrogen source material, like llama manure, will the use of the supplement change them from a registration to a general permit?
 - b) What happens if they accept 6000 ton of material, grind it and use half for hog fuel and compost the other half. Are they a 6000 or 3000 ton composting facility?
 - c) If they have two separate compost piles, one with less than 5000 tons of yard debris and one with less than 2000 of yard debris and manure can they get two registrations rather than on general permit?
- 2) The county will be composting at their landfill site. It was assumed that they will be able to get an addendum to their landfill existing landfill permit rather than have to get an additional permit. They were concerned that the conditions of the addendum be no stricter than those of a composting permit.
- 3) There was a great deal of concern about what guidance materials the Department was going to produce and when this material would be available.

AttachH4.doc

Date: 4/21/97

To: File

From: Lauren Ettlin, Compost Project Coordinator, Solid Waste Policy
and Program Development

Subject: Summary of Compost Information Meeting in The Dalles, Oregon

One person attended the compost information meeting, held in The Dalles on April 7, 1997. His name was Phillip Kovacs and he is the compost site manager at the Columbia Ridge Landfill located near Arlington and owned by Waste Management of Oregon. Two DEQ staff attended the meeting; Ken Lucas of The Dalles office and Lauren Ettlin of the Portland headquarters office.

Lauren Ettlin reviewed the proposed compost rules. Phillip Kovacs said Columbia Ridge was interested in applying the compost made at their site to agricultural land, currently owned by Waste Management of Oregon and leased to cattle ranchers. He said they might also sell compost to farmers.

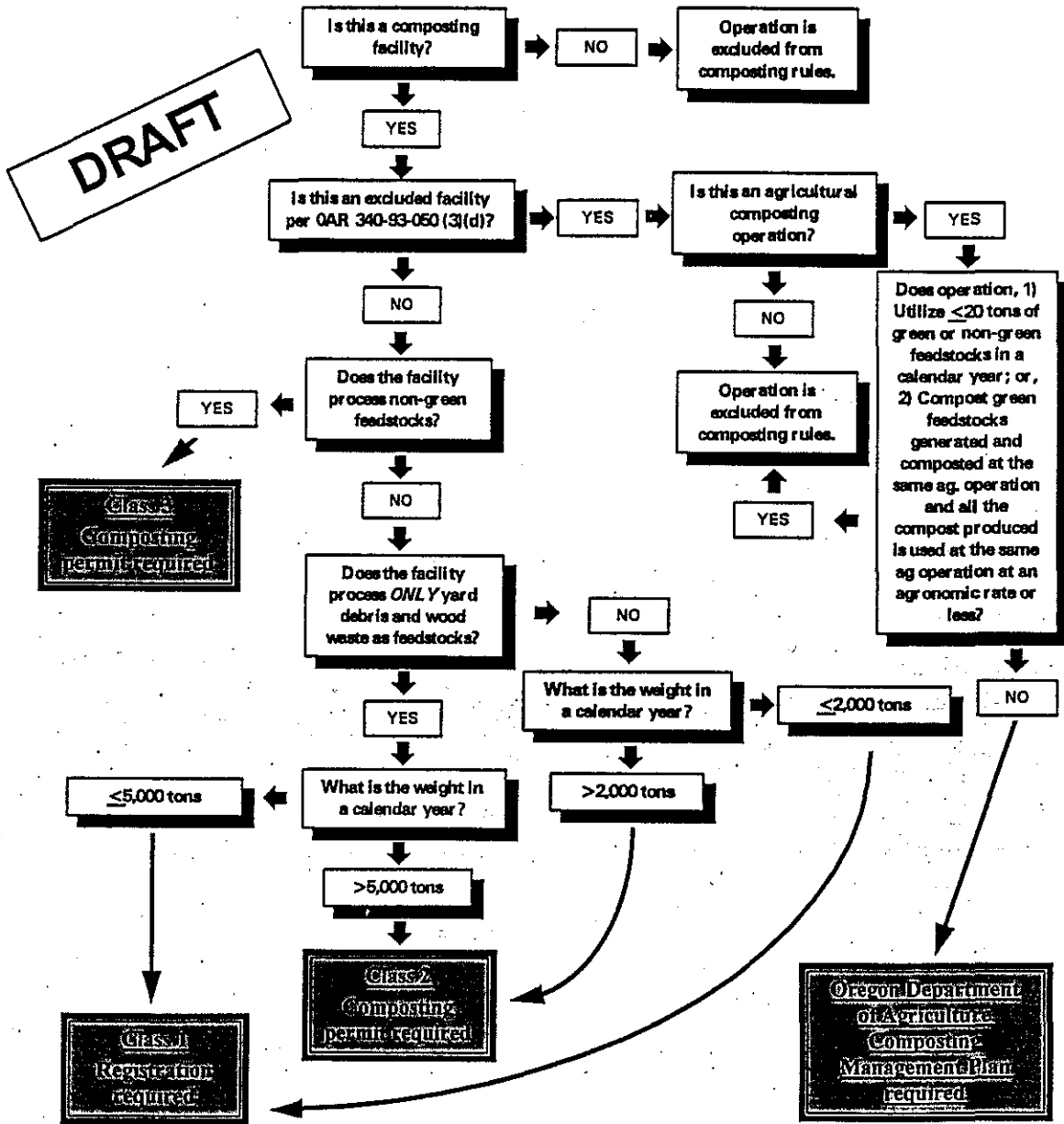
Phillip was interested in markets for compost and wanted to know if there were any compost product quality standards. Lauren told him about the Compost Council of Oregon (CCO) and said the CCO might be interested in development of product standards. Lauren gave Phillip a contact name at CCO.

Phillip was interested in "trying out" new combinations of wastes at the composting facility. He said they get a fair amount of "special waste" coming into the landfill and would be interested in utilizing as much of it as possible in the composting process. He wanted to know if it would be ok to add calcium carbonate sludge to the compost? Ken Lucas said that the term "special waste" had a distinct definition at DEQ; perhaps Phillip was referring to compost feedstock wastes. If so, use of those feedstocks would depend on the content of the feedstock. Would it be beneficial to the composting process? Does it contain hazardous materials? Phillip would need to contact DEQ to get the ok to compost those feedstocks.

Phillip did not have any testimony. He said his goal of attending the meeting was to get "up to speed" on the proposed rules, as he had been at his job only 6 months and hadn't had time to attend a meeting as yet. He said that he didn't think leachate collection was necessary, currently required by DEQ for the windrows at his facility that contain food waste, because of the lack of precipitation.

attachH5.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.

[OARSW] {STATE} 93 - Solid Waste: General Provisions
[OAR93]

** {STATE} means that
** This OAR Division is as the Secretary of State has
** published it except for some font and format changes.
**

Text that is underlined is new.
Deletions are indicated by ~~strikeouts~~.

DIVISION 93

SOLID WASTE: GENERAL PROVISIONS

Definitions

340-93-030 As used in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97 unless otherwise specified:

(1) "Access Road" means any road owned or controlled by the disposal site owner which terminates at the disposal site and which provides access for users between the disposal site entrance and a public road.

(2) "Agricultural Waste" means residues from agricultural products generated by the raising or harvesting of such products on farms or ranches.

(3) "Agricultural composting" means composting as an agricultural operation (as defined in ORS 467.120 (2)(a) conducted on lands employed for farm use (as defined in ORS 215.203). Agricultural composting operations may include supplemental feedstocks to aid in composting feedstocks generated on the farm.

(4) "Agronomic Application Rate" means a rate of sludge or other solid waste land application of no more than the optimum quantity per acre of compost, sludge or other materials designed to:

(a) provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;

(b) condition and improve the soil comparable to that attained by commonly used soil amendments; or

(c) adjust soil pH to desired levels, which improves tilth comparable to other soil amendments commonly used in agricultural practices, matches or does not exceed nutrient requirements for projected crop patterns, or changes soil pH to desired levels for projected crop patterns.

In no case shall the waters of the state be adversely impacted.

(5) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(6) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(7) "Asphalt paving" means asphalt which, has been applied to the land to form a street, road, path, parking lot, highway, or similar paved surface and which is weathered, consolidated, and does not contain visual evidence of fresh oil.

(8) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(9) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(10) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

~~(10)~~ (11) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suction-ings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(12) "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 chemically stabilize solids to the extent that they do not attract vectors.

~~(11)~~(13) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.

~~(12)~~(14) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment, and which are not hazardous wastes as defined by ORS 466.005.

~~(13)~~(15) "Closure Permit" means a document issued by the Department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the Department.

~~(14)~~(16) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other nonmanufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

~~(15)~~(17) "Commission" means the Environmental Quality Commission.

~~(16)~~(18) "Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste. It does not include composting for the purposes of soil remediation. Compost is the product resulting from the composting process.

~~(17)~~(19) "Composting facility" means a site or facility which utilizes organic solid waste or mixed solid waste and source-separated materials to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture, vermicomposting and agricultural composting operations are considered composting facilities.

~~(18)~~(20) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

~~(19)~~ (21) "Construction and Demolition Landfill" means a landfill which receives only construction and demolition waste.

~~(20)~~(22) "Corrective Action" means action required by the Department to remediate a release of constituents above the levels specified in 40 CFR §258.56 or OAR Chapter 340, Division 40, whichever is more stringent.

~~(21)~~ (23) "Cover Material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.

~~(22)~~ (24) "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.

~~(23)~~ (25) "Current Assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

~~(24)~~ (26) "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

~~(25)~~ (27) "Department" means the Department of Environmental Quality.

~~(26)~~ (28) "Designated Well Head Protection Area" means the surface and subsurface area surrounding a public water supply well or wellfield, through which contaminants are likely to move toward and reach the well(s), and within which waste management and disposal, and other activities, are regulated to protect the quality of the water

produced by the well(s). A public water supply well is any well serving 14 or more people for at least six months each year.

~~(27)~~ ~~(29)~~ "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

~~(28)~~ ~~(30)~~ "Director" means the Director of the Department of Environmental Quality.

~~(29)~~ ~~(31)~~ "Disposal Site" means land and facilities used for the disposal, handling, treatment or transfer of or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (74)(b) of this rule), transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

~~(30)~~ ~~(32)~~ "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic or industrial solid wastes;

(c) Industrial waste going to an industrial waste facility; or

(d) Waste received at an ash monofill from an energy recovery facility.

~~(31)~~ ~~(33)~~ "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

~~(32)~~ ~~(34)~~ "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

~~(33)~~ ~~(35)~~ "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

~~(34)~~ ~~(36)~~ "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.

~~(35)~~ ~~(37)~~ "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.

~~(38)~~ "Green feedstocks" are materials used to produce a compost. Green feedstocks are low in a) substances that pose a present or future hazard to human health or the environment and b) low in and unlikely to support human pathogens. Green feedstocks include but are not limited to: yard debris, animal manures, wood waste (as defined in OAR 340-93-030 (95)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products and crop residue. Green feedstocks may also include other materials that can be shown to DEQ by the composter to be low in substances that pose a present or future hazard to human health or the environment and low in and unlikely to support human pathogens. This term is not intended to include materials fed to animals and not used for composting.

~~(37)~~ ~~(39)~~ "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

~~(38)~~ ~~(40)~~ "Hazardous Substance" means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS 465.400.

~~(39)~~ ~~(41)~~ "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

~~(40)~~ ~~(42)~~ "Heat-Treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(43) "Home composting" means composting operated and controlled by the owner or person in control of a single family dwelling unit and used to dispose of food waste and yard debris.

~~(40)~~(44) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

~~(41)~~(45) "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/ demolition waste; municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste; or packaging material for products delivered to the generator.

~~(42)~~(46) "Industrial Waste Landfill" means a landfill which receives only a specific type or combination of industrial waste.

~~(43)~~(47) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

~~(44)~~(48) "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

(49) "Institutional composting" means the composting of green feedstocks generated from the facility's own activities. It may also include supplemental feedstocks. Feedstocks must be composted on-site, the compost produced must be utilized within the contiguous boundaries of the institution and not offered for sale or use off-site. Institutional composting includes but is not limited to: parks, apartments, universities, schools, hospitals, golf courses and industrial parks.

~~(45)~~(50) "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

~~(46)~~(51) "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

~~(47)~~(52) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

~~(48)~~(53) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

~~(49)~~(54) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

~~(50)~~(55) "Local Government Unit" means a city, county, metropolitan service district formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

~~(51)~~(56) "Low-Risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the Department determines to be unlikely to adversely impact the waters of the State or public health.

~~(52)~~(57) "Material Recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused, ~~or~~ recycled or composted for some purpose.

~~(53)~~(58) "Material Recovery Facility" means a solid waste management facility which separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at which previously separated recyclables are collected. ~~"Material recovery facility" includes composting facilities.~~

~~(54)~~(59) "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

~~(55)~~(60) "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

~~(56)~~(61) "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction and demolition waste and industrial solid waste.

~~(57)~~(62) "Net Working Capital" means current assets minus current liabilities.

~~(58)~~(63) "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

~~(64)~~ "Non-green feedstocks" are materials used to produce a compost. Non-green feedstocks are high in a) substances that pose a present or future hazard to human health or the environment and b) high in and likely to support human pathogens. Non-green feedstocks include but are not limited to: animal parts and by-products, mixed materials containing animal parts or by-products, dead animals and municipal solid waste. This term is not intended to include materials fed to animals and not used for composting.

~~(59)~~(65) "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

~~(60)~~(66) "Permit" means a document issued by the Department, bearing the signature of the Director or his authorized representative which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

~~(61)~~(67) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

~~(62)~~(68) "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

~~(63)~~(69) "Public Waters" or "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

~~(64)~~(70) "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

~~(65)~~(71) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

~~(66)~~(72) "Regional Disposal Site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this section, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means that metropolitan service district boundary.

~~(67)~~(73) "Release" has the meaning given in ORS 465.200(14).

~~(74)~~ "Reload facility" means a facility or site that accepts and reloads only yard debris and wood waste (as defined in OAR 340-93-030 (95)) for transport to another location.

~~(68)~~(75) "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

~~(69)~~(76) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

~~(70)~~(77) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

~~(71)~~(78) "Sensitive Aquifer" means any unconfined or semiconfined aquifer which is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

~~(72)~~(79) "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

~~(73)~~(80) "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

~~(74)~~(81) "Sludge" means any solid or semi-solid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

~~(75)~~(82) "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

~~(76)~~(83) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

~~(77)~~(84) "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

~~(78)~~(85) "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

(86) "Supplemental feedstocks" are green feedstocks from off-farm or off-site used to produce a compost at an agricultural or institutional operation, are the minimum amount necessary to allow composting of on-farm or on-site feedstocks, and can be shown by the composter to DEQ to be necessary to maintain porosity, moisture level or carbon to nitrogen ratio in the farm or institution's composting operation. The goal of these feedstocks is to supplement those feedstocks generated on the farm or at the institution so that composting may occur.

~~(79)~~(87) "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

~~(80)~~(88) "Third Party Costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

~~(81)~~(89) "Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

~~(82)~~(90) "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (15) of this rule, "material recovery" as defined in section (51) of this rule, nor does it apply to a "material recovery facility" as defined in section (52) of this rule.

~~(83)~~(91) "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

~~(84)~~(92) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

(93) "Vegetative" means feedstocks used for composting which are derived from plants including but not limited to: fruit or vegetable peelings or parts, grains, coffee grounds, crop residue, waxed cardboard and uncoated paper products. Vegetative material does not include oil, grease or dairy products such as milk, mayonnaise or ice cream.

~~(85)~~(94) "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and elevation head equals the total head.

~~(86)~~(95) "~~Woodwaste~~" "Wood waste" means chemically untreated wood pieces or particles generated from processes commonly used in the timber products industry. Such materials include but are not limited to sawdust,

chips, shavings, stumps, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing or treated with chemical additives, glue resin or chemical preservatives.

(87)(96) "Woodwaste" "Wood waste" Landfill" means a landfill which receives primarily woodwaste wood waste.

(88)(97) "Zone of Saturation" means a three dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

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

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.420 & 468.065

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-010; DEQ 10-1994, f. & cert. ef. 5-4-94

Prohibited Disposal

340-93-040 (1) No person shall dispose of or authorize the disposal of solid waste except at a solid waste disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted by OAR 340-93-050 ~~(2)~~(3) from the requirement to obtain a solid waste permit.

(2) Wastes prohibited from disposal at solid waste disposal sites:

(a) Hazardous Wastes. Wastes defined as hazardous wastes must be managed in accordance with ORS 466.005 et seq. and applicable regulations;

(b) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.

[Subsection on lead-acid batteries deleted, and replaced with (3)(e) below]

(3) No person shall dispose of and no disposal site shall knowingly accept for disposal at a solid waste disposal site:

(a) Used oil as defined in ORS 468.850(5), including liquid used oil and used oil purposely mixed with other materials for the purpose of disposal, but not including cleanup materials from incidental or accidental spills where the used oil spilled cannot feasibly be recovered as liquid oil;

(b) Discarded or abandoned vehicles;

(c) Discarded large metal-jacketed residential, commercial or industrial appliances such as refrigerators, washers, stoves and water heaters;

(d) Whole tires, except as provided in OAR 340-64-052. Tires processed to meet the criteria in OAR 340-64-052 may be landfilled. For purposes of this subsection, "tire" shall have the meaning given in OAR 340-64-010(26);

(e) Lead-acid batteries.

(4) Notwithstanding any other provision of law relating to solid waste disposal, if the state of origin prohibits or restricts the disposal of any kind of solid waste within the state of origin, such prohibition or restriction also shall apply to the disposal of the out-of-state solid waste in Oregon.

Stat. Auth.: ORS 459.005 - 459.418, 459.045(1) & (3), 459A.100 - 459A.120, 459.235(2), 459.420 & 468.065

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 30-1988(Temp), f. & cert. ef. 11-17-88; DEQ 6-1989, f. 4-24-89, cert. ef. 5-4-89; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-060

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilations. Copies may be obtained from the adopting agency or the Secretary of State.]

Permit Required

340-93-050 (1) Except as provided by section ~~(2)~~(3) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

(2) Persons owning or controlling the following classes of disposal sites shall abide by the requirements in the following rules:

(a) Municipal solid waste landfills shall abide by OAR 340, Division 94 "Municipal Solid Waste Landfills."

(b) Industrial Solid Waste Landfills, Demolition Landfills, Wood waste Landfills and other facilities not listed in OAR 340, Division 96 shall abide by OAR 340, Division 95 "Land Disposal Sites Other Than Municipal Solid Waste Landfills."

(c) Energy recovery facilities and incinerators receiving domestic solid waste shall abide by OAR 340, Division 96 "Special Rules Pertaining to Incineration."

(d) Composting facilities except as excluded in OAR 340-93-050 (3)(d) shall abide by OAR 340-96-020, 340-96-024 and 340-96-028 "Special Rules Pertaining to Composting."

(e) Land used for deposit, spreading, lagooning or disposal of sewage sludge, septage and other sludges shall abide by OAR 340-96-030 "Special Rules Pertaining to Sludge and Land Application Disposal Sites."

(f) Transfer stations and Material Recovery Facilities shall abide by OAR 340-96-040 "Transfer Stations and Material Recovery Facilities."

(g) Petroleum contaminated soil remediation facilities and all other solid waste treatment facilities shall abide by OAR 340-96-050 "Solid Waste Treatment Facilities."

~~(2)~~(3) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Divisions 93 through 97, but shall comply with other provisions of OAR Chapter 340 Divisions 93 through 97 and other applicable laws, rules, and regulations regarding solid waste disposal:

(a) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(b) Disposal sites, facilities or disposal operations operated pursuant to a permit issued under ORS 468B.050;

(c) A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the Department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety.

NOTE: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the Department with such information as the Department may require to evaluate the request for exemption, pursuant to OAR 340-93-080.

~~(d) Composting operations used only by the owner or person in control of a dwelling unit to dispose of food scraps, garden wastes, weeds, lawn cuttings, leaves, and prunings generated at that residence and operated in a manner approved by the Department;~~

(d) Composting facilities. The following are exempted from the above requirements to obtain a permit:

(A) Sites, facilities or agricultural composting operations utilizing an amount of green or non-green feedstocks less than or equal to 20 tons in a calendar year.

(B) Agricultural composting operations that are:

i) Composting green feedstocks generated and composted at the same agricultural operation; and

l) All the compost produced is used at the same agricultural operation at an agronomic rate or less; or

II) If any of the compost produced is sent off-farm, the operation is described in a composting management plan on file at the Oregon Department of Agriculture. The composting management plan must be approved by the Oregon Department of Agriculture and implemented by the composter for this exclusion to apply;

ii) Composting non-green feedstocks:

I) Generated and composted at the same agricultural operation; and

II) The operation is described in a composting management plan on file at the Oregon Department of Agriculture. The composting management plan must be approved by the Oregon Department of Agriculture and implemented by the composter for this exclusion to apply;

(C) Production of silage on a farm for animal feed;

(D) Home composting, unless the Department determines there's an adverse impact on ground water, surface water or public health or safety;

(E) Institutional composting, provided there's no adverse impact on ground water, surface water or public health or safety;

(F) Reload facilities, providing no composting occurs at the site;

(e) Site or facility utilizing any amount of sewage sludge or biosolids under a valid water quality permit, pursuant to ORS 468B.050;

(e) (f) Facilities which receive only source separated materials for purposes of material recovery or for composting, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state.

(f) (g) A site used to transfer a container, including but not limited to a shipping container, or other vehicle holding solid waste from one mode of transportation to another (such as barge to truck), if:

(A) The container or vehicle is not available for direct use by the general public;

(B) The waste is not removed from the original container or vehicle; and

(C) The original container or vehicle does not stay in one location longer than 72 hours, unless otherwise authorized by the Department.

(4) (4) The Department may, in accordance with a specific permit containing a compliance schedule, grant reasonable time for solid waste disposal sites or facilities to comply with OAR Chapter 340, Divisions 93 through 97.

(4) (5) If it is determined by the Department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the Department may waive any or all requirements of OAR 340-93-070, 340-93-130, 340-93-140, 340-93-150, 340-94-060(2) and 340-95-030(2) and issue a letter authorization in accordance with OAR 340-93-060.

(5) (6) Each person who is required by sections (1) and (4) of this rule to obtain a permit shall:

(a) Make prompt application to the Department therefor;

(b) Fulfill each and every term and condition of any permit issued by the Department to such person;

(c) Comply with OAR Chapter 340, Divisions 93 through 97;

(d) Comply with the Department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby;

(e) Allow the Department or an authorized governmental agency to enter the property under permit at reasonable times to inspect and monitor the site and records as authorized by ORS 459.385 and 459.272. [Renumbered from 340-94-100(9) and 340-95-050(9).]

(6) (7) Failure to conduct solid waste disposal according to the conditions, limitations, or terms of a permit or OAR Chapter 340, Divisions 93 through 97, or failure to obtain a permit is a violation of OAR Chapter 340, Divisions 93 through 97 and shall be cause for the assessment of civil penalties for each violation as provided in OAR Chapter 340, Division 12 or for any other enforcement action provided by law. Each and every day that a violation occurs is considered a separate violation and may be the subject of separate penalties.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 14-1984, f. & ef. 8-8-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-020; DEQ 10-1994, f. & cert. ef. 5-4-94

Letter Authorizations

340-93-060 Pursuant to OAR 340-93-050~~(4)~~ (5), the Department may authorize the short-term operation of a disposal site by issuing a permit called "letter authorization" subject to the following:

(1) A letter authorization may be issued only on the basis of a complete written application which has been approved by the Department. Applications for letter authorizations shall be complete only if they contain the following items:

- (a) The quantity and types of material to be disposed;
- (b) A discussion of the need and justification for the proposed project;
- (c) The expected amount of time which will be required to complete the project;
- (d) The methods proposed to be used to insure safe and proper disposal of solid waste;
- (e) The location of the proposed disposal site;
- (f) A statement of approval from the property owner or person in control of the property, if other than the applicant;

(g) Written verification from the local planning department that the proposal is compatible with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(h) Any other relevant information which the Department may require.

(2) Upon receipt of a complete written application the Department may approve the application if it is satisfied that:

- (a) The applicant has demonstrated sufficient need and justification for the proposal;
- (b) The proposed project is not likely to cause a public nuisance, health hazard, air or water pollution or other environmental problem.

(3) The Department may revoke or suspend a letter authorization on any of the following grounds:

- (a) A material misrepresentation or false statement in the application;
- (b) Any relevant violation of any statute, rule, order, permit, ordinance, judgment or decree.

(4) The Department may issue letter authorizations for periods not to exceed six months. If circumstances have prevented the holder of a letter authorization from completing the action allowed under the letter authorization, he or she may request a one-time six-month renewal from the Department. Further renewals are not allowed. A letter authorization shall not be used for any disposal actions requiring longer than a total of one year to complete; such actions are subject to a regular solid waste land disposal permit.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-027; DEQ 10-1994, f. & cert. ef. 5-4-94

Applications for Permits

340-93-070 (1) Applications for permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

(2) Applications for a permit, including those required for a composting facility general permit, shall be accepted by the Department only when complete, as detailed in section ~~(3)~~ (4) of this rule.

(3) General Permit: Composting facilities as defined in OAR 340-96-024 (2) are considered to be "lower risk disposal sites" and thus subject to general permits. General permits are permits and permittees shall comply with all pertinent rules except subsections (4) (e) and (f) of this rule, and the requirements of OAR 340-93-150, 340-93-210, 340-94-060 (2) and 340-95-030 (2). In order to comply with requirements, persons applying for a general permit must submit to DEQ items listed in (4) (a), (b), (c) and (d) of this rule prior to receiving their permit. To comply with the remainder of all pertinent rules, these composting facilities must have procedures in place and documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met. A composting facility for which a general permit has been issued, but DEQ determines has inadequate or incomplete plans, specifications, operations and maintenance manuals, operational procedures, or other requirements, may be required to revise documents or operational procedures to comply with current technological practices and pertinent rules of the Department.

~~(3)~~(4) Applications for a registration or permits shall be complete only if they:

(a) Are submitted in triplicate on forms provided by the Department, are accompanied by all required exhibits using paper with recycled content with copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the Department, and are signed by the property owner or person in control of the premises;

(b) Include written recommendations of the local government unit or units having jurisdiction with respect to establish a new or existing disposal sites or to substantially alter, expand, or improve alterations, expansions, improvements a disposal site or to make a changes in the method or type of disposal at new or existing disposal sites. Such recommendations shall include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) Identify any other known or anticipated permits from the Department or other governmental agencies. If previously applied for, include a copy of such permit application and if granted, a copy of such permit;

(d) Include payment of application fees as required by OAR 340-97-110 and 340-97-120;

(e) Include a site characterization reports prepared in accordance with OAR 340-93-130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report(s) have been met by other prior submittals;

(f) Include detailed plans and specifications as required by OAR 340-93-140;

(g) For a new land disposal site:

(A) Include a written closure plan that describes the steps necessary to close all land disposal units at any point during their active life pursuant to OAR 340-94-110 to 340-94-120 or 340-95-050 to 340-95-060; and

(B) Provide evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance of the land disposal site, pursuant to OAR 340-94-140 or 340-95-090, unless the Department exempts a non-municipal land disposal site from this requirement pursuant to OAR 340-95-050(3);

(h) Include any other information the Department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the Department.

~~(4)~~ (5) If the Department determines that a disposal site is a "low-risk disposal site" or is not likely to adversely impact the waters of the State or public health, the Department may waive any of the requirements of subsections ~~(3)-(4)~~ (e) and (f) of this rule, OAR 340-93-150, 340-94-060(2) and 340-95-030(2). In making this judgment, the Department may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factor. The applicant must submit any information the Department deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

~~(5)~~(6) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the Department, there is sufficient public concern regarding the proposed disposal site, the Department may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

~~(6)~~(7) Permit or registration renewals:

(a) Notwithstanding OAR 340-14-020(1), any permittee intending to continue operation beyond the permitted period must file a complete renewal application for renewal of the permit at least 180 days before the existing permit expires;

(b) A complete application for renewal must be made in the form required by the Department and must include the information required by this Division and any other information required by the Department;

(c) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (3)(b) of this rule;

(d) If a completed application for renewal of a permit is filed with the Department in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until the Department takes final action on the renewal application;

(e) If a completed application for renewal of a permit is not filed 180 days prior to the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-94-100 or 340-95-050;

(f) Permits continued under subsection (6)(d) of this rule remain fully effective and enforceable until the effective date of the new print.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-025; DEQ 10-1994, f. & cert. ef. 5-4-94

Variations and Permit Exemptions

340-93-080 (1) Variations. The Commission may by specific written variance waive certain requirements of OAR Chapter 340 Divisions 93 through 97 when circumstances of the solid waste disposal site location, operating procedures, and/or other conditions indicate that the purpose and intent of OAR Chapter 340 Divisions 93 through 97 can be achieved without strict adherence to all of the requirements.

(2) Permit exemptions. Pursuant to OAR 340-93-050 ~~(2)~~ (3), a person wishing to obtain an exemption from the requirement to obtain a solid waste permit for disposal of an inert waste in specified locations may submit a request to the Department. The applicant must demonstrate that the waste is substantially the same as "clean fill." The request shall include but not be limited to the following information:

(a) The exact location (including a map) at which the waste is to be disposed of and a description of the surrounding area;

(b) The monthly rate of disposal;

(c) A copy of the Material Safety Data Sheet (or equivalent, if a MSDS is not available) for all applicable raw materials used at the facility generating the waste;

(d) A description of the process generating the waste and how that process fits into the overall operation of the facility;

(e) Documentation that the waste is not hazardous as defined in OAR Chapter 340, Division 101. The procedure for making a hazardous waste determination is in OAR 340-102-011;

(f) A demonstration that the waste is inert, stable, non-putrescible, and physically similar to soil, rock, concrete, brick, building block, tile, or asphalt paving;

(g) A demonstration that the waste will not discharge constituents which would adversely impact the waters of the state or public health.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-080; DEQ 10-1994, f. & cert. ef. 5-4-94

Site Characterization Report(s)

340-93-130 The purpose of the site characterization report(s) required by OAR 340-93-070 ~~(3)~~ (4) (e) is to demonstrate that the proposed facility will be located in a suitable site and will use appropriate technology in design, construction and operation. The site characterization report(s) shall describe existing site conditions and a conceptual engineering proposal in sufficient detail to determine whether the facility is feasible and protects the environment. The site characterization report(s) shall include, but not be limited to, the following:

(1) Information on site location and existing site conditions, including:

(a) A site location description, including a location map and list of adjacent landowners;

(b) An Existing Conditions Map of the area showing land use and zoning within 1/4 mile of the disposal site; and

(c) Identification of any siting limitations and how those limitations will be addressed.

(2) A description of the scope, magnitude, type, and purpose of the proposed facility, including but not limited to the following:

(a) Estimated capacity and projected life of the site;

(b) Identification of the communities, industries and/or markets to be served;

(c) Anticipated types and quantities of solid wastes to be received, disposed of and/or processed by the facility;

(d) Summary of general design criteria and submittal of conceptual engineering plans;

(e) Description of how the proposed technology compares to current technological practices, or to similar proven technology, including references to where similar technology has been effectively implemented;

(f) Demonstration that the proposed facility is compatible with the local solid waste management plan and the state solid waste management plan;

(g) Planned future use of the disposal site after closure;

(h) Key assumptions used to calculate the economic viability of the proposed facility; and

(i) The public involvement process that has been and will be implemented.

(3) A proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, methane gas, litter and vectors, and control of other discharges, emissions and activities which may result in a public health hazard, a public nuisance or environmental degradation.

(4) For a landfill, the following shall be included:

(a) A detailed soils, geologic, and groundwater report of the site prepared and stamped by a professional Engineer, Geologist or Engineering Geologist with current Oregon registration. The report shall include consideration of surface features, geologic formations, soil boring data, water table profile, direction of groundwater flow, background quality of water resources in the anticipated zone of influence of the landfill, need and availability of cover material, climate, average rates of precipitation, evapotranspiration, runoff, and infiltration (preliminary water balance calculations);

(b) Information on soil borings to a minimum depth of 20 feet below the deepest proposed excavation and lowest elevation of the site or to the permanent groundwater table if encountered within 20 feet. A minimum of one boring per representative landform at the site and an overall minimum of one boring per each ten acres shall be provided. Soil boring data shall include the location, depth, surface elevation and water level measurements of all borings, the textural classification (Unified Soil Classification System), permeability and cation exchange capacity of the subsurface materials and a preliminary soil balance;

(c) For all water wells located within the anticipated zone of influence of the disposal site, the depth, static level and current use shall be identified;

(d) Background groundwater quality shall be determined by laboratory analysis and shall include at least each of the constituents specified by the Department.

(5) Any other information the Department may deem necessary to determine whether the proposed disposal site is feasible and will comply with all applicable rules of the Department.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-030; DEQ 10-1994, f. & cert. ef. 5-4-94

Detailed Plans and Specifications Required

340-93-140 Except as provided in OAR 340-93-070~~(4)~~ (5):

(1) Any person applying for a Solid Waste Disposal Permit shall submit plans and specifications conforming with current technological practices, and sufficiently detailed and complete so that the Department may evaluate all relevant criteria before issuing a permit. The plans and specifications shall follow the organizational format, and include the level of information detail, as required by the Department. The Department may refuse to accept plans and specifications that are incomplete and may request such additional information as it deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(2) Engineering plans and specifications submitted to the Department shall be prepared and stamped by a professional engineer with current Oregon registration.

(3) If in the course of facility construction any person desires to deviate significantly from the approved plans, the permittee shall submit a detailed description of the proposed change to the Department for review and approval prior to implementation. If the Department deems it necessary, a permit modification shall be initiated to incorporate the proposed change.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81;; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-035; DEQ 10-1994, f. & cert. ef. 5-4-94

Construction Certification

340-93-150 Except as provided in OAR 340-93-070(4)-(5):

(1) The Department may require, upon completion of major or critical construction at a disposal site, that the permittee submit to the Department a final project report signed by the project engineer or manager as appropriate. The report shall certify that construction has been completed in accordance with the approved plans including any approved amendments thereto.

(2) If any major or critical construction has been scheduled in the plans for phase development subsequent to the initial operation, the Department may require that the permittee submit additional certification for each phase when construction of that phase is completed.

(3) Solid waste shall not be disposed of in any new waste management unit (such as a landfill cell) of a land disposal site unless/until the permittee has received prior written approval from the Department of the required engineering design, construction, operations, and monitoring plans. Only after the Department has accepted a construction certification report prepared by an independent party, certifying to the Department that the unit was constructed in accordance with the approved plans, may waste be placed in the unit. If the Department does not respond to a certified construction certification report within 30 days of its receipt, the permittee may proceed to use the unit for disposal of the intended solid waste.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-036; DEQ 10-1994, f. & cert. ef. 5-4-94

Place for Collecting Recyclable Material

340-93-160 (1) All solid waste permittees shall ensure that a place for collecting source separated recyclable material is provided for every person whose solid waste enters the disposal site. The place for collecting recyclable material shall be located either at the disposal site or at another location more convenient to the population served by the disposal site.

(2) Any disposal site that identifies a more convenient location for the collection of recyclable materials as part of providing the opportunity to recycle shall provide information to users of the disposal site about the location of the recycling collection site, what recyclable materials are accepted and hours of operation.

(3) Exemption: Any disposal site ~~that does not receive source separated recyclable material or solid waste containing recyclable material meeting one of the following criteria~~ is not required to provide a place for collecting source separated recyclable material:

(a) Receives only feedstocks for composting; or

(b) Does not receive source separated recyclable material; or

(c) Does not receive solid waste containing recyclable material.

(4) Small Rural Sites. Any disposal site from which marketing of recyclable material is impracticable due to the amount or type of recyclable material received or geographic location shall provide information to the users of the disposal site about the opportunity to recycle at another location serving the watershed. Such information shall include the location of the recycling opportunity, what recyclable materials are accepted and hours of operation.

(5) The Department may modify the requirements in this rule if the Department finds that the opportunity to recycle is being provided through an acceptable alternative method.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 26-1981, f. & ef. 9-8-81; DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-60-065; DEQ 10-1994, f. & cert. ef. 5-4-94

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**DIVISION 96
SOLID WASTE: SPECIAL RULES FOR SELECTED SOLID WASTE
DISPOSAL SITES**

Special Rules Pertaining to Composting Facilities

340-96-020 (1) Applicability. This rule applies to all composting facilities, except as exempted in OAR 340-93-050, ~~(2)~~ (3) (d) and (e). Composting facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable. Composting facilities commencing operation prior to January 31, 1999 shall submit an application to the Department for a composting facility registration or permit within 18 months of the effective date of these rules. Following that date, composting facilities must apply for and receive a permit or registration prior to commencing operation.

Types of Composting Facilities

340-96-024 Composting facilities are categorized by the following criteria and shall meet the portions of this rule as listed in (1)(c), (2)(c) or (3) below:

(1) Composting facility registration: For facilities utilizing as feedstocks for composting:

(a) More than 20 tons and less than or equal to 2,000 tons of green feedstocks in a calendar year; or

(b) More than 20 tons and less than or equal to 2,000 tons of green feedstocks which are exclusively yard debris and wood waste in a calendar year;

(c) Composting facilities receiving a registration shall comply with only the following items of OAR 340-96-028: (1) (d), (2) (c), (3) (a), (3) (b), (3) (c) and (4) and are not subject to the remaining requirements of OAR 340-96-028;

(d) Persons applying for a composting facility registration shall submit to DEQ items listed in OAR 340-93-070 (4) (a), (b), (c) and (d) prior to receiving their registration. These facilities are subject to the procedures and requirements of OAR 340-93-070 (1), (6) and (7), (application processing, public hearings, registration renewal) but are exempted from the remaining requirements of OAR 340-93-070;

(e) A composting facility registration will be treated as a permit only for the purposes of OAR 340-18-030 and not for other purposes;

(f) Upon determination by the Department that a registered facility is adversely affecting human health or the environment, a registered facility may be required to apply for and meet the requirements of a composting facility general permit.

(2) Composting facility general permit: For facilities utilizing as feedstocks for composting:

(a) More than 2,000 tons of green feedstocks in a calendar year; or

(b) More than 5,000 tons of green feedstocks which are exclusively yard debris and wood waste in a calendar year.

(c) Persons receiving a composting facility general permit shall comply with all items of OAR 340-96-028 except (2) (b), (3) (g) and (3) (i). In order to meet these requirements, composters shall have procedures in place and written documentation at the composting site available for review and acceptance by DEQ that shows all requirements have been met.

(d) Persons applying for a composting facility general permit shall comply with the requirements of a "General Permit," pursuant to OAR 340-93-070 (3);

(e) Upon determination by the Department that a facility with a composting facility general permit is adversely affecting human health or the environment, that facility may be required to apply for and meet the requirements of a composting facility full permit.

(3) Composting facility full permit: For facilities utilizing as feedstocks for composting more than 20 tons of feedstocks during a calendar year that includes any amount of non-green feedstocks. Persons applying for a composting facility full permit shall comply with all items of OAR 340-96-028. In order to meet these requirements, these persons must submit written documents to the Department for review and approval prior to receiving their permit, as described in OAR 340-93-050 and OAR 340-93-070.

(4) Composting facilities exempted from the requirements to obtain a permit are listed in OAR 340-93-050 (3) (d).

(5) The Director may issue a different level of composting regulation to a facility upon receipt of a request and justification regarding special conditions based on the amount and type of unique feedstocks which do not justify scrutiny of a higher level of regulation. Justification must be substantiated by results from testing, documentation of operational procedures or other methods. Applications shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR 340, Division 14.

Conditions

340-96-028

~~(2) Detailed Plans and Specifications~~ (1) Feasibility Study Report shall include but not be limited to:

~~(a) Location and design of the physical features of the site and composting plant, surface drainage control, waste water wastewater facilities, fences, residue disposal, odor controls to prevent adverse health and environmental impacts, and design and performance specifications of the for major composting equipment and detailed description of methods to be used.~~ Agricultural composting operations need only provide information regarding surface drainage control and wastewater facilities as required by ORS 468B.050 (1) (b), administered by the Oregon Department of Agriculture.

~~(b) A proposed plan for utilization of the processed compost including copies of signed contracts for utilization or other evidence of assured utilization of composted solid waste feedstocks.~~

~~(c) A proposed facility closure plan of a conceptual "worst case" scenario (including evidence of financial assurance, pursuant to OAR 340-95-090 (1) to dispose of unused feedstocks, partially processed residues and finished compost, unless exempted from this requirement by the Department pursuant to OAR 340-95-090 (2). The plan will include a method for disposal of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes;~~

~~(d) A mass balance calculation showing all feedstocks and amendments and all products produced. For facilities applying for a composting facility full permit, the mass balance calculation shall be detailed and utilize a unit weight throughout.~~

~~(3) (2) Composting Facility Plan Design and Construction shall include but not be limited to:~~

~~(a) Non-Compostable Wastes. Facilities and procedures shall be provided for handling, recycling or disposing of solid waste that is non-biodegradable by composting;~~

~~(b) Odors. The design and operational plan shall give consideration to keeping odors to lowest practicable levels. Composting operations, generally, shall not be located in odor sensitive areas;~~

~~(c) Drainage Control. Provisions shall be made to effectively collect, treat, and dispose of leachate or drainage from stored compost and the composting operation;~~

~~(d) Waste Water Discharges. There shall be no discharge of waste water to public waters, except in accordance with a permit from the Department, issued under ORS 468.740;~~

~~(a) Scale drawings of the facility, including location and size of feedstock and finished compost storage area(s), compost processing areas, fixed equipment, and appurtenant facilities (scales, surface water control systems, wells, offices and others). Upon determination by the Department that engineered drawings are necessary, drawings will be produced under the supervision of a licensed engineer with current registration.~~

~~(b) Lining system design: If leachate is present, composter must provide a protective layer beneath compost processing and feedstock areas, leachate sumps and storage basins, to prevent release of leachate to surface water or ground water. The lining system required would be dependent on leachate characteristics, climatic conditions and size of facility and shall be capable of resisting damage from movement of mobile operating equipment and weight of stored piles. Facility operators shall monitor all water releases and document no release to ground water. A construction quality assurance plan shall be included detailing monitoring and testing to assure effectiveness of liner system.~~

~~(c) Water Quality: Composting facilities shall have no discharge of leachate, wastewater or wash water (from vehicle and equipment washing) to the ground or to surface waters, except in accordance with permit(s) from the Water Quality Program of the Department, issued under ORS 468B.050. Agricultural composters must meet water quality requirements pursuant to ORS 468B.050 (1) (b), administered by the Oregon Department of Agriculture.~~

~~(e) (d) Access Roads. When necessary to provide public access, All-weather roads shall be provided from the public highway or roads to and within the disposal site composting operation and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;~~

~~(f) Drainage. A composting site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;~~

~~(g) (e) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department in compliance with pertinent state and local fire regulations;~~

~~(h) (f) Fences. Control of access to the site. Effective barriers to unauthorized entry and dumping shall be provided (such as fences, gates and locks); Access to the composting site shall be controlled by means of a complete perimeter fence and gates which may be locked;~~

~~(i) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;~~

~~(j) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction;~~

(g) Control of noise, vectors, dust and litter. Effective methods to reduce or avoid noise, vectors, dust and litter shall be provided.

(4) (3) Composting Plant Facility Operations Plan shall include:

(a) Supervision of Operation:

~~(A) A composting plant shall be operated under the supervision of a responsible individual who is thoroughly familiar with the operating procedures established by the designer;~~

(a) Operations and Maintenance Manual which describes normal facility operations and includes procedures to address upset conditions and operating problems. The manual shall include monitoring of compost processing parameters including: feedstocks (C:N ratio), moisture content, aeration, pH and temperature;

(b) Odor Minimization Plan shall be developed to address odor within the confines of the composting site and include methods to address:

(A) A management plan for malodorous loads;

(B) Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problems at the facility;

(C) Additional odor-minimizing measures, which may include the following:

(i) Avoidance of anaerobic conditions in the composting material;

(ii) Use of mixing for favorable composting conditions;

(iii) Formation of windrow or other piles into a size and shape favorable to minimizing odors; and

(iv) Use of end-product compost as cover to act as a filter during early stages of composting;

(D) Specification of a readily-available supply of bulking agents, additives or odor control agents;

(E) Procedures for avoiding delay in processing and managing feedstocks during all weather conditions;

(F) Methods for taking into consideration the following factors prior to turning or moving composted material:

(i) Time of day;

(ii) Wind direction;

(iii) Percent moisture;

(iv) Estimated odor potential;

(v) Degree of maturity.

~~(B) All compostable waste shall be subjected to complete processing in accordance with the equipment manufacturer's operating instructions or patented process being utilized.~~

(c) Methods for measuring and keeping records of incoming feedstocks;

~~(b) (d) Removal of Compost. Other than for compost used on-site at an agronomic rate, Compost shall be removed from the composting plant site facility as frequently as possible, but not later than one two years after treatment processing is completed;~~

(e) Incorporation of feedstock(s). Feedstocks shall be incorporated into active compost piles within a reasonable time;

~~(e) (f) Use of Composted Solid Waste. Composted solid waste offered for use by the general public shall contain no pathogenic organisms, shall be relatively odor free and shall not endanger the public health or safety;~~

(g) Pathogen Reduction. Composting facilities accepting any amount of non-green feedstocks shall document and implement a pathogen reduction plan that addresses requirements of the Code of Federal Regulations, 40 CFR Part

503. The plan shall include a Process to Further Reduce Pathogens (PFRP), pursuant to 40 CFR Part 503 Appendix B, item (B) (1), dated February 19, 1993, that shall include:

(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for three days;

(B) Using the windrow composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there shall be a minimum of five turnings of the windrow; or

(C) An alternative method that can be demonstrated by permittee to achieve an equivalent reduction of human pathogens.

(d) (h) Storage:

(A) All solid waste feedstocks deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of solid wastes feedstocks shall not exceed one month's production capacity and undisposed residues shall be kept to minimum practical quantities;

(C) Facilities and procedures shall be provided for handling, recycling or disposing of feedstocks that are non-biodegradable by composting;

(e) (i) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site composting facility only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) Salvaging shall be controlled so as not to not interfere with optimum disposal composting operation and not create unsightly conditions or vector harborage;

(C) All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations plan.

(j) Methods to minimize vector attraction (such as rats, birds, flies) shall be used in order to prevent nuisance conditions or propagation of human pathogens in the active or finished compost.

(f) (4) Records. Annual reporting of the weight of feedstocks utilized for composting is required on a form provided by the Department. The Department may also require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a registration or permit or OAR Chapter 340, Divisions 93 through 97.

Stat. Auth.: ORS Ch. 459

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-050; DEQ 10-1994, f. & cert. ef. 5-4-94

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DIVISION 97
SOLID WASTE: PERMIT FEES

Solid Waste Permit and Disposal Fees

340-97-110 (1) Each person required to have a Solid Waste Disposal Permit shall be subject to the following fees:

(a) An application processing fee for new facilities which shall be submitted with the application for a new permit or registration as specified in OAR 340-97-120(2);

(b) A solid waste permit or registration compliance fee as listed in OAR 340-97-120(3); and

(c) The 1991 Recycling Act permit fee as listed in OAR 340-97-120(4).

(2) Each disposal site receiving domestic solid waste shall be subject to the per-ton solid waste disposal fees on domestic solid waste as specified in OAR 340-97-120(5).

(3) Out-of-state solid waste. Each disposal site or regional disposal site receiving solid waste generated out-of-state shall pay a per-ton solid waste disposal fee as specified in OAR 340-97-120(5).

(4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste shall pay the per-ton solid waste disposal fees as specified in OAR 340-97-120(5):

(a) For purposes of this rule and OAR 340-97-120(5), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

(A) A solid waste collection service or any other person who hauls, under an agreement, solid waste out of Oregon;

(B) A person who hauls his or her own industrial, commercial or institutional waste or other waste such as cleanup materials contaminated with hazardous substances;

(C) An operator of a transfer station, when Oregon waste is delivered to a transfer station located in Oregon and from there is transported out of Oregon for disposal;

(D) A person who authorizes or retains the services of another person for disposal of cleanup materials contaminated with hazardous substances; or

(E) A person who transports infectious waste.

(b) Notification requirement:

(A) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department in writing on a form provided by the Department. The persons identified in subsection (4)(a) of this rule are subject to this notification requirement;

(B) The notification shall include a statement of whether the person will transport the waste on an on-going basis. If the transport is on-going, the person shall re-notify the Department by January 1 of each year of his or her intention to continue to transport waste out-of-state for disposal.

(c) As used in this section, "person" does not include an individual transporting the individual's own residential solid waste to a disposal site located out of the state.

(5) ~~Permit Fees~~. The solid waste permit or registration compliance fee must be paid for each year a disposal site is in operation or under permit. The 1991 Recycling Act permit fee, if applicable, must be paid for each year the disposal site is in active operation. The fee period shall be prospective and is as follows:

(a) New sites:

(A) Any new disposal site shall owe a solid waste permit or registration compliance fee and 1991 Recycling Act permit fee, if applicable, 30 days after the end of the calendar quarter in which solid waste is received at the facility, except as specified in paragraph (5)(a)(B), (C) or (D) of this rule;

(B) For a new disposal site receiving less than 1,000 tons of solid waste a year. For the first year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before September 1. Any new facility placed into operation after September 1 shall not owe a permit compliance fee until the following January 31. An application for a new disposal site receiving less than 1,000 tons of solid waste a year shall include the applicable permit compliance fee for the first year of operation;

(C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year. These facilities shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;

(D) For a new transfer station, ~~or~~ material recovery facility or composting facility. For the first fiscal year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 shall not owe a permit compliance fee until the Department's annual billing for the next fiscal year. An application for a new transfer station, ~~or~~ material recovery facility or composting facility shall include the applicable permit or registration compliance fee for the first year of operation.

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(b) Existing sites. Any existing disposal site that is in operation or receives solid waste in a calendar year must pay the solid waste permit or registration compliance fee and 1991 Recycling Act permit fee, if applicable, for that year as specified in OAR 340-97-120(3)(a), (b), (c) and (4);

(c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee shall pay the solid waste permit or registration compliance fee for the "year of closure" as specified in OAR 340-97-120(3)(e)(d)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee shall pay the solid waste permit compliance fee for closed sites as specified in OAR 340-97-120(3)(e)(d);

(d) The Director may alter the due date for the solid waste permit or registration compliance fee and, if applicable, the 1991 Recycling Act permit fee upon receipt of a justifiable request from a permittee.

(6) Tonnage reporting. Beginning on July 31, 1994, the permit or registration compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees, if applicable, shall be submitted together with a form approved by the Department. Information reported shall include the amount and type of solid waste and any other information required by the Department to substantiate the tonnage or to calculate the state material recovery rate.

(7) Calculation of tonnages. Permittees or registrants are responsible for accurate calculation of solid waste tonnages. For purposes of determining appropriate fees under OAR 340-97-120(3) through (5), annual tonnage of solid waste received shall be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including demolition sites and municipal solid waste composting facilities, receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required or not available, estimated annual tonnage for municipal solid waste, including that at municipal solid waste composting facilities will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, the solid waste facility may use one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section shall be used;

(b) Industrial facilities. Annual tonnage of solid waste received at off-site industrial facilities receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required, or at those sites receiving less than 50,000 tons a year if scales are not available, industrial sites shall use the following conversion factors to determine tonnage of solid waste disposed. Composting facilities shall use the following conversion factors for those materials appropriate for composting:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and landclearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste: ~~1,200 pounds per cubic yard;~~

(i) Wood waste, mixed (as defined in OAR 340-93-030 (95)): 1,200 pounds per cubic yard;

(ii) Wood chips, green: 473 pounds per cubic yard;

(iii) Wood chips, dry: 243 pounds per cubic yard;

(E) Yard debris:

(i) Grass clippings: 950 pounds per cubic yard;

(ii) Leaves: 375 pounds per cubic yard;

(iii) Compacted yard debris: 640 pounds per cubic yard; and

(iv) Uncompacted yard debris: 250 pounds per cubic yard;

~~(F)~~ (F) Food waste, manure, sludge, septage, grits, screenings and other wet wastes: 1,600 pounds per cubic yard;

~~(G)~~ (G) Ash and slag: 2,000 pounds per cubic yard;

~~(H)~~ (H) Contaminated soils: 2,400 pounds per cubic yard;

~~(I)~~ (I) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

~~(J)~~ (J) For wastes other than the above, the permittee or registrant shall determine the density of the wastes subject to approval by the Department;

~~(K)~~ (K) As an alternative to the above conversion factors, the permittee or registrant may determine the density of their own waste, subject to approval by the Department.

(8) The application processing fee may be refunded in whole or in part, after taking into consideration any costs the Department may have incurred in processing the application, when submitted with an application if either of the following conditions exists:

(a) The Department determines that no permit or registration will be required;

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(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

(9) Exemptions:

(a) Persons treating petroleum contaminated soils shall be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) The soil is being treated as part of a site cleanup authorized under ORS Chapters 465 or 466; and

(B) The Department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the Department for oversight of the cleanup and for processing of the Letter of Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

(10) All fees shall be made payable to the Department of Environmental Quality.

(11) Submittal schedule.

(a) The solid waste permit or registration compliance fee shall be billed by the Department to the holder of the following permits: transfer station, material recovery facility, composting facility and closed solid waste disposal site. The fee period shall be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee shall be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (9)(a) of this rule, beginning on July 1, 1994 the solid waste permit or registration compliance fee and the 1991 Recycling Act permit fee, if applicable, are not billed to the permittee by the Department. These fees shall be self-reported by the permittee to the Department, pursuant to sections (5) and (6) of this rule. The fee period shall be either the calendar quarter or the calendar year, and the fees are due to the Department as follows:

(A) For municipal solid waste disposal sites (including incinerators, energy recovery facilities) and composting facilities; construction and demolition landfills: on the same schedule as specified in subsection (11)(c) of this rule. The July 31, 1994 submittal for solid waste disposal sites receiving less than 1,000 tons of solid waste a year shall be for the half-year fee period of July 31, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A);

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and solid waste treatment facilities:

(i) For sites receiving over 20,000 tons of waste a year: quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year: annually, on the 31st day of January beginning on January 31, 1995. A July 31, 1994 submittal shall be paid for the half-year fee period of July 1, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A) or based on the tonnage received from January 1 through June 30, 1994, whichever is more;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the Department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the Department will require the site to report tonnages and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic solid waste and the Orphan Site Account fee are not billed by the Department. They are due on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994.

(d) The fees on Oregon solid waste disposed of out of state are due to the Department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR 340-97-120(5)(e)(C). The fees shall be submitted together with a form approved by the Department, which shall include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.297, 459.298, 459.420 & 468.065

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-120; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94

Permit/Registration Categories and Fee Schedule

340-97-120 (1) For purposes of OAR Chapter 340, Division 97:

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(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial disposal site";

(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. An application processing fee shall be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-93-090. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, construction and demolition landfill, incinerator, energy recovery facility, composting facility for mixed solid waste, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: \$10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: \$5,000;

(b) A new captive industrial facility (other than a transfer station or material recovery facility): \$1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: \$500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: \$200;

(C) Receiving less than 10,000 tons of solid waste per year: \$100;

(d) Letter Authorization (pursuant to OAR 340-93-060):

(A) New site: \$500;

(B) Renewal: \$500;

(e) A new composting facility (pursuant to OAR 340-96-024):

(A) Composting facility registration: \$100;

(B) Composting facility general permit: \$500;

(C) Composting facility full permit. For facilities utilizing as feedstock for composting:

(i) Over 20 tons and less than or equal to 7,500 tons per year: \$1,000;

(ii) More than 7,500 tons per year: \$5,000;

(f) Permit Exemption Determination (pursuant to OAR 340-93-080(2)): \$500.

(3) Solid Waste Permit and Registration Compliance Fee. The Commission establishes the following fee schedule including base per-ton rates to be used to determine the solid waste permit compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this fee schedule. To determine the solid waste permit compliance fee, the Department may use the base per-ton rates, or any lower rates if the rates would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) All facilities accepting solid waste except transfer stations, and material recovery facilities and composting facilities:

(A) \$200, if the facility receives less than 1,000 tons of solid waste a year; or

(B) A solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: \$21 per ton;

(ii) Captive industrial facilities: \$21 per ton;

(iii) Energy recovery facilities: \$13 per ton;

~~(iv) Composting facilities receiving mixed solid waste: \$10 per ton.~~

(C) If a disposal site (other than a municipal solid waste facility) is not required by the Department to monitor and report volumes of solid waste collected, the solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

(b) Transfer stations and material recovery facilities:

(A) Facilities accepting over 50,000 tons of solid waste per year: \$1,000;

(B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: \$500;

(C) Facilities accepting less than 10,000 tons of solid waste per year: \$50.

(c) Composting facilities:

(A) Facilities with a registration: \$100;

(B) Facilities with a general permit:

(i) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;

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- (ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,000;
- (iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: \$500;
- (C) Facilities with a full permit:
 - (i) Utilizing over 50,000 tons of feedstocks for composting per year: \$5,000;
 - (ii) Utilizing over 7,500 and less than or equal to 50,000 tons of feedstocks for composting per year: \$1,500;
 - (iii) Utilizing less than or equal to 7,500 tons of feedstocks for composting per year: \$500;

(d) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the Department shall determine a pro-rated permit compliance fee for those quarters of the fiscal year not covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection.

(B) Each land disposal site which closes after July 1, 1984: \$150,
or the average tonnage of solid waste received in the three most active years of site operation multiplied by \$.025 per ton, whichever is greater; but the maximum permit compliance fee shall not exceed \$2,500.

(4) 1991 Recycling Act permit fee:

(a) A 1991 Recycling Act permit fee shall be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities, composting facilities and captive industrial facilities. The Commission establishes the 1991 Recycling Act permit fee as \$.09 per ton for each ton of solid waste received in the subject calendar quarter or year;

(b) The \$.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act permit fee, the Department may use this rate, or any lower rate if the rate would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) This fee is in addition to any other permit fee and per-ton fee which may be assessed by the Department.

(5) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste (except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-97-110(4)(c), shall submit to the Department of Environmental Quality the following fees for each ton of domestic solid waste received at the disposal site:

- (a) A per-ton fee of 50 cents;
- (b) An additional per-ton fee of 31 cents;
- (c) Beginning January 1, 1993, an additional per-ton fee of 13 cents for the Orphan Site Account.
- (d) Submittal schedule:

(A) These per-ton fees shall be submitted to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on July 31, beginning in 1994, and on January 31, beginning in 1995. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fees shall be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out of state for disposal, the per-ton fees shall be paid to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee shall be paid to the Department within 60 days after the disposal occurs.

(e) As used in this rule and in OAR 340-97-110, the term "domestic solid waste" does not include source separated recyclable material, or material recovered at the disposal site.

(f) Solid waste that is used as daily cover at a landfill in place of virgin soil shall not be subject to the per-ton solid waste fees in this section, provided that:

- (i) The amount of solid waste used as daily cover does not exceed the amount needed to provide the equivalent of six inches of soil used as daily cover;
- (ii) If disposed of in Oregon, the solid waste is not being used on a trial basis, but instead has received final approval from the Department for use as daily cover; and
- (iii) If disposed of in a landfill outside of Oregon, the solid waste has received final approval from the appropriate state or local regulatory agency that regulates the landfill.

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(g) For solid waste delivered to disposal facilities owned or operated by a metropolitan service district, the fees established in this section shall be levied on the district, not on the disposal site.

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.297, 459.298, 459.420 & 468.065

Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-120; DEQ 23-1993, f. 12-16-93, cert. ef. 1-1-94; DEQ 10-1994, f. & cert. ef. 5-4-94

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Oregon Agricultural Composting Management Plan

- Environmental Protection Criteria -

The following bulleted items are necessary elements to be included in Agricultural Composting Management Plans. These elements are the equivalents to those required of Composting Operations under DEQ Composting Registration or Permits. Submittal to and approval by Oregon Dept. of Agriculture of an Oregon Agricultural Composting Management Plan allows agricultural composters exemption from DEQ permitting process and fees.

AGRICULTURAL COMPOSTING OPERATIONS UTILIZING GREEN AND NON-GREEN FEEDSTOCKS

- **Plans** - a written description of:
 - Location and design of the physical features of the site and composting operation, surface drainage control, wastewater facilities, fences, residue disposal, controls to prevent adverse health and environmental impacts, and design and performance specifications for major composting equipment and detailed description of methods to be used;
 - Scale drawings of the facility including location and size of feedstock and finished compost storage area(s), compost processing areas, fixed equipment, and appurtenant facilities (scales, surface water control systems, wells, buildings, surface drainage features, waterways, land application sites, access and others).
 - Operations and Maintenance Plan.
 - describes normal facility operations and includes procedures to address upset conditions and operating problems. Including:
 - Mass balance calculation showing all feedstocks and amendments and all products produced.
 - removal of compost including quantities, times and destination.
 - use of finished compost including:
 - if used on farm, agronomic utilization including crop, yield, soils, nutrient content, application rate and timing.
 - Plan for unusable material:
 - Plan to dispose of processed compost that, due to concentrations of contaminants, cannot be marketed or used for beneficial purposes, and finished compost which has been stored for two years since processing was completed.
 - Odor Minimization Process.
to address odor within the confines of the composting site and include:
 - a management plan for malodorous feedstock loads;
 - procedures for immediately investigating any upset conditions to determine the cause of odor emissions, and remedy promptly any odor problem(s) at the facility;
 - additional odor-minimizing measures, which may include the following:
 - avoidance of anaerobic conditions in the composting material;
 - use of mixing for favorable composting conditions;
 - formation of windrow or other piles into a size and shape favorable to composting and minimizing odors and;
 - use of end-product compost as cover to act as a filter during early stages of composting.
 - odor management factors prior to turning or moving composted material:
 - time of day
 - wind direction
 - percent moisture
 - estimated odor potential
 - degree of compost maturity

- Specification of a readily-available supply of bulking agents, additives or odor control agents;
- Procedures for avoiding delay in processing and managing feedstocks during all weather conditions;
- Water Quality Plan
 - Composting facilities shall have no discharge of leachate, wastewater, contaminated precipitation or wash water (from vehicle and equipment washing) to the ground or to surface waters, except in accordance with water quality requirements pursuant to ORS 468B.050 and administered by the Oregon Dept. of Agriculture. If liquid wastes are present, plan shall include:
 - 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.
 - liquid waste and compost land application plan including rate and schedule, crop, yield, acres, nutrients applied and removed, and supplemental irrigation and fertilization.
 - soil, compost and liquid waste sampling to determine agronomic application schedules.
- Access Roads
 - all weather roads to allow operations during all intended use seasons of the year.
- Measures to control noise, vectors, dust and litter.
- **Record Keeping**
 - Measure and maintain records of the weight or volume and origin of feedstocks used for composting.
 - Measure and maintain records of the weight or volume and destination of finished compost. If used on-site maintain records of fields applied to, application rate, date, crops grown and yield.
 - Operations Manual that records appropriate periodic monitoring of compost processing parameters including:
 - feedstocks management (storage, movement and C:N ratio of incorporated feedstocks);
 - temperature
 - for non-green feedstocks composting - time and temperature measurements to demonstrate attainment of conditions for reduction of human pathogens.
 - Other parameters to monitor may be:
 - moisture content;
 - aeration and;
 - pH

AGRICULTURAL COMPOSTING OPERATIONS UTILIZING NON-GREEN FEEDSTOCKS

In addition to the above, the following is also required in the Agricultural Composting Management Plans for agricultural composting operations utilizing any amount of non-green feedstocks (dead animals or dead animal parts or feedstocks likely to support human pathogens).

- **Lining System Design** (If leachate is present. If no leachate present, skip this part but demonstrate how leachate is avoided.)
 - If leachate is present, composter must provide a protective layer beneath compost processing and feedstock areas, leachate sumps and storage basins; to prevent release of leachate to surface water or ground water. Lining system required would be dependent on leachate characteristics, climatic conditions and size of facility and shall be capable of resisting damage from movement of mobile operating equipment and weight of stored piles. Facility operators shall monitor all water releases and document no release to ground water. A construction quality assurance plan shall be included detailing monitoring and testing to assure effectiveness of liner system.
- **Pathogen Reduction**
 - Facilities composting any amount of non-green feedstocks shall have a pathogen reduction plan that addresses requirements of the Code of Federal Regulations 40 CFR part 503. The plan must include a Process to Further Reduce Pathogens (PFRP), pursuant to 40 CFR Part 503 Appendix B, item (B)1, dated February 19, 1993, that shall include:

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- Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for three days;
- Using the windrow composting method, the temperature of the active compost pile shall be maintained at 55 degrees Celsius or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees Celsius or higher, there shall be a minimum of five turnings of the windrow or
- An alternative method that can be demonstrated by the composter to achieve an equivalent reduction of human pathogens.

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Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D
July 17, 1997 Meeting

| | | | |
|--|--|--|------------------------------|
| Title: Solid Waste Rule Amendments: Local Government Municipal Landfill Financial Assurance, and Delayed Effective Date of Requirements for Certain Very Small Landfills | | | |
| Summary: The proposed rule amendments would add two additional financial assurance mechanisms local governments can use to demonstrate financial responsibility for the closure, post-closure, and potential corrective actions for municipal solid waste landfills. They also would change the method all municipal solid waste permittees use to estimate the cost for these activities, and add the effective date of October 9, 1997, for "very small landfills" to meet financial assurance requirements. | | | |
| Department Recommendation: Adoption of the proposed rules as presented in Attachment A. | | | |
| <table style="width: 100%; border: none;"><tr><td style="width: 33%; vertical-align: top;"><i>Jaquie Moon</i> Report Author</td><td style="width: 33%; vertical-align: top;"><i>John B. Quinn</i> Division Administrator</td><td style="width: 33%; vertical-align: top;">Director <i>Langdon West</i></td></tr></table> | <i>Jaquie Moon</i> Report Author | <i>John B. Quinn</i> Division Administrator | Director <i>Langdon West</i> |
| <i>Jaquie Moon</i> Report Author | <i>John B. Quinn</i> Division Administrator | Director <i>Langdon West</i> | |

State of Oregon
Department of Environmental Quality Memorandum

Date: June 30, 1997
To: Environmental Quality Commission
From: Langdon Marsh
Subject: Agenda Item D, July 17, 1997 EQC Meeting

Solid Waste Rule Amendments: Local Government Municipal Landfill Financial Assurance, Cost Discounting, and Delayed Effective Date of Requirements for Certain Very Small Landfills

Background

On May 14, 1997, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking on proposed amendments to the financial assurance rules.

It was determined that a public hearing was not necessary based on the administrative nature of the proposed rule amendments. With one exception, described in Attachment B-4, these rule amendments adopt the US Environmental Protection Agency's (EPA) recently adopted regulations. Therefore, pursuant to the Director's authorization, a public notice of an opportunity to provide written comments was published in the Secretary of State's Bulletin on June 1, 1997. On May 19, 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.

Written testimony was received through 5:00 p.m., June 23, 1997. One written comment was received. The written comment is included as Attachment C.

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

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

Issue this Proposed Rulemaking Action is Intended to Address

Since January 1984, permittees of solid waste disposal sites have been required by state law to apply for a "closure permit" at least five years before the anticipated closure of the site. One of the requirements of a closure permit, required by both state and federal rules, is a financial assurance plan to cover the cost of properly closing the site and providing post-closure maintenance.

Federal criteria (40 CFR Part 258, or "Subtitle D") established financial assurance requirements for municipal solid waste landfills in August 1988. EPA promulgated several financial assurance mechanisms in October 1991, and announced their intention to develop financial tests for local governments and corporations in future rulemakings. April 9, 1994, was the date originally set for financial assurance requirements to take effect. EPA subsequently delayed that date three times.

In November 1996, EPA adopted two additional financial assurance mechanisms, both pertaining to local governments. They also adopted regulations that allow all municipal solid waste permittees to discount the cost for disposal site closure and post-closure care with state oversight. EPA's regulations allow discounting only when cost estimates are complete and accurate and timing of closure is certain, and then only for an essentially risk free rate, net of inflation. EPA's regulations on discounting are more stringent than the Department's current rule. The proposed rule amendments add these changes to state law.

The newly adopted EPA regulations also allow the Director the option to waive financial assurance requirements for all municipal solid waste landfills for good cause for up to one year, until April 9, 1998.

State rule (OAR 340-94-020, State Flexibility) already allows the Director to specify alternative schedules for financial assurance, so this one year optional extension is not included in the proposed rule amendments. However, the Department's intent is to allow both municipal and non-municipal solid waste landfills to waive financial assurance requirements for good cause until April 9, 1998.

Additionally, the effective date of October, 9, 1997 for "very small landfills" to meet financial assurance requirements is included in this proposal. This effective date was added to state law in a temporary rule in November 1995. This proposal will make it a permanent amendment to the rule.

Relationship to Federal and Adjacent State Rules

The proposed rules will make Oregon's rules consistent with the newly adopted federal regulations for municipal solid waste landfills, with one exception. See Attachment B-4 for more information.

Authority to Address the Issue

ORS 459.045, 459.046, 459.248, 459.270, 459.272, 468.020. Oregon has also received "approved state" designation from EPA, and thus may independently implement the requirements of the Resource Conservation and Recovery Act Subtitle D for municipal solid waste landfills.

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

The proposed rule was based on changes in federal rules as published in the Federal Register Volume 61, No. 230, on November 27, 1996, (40 CFR Part 258). The Department's Solid Waste Advisory Committee did not meet during this rulemaking, but on May 9, 1997, all Committee members were mailed a memo on the subject and invited to comment on the proposal either in writing or by phone. No comments were received.

Summary of Rulemaking Proposal and Discussion of Significant Issues Involved

The rule amendments add two additional financial assurance mechanisms local governments can use to demonstrate financial responsibility for the closure, post-closure, and potential corrective actions for municipal solid waste landfills. They also change the method all municipal solid waste permittees use to estimate the cost for these activities, and add the effective date of October 9, 1997, for "very small landfills" to meet financial assurance requirements.

Summary of Public Comment

The Department received a written comment from a representative of Waste Control Systems, Inc. Department staff have evaluated the written comment. No modification to the initial rulemaking proposal is being recommended.

The representative of Waste Control Systems, Inc. expressed concern that the Department was proposing to apply the stricter standard of discounting only to municipal solid waste landfills. He said this was a departure from our past practice of uniform application of rules to municipal and non-municipal landfills. He thought this would have a negative financial impact on municipal sites, since they often compete with non-municipal sites for the same waste.

Department Response. Although Subtitle D regulations do not apply to non-municipal sites, by policy the Department has endeavored to maintain equivalent rules for municipal and non-municipal sites. However, the Department has departed from uniform application of rules to municipal and non-municipal sites in several instances, primarily because applying the more stringent Subtitle D requirements to non-municipal sites was not necessary for sound environmental management. For example, current rules allow the Department to exempt non-municipal sites from financial assurance requirements if the site is unlikely to cause environmental problems, and the Subtitle D design

requirement for double composite liner and groundwater monitoring are not required of many non-municipal sites.

A large majority of non-municipal sites are small sites owned and operated by a business. They typically accept "captive" waste, that is, waste from the business operation. Half a dozen non-municipal sites are categorized as Construction and Demolition landfills, and perhaps half of these are in active competition with municipal landfills for waste. One of these is subject to Subtitle D regulations.

Depending on the financial assurance mechanism chosen, the stricter standard of discounting is likely to cost a permittee more for financial assurance. The Department does not believe there is a good reason to apply EPA's stricter standard of discounting to non-municipal sites, which are typically small and limit disposal to "captive" waste from the business operation.

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

Local governments will have two additional financial assurance mechanisms from which to choose to demonstrate that adequate funds are available to properly close and maintain municipal solid waste landfills.

The Department will calculate an annual acceptable discount rate, and publish the rate in July of each year. If permittees wish to discount cost estimates, they will determine if they meet EPA's criteria for discounting. If so, at the time they perform the required annual review and update of financial cost estimates, they will use the Department's discount rate for the current year.

Permittees wishing to delay financial assurance requirements until April 9, 1998, will request a waiver in writing, demonstrating to the Department's satisfaction that the delay will not adversely affect human health and the environment.

If this rule amendment is adopted, landfill operators and permittees will be notified.

For more details see Attachment D.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments that add two financial assurance mechanisms local government permittees can use to demonstrate their ability to pay for closure, post-closure care and corrective action for municipal solid waste landfills; that change the method all municipal solid waste permittees use to estimate cost for these activities; and that add the effective date of October 9, 1997, for "very small landfills" to meet financial assurance requirements, as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule Amendments Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Written Comment Received
- D. Rule Implementation

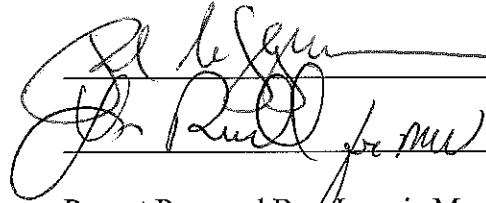
Reference Documents (available upon request)

Federal Register Volume 61, No. 230, on November 27, 1996 (40 CFR Part 258)

Approved:

Section:

Division:



Report Prepared By: Jacquie Moon

Phone: 229-5479

Date Prepared: June 30, 1997

Attachment A

Proposed rule Modifications

Bold and underlined indicate proposed additions.

~~Strikeout~~ indicates proposed deletions.

Applicability

340-94-001 (1) OAR Chapter 340, Division 94 applies to municipal solid waste landfills and their appurtenances such as leachate management facilities, and to ash monofills.

(2) The criteria adopted in OAR 340-94-010 apply to all municipal solid waste landfills which receive waste on or after October 9, 1993, unless the landfill meets the following requirements for a later effective date:

(a) For existing municipal solid waste landfills or lateral expansions of municipal solid waste landfills that meet the conditions of 40 CFR, §258.1(e)(2) ("small landfills"): the criteria apply if the landfill receives waste on or after April 9, 1994;

(b) For new, existing or lateral expansions of municipal solid waste landfills that meet the conditions in 40 CFR, §258.1(f)(1) ("very small landfills serving certain small communities"): the criteria apply if the landfill receives waste on or after October 9, 1997.

(3) Municipal solid waste landfills that receive waste after October 9, 1991 but stop receiving waste before a date certain, and which complete installation of a final cover as specified in 40 CFR, §258.60(a) by another date certain, are exempt from the other criteria adopted in OAR 340-94-010. The dates are as follows:

(a) All municipal solid waste landfills (unless the landfill meets the conditions under subsections (3)(b) or (3)(c) of this rule): no waste received after October 9, 1993, and installation of final cover completed by October 9, 1994;

(b) A "small landfill" meeting the criteria in 40 CFR, §258.1(e)(2): no waste received after April 9, 1994 and installation of final cover completed by October 9, 1994;

(c) A "very small landfill serving certain small communities" meeting the criteria in 40 CFR, §258.1(f)(1): no waste received after October 9, 1997 and installation of final cover completed by October 9, 1998.

(4) In order to meet the requirements for later effective dates as a "very small landfill serving certain small communities", a landfill owner or operator shall make the demonstration required in 40 CFR, §258.1(f)(2) by April 9, 1994. The owner or operator shall keep the demonstration available for inspection by the Department.

(5) Persons who receive municipal solid waste but who are exempt from any or all criteria in 40 CFR, Part 258 must comply with all relevant requirements in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93; DEQ 14-1993(Temp), f. & cert. ef. 11-2-93; DEQ 10-1994, f. & cert. ef. 5-4-94

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Adoption Of United States Environmental Protection Agency Municipal Solid Waste Regulations

340-94-010 (1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 93 through 97, the criteria for municipal solid waste landfills, prescribed by the United States Environmental Protection Agency in Title 40, CFR, Part 258, and any amendments or technical corrections promulgated thereto as of ~~January 1, 1996~~ **August 1, 1997** are adopted by reference and prescribed by the Commission to be observed by all persons who receive municipal solid waste and who are subject to ORS 459.005 through 459.405 and 459A.

(2) Wherever there may be a discrepancy between requirements in 40 CFR, Part 258 as adopted by the Commission and OAR Chapter 340 Divisions 93 through 97, the more protective standard shall apply.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93; DEQ 14-1993(Temp), f. & cert. ef. 11-2-93; DEQ10-1994, f. & cert. ef. 5-4-94

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

State Flexibility

340-94-020

(1) The provisions of **Title 40, CFR, Part 258**, shall apply even where the Director is allowed to specify alternative schedules, procedures or designs, unless an applicant or permittee can demonstrate to the Department's satisfaction pursuant to section (2) of this rule that an alternative schedule, procedure or design is at least as protective of the environment as the provisions in **Part 258** or any more stringent requirements specified in OAR Chapter 340, Divisions 93 through 97.

(2) The Director or his/her designate may approve an alternative schedule, procedure or design, per the following procedure:

- (a) The applicant shall request in writing a waiver from the specific requirement;
- (b) The request shall include supporting scientific documentation;
- (c) The approval is not valid until approved in writing by the Department.

(3) The Department will exercise its authority to issue Letter Authorizations and to grant variances, exceptions and waivers in a manner consistent with the requirements of **40 CFR, Part 258**.

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

Stat. Auth.: ORS 459.005 - 459.418 & 459A.100 - 459A.120

Hist.: DEQ 5-1993, f. & cert. ef. 3-10-93

Location Restrictions

340-94-030

(1) If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with landfill location restrictions in **40 CFR, Part 258, Subpart B**. Except as otherwise provided in OAR Chapter 340, Division 94, any person who designs, constructs, maintains, or operates any municipal solid waste landfill must do so in conformance with the location requirements of this rule.

(2) Floodplains. No person shall establish, expand or modify a landfill in a floodplain in a manner that will allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(3) Endangered Species. In addition to the requirements of **40 CFR, Part 258, Subpart B**, no person shall establish, expand or modify a landfill in a manner that will cause or contribute to the actual or attempted:

(a) Harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting of any endangered or threatened species of plants, fish, or wildlife;

(b) Direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(4) Sensitive Hydrogeological Environments. In addition to the requirements of **40 CFR, Part 258, Subpart B**, no person shall establish or expand a landfill in a gravel pit excavated into or above a water table aquifer or other sensitive or sole source aquifer, or in a designated wellhead protection area, where the Department has determined that:

(a) Groundwater must be protected from pollution because it has existing or potential beneficial uses (OAR 340-40-020); and

(b) Existing natural protection is insufficient or inadequate to minimize the risk of polluting groundwater.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-040; DEQ10-1994, f. & cert. ef. 5-4-94

Operating Criteria

340-94-040

(1) If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with landfill operating criteria in **40 CFR, Part 258, Subpart C**. Except as otherwise provided in OAR Chapter 340, Division 94, any person who maintains or operates any municipal solid waste landfill must do so in conformance with the operating requirements of this rule.

(2) Open Burning. No person shall conduct the open burning of solid waste at a landfill. The Department may authorize the infrequent burning of land-clearing debris such as tree stumps and limbs, brush and other wood waste, except that open burning of industrial wood waste is prohibited.

(3) Surface Water:

(a) No person shall cause a discharge of pollutants from a landfill into public waters including wetlands, in violation of any applicable state or federal water quality rules or regulations;

(b) Each landfill permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters.

(4) Surface Drainage Control. Each permittee shall ensure that:

(a) The landfill is maintained so that drainage will be diverted around or away from active and completed operational areas;

(b) The surface contours of the landfill are maintained such that ponding of surface water is minimized.

(5) Gas Control:

(a) No person shall operate or maintain a landfill except in conformance with the provisions for gas control in OAR 340-94-060(4);

(b) Monitoring:

(A) Where the Department finds that a landfill's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells to determine the effects of the landfill on the concentration of methane gas in the soil;

(B) In addition to the requirements of **40 CFR, §258.23**, if the Department determines that monitoring wells are required at a landfill, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(C) In addition to the requirements of **40 CFR, §258.23**, where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of gas, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(D) In addition to the requirements of **40 CFR, §258.23**, the Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(6) Floodplains. No permittee of a landfill located in a floodplain shall allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(7) Cover Material. Each permittee shall provide adequate quantities of cover material of a type approved by the Department for the covering of deposited solid waste at a landfill in accordance with the approved operations plan, and permit conditions and OAR Chapter 340, Divisions 93 and 94.

(8) Cover Frequency. Each permittee shall place a compacted layer of at least six inches of approved cover material over the compacted wastes in a landfill at intervals specified in the permit. An applicant may propose and the Department may approve alternative cover designs or procedures which are equally protective. In evaluating such a proposal for alternative cover design or procedures, the Department may consider such factors as the volume and types of waste received, hydrogeologic setting of the facility, climate, proximity of residences or other occupied buildings, site screening, availability of equipment and cover material, any past operational problems and any other relevant factor.

(9) Access Control. Each permittee shall insure that the landfill has a perimeter barrier or topographic constraints adequate to restrict unauthorized entry.

(10) Vector and Bird Control:

(a) Each permittee shall ensure that effective means such as the periodic application of earth cover material or other techniques as appropriate are taken at the landfill to control or prevent the propagation, harborage, or attraction of flies, rodents, or other vectors and to minimize bird attraction;

(b) No permittee of a landfill disposing of putrescible wastes that may attract birds and which is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any

airport used by only piston-type aircraft shall allow the operation of the landfill to increase the likelihood of bird/aircraft collisions.

(11) In addition to the requirements of **40 CFR, Part 258, Subpart C**, any person who maintains or operates any municipal solid waste landfill must do so in conformance with the following:

(a) Permitted Wastes. Only the waste types listed in the solid waste permit or the approved operations plan, or wastes previously approved by the Department in writing, may be accepted for disposal. In certain cases the Department may also require approval of the source(s) of the waste. Written requests for authorization to accept additional waste types shall be submitted to and approved by the Department prior to disposal of such waste. Requests for authorization to accept additional waste types shall include the following information:

(A) Waste characterization with detailed physical and chemical characteristics of the waste type such as percent solids, results of the paint filter test, Toxicity Characteristic Leaching Procedure ("TCLP") results, polychlorinated biphenyl content, and test results for ignitability, reactivity, corrosivity, etc., as appropriate;

(B) The approximate volume of waste to be disposed of on a daily and yearly basis;

(C) The source of the wastes and a description of the processes which generated the waste;

(D) Special handling and disposal procedures, to be incorporated into the Special Waste Management Plan pursuant to paragraph (11)(b)(J) of this rule.

(b) Operations Plan. Each permittee shall maintain a detailed operations plan which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells. Said plan shall include at least the following:

(A) A description of the types and quantities of waste materials that will be received (estimated maximum daily and average annual quantities);

(B) A program for detecting and preventing the disposal at the facility of regulated hazardous wastes and polychlorinated biphenyl wastes and any other unacceptable wastes as determined by the Department;

(C) Methods of waste unloading, placement, compaction and covering;

(D) Areas and/or procedures to be used for disposal of waste materials during inclement weather;

(E) Types and weights of equipment to be used for site operation;

(F) Detailed description of any salvaging or resource recovery operations to take place at the facility;

(G) Such measures for the collection, containment, treatment or disposal of leachate as may be required;

(H) Provisions for managing surface drainage;

(I) Measures to be used for the control of fire, dust, decomposition gases, birds, disease vectors, scavenging, access, flooding, erosion, and blowing debris, as pertinent; and

(J) A Special Waste Management Plan if certain wastes are received, which due to their unique characteristics, require special handling. Such wastes may present personnel safety hazards, create odor and vector problems, generate excessive leachate, lead to excessive settlement, puncture or tear the landfill liner, pose a fire hazard, or increase the toxicity of landfill leachate. The Special Waste Management Plan shall describe special acceptance, waste characterization, handling, storage, recordkeeping and disposal procedures for those materials. Wastes to be included in a Special Waste Management Plan include:

(i) Cleanup materials contaminated with hazardous substances pursuant to OAR 340-93-170;

(ii) Wastes requiring special management pursuant to OAR 340-93-190(1);

(iii) Additional wastes authorized for disposal by the Department pursuant to subsection (11)(a) of this rule; and

(iv) Large dead animals, sewage sludges and grit, septage, industrial solid wastes and other materials which may be hazardous or difficult to manage by virtue of their character or large volume, unless special provisions for such disposal are otherwise approved by the Department.

(c) Leachate. Any person constructing, operating or maintaining a landfill shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department;

(d) Endangered Species. No person shall operate a landfill in a manner that will affect endangered species in any of the ways specified in OAR 340-94-030(3);

(e) Access Roads. Each permittee shall ensure that roads from the landfill property line to the active operational area and roads within the operational area are constructed and maintained so as to minimize traffic hazards, dust and mud and to provide reasonable all-weather access for vehicles using the site;

(f) Site Screening. To the extent practicable, each permittee shall screen the active landfill area from public view by trees, shrubbery, fence, stockpiled cover material, earthen berm, or other appropriate means;

(g) Fire Protection:

(A) Each landfill permittee shall make arrangements with the local fire control agency to immediately acquire their services when needed and shall provide adequate on-site fire protection as determined by the local fire control agency;

(B) In case of accidental fires at the site, the operator shall be responsible for initiating and continuing

appropriate fire-fighting methods until all smoldering, smoking and burning ceases;

(C) No operator shall permit the dumping of combustible materials within the immediate vicinity of any smoldering, smoking or burning conditions at a landfill, or allow dumping activities to interfere with fire-fighting efforts.

(h) Signs. Each permittee of a landfill open to the public shall post a clearly visible and legible sign or signs at the entrance to the disposal site specifying the name of the facility, the hours and days the site is open to the public, an emergency phone number and listing the general types of materials which either will be accepted or will not be accepted;

(i) Truck Washing Facilities. Each permittee shall ensure that any truck washing areas at a landfill are hard surfaced and that any on-site disposal of wash waters is accomplished in a manner approved by the Department;

(j) Sewage Disposal. Each landfill permittee shall ensure that any on-site disposal of sewage is accomplished in a manner approved by the Department;

(k) Salvage. A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the landfill only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(l) Litter:

(A) Each permittee shall ensure that effective measures such as compaction, the periodic application of cover material or the use of portable fencing or other devices are taken to minimize the blowing of litter from the active working area of the landfill;

(B) Each landfill operator shall collect windblown materials from the disposal site and adjacent property and properly dispose of same at sufficient frequency to prevent aesthetically objectionable accumulations.

(12) Weighing. The Department may require that landfill permittees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning and decision making.

(13) Records. The Department may require records and reports it considers reasonably necessary to ensure compliance with conditions of a permit, OAR Chapter 340, Divisions 93 through 97 or provisions of OAR Chapter 340, Divisions 90 and 91. All records must be kept for a minimum of five years.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-040; DEQ 10-1994, f. & cert. ef. 5-4-94

Design Criteria

340-94-060

(1) If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with landfill design criteria in **40 CFR, Part 258, Subpart D**. Except as otherwise provided in OAR Chapter 340, Division 94, any person who designs, constructs, expands or modifies any municipal solid waste landfill must do so in conformance with the design requirements of this rule.

(2) Plan Design Requirements. In addition to the requirements of **40 CFR, Part 258, Subpart D**, unless an exemption has been granted under OAR 340-93-070(4), and in addition to the requirements of OAR 340-93-070, detailed plans and specifications for landfills shall include but not be limited to:

(a) Topographic maps which show natural features of the site; the location and design of all pertinent existing and proposed structures, such as berms, dikes, surface drainage control devices, access and on-site roads, water and waste water facilities, gas control devices, monitoring wells, fences, utilities, maintenance facilities, shelter and buildings; legal boundaries and property lines, and existing contours and projected finish grades. Unless otherwise approved by the Department, the scale of the plan drawings shall be no greater than one inch equals 200 feet, with contour intervals not to exceed five feet. Horizontal and vertical controls shall be established and tied to an established bench mark located on or near the site. Where the Department deems it essential to ensure compliance with OAR Chapter 340, Divisions 93 through 96, the bench mark shall be referenced to the Oregon State Plane Coordinate System, Lambert Projection;

(b) A minimum of two perpendicular cross section drawings through the landfill. Each cross section shall illustrate existing grade, excavation grade, proposed final grade, any additions for groundwater protection, water table profile and soil profile. Additional cross sections shall be provided as necessary to adequately depict underlying soils, geology and landfill contours, and to display the design of environmental protection devices or structures;

(c) A description of the design assumptions and methods used to forecast flows and to determine the sizing of pumps, pipes, ditches, culverts and other hydraulic equipment used for the collection, treatment and disposal of leachate and for the control of surface drainage;

(d) A detailed operations plan pursuant to OAR 340-94-040(11)(b) and timetable which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells.

(3) Leachate. In addition to the requirements of **40 CFR, Part 258, Subpart D**, any person designing or constructing a landfill shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department. Leachate storage and treatment impoundments shall be located, designed, constructed and monitored, at a minimum, to the same standards of environmental protection as municipal solid waste landfills.

(4) Gas Control. No person shall establish, expand or modify a landfill such that:

(a) The concentration of methane (CH₄) gas at the landfill exceeds 25 percent of its lower explosive limit in facility structures (excluding gas control or gas recovery system components) or its lower explosive limit at the property boundary;

(b) Malodorous decomposition gases become a public nuisance.

(5) Surface Drainage Control. Each permittee shall ensure that landfill is designed and constructed so that drainage will be diverted around or away from active and completed operational areas.

(6) Additional Requirements to Protect or to Monitor Potential Threats to Groundwater. When a person applies to construct a new or expanded landfill cell at a municipal solid waste landfill, the Department shall evaluate the need to provide protection to groundwater in addition to the requirements of **40 CFR, Part 258, Subpart D**. The Department shall also evaluate whether the specific conditions at the site require an enhanced ability to monitor potential threats to groundwater in addition to the requirements in **40 CFR, Part 258, Subpart E**. The evaluation shall be based on site-specific data, including but not limited to location, geography, hydrogeology and size of the site. To assist in the Department's evaluation, the applicant shall provide necessary relevant data. The Department may require a secondary leachate collection system, and/or leak detection system, or other design or technology providing equivalent protection to the environment if the Department determines that:

(a) There is significant potential for adverse impact to groundwater from the proposed cell; or

(b) Additional measures are necessary to provide adequate monitoring of potential threats to the groundwater.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-040; DEQ 10-1994, f. & cert. ef. 5-4-94

Groundwater Monitoring and Corrective Action

340-94-080 If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with groundwater monitoring and corrective action requirements in **40 CFR, Part 258, Subpart E**. Consistent with those requirements, all municipal solid waste landfill owners and operators shall also comply with this rule:

(1) Groundwater:

(a) Each landfill permittee shall ensure that:

(A) The introduction of any substance from the landfill into an underground drinking water source does not result in a violation of any applicable federal or state drinking water rules or regulations beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department;

(B) The introduction of any substance from the landfill into an aquifer does not impair the aquifer's recognized beneficial uses, beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department, consistent with OAR Chapter 340, Division 40 and any applicable federal or state rules or regulations.

(b) Where monitoring is required, monitoring wells shall be placed at Department-approved locations between the solid waste boundary and the property line if adequate room exists;

(c) The Department may specify an alternative boundary based on a consideration of all of the following factors:

(A) The hydrogeological characteristics of the facility and surrounding land;

(B) The volume and physical and chemical characteristics of the leachate;

(C) The quantity and directions of flow of groundwater;

(D) The proximity and withdrawal rates of groundwater users;

(E) The availability of alternative drinking water supplies;

(F) The existing quality of the groundwater including other sources of contamination and their cumulative impacts on the groundwater; and

(G) Public health, safety, and welfare effects.

(2) Monitoring:

(a) Where the Department finds that a landfill's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells at Department-approved locations and depths to determine the effects of the landfill on groundwater;

(b) In addition to the requirements in **40 CFR, Part 258, Subpart E**, if the Department determines that monitoring wells are required at a landfill, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(c) In addition to the requirements in **40 CFR, Part 258, Subpart E**, where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of surface water and/or groundwater, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(d) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(3) Corrective action. The Department may require action to remediate releases of constituents above the levels specified in **40 CFR, §258.56** or OAR Chapter 340, Division 40, whichever is more stringent. This authority is in addition to any other authority granted by law.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-040; DEQ 10-1994, f. & cert. ef. 5-4-94

Closure and Post-Closure Care: Closure Permits

340-94-100 [Renumbered from 340-61-028; incorporates part of 340-61-020] If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with closure criteria in **40 CFR, §258.60**. All municipal solid waste permittees shall also comply with this rule:

(1) [Renumbered from 340-61-020(7)] Closure Permit:

(a) At least five years prior to anticipated closure of a municipal solid waste landfill, the person holding the disposal site permit shall apply to renew the permit to cover the period of time remaining for site operations, closure of the site, and all or part of the time that active post-closure site maintenance is required by the Department. This last permit issued before final closure of the landfill is scheduled to occur shall be called a "closure permit";

(b) The person who holds or last held the disposal site permit, or, if that person fails to comply, then the person owning or controlling a municipal solid waste landfill that is closed and no longer receiving solid waste after January 1, 1980, must continue or renew the disposal site permit after the site is closed for the duration of the period in which the Department continues to actively supervise the site, even though solid waste is no longer received at the site.

(2) [Renumbered from 340-61-028] Applications for closure permits must include but are not limited to:

(a) A Final Engineered Site Closure Plan prepared in accordance with OAR 340-94-110. In lieu of requiring the Final Engineering Site Closure Plan as a part of the application for a closure permit, the Department may specify a date in the closure permit for submission of the Final Engineering Site Closure Plan;

(b) A Final Engineered Post-closure Plan prepared in accordance with OAR 340-94-115. In lieu of requiring the Final Engineered Post-closure Plan as a part of the application for a closure permit, the Department may specify a date in the closure permit for submission of the Final Engineered Post-closure Plan;

(c) If the permittee does not own and control the property, the permittee shall demonstrate to the Department that the permittee has access to the landfill property after closure to monitor and maintain the site and operate any environmental control facilities;

(d) If any person other than the permittee assumes any responsibility for any closure or post-closure activities, that responsibility shall be evidenced by a written contract between the permittee and each person assuming any responsibility.

(3) While a closure permit is in effect, the permittee shall submit a report to the Department within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department, which contains but is not limited to:

(a) An evaluation of the approved closure or post-closure plan as applicable discussing current status, unanticipated occurrences, revised closure date projections, necessary changes, etc.;

(b) A copy of the annual update of financial assurance as required by OAR 340-94-140(6)(d). If the financial mechanism used is a trust fund, the permittee shall include an evaluation of the financial assurance plan documenting

an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance. This evaluation must also assess the adequacy of the financial assurance and justify any changes in the plan;

(c) Other information requested by the Department to determine compliance with the rules of the Department.

(4) The Department shall terminate closure permits for municipal solid waste landfills not later than 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

(5) Any time after a municipal solid waste landfill is closed, the permit holder may apply for a termination of the permit, a release from one or more of the permit requirements or termination of any applicable permit fee. Before the Department grants a termination or release under this section, the permittee must demonstrate and the Department must find that human health and the environment will be protected and there is no longer a need for:

(a) Active supervision of the site;

(b) Maintenance of the site; or

(c) Maintenance or operation of any system or facility on the site.

(6) The closure permit remains in effect and is a binding obligation of the permittee until the Department terminates the permit according to section (4) or (5) of this rule or upon issuance of a new closure permit for the site to another person following receipt of a complete and acceptable application.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-020 & 340-61-028; DEQ 14-1993(Temp), f. & cert. ef. 11-2-93; DEQ10-1994, f. & cert. ef. 5-4-94

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Closure and Post-Closure Care: Closure Plans

340-94-110 [Renumbered from 340-61-033] If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with closure and post-closure care requirements in **40 CFR, Part 258, Subpart F**. All municipal solid waste permittees shall also comply with this rule:

(1) Two types of written closure plans shall be prepared.

(a) The two types of closure plan are:

(A) A Subtitle D or "worst-case" closure plan, as required by 40 CFR §258.60(c); and subsequently

(B) A Final Engineered Site Closure Plan, as required by OAR 340-94-100(2)(a), which shall include all the elements of and replace the "worst-case" closure plan.

(b) Schedule for preparation of closure plans.

(A) The "worst-case" closure plan shall be prepared and placed in the facility operating record and the Director shall be notified of that action no later than the effective dates specified in OAR 340-94-001(2) or by the initial receipt of waste, whichever is later;

(B) The Final Engineered Site Closure Plan shall be prepared and submitted to the Department five years before the anticipated final closure date, or at a date specified in the permittee's closure permit pursuant to OAR 340-94-100(2)(a).

(2) Approval of Closure Plan. After approval by the Department, the permittee shall implement the closure plan within the approved time schedule.

(3) Requirements for closure plans. A closure plan shall specify the procedures necessary to completely close the municipal solid waste landfill at the end of its intended operating life.

(a) Requirements for the "worst-case" closure plan shall include all elements specified in 40 CFR §258.60, and consist of at least the following:

(A) A description of the steps necessary to close all municipal solid waste landfill units at any point during their active life;

(B) A description of the final cover system that is designed to minimize infiltration and erosion;

(C) An estimate of the largest area of the municipal solid waste landfill unit ever requiring a final cover;

(D) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(E) A schedule for completing all activities necessary to satisfy the closure criteria in 40 CFR §258.60.

(b) Requirements for the Final Engineered Site Closure Plan. In addition to the requirements for the "worst-case" closure plan, the Final Engineered Site Closure Plan shall consist of at least the following elements:

(A) Detailed plans and specifications consistent with the applicable requirements of OAR 340-93-140 and 340-94-060(2), unless an exemption is granted as provided in OAR 340-93-070(4);

NOTE: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure activities.

(B) A description of how and when the facility will be closed. The description shall, to the extent practicable, show how the disposal site will be closed as filling progresses to minimize the area remaining to be closed at the time that the site stops receiving waste. A time schedule for completion of closure shall be included;

(C) Details of final cover including soil texture, depth and slope;

(D) Details of surface water drainage diversion; and

(E) Other information requested by the Department necessary to determine whether the disposal site will comply with all applicable rules of the Department.

(4) Department approval. The Final Engineered Site Closure Plan is subject to written approval by the Department. After approval by the Department, the permittee shall implement the Final Engineered Site Closure Plan within the approved time schedule.

(5) Amendment of Plan. The approved Final Engineered Site Closure Plan may be amended at any item as follows:

(a) The permittee must amend the plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Divisions 93 through 97, or events which occur during the active life of the landfill significantly affect the plan. The permittee must also amend the plan whenever there is a change in the expected year of closure. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(b) The permittee may request to amend the plan to alter the closure requirements based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(A) The nature of the landfill makes the closure requirements unnecessary; or

(B) The requested alteration of closure requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(c) The Department may amend a permit to require the permittee to modify the plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may alter the closure requirements based on cause.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-033;

DEQ10-1994, f. & cert. ef. 5-4-94

Closure and Post-Closure Care: Post-Closure Plans

340-94-115 If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with post-closure care requirements in **40 CFR, §258.61**. All municipal solid waste permittees shall also comply with this rule.

(1) Two types of written post-closure plans shall be prepared:

(a) A "Subtitle D" post-closure plan as required by **40 CFR §258.61(c)**; and subsequently

(b) A Final Engineered Post-closure Plan as required by **OAR 340-94-100(2)(b)**. When prepared, this shall include all requirements of and replace the "Subtitle D" post-closure plan.

(2) Schedule for preparation of post-closure plans.

(a) The "Subtitle D" post-closure plan shall be placed in the facility operating record and the Director shall be notified of that action no later than the effective dates specified in **OAR 340-94-001(2)** or by the initial receipt of waste, whichever is later;

(b) The Final Engineered Post-closure Plan shall be prepared in conjunction with and submitted to the Department together with the Final Engineered Site Closure Plan required by **OAR 340-94-100(2)(a)**.

(3) Requirements for post-closure plans. Post-closure plans shall identify the post-closure activities which will be carried on to property monitor and maintain the closed municipal solid waste landfill site.

(a) Requirements for the "Subtitle D" post-closure plan shall include all elements specified in **40 CFR §258.61**, and consist of at least the following:

(A) Maintaining the integrity and effectiveness of any final cover;

(B) Maintaining and operating the leachate collection system;

(C) Monitoring the groundwater;

- (D) Maintaining and operating the gas monitoring system;
 - (E) Monitoring and providing security for the landfill site; and
 - (F) Description of the planned uses of the property during the post-closure care period.
- (b) Requirements for the Final Engineered Post-closure Plan. In addition to the requirements for the "Subtitle D" post-closure plan, the Final Engineered Post-closure Plan shall consist of at least the following elements:
- (A) Detailed plans and specifications consistent with the applicable requirements of OAR 340-93-140 and 340-94-060(2), unless an exemption is granted as provided in OAR 340-93-070(4);
- NOTE: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure or post-closure activities.
- (B) Details of how leachate discharges will be minimized and controlled and treated if necessary;
 - (C) Details of any landfill gas control facilities, their operation and frequency of monitoring;
 - (D) A schedule of monitoring the site after closure;
 - (E) A projected frequency of anticipated inspection and maintenance activities at the site after closure, including but not limited to repairing, recovering and regrading settlement areas, cleaning out surface water diversion ditches, and re-establishing vegetation; and
 - (F) Any other information requested by the Department necessary to determine whether the disposal site will comply with all applicable rules of the Department/
- (c) Department approval. The Final Engineered Post-closure Plan is subject to written approval by the Department. After approval by the Department, the permittee shall implement the Final Engineered Post-closure Plan within the approved time schedule.
- (d) Amendment. The approved Final Engineered Post-closure Plan may be amended at any time as follows:
- (A) The permittee must amend the Plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Division 93 through 97, or events which occur during the active life of the landfill or during the post-closure care period, significantly affect the Plan. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;
 - (B) The permittee may request to amend the Plan to alter the post-closure care requirements, or to extend or reduce the post-closure care period based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:
 - (i) The nature of the landfill makes the post-closure care requirements unnecessary; or
 - (ii) The nature of the landfill supports reduction of the post-closure care period; or
 - (iii) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.
 - (C) The Department may amend a permit to require the permittee to modify the Plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may extend or reduce the post-closure care period or alter the post-closure care requirements based on cause.

Closure Requirements

340-94-120 [Renumbered from 340-61-042] If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with closure and post-closure care requirements in **40 CFR, Part 258, Subpart F**. All municipal solid waste permittees shall also comply with this rule:

- (1) When solid waste is no longer received at a municipal solid waste landfill, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the landfill is located, shall close and maintain the site according to the requirements of ORS Chapter 459, all applicable rules adopted by the Commission under ORS 459.045 and all requirements imposed by the Department as a condition to renewing or issuing a disposal site permit.
- (2) Unless otherwise approved or required in writing by the Department, no person shall permanently close or abandon a municipal solid waste landfill, except in the following manner:
 - (a) All areas containing solid waste not already closed in a manner approved by the Department shall be covered with at least three feet of compacted soil of a type approved by the Department graded to a minimum two percent and maximum 30 percent slope unless the Department authorizes a lesser depth or an alternative final cover design. In applying this standard, the Department will consider the potential for adverse impact from the disposal site on public health, safety or the environment, and the ability for the permittee to generate the funds necessary to comply with this standard before the disposal site closes. A permittee may request that the Department approve a lesser depth of cover material or an alternative final cover design based on the type of waste, climate, geological setting, degree of environmental impact;
 - (b) Final cover material shall be applied to each portion of a municipal solid waste landfill within 60 days after said portion reaches approved maximum fill elevation, except in the event of inclement weather, in which case final cover shall be applied as soon as practicable;

(c) The finished surface of the closed areas shall consist of soils of a type or types consistent with the planned future use and approved by the Department. Unless otherwise approved by the Department, a vegetative cover of native grasses shall be promptly established over the finished surface of the closed site;

(d) All surface water must be diverted around the area of the disposal site used for waste disposal or in some other way prevented from contacting the waste material;

(e) All systems required by the Department to control or contain discharges to the environment must be completed and operational.

(3) Closure of municipal solid waste landfills shall be in accordance with detailed plans approved in writing by the Department pursuant to OAR 340-94-110.

(4) Closure approval:

(a) When closure is completed, the permittee shall submit a written request to the Department for approval of the closure;

(b) Within 30 days of receipt of a written request for closure approval, the Department shall inspect the facility to verify that closure has been effected in accordance with the approved closure plan and the provisions of OAR Chapter 340, Divisions 93 and 94;

(c) If the Department determines that closure has been properly completed, the Department shall approve the closure in writing. Closure shall not be considered complete until such approval has been made. The date of approval notice shall be the date of commencement of the post-closure period.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 2-1984, f. & ef. 1-16-84; DEQ5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-042; DEQ 10-1994, f. & cert. ef. 5-4-94

Post-Closure Care Requirements

340-94-130 [Renumbered from 340-61-043] If a municipal solid waste landfill is subject to **40 CFR, Part 258** as provided in **40 CFR, §258.1**, the owner or operator shall comply with post-closure care requirements in **40 CFR, Part 258, Subpart F**. All municipal solid waste permittees shall also comply with this rule.

(1) Post-closure requirements:

(a) Upon completion or closure of a landfill, a detailed description of the site including a plat should be filed with the appropriate county land recording authority by the permittee. The description should include the general types and location of wastes deposited, depth of waste and other information of probable interest to future land owners;

(b) During the post-closure care period, the permittee must, at a minimum:

(A) Maintain the approved final contours and drainage system of the site;

(B) Consistent with final use, ensure that a healthy vegetative cover is established and maintained over the site;

(C) Operate and maintain each leachate and gas collection, removal and treatment system present at the site;

(D) Operate and maintain each groundwater and surface water monitoring system present at the site;

(E) Comply with all conditions of the closure permit issued by the Department.

(2) Post-closure care period. Post-closure care must continue for 30 years after the date of completion of closure of the land disposal site, unless otherwise approved or required by the Department according to OAR 340-94-100(4) and (5).

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Hist.: DEQ 2-1984, f. & ef. 1-16-84; DEQ 5-1993, f. & cert. ef. 3-10-93; Renumbered from 340-61-043; DEQ 10-1994, f. & cert. ef. 5-4-94

Financial Assurance Criteria

340-94-140 If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with financial assurance criteria in 40 CFR, Part 258, Subpart G. All municipal solid waste permittees shall also comply with this rule.

(1) Financial Assurance Required. The owner or operator of a municipal solid waste landfill shall maintain a financial assurance plan with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:

- (a) Closure of the municipal solid waste landfill;
- (b) Post-closure maintenance of the municipal solid waste landfill; and
- (c) Any corrective action required by the Department to be taken at the municipal solid waste landfill, pursuant to OAR 340-94-080(3).

(2) Exemptions. The Department may exempt from the financial assurance requirements existing municipal solid waste landfills which stopped receiving waste before October 9, 1993 (or which stopped receiving waste before April 9, 1994, if a "small landfill" meeting criteria in 40 CFR, §258.1(e)(2)), and completed installation of final cover by October 9, 1994. The Department may also exempt from the financial assurance requirements an existing "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1), if such a landfill stops receiving waste before October 9, 1997 and completes installation of final cover by October 9, 1998.

(a) Exemption criteria. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

- (A) The landfill poses no significant threat of adverse impact on groundwater or surface water;
- (B) The landfill poses no significant threat of adverse impact on public health or safety;
- (C) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;
- (D) The area of the landfill that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(b) In determining if the applicant has demonstrated that a site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(c) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the site continues to meet the exemption criteria in subsection (2)(a) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance.

[Renumbered from 340-94-100 (3)-(5)]

(3) Schedule for provision of financial assurance.

(a) For costs associated with the "worst-case" closure plan and the "Subtitle D" post-closure plan prepared pursuant to 40 CFR Subparts F and G and OAR 340-94-110(1)(a)(A) and OAR 340-94-115(1)(a), respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the landfill shall be provided on the following schedule:

- (A) For a new municipal solid waste landfill: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste;
- (B) For a regional disposal site operating under a solid waste permit on November 4, 1993: by May 4, 1994;
- or
- (C) For other municipal solid waste landfills operating under a solid waste permit on November 4, 1993: by April 9, 1997; or

(D) For a "very small landfill serving certain small communities" meeting criteria in 40 CFR §258.1(f)(1) and operating under a solid waste permit on November 4, 1993: by October 9, 1997.

(b) For costs associated with the Final Engineered Site Closure Plan and the Final Engineered Post-closure Plan prepared pursuant to OAR 340-94-110(1)(a)(B) and OAR 340-94-115(1)(b) respectively: Evidence of the required financial assurance for closure and post-closure maintenance of the landfill shall be provided at the same time those two Plans are due to the Department.

- (c) Evidence of financial assurance for corrective action shall be provided before beginning corrective action.
- (d) Continuous financial assurance shall be maintained for the facility until the permittee or other person owning or controlling the site is no longer required to demonstrate financial responsibility for closure, post-closure care or corrective action (if required).

(4) Financial assurance plans. The financial assurance plan is a vehicle for determining the amount of financial assurance necessary and demonstrating that financial assurance is being provided. A financial assurance plan shall include but not be limited to the following, as applicable:

- (a) Cost Estimates. A detailed written estimate of the third-party costs in current dollars ~~(as calculated using a~~

~~discount rate equal to the current yield of a 5-year U.S. Treasury Note as published in the Federal Reserve's H.15 (519) Selected Interest Rates for the week in which the calculation is done) according to the provisions of 40 CFR, §258.75. A landfill owner or operator meeting the criteria in 40 CFR §258.75 (a) through (c) may estimate the current dollar cost using a discount rate no greater than the Department's current reference rate. The Department shall determine the reference rate annually during the month of June. It shall be in effect for the fiscal year beginning on the first day of July immediately following the determination date and ending on June 30 of the following calendar year. (The reference rate shall be based on the current yield of composite long-term U.S. Treasury Bonds as published in the Federal Reserve's H.15 (519) Selected Interest Rates for the first full week of the month in which the reference rate is determined, less the annualized Gross Domestic Product implicit price deflator as published in the most recent U.S. Bureau of Economic Analysis Survey of Current Business.)~~ The written estimate shall include costs of:

- (A) Closing the municipal solid waste landfill;
 - (B) Providing post-closure care, including installing, operating and maintaining any environmental control system required on the landfill site;
 - (C) Performing required corrective action activities; and
 - (D) Complying with any other requirement the Department may impose as a condition of issuing a closure permit, closing the site, maintaining a closed facility, or implementing corrective action.
- (b) The source of the cost estimates;
- (c) A detailed description of the form of the financial assurance and a copy of the financial assurance mechanism;
- (d) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;
- (e) A proposal with provisions satisfactory to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance, if applicable.
- (A) To the extent practicable and to the extent allowed by any franchise agreement, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:
- (i) A reduction of the rates a person within the area served by the municipal solid waste landfill is charged for solid waste collection service as defined by ORS 459.005; or
 - (ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.
- (B) If the municipal solid waste landfill is owned and operated by a private entity not regulated by a unit of local government, excess moneys and interest remaining in any financial assurance reserve shall be released to that business entity after post-closure care has been completed and the permittee is released from permit requirements by the Department.
- (f) Adequate accounting procedures to insure that the permittee does not collect or set aside funds in excess of the amount specified in the financial assurance plan or any updates thereto or use the funds for any purpose other than required by paragraph (8)(a) of this rule; [Renumbered from 340-94-140(6)(b)]
- (g) The certification required by subsection (6)(c) of this rule; and
 - (h) The annual updates required by subsection (6)(d) of this rule.
- (5) Amount of Financial Assurance Required. The amount of financial assurance required shall be established as follows:
- (a) Closure. Detailed cost estimates for closure shall be based on the "worst-case" closure plan or the Final Engineered Site Closure Plan, as applicable. Cost estimates for the Final Engineered Site Closure Plan shall take into consideration at least the following:
- (A) Amount and type of solid waste deposited in the site;
 - (B) Amount and type of buffer from adjacent land and from drinking water sources;
 - (C) Amount, type, availability and cost of required cover;
 - (D) Seeding, grading, erosion control and surface water diversion required;
 - (E) Planned future use of the disposal site property;
 - (F) The portion of the site property closed before final closure of the entire site; and
 - (G) Any other conditions imposed on the permit relating to closure of the site.
- (b) Post-closure care. Detailed cost estimates for post-closure care shall be based on the "Subtitle D" post-closure plan or the Final Engineered Post-closure Plan, as applicable. Cost estimates for the Final Engineered Post-closure Plan shall also take into consideration at least the following:
- (A) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges; and
 - (B) Any other conditions imposed on the permit relating to post-closure care of the site.

(c) Corrective action. Estimated total costs of required corrective action activities for the entire corrective action period, as described in a corrective action report pursuant to requirements of OAR 340-94-080(3) and 40 CFR §258.73.

(d) If a permittee is responsible for providing financial assurance for closure, post-closure care and/or corrective action activities at more than one municipal solid waste landfill, the amount of financial assurance required is equal to the sum of all cost estimates for each activity at each facility.

(6) How Financial Assurance Is to Be Provided and Updated.

(a) The permittee shall submit to the Department a copy of the first financial assurance mechanism prepared in association with a "worst-case" closure plan, a Final Engineered Site Closure Plan, a "Subtitle D" post-closure plan, a Final Engineered Post-closure Plan, and a corrective action report.

(b) The permittee shall also place a copy of the applicable financial assurance plan(s) in the facility operating record on the schedule specified in section (3) of this rule.

(c) The permittee shall certify to the Director at the time a financial assurance mechanism is submitted to the Department and when a financial assurance plan is placed in the facility operating record that the financial assurance mechanism meets all state and federal requirements. This date becomes the "annual review date" of the provision of financial assurance, unless a corporate guarantee is used, in which case the annual review date is 90 days after the end of the corporation's fiscal year.

(d) Annual update. The permittee shall annually review and update the financial assurance during the operating life and post-closure care period, or until the corrective action is completed, as applicable.

(A) The annual review shall include:

(i) An adjustment to the cost estimate(s) for inflation and in the discount rate as specified in subsection (4)(a) of this rule;

(ii) A review of the closure, post-closure care and corrective action (if required) plans and facility conditions to assess whether any changes have occurred which would increase or decrease the estimated maximum costs of closure, post-closure care or corrective action since the previous review;

(iii) If a trust fund or other pay-in financial mechanism is being used, an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance.

(B) The financial assurance mechanism(s) shall be increased or may be reduced to take into consideration any adjustments in cost estimates identified in the annual review.

(C) The annual update shall consist of a certification from the permittee submitted to the Department and placed in the facility operating record. The certification shall state that the financial assurance plan(s) and financial assurance mechanism(s) have been reviewed, updated and found adequate, and that the updated documents have been placed in the facility operating record. The annual update shall be no later than:

(i) The facility's annual review date; or

(ii) For a facility operating under a closure permit, by the date specified in OAR 340-94-100(3).

(7) Department Review of Financial Assurance and Third-Party Certification.

(a) The Department may at any time select a permittee to submit financial assurance plan(s) and financial assurance mechanism(s) for Department review. Selection for review will not occur more frequently than once every five years, unless the Department has reasonable cause for more frequent selection. The Department may, however, review such plans and mechanisms in conjunction with a site inspection at any time.

(b) A permittee who wants to provide "alternative financial assurance" pursuant to OAR 340-94-145(5)(g)(i) shall submit its financial assurance plan and proposed financial assurance mechanism for Department review and approval on the schedule specified in section (3) of this rule. The submittal shall include certification from a qualified third party that the financial assurance mechanism meets all state and federal requirements for financial assurance including criteria in 340-94-145(5)(g)(i), and is reasonably designed to provide the required amount of financial assurance. The third-party certification shall be submitted in a format acceptable to the Department.

(c) The Department will review the financial assurance and the third-party certification, if applicable, for compliance with applicable laws.

(8) Accumulation of any financial assurance funds:

(a) The financial assurance mechanisms for closure, post-closure care and corrective action shall ensure the funds will be available in a timely fashion when needed. The permittee shall pay moneys into a trust fund in the amount and at the frequency specified in the financial assurance plan or obtain other financial assurance mechanisms as specified in the financial assurance plan, on the schedule specified in section (3) of this rule.

(A) Closure. The total amount of financial assurance required for closure shall be available in the form specified in the financial assurance plan or any updates thereto, whenever final closure of a municipal solid waste landfill unit is scheduled to occur in the "worst case" closure plan or in the Final Engineered Site Closure Plan.

(B) Post-closure care. The total amount of financial assurance required for post-closure care shall be available in the form specified in the financial assurance plan or any updates thereto, whenever post-closure care is scheduled to

begin for a municipal solid waste landfill unit in the "Subtitle D" post-closure plan or in the Final Engineered Post-closure Plan.

(C) Corrective action. The total amount of financial assurance required for corrective action shall be available in the form specified in the financial assurance plan or any updates thereto on the schedule specified in 40 CFR §258.74.

(b) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule and OAR 340-94-145;

(c) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the applicable financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in section (1) of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the applicable financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use;

(d) If financial assurance is provided under OAR 340-94-145(5)(a), (b) or ~~(g)~~(i), upon successful closure and release from permit requirements by the Department, any excess money in the financial assurance account must be used in a manner consistent with subsection (4)(e) of this rule. [Renumbered from OAR 340-94-150(7)]

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

Statutory Authority: ORS 459.045, ORS 459.209, ORS 459.272, ORS 468.020
Stats. Implemented

Financial Assurance Mechanisms

340-94-145 [Renumbered from 340-94-140(5)] Form of Financial Assurance.

(1) The financial assurance mechanism shall restrict the use of the financial assurance so that the financial resources may be used only to guarantee that closure, post-closure or corrective action activities will be performed, or that the financial resources can be used only to finance closure, post-closure or corrective action activities.

(2) The financial assurance mechanism shall provide that the Department or a party approved by the Department is the beneficiary of the financial assurance.

(3) A permittee may use one financial assurance mechanism for closure, post-closure and corrective action activities, but the amount of funds assured for each activity must be specified.

(4) The financial assurance mechanism shall be worded as specified by the Department, unless a permittee uses an alternative financial assurance mechanism pursuant to subsection (5)[~~(g)~~](i) of this rule. The Department retains the authority to approve the wording of an alternative financial assurance mechanism.

(5) Allowable Financial Assurance Mechanisms. A permittee shall provide only the following forms of financial assurance for closure and post-closure activities:

(a) A trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency and meeting criteria in 40 CFR §258.74(a). The purpose of the trust fund is to receive and manage any funds that may be paid by the permittee and to disburse those funds only for closure, post-closure maintenance or corrective action activities which are authorized by the Department. The permittee shall notify the Department, in writing, before any expenditure of trust fund moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the trustee within 30 days after receiving such notification, the expenditure is deemed authorized and the trustee may make the requested reimbursements;

(b) A surety bond guaranteeing payment into a standby closure or post-closure trust fund issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The standby closure or post-closure trust fund must be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the permittee or surety company. The penal sum of the bond must be in an amount at least equal to the current closure or post-closure care cost estimate, as applicable. The bond must guarantee that the permittee will either fund the standby trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste or within 15 days after an order to begin closure is issued by the Department or by a court of competent jurisdiction; or that the permittee will provide alternative financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after

the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(c) A surety bond guaranteeing performance of closure, post-closure or corrective action activities issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds that may be paid by the surety company. The bond must guarantee that the permittee will either perform final closure, post-closure maintenance or corrective action activities, as applicable, or provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby trust account;

(d) An irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. A standby trust fund must also be established by the permittee. The purpose of the standby trust fund is to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit must be irrevocable and issued for a period of at least one year and shall be automatically extended for at least one year on each successive expiration date unless the issuing institution notifies both the permittee and the Department at least 120 days before the current expiration date. If the permittee fails to perform closure and post-closure activities according to the closure plan and permit requirements, or to perform the selected remedy described in the corrective action report, or if the permittee fails to provide alternate financial assurance acceptable to the Department within 90 days after notification that the letter of credit will not be extended, the Department may draw on the letter of credit;

(e) A closure or post-closure insurance policy issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus lines insurer in one or more states. The insurance policy must guarantee that funds will be available to complete final closure and post-closure maintenance of the site. The policy must also guarantee that the insurer will be responsible for paying out funds for reimbursement of closure and post-closure expenditures that are in accordance with the closure or post-closure plan or otherwise justified. The permittee shall notify the Department, in writing, before any expenditure of insurance policy moneys is made, describing and justifying the activities for which the expenditure is to be made. If the Department does not respond to the insurer within 30 days after receiving such notification, the expenditure is deemed authorized and the insurer may make the requested reimbursements. The policy must provide that the insurance is automatically renewable and that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may not terminate the policy until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. Termination of the policy may not occur and the policy must remain in full force and effect if: the Department has commenced a proceeding to modify the permit to require immediate closure; or closure has been ordered by the Department, Commission or a court of competent jurisdiction; or the permittee is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. code; or the premium due is paid. The permittee is required to maintain the policy in full force and effect until the Department consents to termination of the policy when alternative financial assurance is provided or when the permit is terminated.

(f) Corporate guarantee. A private corporation meeting the financial test may provide a corporate guarantee that funds are available for closure, post-closure or corrective action activities, and that those activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable. To qualify, a private corporation must meet the criteria of either paragraph (A) or (B) of this subsection:

(A) Financial Test. To pass the financial test, the permittee must have:

(i) Two of the following three ratios: A ratio of total liabilities to tangible net worth less than 3.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(ii) Net working capital equal to at least four times and tangible net worth equal to at least six times the sum of the current cost estimates covered by the test;

(iii) Tangible net worth of at least \$10 million; and

(iv) Assets in the United States amounting to at least six times the sum of the current cost estimates covered by the test.

(B) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

(i) Tangible net worth of at least \$10 million; and

(ii) Two of the following three ratios:

(I) Times Interest Earned ([earnings before interest and taxes] divided by interest) of 2.0 or higher;

(II) Beaver's Ratio of 0.2 or higher ([internally generated cash] divided by [total liabilities]). Internally generated cash is obtained from taxable income before net operating loss, plan credits for fuel tax and investment in regulated investment companies, plus depreciation plus amortization plus depletion, plus any income on the books not required to be reported for tax purposes if it is likely to be recurring, minus income tax expenses. Total liabilities includes all long- and short-term debt; Or

(III) Altman's Z-Score of 2.9 or higher.

(C) The permittee shall demonstrate that it passes the financial test at the time the financial assurance plan is filed and reconfirm that annually 90 days after the end of the corporation's fiscal year by submitting the following items to the Department:

(i) A letter signed by the permittee's chief financial officer that:

(I) Provides the information necessary to document that the permittee passes the financial test;

(II) Guarantees that the funds are available to finance closure, post-closure or corrective action activities according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable;

(III) Guarantees that the closure, post-closure or corrective action activities will be completed according to the closure or post-closure plan, permit requirements or selected remedy described in the corrective action report, as applicable;

(IV) Guarantees that the standby trust fund will be fully funded within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure or post-closure plan and permit, or the selected remedy described in the corrective action report, as applicable, or service of a written notice from the Department that the permittee no longer meets the criteria of the financial test;

(V) Guarantees that the permittee's chief financial officer will notify the Department within 15 days any time that the permittee no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; and

(VI) Acknowledge that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(ii) A copy of the independent certified public accountant's (CPA) report on examination of the permittee's financial statements for the latest completed fiscal year;

(iii) A special report from the permittee's independent CPA stating that the CPA has compared the data which the letter from the permittee's chief financial officer specifies as having been derived from the independently audited year end financial statements for the latest fiscal year with the amounts in such financial statements, and that no matters came to the CPA's attention which caused the CPA to believe that the specified data should be adjusted;

(iv) A trust agreement demonstrating that a standby trust fund has been established with an entity which has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and

(v) A list of any facilities in Oregon or elsewhere for which the permittee is using a similar financial means test to demonstrate financial assurance.

(D) The Department may, based on a reasonable belief that the permittee no longer meets the criteria of the financial test, require reports of the financial condition at any time from the permittee in addition to the annual report. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the criteria of the financial test, the permittee shall fully fund the standby trust fund within 30 days after notification by the Department.

(g) Local Government Financial Test. A local government permittee that satisfies the requirements of 40 CFR §258.74(f)(1) through (3) may demonstrate financial assurance up to the amount specified in 40 CFR § 258.74 (f)(4).

(A) The provisions of 40 CFR §258.74 (f)(1)(i) and 40 CFR §258.74 (f)(1)(i)(A) are deleted.

(h) Local Government Guarantee. A permittee that satisfies the requirements of 40 CFR §258.74(h)(1) and (2) may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government.

(A) The local government guarantee mechanism is allowed only to the extent permitted by the Oregon Constitution.

(g) (i) Alternative Financial Assurance. Alternative forms of financial assurance, such as state-approved trust fund or a pledge of revenue, may be proposed by the permittee, subject to the review and approval of the Director. The applicant must be able to prove to the satisfaction of the Department that the level of security is equivalent to subsections (a) through (f) **(h)** of this section, that the criteria of OAR 340-94-140(4)(e) and sections (1) through (3) of this rule and the performance standards in 40 CFR §258.74(1) are met, except that the pay-in period of a state-approved trust fund for closure or post-closure care may be over the remaining life of the municipal solid waste landfill unit.

Submittal of an alternative financial assurance mechanism to the Department for review and approval shall include third-party certification as specified in OAR 340-94-140(7).

(6) Allowable Financial Assurance Mechanism for Corrective Action. A permittee shall provide one of the following forms of financial assurance for corrective action: a trust fund, a surety bond guaranteeing performance of corrective action, an irrevocable letter of credit, a corporate guarantee, **local government financial test, local government guarantee, or alternative forms of financial assurance**, pursuant to subsections (5)(a), (c), (d), (f), ~~or (g), (h), or (i)~~ of this rule, respectively. Unless specifically required by a mutual agreement and order pursuant to ORS 465.325, the surcharge provisions of ORS 459.311 shall not be used to meet the financial assurance requirements of this rule for financial assurance for corrective action.

(Note: Formats containing the standard wording for financial assurance mechanisms as required by OAR 340-94-145(4) may be obtained from the Department.)

Attachment B-1
NOTICE OF PROPOSED RULEMAKING
(Statement of Need and Fiscal Impact must accompany this form.)

Department of Environmental Quality

OAR Chapter 340-94-010, 340-94-140, & 340-94-145

STATUTORY AUTHORITY: ORS 459.045, 459.046, 459.248, 459.270, 459.272, 468.020

ADOPT:

AMEND: OAR 340-94-010, 340-94-140, and 340-94-145

REPEAL:

RENUMBER:

(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER TO:

(prior approval from Secretary of State REQUIRED)

SUMMARY:

The proposed amendments add two additional financial assurance mechanisms for local governments to demonstrate that adequate funds will be available for the cost of closure, post-closure maintenance, and corrective action for municipal solid waste landfills; a provision for the Director to allow discounting of closure cost estimates, post-closure cost estimates, and corrective action costs up to the rate of return for risk free investments net of inflation, under certain circumstances; and adds the effective date of October 9, 1997, for "very small landfills" to meet financial assurance requirements.

LAST DATE FOR COMMENT: June 23, 1997

AGENCY RULES COORDINATOR:

Susan M. Greco, (503) 229-5213

AGENCY CONTACT FOR THIS PROPOSAL:

Jacque Moon

ADDRESS:

811 S. W. 6th Avenue

Portland, Oregon 97204

TELEPHONE:

(503) 229-5479

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.

Signature

Date

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Solid Waste Rule Amendments: Local Government Municipal Landfill Financial Assurance, Cost Discounting, and Delayed Effective Date of Requirements for Certain Very Small Landfills

Fiscal and Economic Impact Statement

Introduction

Financial assurance requirements were previously adopted by DEQ to assure that landfill operators had sufficient money available to properly close and maintain their landfills. Financial assurance could be provided through such mechanisms as a trust fund, a surety bond, an irrevocable letter of credit, or other approved methods. The requirements were scheduled to become effective April 9, 1997, for most Oregon landfills.

The rule amendments being proposed would not change the previously adopted requirements for closing landfills. Instead, they incorporate the Environmental Protection Agency's (EPA) newly adopted regulations that add two additional financial assurance mechanisms local governments can use to demonstrate financial responsibility for the closure, post-closure, and any potential corrective actions for closed landfill sites. The rule amendments also add that "very small landfills" have until October 9, 1997, to meet financial assurance requirements.

The following elements of this rulemaking proposal would have fiscal and economic impacts:

1. Discount rate. Post-closure costs represent a future cash outflow stream covering up to a 30-year period of time. EPA regulations require permittees to calculate cost estimates for closure and post-closure care in current dollars, and aggregate these.

Cost discounting allows permittees to adjust an aggregated cost estimate to reflect the fact that activities are scheduled to occur in the future, and to obtain a financial instrument covering the present value of these future costs. Appropriate financial practices dictate that such future cash flow streams be discounted before they can be stated in terms of current dollars. Therefore, in the Department of Environmental Quality's (DEQ) Rulemaking for Solid Waste, Criteria for Financial Assurance for Closure and Post-Closure Care in December 1994 (OAR 340-94-140 (4)(a)), use of a discount rate equal to the current yield of a five-year US Treasury Note (about 6%) for closure, post closure, and corrective costs for municipal sites was proposed and adopted.

EPA's newly adopted regulations allow discounting with State oversight. EPA used the Financial Accounting Standards Board (FASB) recommendations, which set standards for corporate accounting. FASB allows discounting only when costs and timing of landfill closure are certain, and then only up to the rate of return for essentially risk free investments, net of inflation. The standard "net of inflation" is more stringent than DEQ's current rule, and will have an economic impact, the extent depending on the financial assurance mechanism chosen. For example, a permittee with estimated post-closure costs of \$100,000 per year (for 30 years) who is assuring payment of these costs with a commercial letter of credit could expect to see his letter of credit fees increase by \$5500 to \$6500 per year.

DEQ has, by policy and statute, generally kept financial assurance requirements the same for municipal and non-municipal landfills, even though EPA regulations do not apply to non-municipal landfills. However, the Department does not intend to apply the more stringent method of determining a discount rate to non-municipal landfills.

2. Local Government Financial Test Mechanism. This new financial assurance mechanism allows a local government to avoid incurring the expenses associated with demonstrating financial assurance through the use of third-party financial instruments, such as a trust fund, letter of credit or insurance policy. Under this approach, a local government may demonstrate that it is capable of meeting its financial obligations through "self-insurance."

What will the economic impact be?

Of the forty-nine active municipal solid waste landfills operating in Oregon as of March 1997, thirty-five, or 71%, are owned or operated by local governments. Five of these receive more than 100 tons of waste a day, and are considered large. The remaining thirty are considered small. The Department estimates that as many as twenty-three of the small landfills will close before October 1997, and will not be subject to financial assurance requirements. Fourteen of the operating landfills are privately owned.

General Public

There would be no direct effect on the general public. The public would be indirectly affected in that any additional costs of financial assurance would likely be passed on to them in increase per-ton disposal fees by municipal solid waste landfill operators. On the other hand, the public will benefit in that the requirements for financial assurance will help ensure that permittees rather than the public bear the cost for closure, post-closure and corrective action costs for their facilities.

Small Business

Some landfill operators are small businesses. They would incur the costs of the reduction in discount rate identified above. However, site closure and post closure costs are independent of the number of employees of a permittee and are individually determined for each landfill site. Consequently, small businesses are placed at no relative disadvantage.

Large Business

Some landfill operators are large businesses. They would incur the costs identified above in the same manner as small businesses. Large, privately owned businesses are more likely than small businesses to operate larger industrial landfills.

Local Governments

In the discussion of Economic and Regulatory Impacts in the Federal Register, Volume 61, No. 230, EPA estimates the two new additional mechanisms for local governments to use to demonstrate financial responsibility will save local government owners and operators \$105.1 million annually. Approximately \$96.6 million of the savings is attributable to the availability of the Local Government Financial Test mechanism, and \$8.5 million is attributable to the availability of the Local Government Guarantee.

Oregon local government owners and operators will get approximately 1% of these savings, saving close to one million dollars annually. This estimate is based on the "census shares" method: since Oregon has 1% of the nation's population, its allocated share is 1% of the expected savings, or one million dollars annually.

State Agencies

DEQ does not expect to experience any fiscal impact from the proposed rulemaking. No other state agencies are directly affected.

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-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for

Solid Waste Rule Amendments: Local Government Municipal Landfill Financial Assurance, Cost Discounting, and Delayed Effective Date of Requirements for Certain Very Small Landfills

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Solid Waste Policy and Program Development Section in the Waste Management and Cleanup Division is proposing to amend Oregon Administrative Rules 340-94-010, 340-94-140, and 340-94-145.

The proposed rule amendments will bring State requirements in line with recently adopted Environmental Protection Agency (EPA) regulations. EPA added two mechanisms from which local governments may choose to demonstrate financial assurance for closure, post-closure maintenance, and corrective action for municipal solid waste (MSW) landfills. EPA also added a provision allowing "approved states" to discount closure cost estimates, post-closure cost estimates, and corrective action cost up to the rate of return net of inflation for risk free investments. Oregon is an approved state.

The newly adopted EPA regulations also give State Directors the option to waive financial assurance requirements for all MSW landfills for good cause for up to one year, until April 9, 1998. State rule (OAR 340-94-020 State Flexibility) already allows the Director to specify alternative schedules for financial assurance, so this one year optional extension is not included in the proposed rule amendment. The regulated community will be notified of the one year extension in the Rulemaking Public Information Package.

Additionally, the effective date of October 9, 1997 for "very small landfills" that meet certain criteria to meet the financial assurance requirement is included in the rule amendment. It was added in a temporary rulemaking and adopted in November 1995, but never adopted as a permanent rule.

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:** Division 94 (formerly Division 61), has been identified as a program that significantly affects land use because of the issuance of solid waste disposal permit. When a permit is issued, the affected local government is required to review and approve a land use compatibility statement before the permit is processed. However, the proposed rule amendments in question do not have direct implications to land use.

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

Yes No (if no, explain): Not applicable, the proposed rule amendments do not relate to the permit process and the required Land Use Compatibility Statement.

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.

Janique Moon
Division

Intergovernmental Coord.

Date

Attachment B-4

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?

40 CFR Parts 257 and 258, Solid Waste Disposal Facility Criteria ("subtitle D") apply to municipal solid waste landfills.

40 CFR Part 257 also applies to non-municipal land disposal facilities, but contains no regulations for financial assurance, or for closure or post-closure plans.

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

The federal rules for municipal solid waste landfills require a detailed written estimate be produced of the cost of closure, post-closure, and corrective action (if necessary), and a demonstration that financial assurance based on those costs is available. This requirement assures that landfill operators have sufficient money available to properly close and maintain their landfills. Several financial assurance mechanisms are available, and a "performance based" alternative mechanism is allowed if approved by the Director of an "approved state." Oregon is an "approved state." The federal financial assurance requirements do not apply to non-municipal landfills.

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

The federal requirements do address issues that are of concern in Oregon. The proposed rule amendments make Oregon's effective date for certain very small landfills, the option for permittees to discount closure and post-closure costs, and financial assurance mechanisms the same for municipal solid waste landfills as federal requirements.

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

The proposed rules will increase the flexibility available to local government owners and operators of municipal solid waste landfills by adding two financial assurance mechanisms to those currently available. The *local government financial test* mechanism allows a local government to avoid incurring the expenses associated with demonstrating financial assurance

through the use of third-party financial instruments, such as a trust fund, letter of credit or insurance policy. Under this approach, a local government may demonstrate that it is capable of meeting its financial obligations through "self-insurance."

Additionally, federal requirements allow certain very small landfills the ability to postpone meeting financial requirements until October 9, 1997. This allows the owners and operators sufficient time to provide financial assurance.

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

No. DEQ agrees with the proposed date.

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

Not applicable.

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

Yes. The financial assurance requirements, provision for cost discounting, and date for compliance applies equally to all permittees of municipal solid waste landfills.

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

Yes. the public will benefit in that the requirements for financial assurance will help ensure that permittees rather than the public bear the cost for closure, post-closure and corrective action costs for their facilities.

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

Oregon's proposed rules are consistent with the newly adopted Federal rules with one exception. The Environmental Protection Agency regulations allow local governments to demonstrate financial assurance in one of two ways for the *local government financial test* mechanism. One way is through general obligation bonds. In previous Financial Assurance rule adoptions, the Department declined to allow a bond rating to replace other financial tests for corporations because general obligation bonds are not an indicator of liquidity. A highly rated municipality (or corporation) could be months, or even years, from converting some asset into cash to pay for needed action. Additionally, a bond rating is a rating of a security, not of a governmental entity. Other problems with abrogating DEQ's responsibility to the rating agencies include:

- The cost of rating for a small municipality could be considerable, especially if this were the only reason they had to seek a rating.
- Rating agencies have no financial responsibility for their ratings. They could overrate a municipality that later turned up insolvent. DEQ would have to sue the rating agency and

prove gross negligence in order to receive any compensation. The raters could retaliate by downgrading state bonds.

- The BBB and Baa ratings suggested as acceptable are only marginally investment grade; they more accurately might be described as "municipal junk bonds." The least slippage, for example one big property tax payer leaves the state, could cause the ratings to vanish.
- The financial analysis literature abounds with examples of firms and municipalities receiving investment grade ratings at the same instant the cash is flowing out and imminent bankruptcy looms. Viz. W. T. Grant, Orange County.

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

Yes. The methods to demonstrate financial responsibility and cost discounting are in common use.

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

Yes. An increased level of Department scrutiny in monitoring facility closure, post-closure and corrective action activities will correspondingly contribute to the prevention of pollution. Ensuring that permittees have available funds for those activities will preclude the public having to finance them.

Attachment B-5

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 19, 1997

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements - Solid Waste Rule Amendments: Local Government Municipal Landfill Financial Assurance, Cost Discounting, and Delayed Effective Date of Requirements for Certain Very Small Landfills

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to amend the financial assurance requirements for municipal solid waste landfills to match newly adopted Environmental Protection Agency (EPA) regulations that add:

- Two additional financial assurance mechanisms for local governments to demonstrate that adequate funds will be available for the cost of closure, post-closure maintenance, and corrective action for municipal solid waste landfills. The first mechanism is a financial test for use by local governments, and the second is a provision for local governments that wish to guarantee the costs for an owner or operator other than themselves; and
- A provision for the Director to allow discounting of closure cost estimates, post-closure cost estimates, and corrective action cost up to the rate of return for risk free investments net of inflation, under certain circumstances.

The newly adopted EPA regulations also allow the Director the option to waive financial assurance requirements for all municipal solid waste landfills for good cause for up to one year, until April 9, 1998. State rule (OAR 340-94-020, State Flexibility) already allows the Director to specify alternative schedules for financial assurance, so this one year optional extension is not included in the proposed rule amendments. However, DEQ intends to allow both municipal and non-municipal solid waste landfills to waive financial assurance requirements for good cause until April 9, 1998.

This proposal also amends the effective date to October 9, 1997, for "very small landfills" to meet financial assurance requirements.

Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's (EQC) intended action to adopt a rule.

What's in this Package?

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

Memo To: Interested and Affected Public
May 19, 1997
Page 2

- Attachment E: Summary of proposed rule language
- Attachment F: Local Government Financial Assurance Guidelines

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

Public Comment Period

You are invited to review these materials and present written comment on the proposed rule changes. Written comments must be presented to the Department by 5:00 p.m., Monday, June 23, 1997. Please forward all comments to DEQ, Attention: Jacquie Moon, 811 S.W. 6th Avenue, Portland, Oregon, 97204. Written comments may also be hand delivered to the DEQ, 811 S.W. 6th, 8th Floor between 8:00 a.m. and 5:00 p.m.

In accordance with ORS 183.335(13), no comments can be accepted after the close of the comment period. 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.

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., June 23, 1997.

What Happens After the Public Comment Period Closes

Following close of the public comment period, the Department will prepare a report which summarizes the comments received. The Environmental Quality Commission (EQC) will receive a copy of this report.

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 the 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 dates for consideration of this rulemaking proposal are July 17-18, 1997. This may be delayed if needed to provide additional time for evaluation and response to the public comments received.

You will be notified of the time and place for final EQC action if you submit written comments during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

Since January 1984, permittees of solid waste disposal sites have been required by state law to apply for a "closure permit" at least five years before the anticipated closure of the site. One of the requirements of a closure permit, required by both state and federal rules, is a financial assurance plan to cover the costs of properly closing the site and providing post-closure maintenance.

Federal criteria (40 CFR Part 258, or "Subtitle D") established financial assurance requirements for municipal solid waste landfills in August 1988. EPA promulgated several financial assurance mechanisms in October 1991, and announced their intention to develop financial tests for local governments and corporations in future rulemakings. April 9, 1994 was the date originally set for financial assurance requirements to take effect. EPA subsequently delayed that date.

In November 1996, EPA adopted two additional financial assurance tests, both pertaining to local governments. They also adopted regulations that allow discounting the cost for closure and post-closure care with State oversight. EPA's regulations allow discounting only when cost estimates are complete and accurate, and timing of closure are certain and then only for an essentially risk free rate, net of inflation. EPA's rules on discounting are more stringent than DEQ's current rule. DEQ's proposed rule amendment add these changes to state law.

Additionally, the effective date of October, 9, 1997 for "very small landfills" to meet the financial assurance requirement is included in this proposal. This effective date was added to state law in a temporary rule in November 1995. This proposal will make it a permanent amendment to the rule.

How was the rule developed?

The amendments were developed to match federal requirements for financial assurance for municipal solid waste landfills. The Solid Waste Advisory Committee has reviewed the proposed amendments by mail.

Federal Register Volume 61, No. 230, November 27, 1996 (40 CFR Part 258) was the document relied upon in the development of this rulemaking proposal. Copies of this document can be reviewed at the DEQ's office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Jacquie Moon at 229-5479 for times when the document is available for review.

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

The public is affected only indirectly. Any increased costs incurred by the regulated community (operators of solid waste disposal sites) are likely to be passed on to the public in increased tipping fees. At the same time, the public might experience even higher costs if it has to pay for cleanup and closing of a disposal site because a landfill continued to operate without building up sufficient financial backing to properly close the landfill.

Local government permittees of municipal solid waste landfills who have not yet demonstrated financial assurance are directly affected by this rule amendment. The Department estimates that as many as twenty-

Memo To: Interested and Affected Public
May 19, 1997
Page 4

three of these landfills may close before October 1997, and will not be subject to financial assurance requirements. If the estimate is correct, the portion of the rule amendment adding two additional financial assurance mechanisms for local governments will affect three landfills.

The new financial assurance mechanisms are expected to provide considerable cost savings to local governments. The mechanisms allow a local government to demonstrate that it is capable of meeting its financial obligations through "self-insurance", avoiding incurring the expenses associated with demonstrating financial assurance through the use of third-party financial instruments, such as a trust fund, letter of credit or insurance policy.

EPA's newly adopted rule on cost discounting is more stringent than DEQ's current rule, and will have an economic impact on all municipal solid waste landfills, both publicly and privately owned, the extent depending on the financial assurance mechanism chosen. For example, a permittee with estimated post-closure costs of \$100,000 per year (for 30 years) who is assuring payment of these costs with a commercial letter of credit could expect to see his or her letter of credit fees increase by \$5500 to \$6500 per year.

How will the rule be implemented?

Local government permittees of municipal solid waste landfills will have two additional financial assurance mechanisms from which to choose to demonstrate that adequate funds will be available for the closure, post-closure maintenance, and corrective action for existing disposal sites.

Both municipal and non-municipal facilities must provide a copy of the financial assurance mechanism to the Department by April 9, 1997. Very small landfills meeting certain criteria have until October 9, 1997. However, the Department will waive financial assurance requirements for all facilities for good cause for up to one year, until April 9, 1998, according to the provisions of OAR 340-94-020(2).

Are there time constraints?

There are no formal deadlines in state or federal law for this rulemaking. However, for permittees to be able to provide financial assurance by the required dates, the proposed rule amendments need to be adopted on a schedule with some lead time.

Contact for more information

If you would like more information on this rulemaking proposal, obtain copies of the entire rule DEQ proposes to amend, or would like to be added to the mailing list, please contact:

Jacquie Moon, phone (503) 229-5479
DEQ 9th floor
811 SW 6th Avenue
Portland, OR 97204

Attachment C**Waste Control Systems, Inc.**

P.O. BOX NUMBER 807
CORVALLIS, OREGON 97339
(541) 757-0011
FAX # (541) 757-0219

June 23, 1997

Jacquie Moon
DEQ 9th floor
811 SW 6th Avenue
Portland, OR 97204

Re: Proposed change to Financial Assurance Rule

Dear Ms. Moon:

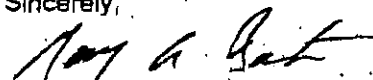
In response to the EPA rule changes under 40 CFR, Part 258, the DEQ has proposed certain changes to the State rule regarding financial assurance plans for Oregon Municipal Solid Waste Landfills. The purpose of this letter is to comment on the scope of application that the proposed DEQ rule change would provide.

The EPA rule amendment added wording to section 258.75, subpart G regarding the use of discounting. This change allows discounting under specific criteria which is different from the current discounting allowed under the State rule. In the Department's Fiscal and Economic Impact Statement, paragraph 1, it states that this portion of the rule change would have an economic impact likely to result in additional costs to a permittee. It further states that the Department "does not intend to apply the more stringent method of determining a discount rate to non-municipal landfills." No explanation for this difference in application was offered.

I agree with the original rulemaking on financial assurance plans, whereby the Department applied the same rules to non-municipal landfills. These landfills often compete with municipal landfills for the same waste. It is therefore appropriate to apply the same rules (and thus costs) to both types of landfills. With this rule change, the Department departs from its uniform application of rule by proposing that it would not apply to non-municipal landfills. Since this change is likely to have a negative financial impact on landfills to which it applies, such non-application may result in an unfair competitive advantage being given to non-municipal landfills.

I therefore urge the Department to not depart from its uniform application approach taken in the original rule making and apply the proposed changes to non-municipal landfills as well as municipal landfills.

Sincerely,



Gary A. Barton
Vice President

Enhancing the Environment of Oregon through
Recycling, Collection and Disposal of Solid Waste

RECYCLED PAPER

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Solid Waste Rule Amendments: Local Government Municipal Landfill Financial Assurance, and Delayed Effective Date of Requirements for Certain Very Small Landfills

Rule Implementation Plan

Summary of the Proposed Rule

The proposed rule amendments will bring state requirements in line with recently adopted Environmental Protection Agency (EPA) regulations. EPA added two mechanisms from which local governments may choose to demonstrate financial assurance for closure, post-closure maintenance, and corrective action for municipal solid waste (MSW) landfills. EPA also added a provision allowing "approved states" to discount closure cost estimates, post-closure cost estimates, and corrective action cost up to the rate of return for risk free investments, net of inflation. This will change the way the Department currently handles discounting.

Additionally, the effective date of October 9, 1997, for "very small landfills" to meet financial assurance requirements is included. This effective date was added to state law in a temporary rule in November 1995. This proposal will make it a permanent amendment to the rule.

Proposed Effective Date of the Rule

August 1, 1997. However, the existing rule itself contains specific dates by which certain actions must take place.

Proposal for Notification of Affected Persons

All permittees of solid waste disposal sites will be notified of the rule amendment and of its availability. The notification will include a summary of the new local government financial assurance options, the change in the method for calculating the discount rate to estimate financial assurance costs, and the procedure for requesting delay of the effective date for financial assurance requirements.

Proposed Implementing Actions

DEQ's Solid Waste Permit Guidance document will be updated to include the rule amendments.

As with the previously adopted financial assurance mechanisms, Guidelines (required formats) for preparing financial assurance documents for the two new financial assurance mechanisms have been developed. The Guidelines will be included in the notification to Affected Persons. The Guidelines for all financial assurance mechanisms will be added to the Department's shared electronic directory, and Solid Waste Regional staff notified of their availability.

The Department will calculate an annual acceptable discount rate, and publish the rate in July of each year.

If permittees wish to discount cost estimates, they will determine if they meet EPA's criteria for discounting. If so, at the time they perform the first required annual review and update of financial cost estimates after August 1, 1997, and thereafter, they will use the Department's discount rate for the current year. Additionally, at the first required annual review after August 1, 1997, they will submit the following: a one-time certification to the Department that the closure date is certain and there are no foreseeable factors that will change the estimate of site life, and a certification from a Registered Professional Engineer stating the cost estimates are complete and accurate.

Permittees wishing to delay financial assurance requirements until April 9, 1998, will request a waiver in writing, demonstrating to the Department's satisfaction that the delay will not adversely affect human health and the environment. The Department will respond to the request in writing.

Proposed Training/Assistance Actions

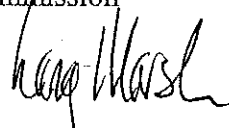
Solid Waste Regional staff have been consulted on the new mechanisms and new method for determining cost discounting, and will be informed when the Commission adopts the rule amendments.

Headquarters staff will work with Regional staff to inform them of financial assurance requirements. Solid Waste Regional staff will work with existing solid waste permittees to further inform them of requirements and to develop schedules for preparation of financial assurance plans.

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 30, 1997

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item E, Petition by JELD-WEN, Inc. for Declaratory Ruling Concerning Availability of Sewer as Defined in OAR 340-71-160(5)(f), EQC Meeting, July 17, 1997

Statement of Purpose

The Commission needs to decide how it wishes to respond to a petition for declaratory ruling filed by JELD-WEN, Inc.

Background

JELD-WEN, Inc. (JWI) owns and operates a wood products manufacturing complex near Klamath Falls, Oregon. Sewage generated at the complex is treated and disposed in a large septic tank and drainfield system located on the property of the complex. In early May, 1997, JWI discovered that their drainfield was failing.

Oregon Revised Statute (ORS) 454.655(4), in part, states: "No permit shall be issued if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge." Oregon Administrative Rule (OAR) 340-71-160(5) states, in part: "Upon receipt of a completed application the Agent shall deny the permit if: (f) A sewerage system which can serve the proposed sewage flow is both legally and physically available." A sanitary sewer owned by the City of Klamath Falls is adjacent to the complex site; therefore, the Department concluded that sewer is physically available. The City of Klamath Falls has indicated that it is willing to allow JWI to connect to this sewer provided JWI meets certain conditions including annexation of the complex site into the City of Klamath Falls. The Department believes that an area-wide sewer is legally available and, therefore, will not authorize JWI to repair its drainfield system, but JWI, instead, must connect to the City of Klamath Falls sewer system.

JWI's position is that, since the City will not allow connection because JWI is outside city limits, sewer is not legally available. JWI has filed its petition, pursuant to OAR 340-11-061 and OAR 137-02-010 to 060, to request the Commission to rule that an area-wide sewer is not available and that DEQ should allow JWI to permanently repair and maintain its drainfield system.

Memo To: Environmental Quality Commission

Agenda Item E, Petition by JELD-WEN, Inc. for Declaratory Ruling Concerning Availability of Sewer as Defined in OAR 340-71-160(5)(f), EQC Meeting Page 2

Authority of the Commission with Respect to the Issue

OAR 340-11-061 and OAR 137-02-010 to 060 provide the Environmental Quality Commission the authority and process for issuing declaratory rulings.

Alternatives and Evaluation

The process for considering a petition for declaratory ruling involves several steps.

ISSUE #1: Whether to accept the petition.

Alternative #1: Deny the petition which precludes the EQC from providing an interpretation of the rule. JWI would then be able to appeal the issue to circuit court.

Alternative #2: Accept the petition.

The Department recommends that the EQC accept the petition. The cost to JWI for connecting to sewer is substantial and, because of this, JWI deserves consideration of its petition.

If the Commission accepts the petition, it must send notice to the petitioner, interested persons listed in the petition and anyone else that the Commission thinks might be interested. The notice should also provide information about deadlines (for intervention requests and briefs) and procedures to be followed.

ISSUE #2: How does the EQC wish to process the petition?

Alternative #1: Following acceptance of the petition, the Department would notice the petitioner and all interested parties that the petition has been accepted. Interested parties would be given until August 1, 1997 (two weeks after the EQC's July meeting) to submit intervention requests. The EQC could convene a special meeting by telephone to rule on the intervention requests or could delegate this function to the Director or to a Commission member. The petitioner and interested parties would be notified by DEQ of intervention rulings and a deadline of August 15, 1997 (one week before the August 22, 1997 meeting) for filing of briefs. The EQC would conduct the hearing itself and render a decision at the August 22, 1997, EQC meeting.

The advantage of this alternative is that the proceeding is concluded relatively quickly. The disadvantage is that the hearing may be fairly lengthy (a couple of hours) and would not have the benefit of a Presiding Officer's summary of the issue and recommendation.

Alternative #2: Following acceptance of the petition, the Department would notice the petitioner and all interested parties that the petition has been accepted. Interested parties would be given until August 15, 1997 (one week before the EQC's August meeting) to submit intervention requests. At the August 22, 1997, EQC meeting, the EQC would rule on intervention requests, either select a Presiding Officer or decide to conduct the hearing itself, and set a date for the hearing. If the EQC decides to conduct the hearing itself, it could be held at the October 3, 1997, EQC meeting. If the hearing is to be conducted by a Presiding Officer, it could be scheduled for a time in September with the EQC making a final ruling at the November 21, 1997, EQC meeting.

The advantages of alternative #2 is that it is not so rushed and does not encumber the Commission with the task of conducting a lengthy hearing. The disadvantage is that it could delay final ruling into the late fall.

Delay is significant because the failing drainfield by definition is creating a health hazard. The longer it takes to resolve the issue, the longer the health hazard will persist. As the weather gets colder and wetter, it is likely that the drainfield's limited effectiveness will diminish even further. At the time this report was drafted, however, the Department was negotiating a mutual agreement and order with JWI that would allow temporary repair pending a ruling by the EQC.

The Department recommends that the EQC select alternative #2 as the process for ruling on this petition.

Summary of Public Input Opportunity

To this point, there has been no public input. The process for a declaratory ruling does provide for interested parties to intervene in the proceeding, however.

Conclusions

The Department believes the petition for declaratory ruling filed by JWI should be heard by the EQC.

Memo To: Environmental Quality Commission
Agenda Item E, Petition by JELD-WEN, Inc. for Declaratory Ruling Concerning Availability of Sewer as
Defined in OAR 340-71-160(5)(f), EQC Meeting Page 4

Intended Future Actions

Assuming the EQC accepts the petition, the Department will prepare proper public notice and send it to the petitioner and interested parties. In addition, the Department will negotiate an MAO with JELD-WEN to allow a temporary repair pending a ruling by the EQC.

Department Recommendation

It is recommended that the Commission accept the petition, and request the Department to proceed with a process as outline in alternative #2.

Attachments

ORS 454.655, OAR 340-71-160(5), OAR 137-12-010 to 060 Division 2 (Attorney
General Model Rules for Declaratory Rulings)

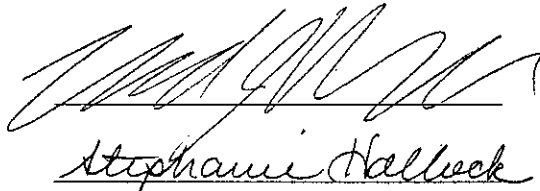
Petition filed by JWI

Reference Documents (available upon request)

Approved:

Section:

Division:



Report Prepared By: Richard J. Nichols

Phone: (541) 388-6146, X251

Date Prepared: June 30, 1997

Permit Application Procedures — General Requirements

340-71-160 (1) No person shall cause or allow construction, alteration, or repair of a system, or any part thereof, without first applying for and obtaining a permit.

EXCEPTION: Emergency repairs as set forth in OAR 340-71-215.

(2) Applications for permits shall be made on forms approved by the Department.

(3) An application is complete only when the form, on its face, is completed in full, is signed by the owner or the owner's legally authorized representative, and is accompanied by all required exhibits and fee. Except as otherwise allowed in this division, the exhibits shall include:

(a) Favorable Site Evaluation Report. At the Agent's discretion, the requirement for an evaluation report may be waived when the application is for a repair permit or an alteration permit;

(b) A land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;

(c) Plans and specifications for the on-site system proposed for installation within the area identified by the Agent or in the favorable site evaluation report. The Agent shall determine and request the minimum level of detail necessary to insure proper system construction;

(d) Any other information the Agent finds is necessary to complete the permit application.

(4) The application form shall be received by the Agent only when the form is complete, as detailed in section (3) of this rule.

(5) Upon receipt of a completed application the Agent shall deny the permit if:

(a) The application contains false information;

(b) The application was wrongfully received by the Agent;

(c) The proposed system would not comply with these rules;

(d) The proposed system, if constructed, would violate a Commission moratorium as described in OAR 340-71-460;

(e) The proposed system location is encumbered as described in OAR 340-71-130(8);

(f) A sewerage system which can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection:

(A) Physical Availability. A sewerage system shall be deemed physically available if its nearest connection point from the property to be served is:

(i) For a single family dwelling, or other establishment with a maximum projected daily sewage flow of not more than four hundred fifty (450) gallons, within three hundred (300) feet;

(ii) For a proposed subdivision or group of two (2) to five (5) single family dwellings, or equivalent projected daily sewage flow, not further than two hundred (200) feet multiplied by the number of dwellings or dwelling equivalents;

(iii) For proposed subdivisions or other developments with more than five (5) single family dwellings, or equivalents, the Agent shall make a case-by-case determination of sewerage availability.

EXCEPTION: A sewerage system shall not be considered available if topographic or man-made features make connection physically impractical.

(B) Legal Availability. A sewerage system shall be deemed legally available if the system is not under a Department connection permit moratorium, and the sewerage system owner is willing or obligated to provide sewer service.

(6) A permit shall be issued only to a person licensed under ORS 454.695, or to the owner or easement holder of the land on which the system is to be installed.

(7) No person shall construct, alter or repair a system, or any part thereof, unless that person is licensed under ORS 454.695, or is the permittee.

(8) The Agent shall either issue or deny the permit within twenty (20) days after receipt of the completed application.

EXCEPTION: If weather conditions or distance and unavailability of transportation prevent the Agent from acting to either issue or deny the permit within twenty (20) days, the applicant shall be notified in writing. The notification shall state the reason for delay. The Agent shall either issue or deny the permit within sixty (60) days after the mailing date of such notification.

(9) 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.

(10) Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date. Application for permit renewal shall conform to the requirements of sections (2) and (4) of this rule. The permit shall be issued or denied consistent with sections (5), (6), (8), and (9) of this rule.

(11) If a permit has been issued pursuant to these rules but existing soil moisture conditions preclude the construction of the soil absorption system, the septic tank may be installed and used as a temporary holding tank upon approval of the Agent. Before the Agent will approve such use, the permittee shall demonstrate that the outlet of the tank has been sealed with a water tight seal and that the permittee or owner has entered into a pumping contract for the tank. The maximum length of time a septic tank can be used as a temporary holding tank is 12 months.

DIVISION 2

**MODEL RULES OF PROCEDURE
APPLICABLE TO PROCEEDINGS FOR
AGENCY DECLARATORY RULINGS**

Institution of Proceedings for Declaratory Rulings

137-02-000 [1AG 14, f. & ef. 10-22-75;
Repealed by JD 2-1986,
f. & ef. 1-27-86]

[ED. NOTE: OAR 137-02-010 to 137-02-060 were adopted by the Attorney General as required by ORS 183.410. Agencies must apply these rules without further adoption or amendment.]

Petition for Declaratory Ruling

137-02-010 The petition to initiate proceedings for declaratory rulings shall contain:

- (1) The rule or statute that may apply to the person, property, or state of facts;
- (2) A detailed statement of the relevant facts; including sufficient facts to show petitioner's interest;
- (3) All propositions of law or contentions asserted by petitioner;
- (4) The questions presented;
- (5) The specific relief requested; and
- (6) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: 1AG 14, f. & ef. 10-22-75; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

Service of Declaratory Ruling Petition

137-02-020 (1) The petition shall be deemed filed when received by the agency.

(2) Within 60 days after the petition is filed the agency shall notify the petitioner in writing whether it will issue a ruling. If the agency decides to issue a ruling, it shall serve all persons named in the petition by mailing:

- (a) A copy of the petition together with a copy of the agency's rules of practice; and
- (b) Notice of any proceeding including the hearing at which the petition will be considered. (See OAR 137-02-030 for contents of notice.)

(3) Notwithstanding section (2) of this rule, the agency may decide at any time that it will not issue a declaratory ruling in any specific instance. The agency shall notify the petitioner in writing when the agency decides not to issue a declaratory ruling.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

Intervention in Declaratory Rulings

137-02-025 (1) Any person or entity may petition the agency for permission to participate in the

proceeding as a party.

(2) The petition for intervention shall be in writing and shall contain:

(a) The rule or statute that may apply to the person, property, or state of facts;

(b) A statement of facts sufficient to show the intervenor's interest;

(c) A statement that the intervenor accepts the petitioner's statement of facts for purposes of the declaratory ruling;

(d) All propositions of law or contentions asserted by the intervenor;

(e) A statement that the intervenor accepts the petitioner's statement of the questions presented or a statement of the questions presented by the intervenor;

(f) A statement of the specific relief requested.

(3) The agency may, in its discretion, invite any person or entity to file a petition for intervention.

(4) The agency, in its discretion, may grant or deny any petition for intervention. If a petition for intervention is granted, the status of the intervenor(s) shall be the same as that of an original petitioner, i.e. the declaratory ruling, if any, issued by the agency shall be binding between the intervenor and the agency on the facts stated in the petition, subject to review as provided in ORS 183.410

(5) The decision to grant or deny a petition for intervention shall be in writing and shall be served on all parties.

Stat. Auth.: ORS Ch. 183.410

Stats. Implemented: ORS 183.410

Hist.: JD 5-1989, f. 10-5-89, cert. ef. 10-15-89; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

Notice of Declaratory Ruling Hearing

137-02-030 The notice of hearing for a declaratory ruling shall:

(1) Be accompanied by a copy of the petition requesting the declaratory ruling and by a copy of any petition for intervention if copies of these petitions have not previously been served on the party;

(2) Set forth the time and place of the proceeding; and

(3) Identify the presiding officer.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

Declaratory Ruling Procedure

137-02-040 (1) The proceeding shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body or any other person designated by the agency.

(2) No testimony or other evidence shall be accepted at the hearing. The petition will be decided on the facts stated in the petition, except that the presiding officer may agree to accept, for consideration by the agency, a statement of alternative facts if such a statement has been stipulated to in writing by all parties to the proceeding, including any intervening parties.

(3) The parties and agency staff shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the time allowed for oral argument. The parties and agency staff may file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs and may direct that the briefs be submitted prior to oral argument. The presiding officer may permit the filing of memoranda following the hearing.

(4) The proceeding may be conducted in person or by telephone.

(5) As used in this rule, "telephone" means any two-way electronic communication device.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS ORS 183.410

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

Presiding Officer's Proposed Declaratory Ruling

137-02-050 (1) Except when the presiding officer is the decision maker, the presiding officer shall prepare a proposed declaratory ruling in accordance with OAR 137-02-060 for consideration by the decision maker.

(2) When a proposed declaratory ruling is considered by the decision maker, the parties and agency staff shall have the right to present oral argument to the decision maker.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: 1AG 14, f. & ef. 10-22-75; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

Issuance of Declaratory Ruling

137-02-060 (1) The agency shall issue its declaratory ruling within 60 days of the close of the record.

(2) The ruling shall be in writing and shall include:

(a) The facts upon which the ruling is based;

(b) The statute or rule in issue;

(c) The agency's conclusion as to the applicability of the statute or rule to those facts;

(d) The agency's conclusion as to the legal effect or result of applying the statute or rule to those facts;

(e) The reasons relied upon by the agency to support its conclusions;

(f) A statement that under ORS 183.480 the parties may obtain judicial review by filing a petition with the Court of Appeals within 60 days from the date the declaratory ruling is served.

(3) The ruling shall be served by mailing a copy to the parties.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

Effect of Agency Ruling

137-02-070 [1AG 14, f. & ef. 11-22-75;

Repealed by JD 2-1986,

f. & ef. 1-27-86]

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
FOR THE STATE OF OREGON

In re JELD-WEN, Inc.,

Petitioner.

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No. _____

PETITION FOR A DECLARATORY
RULING

JELD-WEN, Inc., through its attorneys Schwabe, Williamson & Wyatt petitions the Environmental Quality Commission for a declaratory ruling pursuant to OAR Chapter 137, Division 2. In support of its petition, JELD-WEN relies on the following statement of issues, statement of facts, legal argument and other information required under OAR 137-02-010.

APPLICABLE RULE

The issue in this case is an interpretation of OAR 340-71-160(5)(f). DEQ claims this regulation requires JELD-WEN to abandon its existing method of sewage disposal [an on-site sewage disposal system (a drainfield)]. DEQ also claims that the regulation requires connection to the City of Klamath Falls' sanitary sewer system, even though the City of Klamath Falls requires annexation of the JELD-WEN property by the City before it will allow a connection. JELD-WEN's property is located in Klamath

1 County. The City stated that it must annex JELD-WEN's property before JELD-WEN can
2 connect to the City sewer system. Despite these physical and legal impediments, DEQ has
3 determined that the City of Klamath Falls' sewer is "physically available" and "legally
4 available" as those terms are defined in the regulation.

5 In part, the applicable regulations state that no person shall cause or allow
6 construction, alteration, or repair of an on-site sewerage disposal system, without first
7 applying for and obtaining a permit. OAR 340-71-160(1). Under the regulations, DEQ
8 "shall" deny the permit if "a sewerage system which can serve the proposed sewage flow is
9 both legally and physically available." OAR 340-71-160(5)(f). A sewerage system shall be
10 deemed legally available if the system is not subject to a DEQ connection permit
11 moratorium, and "the sewerage system owner is willing or obligated to provide sewer
12 service." OAR 340-71-160(5)(f)(13). A copy of the applicable rule is attached to this
13 Petition as Exhibit A.

14 **STATEMENT OF ISSUES**

15 Whether DEQ can consider a sewerage system to be "legally available" under
16 its regulations if the owner of the sewer system requires the landowner to become annexed
17 in order to be connected?

18 Whether DEQ is justified in denying JELD-WEN's application for repair of
19 an existing and previously permitted septic tank drainfield system?

20 **STATEMENT OF FACTS**

21 Since approximately 1950, JELD-WEN Inc. has operated and maintained a
22 septic tank/drainfield system at its door and cutstock manufacturing facilities located in
23 Klamath County. The system is used primarily to treat and dispose of domestic wastes
24 generated at the facility.

25 In 1978, JELD-WEN retained an engineering firm to design upgrades to and
26 repair the existing system. DEQ approved the 1978 design and granted JELD-WEN a

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1 permit to install the upgrades. As a condition of the 1978 plan approval letter from DEQ,
2 JELD-WEN was required to leave undeveloped areas contiguous to the drainfield for use as
3 future drainfield. The JELD-WEN system has been included in the facility's NPDES
4 permit in the past. The system has operated successfully since 1978 (and before) without
5 any environmental or public health problems. There have been no regulatory violations at
6 the system.

7 The JELD-WEN facility is located (and was in 1978) within the
8 unincorporated jurisdiction of Klamath County, outside of the Klamath Falls city limits, but
9 within the urban growth boundary. The Klamath Falls city boundary abuts the JELD-WEN
10 property line, separated by Lakeport Boulevard. There was no available County sewer
11 system in 1978, nor is there today. The City of Klamath Falls, on the other hand, does
12 maintain a City sewer system. However, the City is unwilling to allow a connection to its
13 sewer without annexation of the property to be hooked up.

14 On May 2, 1997, JELD-WEN discovered that its drainfield system was
15 potentially failing. Jeld-Wen immediately notified Walt West and Dick Nichols of the
16 Eastern Region Water Quality Management program of DEQ's Eastern Region office in
17 Bend, as well as Bob Bagget of the onsite sewer program in Pendleton. Pursuant to
18 OAR 340-71-160, JELD-WEN requested appropriate permits in order to repair the existing
19 drainfield. DEQ informed JELD-WEN that it was necessary first to conduct a Site
20 Evaluation of the system. On May 6 and 13, 1997, DEQ staff traveled to Klamath Falls
21 and conducted the evaluation, after which JELD-WEN completed an application and
22 submitted a \$1,200 application fee.

23 On May 22, 1997, DEQ informed JELD-WEN through a memorandum that
24 the area surveyed was satisfactory for a new system if it included a recirculating gravel
25 filter, and if the soil was allowed to dry before installation. See May 22, 1997 DEQ
26 Memorandum, attached as Exhibit B. However, the memorandum went on to state that

1 DEQ staff would deny JELD-WEN's permit application because it considered the City of
2 Klamath Falls sewer system to be "legally available" even though the City would require
3 annexation.

4 JELD-WEN disagrees that the City's sewer system is "legally available." The
5 City lacks the authority to annex JELD-WEN without JELD-WEN's consent and JELD-
6 WEN has no intention of voluntarily consenting to annexation since JELD-WEN already
7 receives all necessary public services from other sources and annexation would cost JELD-
8 WEN significant sums of money.¹ JELD-WEN has received some or all of its water
9 supply from the City system for at least the last 25 years.

10 JELD-WEN disagreed with DEQ's position in a June 2, 1997 letter to
11 Richard Nichols, attached as Exhibit C. DEQ responded by letter on June 3, 1997, and
12 stated that it agrees that the area proposed by JELD-WEN is acceptable for the replacement
13 drainfield. Despite the acceptability of the replacement drainfield, DEQ said it was unable
14 to issue the permit because it feels the City of Klamath Falls sewer system is physically and
15 legally available. As a result, DEQ is precluded from issuing a permit to construct a
16 replacement drainfield. June 3, 1997 Letter from DEQ to Stanley K. Meyers, attached as
17 Exhibit D. The letter also suggested that JELD-WEN petition the EQC for a declaratory
18 ruling on this issue. JELD-WEN is working on a temporary solution with DEQ while the
19 EQC reviews this petition.

20 LEGAL ANALYSIS

21 JELD-WEN's property is close to the Klamath Falls sewer system which
22 makes the City system arguably "physically available" to JELD-WEN, as defined in OAR
23 340-71-160(5)(f)(A). However, the physical availability of a sewerage system is just one
24

25 ¹Through conversations with City personnel, Jeld Wen anticipates that annexation would
26 result in a property tax assessment equal to approximately \$250,000 to \$300,000, plus
substantial connection fees and monthly user fees.

1 prong of a two-prong test. DEQ must also establish that the City's sewerage system is
2 "legally available" before it can deny JELD-WEN's permit.

3 As previously mentioned, a sewerage system is legally available if "the
4 system is not under a Department connection permit moratorium, and the sewerage system
5 owner is willing or obligated to provide sewer service." OAR 340-71-160(5)(f)(B). The
6 system is not under a Department connection permit moratorium. However, at issue is
7 whether the City of Klamath Falls (i.e., the sewerage system owner) is "willing or
8 obligated" to provide sewer service to JELD-WEN. Since there is no caselaw interpreting
9 the meaning of "willing or obligated" as these words are used in OAR 340-71-160(5)(f)(B),
10 an analysis of this language is limited to an examination of other statutory and regulatory
11 authority and consideration of the plain meaning of the language.

12 Pursuant to ORS 454.215(1), "(a)ny municipality may own, acquire,
13 construct, equip, operate and maintain, either within or without its statutory or corporate
14 limits, in whole or in part, disposal systems with all appurtenances necessary, useful or
15 convenient for the collection, treatment and disposal of sewage." The Oregon legislature
16 made it clear in ORS 454.215(2) that the authority it granted to municipalities over disposal
17 systems in ORS 454.215(1) is "in addition to, and not in derogation of any power existing
18 in the municipality under any constitutional, statutory or charter provisions now or hereafter
19 existing." In other words, Oregon Revised Statutes enables municipalities to provide
20 disposal systems, but it does not mandate that they provide such services. Moreover,
21 municipalities have the rights, powers and privileges to determine in which manner they
22 shall provide such services.

23 Under its City charter, Klamath Falls is "obligated" to provide a sewer
24 system to all who are within city limits. Since JELD-WEN is not within city limits,
25 Klamath Falls is not obligated to provide sewer services to JELD-WEN. Accordingly, the
26 only way Klamath Falls sewer system is "legally available" to JELD-WEN, is if Klamath

1 Falls is "willing" to provide such services. In JELD-WEN's case, Klamath Falls is willing
2 to provide sewer services to JELD-WEN if, and only if, JELD-WEN is annexed to the city.
3 In other words, Klamath Falls' "willingness" to provide sewer services is contingent upon
4 JELD-WEN's annexation to the City. Unless the condition of being annexed to the city is
5 satisfied, Klamath Falls is not willing to deliver sewer services to JELD-WEN. JELD-
6 WEN strenuously opposes annexation.

7 The power of a municipality to annex territory is entirely a legislative
8 function, granted to the municipality through express authority by the state legislature, and
9 subject only to constitutional restrictions. McQuillan, Municipal Corporations § 7.10 (3rd
10 ed. 1996). In other words, municipalities have no inherent power to annex territory, unless
11 that right is granted by the state legislature. McQuillan at § 7.13. The methods of
12 annexation must specifically be authorized by legislation. McQuillan at § 7.14. Thus,
13 DEQ has no authority to mandate annexation unless that power is expressly granted by the
14 legislature, which it has not done.

15 ORS Chapter 222 describes seven types of proceedings to annex
16 non-boundary commission territory to a city. These proceedings may be initiated by the
17 city, on its own motion, or by a petition of the landowners in the territory to be annexed.
18 ORS 222.111(2). Since JELD-WEN does not intend to petition for annexation, any
19 annexation proceedings initiated would be done at the city's initiative. Of the seven types
20 of proceedings to annex non-boundary commission territory, five require consent. The five
21 consent annexations are as follows:

- 22 1. The general annexation method requires the city council to submit an
23 annexation proposal to the electors of the territory proposed for annexation
24 and to the electors of the annexing city. If a majority of both groups vote in
25 favor of annexation, the territory may be annexed. ORS 222.111(5).
- 26 2. Another annexation method involves holding an election in the territory to be
annexed and, instead of holding a vote of the electorate, having a public
hearing on the annexation. ORS 222.120(2).

- 1 3. The third method of annexation requires the written consents of 100% of the
2 property owners and more than 50% of the electors residing in the territory
3 to be annexed. Such consent dispenses with the need to take a vote of the
4 property owners and electors in the territory. Again, as in the second
5 method, the citizens are given the opportunity to approve or disapprove of
6 the annexation via a public hearing. ORS 222.125.
- 7 4. The *triple majority method of annexation*, which the court of appeals has
8 determined is unconstitutional, requires the written consents of more than
9 half of the landowners in the territory, who also own more than half of the
10 land in the territory, which represents more than half of the assessed value of
11 all real property in the territory proposed to be annexed. The city council
12 must either hold a public hearing for the city on the annexation or put it to a
13 vote of the city's electorate. ORS 222.170(1).
- 14 5. The *double majority annexation* is initiated by filing with the city council
15 written consents to annex from a majority of the electors in a territory and
16 from the owners of more than half of the land in the territory. The city
17 council must either hold a public hearing for the city or have a city election
18 on the annexation. ORS 222.170(2).

19 Despite the subtle and intricate differences between these annexation methods, a common
20 thread runs throughout all of them. Under each method, the three parties at issue (the
21 landowners in the territory, the electorate in the territory and the electorate in the city) have
22 a voice in the process. Whether by voting, written consent or public hearing, Oregon's
23 legislature mandated that the three groups with a vested interest be heard. Moreover, a
24 landowner's ability to give or withhold consent for annexation of his own land is considered
25 a "privilege" under the privileges and immunities clause of Oregon's constitution. Mid-
26 County Future v. Port. Metro. Area LGBC, 82 Or App 193, 728 P2d 63 (1986). "The
landowners can neither bring about an annexation that the electorate might oppose . . . nor
unilaterally prevent an annexation that the electorate might favor." Mid-County Future v.
Port. Metro. Area LGBC, 106 Or App 647, 653, 809 P2d 1354 rev. denied, 312 Or 80
(1991).

 There are only two very limited circumstances in which a city may annex a
territory without the landowner's consent. First, the city may annex territory which is
surrounded by the corporate boundaries of the city ("island annexation"). Although this

1 type of annexation may be done without the consent of the land owners in the territory or
2 the residents in the territory to be annexed, such type of annexation is subject to
3 referendum. ORS 222.750. The only other circumstance where a city may annex a
4 territory without consent is if conditions within a territory have caused a danger to the
5 public health as determined by the Division of Health and such conditions may be alleviated
6 by the services provided by the annexing city. ORS 222.855. ORS 222.840 through
7 222.910 sets forth a detailed and comprehensive process for allowing health hazard
8 annexations and provides such authority only to the Division of Health. The Oregon
9 legislature has not granted DEQ the authority similar to that granted to the Division of
10 Health to require annexation on a finding of a health hazard. Other than these two specific
11 and limited situations, a city must obtain consent before annexing a territory.

12 The fact that these two situations are so specific, and would leave little doubt
13 as to whether a particular territory may be annexed under these particular provisions, only
14 demonstrates, at great length, the caution the Oregon legislature took in limiting those
15 situations where a city could act unilaterally. Since the JELD-WEN facility is not an island
16 surrounded by the corporate boundaries of Klamath Falls, and because the Division of
17 Health has not determined a health hazard pursuant to ORS 222.840 through 910, the
18 JELD-WEN property may be annexed to the City of Klamath Falls only with the consent of
19 JELD-WEN. As previously stated, JELD-WEN has no intention of consenting voluntarily.

20 In the event DEQ does not grant JELD-WEN a permit to repair the existing
21 drainfield, and such inability to repair results in violations of water quality regulations,
22 JELD-WEN may be forced to "consent" to annexation in order to have a disposal system in
23 compliance with the law. Forcing a party's consent to annexation has been regarded as the
24 equivalent of forcing a party to vote a certain way. Pursuant to Hussey v. City of Portland,
25 64 F.3d 1260 (9th Cir. 1995), such coercion is unconstitutional.

26

1 In Hussey, the Environmental Quality Commission ordered the City of
2 Portland to provide sewer services to residents of an unincorporated area of East
3 Multnomah County (known as "Mid-County"). The EQC also required the residents to
4 hook up to the sewer system once available. Although the EQC forbade the City from
5 requiring annexation as a condition of hooking up to the sewers, the City passed an
6 ordinance which provided a subsidy in the form of reduced sewer connection charges in
7 exchange for landowners signing an irrevocable consent to annexation. 64 F3d at 1262.
8 Those landowners who failed to consent to annexation would not receive reduced sewer
9 connection charges. Id.

10 A group of landowners sued for declaratory and injunctive relief, arguing
11 that imposing financial distress only on electors who opposed annexation was a violation of
12 their personal right to equal protection under the Fourteenth Amendment. The landowners
13 argued, and the court of appeals agreed, that obtaining the consent of electors is the
14 constitutional equivalent of voting. Even though there is no federal or state constitutional
15 right to vote on annexation of territory by a City, once that right is granted through a
16 statute, the right to vote becomes constitutionally protected. 64 F.3d at 1263. Coercing
17 the landowners to consent to annexation (by imposing financial distress on them if they did
18 not consent) was unconstitutional because it abrogated the landowners' right to vote and
19 therefore failed to survive strict scrutiny.

20 Here, the situation is similar. DEQ's position requires JELD-WEN to give
21 up its constitutionally protected right to consent (i.e., vote) on annexation by Klamath Falls.
22 Rather than the subsidy provided to the landowners in Hussey v. City of Portland,
23 however, the economic coercion in this case is DEQ's denial of JELD-WEN's repair of its
24 drainfield. Without a satisfactorily-repaired drainfield, JELD-WEN runs the risk of
25 violating several water quality regulations. By denying issuance of the permit, DEQ forces
26

1 JELD-WEN to consent to annexation to the City. Such coercion distorts the political
2 process and is unconstitutional under Hussey v. City of Portland.

3 **CONCLUSION AND RELIEF REQUESTED**


4 Klamath Falls is willing to provide sewer services only to those parties
5 annexed to the City. JELD-WEN is not presently annexed to the City. It is not willing to
6 voluntarily consent to annexation and it cannot be forced to consent to annexation. Thus,
7 Klamath Falls is not willing to provide sewer services to JELD-WEN.

8 The sole reason for DEQ's denial of JELD-WEN's permit is because DEQ
9 believed the sewerage system of Klamath Falls was both legally and physically available.
10 Although Klamath Falls system may be physically available, it is not legally available
11 because Klamath Falls is not willing or obligated to provide such services. For these
12 reasons, DEQ is required to issue the Division 71 permit to JELD-WEN.

13 Respectfully submitted,

14 SCHWABE, WILLIAMSON & WYATT

15
16 By:


Jay T. Waldron, OSB #74331
Neal A. Hueske, OSB #91319
Of Attorneys for Plaintiff

17
18
19
20 NAME AND ADDRESS OF PETITIONER:

21 JELD-WEN, INC.
22 3250 Lakeport Blvd.
23 Klamath Falls, OR 97601
24 Attention: Rod Wendt
25
26

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 71 — DEPARTMENT OF ENVIRONMENTAL QUALITY

that the property owner will receive a permit to construct a system on that property provided procedures and conditions for permit issuance found in OAR 340-71-160 are met.

(4) Approval or Denial:

(a) In order to obtain a favorable site evaluation report the following conditions shall be met:

(A) All criteria for approval of a specific type or types of system, as outlined in OAR 340, Division 71 shall be met;

(B) Each lot or parcel must have sufficient usable area available to accommodate an initial and replacement system. The usable area may be located within the lot or parcel, or within the bounds of another lot or parcel if secured pursuant to OAR 340-71-130(11). Sites may be approved where the initial and replacement systems would be of different types, e.g., a standard subsurface system as the initial system and an alternative system as the replacement system. The site evaluation report shall indicate the type of the initial and type of replacement system for which the site is approved.

EXCEPTION: A replacement area is not required in areas under control of a legal entity such as a city, county, or sanitary district, provided the legal entity gives a written commitment that sewerage service will be provided within five years.

(b) A site evaluation shall be denied where the conditions identified in subsection (4)(a) of this rule are not met;

(c) Technical rule changes shall not invalidate a favorable site evaluation, but may require use of a different kind of system.

(5) Site Evaluation Report Review. A site evaluation report issued by the Agent shall be reviewed at the request of the applicant. The application for review shall be submitted to the Department in writing, within 30 days of the site evaluation report issue date, and be accompanied by the review fee. The review shall be conducted and a report prepared by the Department.

Stat. Auth.: ORS Ch. 454

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86

Existing System Evaluation Report

340-71-155 (1) Any person, upon application, may request an evaluation report on an existing on-site sewage disposal system. The application shall be on a form provided by the agent and approved by the Department.

(2) The application is complete only when the form, on its face, is completed in full, signed by the owner or the owner's legally authorized representative, and is accompanied by all necessary exhibits including the fee. A fee shall not be charged for an evaluation report on any proposed repair, alteration or extension of an existing system.

(3) The agent shall:

(a) Examine the records, if available, on the existing system; and

(b) Conduct a field evaluation of the existing system; and

(c) Issue a report of findings to the applicant.

Stat. Auth.: ORS Ch. 454

Hist.: DEQ 8-1983, f. & ef. 5-25-83

Permit Application Procedures — General Requirements

340-71-160 (1) No person shall cause or allow construction, alteration, or repair of a system, or any part thereof, without first applying for and obtaining a permit.

EXCEPTION: Emergency repairs as set forth in OAR 340-71-215.

(2) Applications for permits shall be made on forms provided by the Agent and approved by the Department.

(3) An application is complete only when the form, on its face, is completed in full, is signed by the owner or the owner's legally authorized representative, and is accompanied by all required exhibits and fee. Except as otherwise allowed in OAR 340-71-400(6), the exhibits shall include:

(a) Favorable site evaluation report;

(b) Favorable land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;

(c) Plans and specifications for the on-site system proposed for installation within the area identified in the favorable site evaluation report. The Agent shall determine and request the minimum level of detail necessary to insure proper system construction;

(d) Any other information the Agent finds is necessary to complete the permit application.

(4) The application form shall be received by the Agent only when the form is complete, as detailed in section (3) of this rule.

(5) Upon receipt of a completed application the Agent shall deny the permit if:

(a) The application contains false information;

(b) The application was wrongfully received by the Agent;

(c) The proposed system would not comply with these rules;

(d) The proposed system, if constructed, would violate a Commission moratorium as described in OAR 340-71-460;

(e) The proposed system location is encumbered as described in OAR 340-71-130(8);

(f) A sewerage system which can serve the proposed sewage flow is both legally and physically available, as described below:

(A) Physical Availability. A sewerage system shall be deemed physically available if its nearest connection point from the property to be served is:

(i) For a single family dwelling, or other establishment with a maximum projected daily sewage flow of not more than 450 gallons, within 300 feet;

(ii) For a proposed subdivision or group of two to five single family dwellings, or equivalent projected daily sewage flow, not further than 200 feet multiplied by the number of dwellings or dwelling equivalents;

(iii) For proposed subdivisions or other developments with more than five single family dwellings, or equivalents, the Agent shall make a case-by-case determination of sewerage availability.

EXCEPTION: A sewerage system shall not be considered available if topographic or man-made features make connection physically impractical.

(B) Legal Availability. A sewerage system shall be deemed legally available if the system is not

(October, 1994)

EXHIBIT A
PAGE 1 OF 2

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 71 — DEPARTMENT OF ENVIRONMENTAL QUALITY

under a Department connection permit moratorium, and the sewerage system owner is willing or obligated to provide sewer service.

(6) A permit shall be issued only to a person licensed under ORS 454.695, or to the owner or easement holder of the land on which the system is to be installed.

(7) No person shall construct, alter or repair a system, or any part thereof, unless that person is licensed under ORS 454.695, or is the permittee.

(8) The Agent shall either issue or deny the permit within 20 days after receipt of the completed application.

EXCEPTION: If weather conditions or distance and unavailability of transportation prevent the Agent from acting to either issue or deny the permit within 20 days, the applicant shall be notified in writing. The notification shall state the reason for delay. The Agent shall either issue or deny the permit within 60 days after the mailing date of such notification.

(9) A permit issued pursuant to these rules shall be effective for one 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.

(10) Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date. Application for permit renewal shall conform to the requirements of sections (2) and (4) of this rule. The permit shall be issued or denied consistent with sections (5), (6), (8), and (9) of this rule.

Stat. Auth.: ORS Ch. 454

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86

Permit Denial Review

340-71-165(1) A permit denied by the Agent shall be reviewed at the request of the applicant. The application for review shall be submitted to the Department in writing, within 30 days of the permit denial notice from the Agent, and be accompanied by the denial review fee. The denial review shall be conducted and a report prepared by the Department.

(2) Permit denials for systems proposed to serve a commercial facility, intended to be used in a commercial activity, trade, occupation or profession, may be appealed through the contested case hearing procedure set forth in ORS Chapter 183 and OAR Chapter 340, Division 11.

(3) If the Agent intends to deny a permit for a parcel of ten acres or larger in size, the Agent shall:

(a) Provide the applicant with a Notice of Intent to Deny;

(b) Specify reasons for the intended denial; and

(c) Offer a contested case hearing in accordance with ORS Chapter 183 and OAR Chapter 340, Division 11.

Stat. Auth.: ORS Ch. 454

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82

Pre-Cover Inspections

340-71-170 (1) When construction, alteration or repair of a system for which a permit has been issued is complete, except for backfill (cover), or as required by permit, the system installer shall notify the Agent. The Agent shall inspect the installation to determine if it complies with the rules of the Commission, unless the inspection is waived by the Agent in accordance with section (2) of this rule or in accordance with the provisions of OAR 340-71-400(6).

(2) The Agent may, at his own election, waive the pre-cover inspection provided:

(a) The installation is a standard subsurface system installed by a sewage disposal service licensed pursuant to ORS 454.695; and

(b) The inspecting jurisdiction and the Department have developed an impartial method of identifying those installers who have a history of proper installations without excessive numbers of corrections; and

(c) Inspections waived are for installations made by installers identified as having a good history of proper installation; and

(d) A list of installers whose inspections may be waived is available to the public and the Department; and

(e) A representative number of each installer's systems has been inspected, regardless of installation history; and

(f) After system completion the installer certifies in writing that the system complies with the rules of the Commission, and provides the Agent with a detailed as-built plan (drawn to scale) of the installation.

(3) Pre-cover inspection details shall be recorded on a form approved by the Department.

Stat. Auth.: ORS Ch. 454

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 15-1986, f. & ef. 8-6-86

Certificate of Satisfactory Completion

340-71-175 (1) The Agent shall issue a Certificate of Satisfactory Completion, if, upon inspection of installation, the system complies with the rules of the Commission and the conditions of the permit.

(2) If inspected installation does not comply with the rules of the Commission and the conditions of the permit, the permittee shall be notified in writing or a Correction Notice shall be posted on the site. System deficiencies shall be explained and satisfactory completion required. Follow-up inspections may be waived by the Agent. After satisfactory completion a Certificate shall be issued.

(3) If the inspection is not made within seven days after notification of completion, or the inspection is waived, a Certificate of Satisfactory Completion shall be deemed to have been issued by operation of law. In such cases, a modified Certificate shall be issued to the owner.

(4) A system, once installed, shall be backfilled (covered) only when:

(a) The permittee is notified by the Agent that inspection has been waived; or

(b) The inspection has been conducted by the Agent and a Certificate of Satisfactory Completion has been issued; or

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 22, 1997

To: File - JELD-WEN, inc.
BEN FAB Division, IW-File
Klamath County

From: Walt West, IW - WQ

Through: Dick ~~Nichols~~, Eastern Region WQ Manager

Subject: Drainfield Replacement

On May 2, 1997, JELD-WEN, inc., (JWI) notified our Department that sewage was surfacing from their existing drainfield. I met with Karen Olsen at the facility on May 6, 1997, and observed where the effluent was surfacing. The facility's septic tank was being pumped on a regular basis to reduce flow into the drainfield system and to prevent sewage from reaching a nearby drainage ditch and to protect human health. On May 13, 1997, Lawrence Brown of the Department's On-Site program conducted a site evaluation for possible repair. The site is located in Klamath Falls at; T38, R9, S19; Tax Lot 400 lots 4 & 5. The evaluation report findings are summarized below.

The soil in the area proposed to install a replacement drainfield was found to be a silty clay. Permanent Groundwater is predicted to rise to within 48 and 53 inches from the ground surface in both areas evaluated.

The rules for standard drainfield systems require that a permanent water table shall be four feet or more from the bottom of the absorption facility. With trench depths of 18 inches, minimum, the water table could be no closer than 66 inches from the ground surface. [OAR 340-71-220 (1) (b)].

The rules for capping fill systems require that a permanent ground water shall be 4 feet below the bottom of the absorption facility, however, capping fills are limited to soils no finer than silty clay loam. A silty clay is finer than a silty clay loam, therefore, capping fill is not an option. Even with 4 feet of separation and 12 inch trench depths, minimum, the permanent water table shall be no closer than 60 inches from the ground surface. OAR 340-71-265 (1)(c) and (f). Again, at this site the permanent water table is predicted to rise to within 48 and 53 inches from the ground surface.

With these two options eliminated, by rule, a pretreatment device would be required. We believe that with the flows of this facility a recirculating gravel filter would be the only appropriate treatment device. Since the effluent quality is similar to that of sand filter effluent 50 linear feet of disposal trench would be required per 150 gallons per day of flow. Technical specifications for a recirculating gravel filter are attached for your information.

The site conditions are not conducive for installing a system at this time. The sidewalls were smeared in test holes 1 through 8 and in the opinion of this Agent damage would occur to the system operation if installed at this time. Test Holes 9 and 10 were drier but area is limited due to the site's limitations. Should a drainfield system be allowed in conjunction with a recirculating gravel filter, installation would need to be delayed until soil dries sufficiently to prevent smearing of the sidewalls of the drainfield trench during construction.

Observations in the test holes dug between drainlines of the original drainfield indicated blackening and moisture extending to at least 30 inches from the drainline. The drainlines were spongy and very soft. Also, the distribution boxes which were uncovered, were completely full indicating that the drainlines were saturated. The person who dug the test holes in the original drainfield drove overtop of the existing drainlines and sank about 6 to 10 inches. Damage to the perforated pipe in these areas is expected.

With respect to system repair, OAR 340-71-160 (5)(f) states that upon receipt of a completed application the Agent shall deny the permit if: A sewerage system which can serve the proposed sewage flows is both legally and physically available. Physical Availability is defined by its nearest connection point from the property to be served expressed in feet. For developments with more than 5 single family equivalents projected daily sewage flow, the Agent shall make a case-by-case determination of sewerage availability. A single family dwelling would be required to connect if the sewer is within 300 feet. At this site, the sewer is less than 50 feet running down Lakeport Blvd.

A sewerage system shall be deemed legally available if the system is not under a Department connection permit moratorium, and the sewerage system owner is willing or obligated to provide sewer service.

At this time with the available information, it would seem to us that our rules will dictate that a repair permit not be issued and that you must connect to the City of Klamath Falls sewerage facility. We know that you have done some initial investigation of this option and found that City policy requires annexation which, in turn, involves a significant increase in your property taxes. Nevertheless, the rules governing this type of situation do not consider the potential financial burden of connection as a basis to allow a repair when sewer is deemed available. Further, we believe that the Environmental Quality Commission (EQC) has ruled in the past that annexation is not

an unreasonable requirement for connection to sewer. Our staff is researching past EQC meeting minutes to find the record of such a ruling. If and when we find it, we will provide you a copy.

Enclosures (2)

17

JELD-WEN

MANUFACTURER OF SUPERIOR BUILDING PRODUCTS
WINDOWS • DOORS • MILLWORK

June 2, 1997

Mr. Richard Nichols
Eastern Region WQ Manager
Department of Environmental Quality
2146 NE 4th Street, Suite 104
Bend, Oregon 97701

JELD-WEN's Klamath Falls On-Site Drainfield

Dear Mr. Nichols:

This letter will confirm receipt of the Department of Environmental Quality's ("DEQ") Memorandum dated May 22, 1997 addressed to Ben-Fab, and will also serve to address the analysis upon which the DEQ bases its preliminary conclusion that JELD-WEN, inc. ("JWI") "must connect to the City of Klamath Falls sewerage facility." First of all, let me thank you for your courtesy and candor in providing us with the DEQ's preliminary opinions, as we will incur significant civil engineering charges before we even begin the permit process. However, Bill Fagan, myself, and others here at JWI have carefully reviewed the Memorandum and while we agree that the soils would support a properly engineered on-site drainfield, we respectfully (and strenuously) disagree with your annexation conclusion. As the DEQ's preliminary conclusion may be a dispositive issue to moving forward and properly correcting the current problems, and in as much as we currently have the good fortune of not operating under an emergency situation, I was hoping you would be available to meet with me at your convenience, tomorrow, June 3, in your office to discuss this further.

EXHIBIT C
PAGE 1 OF 2

Essentially, I would like to discuss with you the language from the regulation cited in the Memorandum instructing the DEQ agent to deny a repair permit if "A sewerage system which can serve the proposed sewage flows is both legally and physically available." (Emphasis added). As you know, the JWI property and facilities serviced by the existing standard on-site drainfield for the past 20 years are located within and under the jurisdiction of Klamath County—not the City of Klamath Falls. The County sewerage system is located on the other side of the community. Accordingly, the County sewerage system is not "physically available". Furthermore, the City of Klamath Falls has indicated that it is not willing to allow a connection since we are not part of the City. As a result, the City's sewerage system is not "legally available" to JWI at the present time. We do not believe that OAR 340-71-160(5)(f), cited above, should impede our permit process.

I also note in the DEQ Memorandum a reference to possible prior Environmental Quality Commission rulings forcing a landowner to annex with a City to meet the "legal and physical availability" requisites. I am not aware of any such rulings but would appreciate you forwarding same so they can be reviewed by our legal department.

Again, I remain very hopeful that we can quickly resolve this issue and move forward with preventing an emergency situation. Please call me with your availability for tomorrow or if you have any questions. If I am not available when you call, please feel free to call Bill Fagan also. I look forward to meeting you.

Sincerely,



Stanley K. Meyers, P.E.
Vice President, Engineering

EXHIBIT C
PAGE 2 OF 2

June 3, 1997

Oregon

Mr. Stanley K. Meyers, P.E.
Vice President, Engineering
JELD-WEN
PO Box 1329
Klamath Falls, OR 97601-0268

RECEIVED

JUN 13 1997

Schwabe, Williamson & Wyatt

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

EASTERN REGION
Bend Office

Mr. Meyers:

This letter will summarize our telephone conference today. Included in the call were you, Messrs. Charlie Taylor and Bill Fagan of JELD-WEN and Walt West and myself representing DEQ.

The issue discussed relates to the failing on-site sewage disposal system that serves your Klamath Falls wood products complex. The Department has concluded that the City of Klamath Falls sewer is physically and legally available and, as a result, we cannot provide you approval to construct a replacement drainfield. You, on the other hand, disagree that it is available because the City will not allow you to connect unless you annex into the City.

The Department does agree that you have an acceptable area to put a replacement drainfield although because groundwater levels are somewhat shallow, a recirculating gravel filter must be used to pretreat the sewage prior to discharge into the drainfield.

As we concluded in our meeting, the Department believes you should file a petition for declaratory ruling with the Environmental Quality Commission if you wish to pursue construction of a replacement drainfield. I have enclosed the Oregon's Model Rules of Procedure Applicable to Proceedings for Agency Declaratory Rulings for your information. The petition should be filed with the Environmental Quality Commission in care of the Director of DEQ, Langdon Marsh. His address is: 811 SW 6th Avenue, Portland, OR 97204. I have also enclosed a copy of the October 27, 1978 EQC meeting minutes and a supporting document which addresses an issue relative to on-site sewage disposal systems which may have some relevancy to this matter.

If you have questions or comments, please call me or Walt West in this office at (541) 388-6146.

Sincerely,



Richard J. Nichols, Manager
Bend Water Quality Section
Eastern Region

RJN/ns

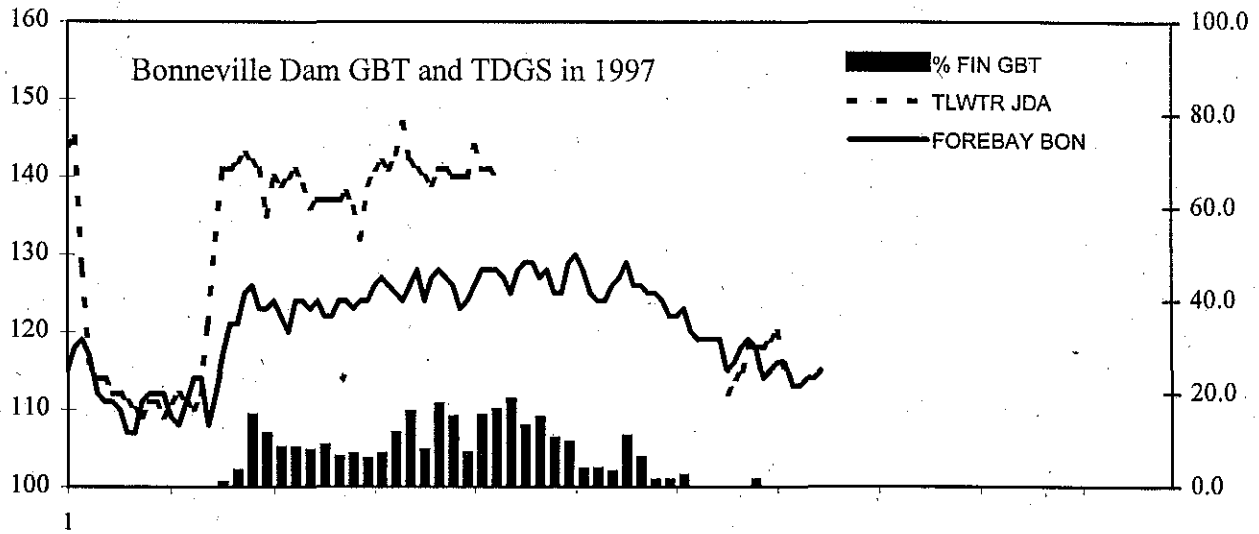
Enclosures

cc: Susan Greco/Paul Burnet - DEQ - HQ
Larry Knudsen - DOJ - Portland
Stephanie Hallock/file - Bend

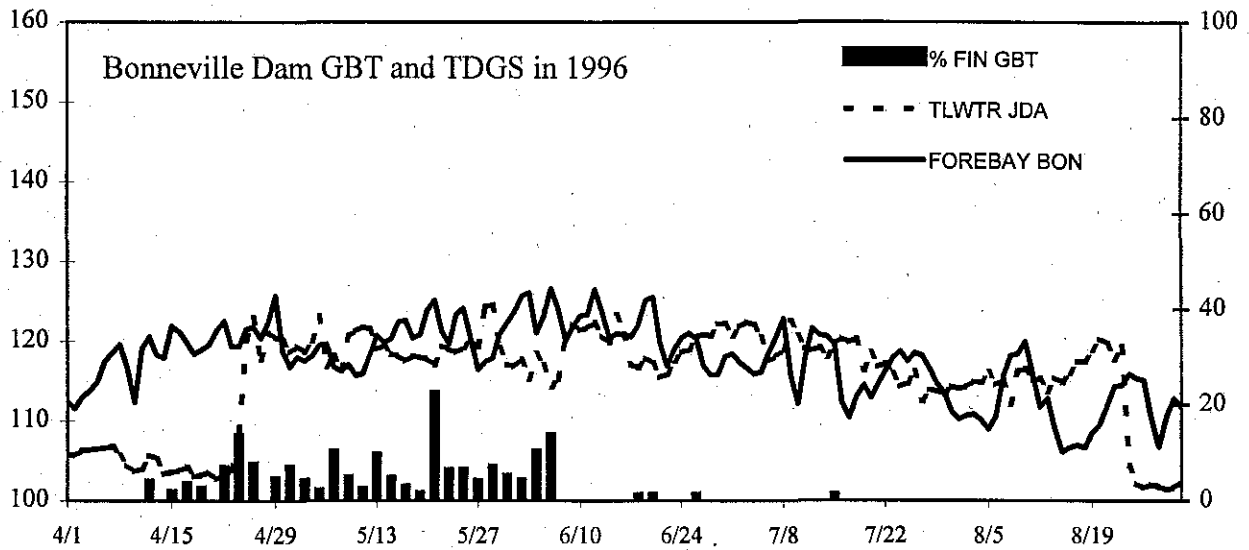


2146 NE 4th Street
Suite 104
Bend, OR 97701
(541) 388-6146
DEQ/CR-101 1-91

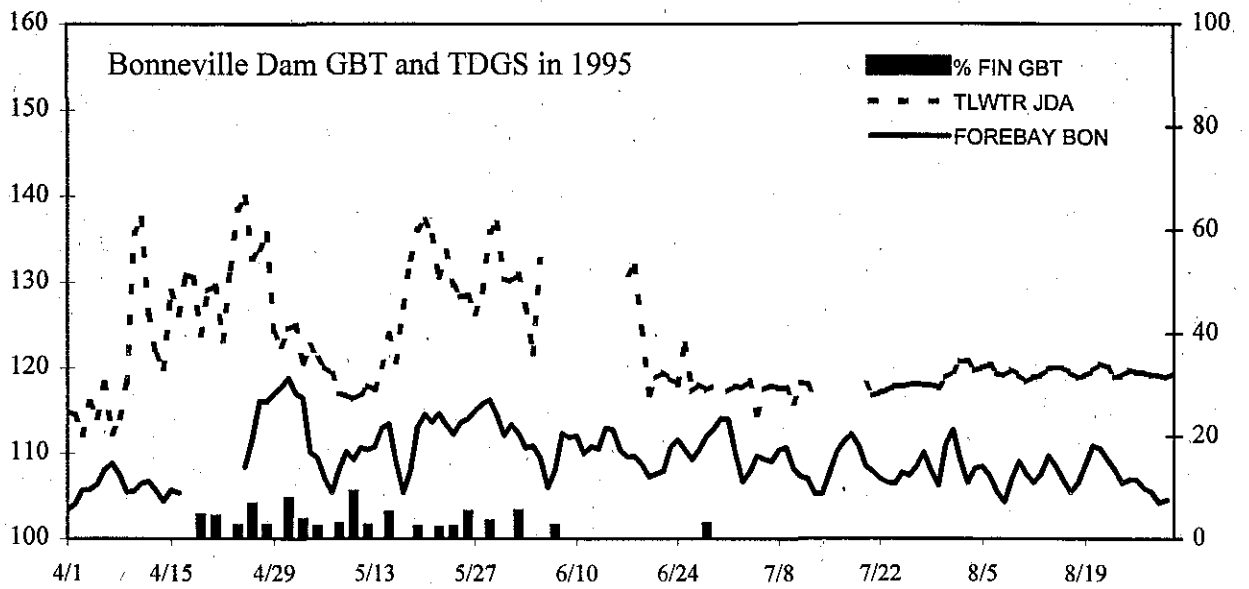
EXHIBIT D
PAGE 1 OF 1

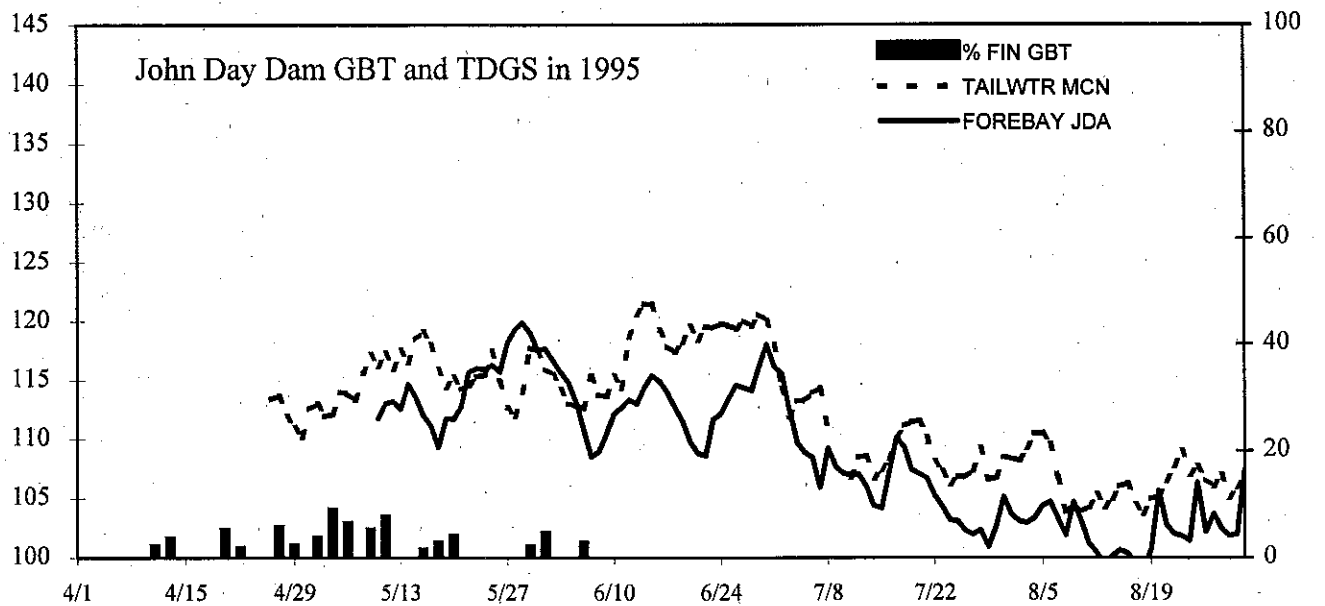
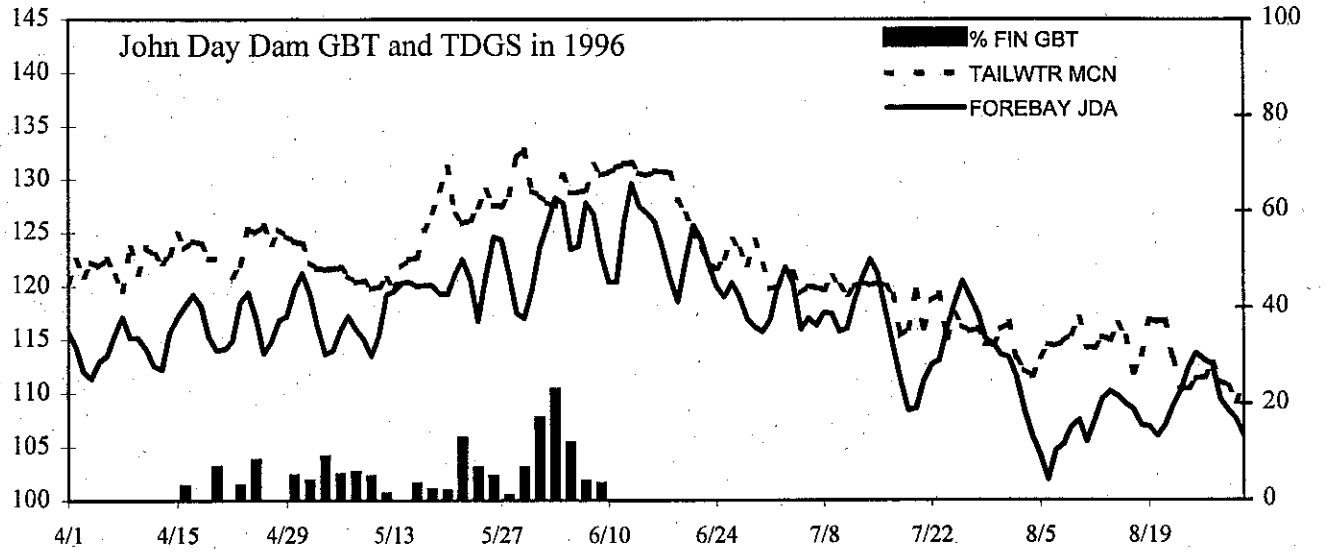
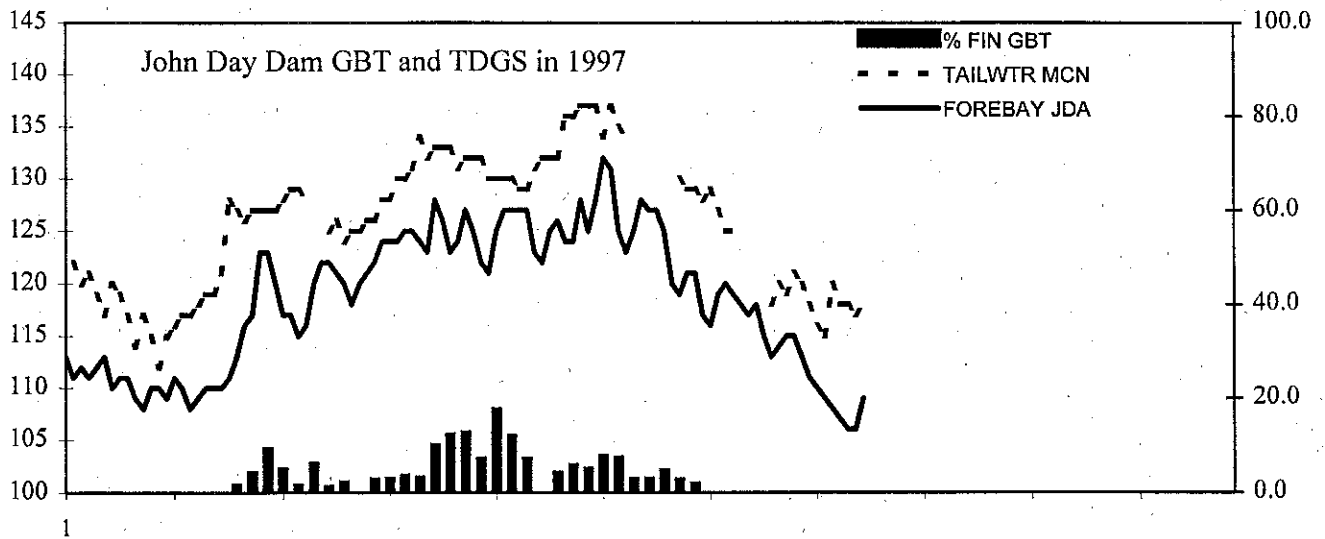


Average of 12 Highest Hours TDGS



Percent of Fish with GBT Signs in Fins

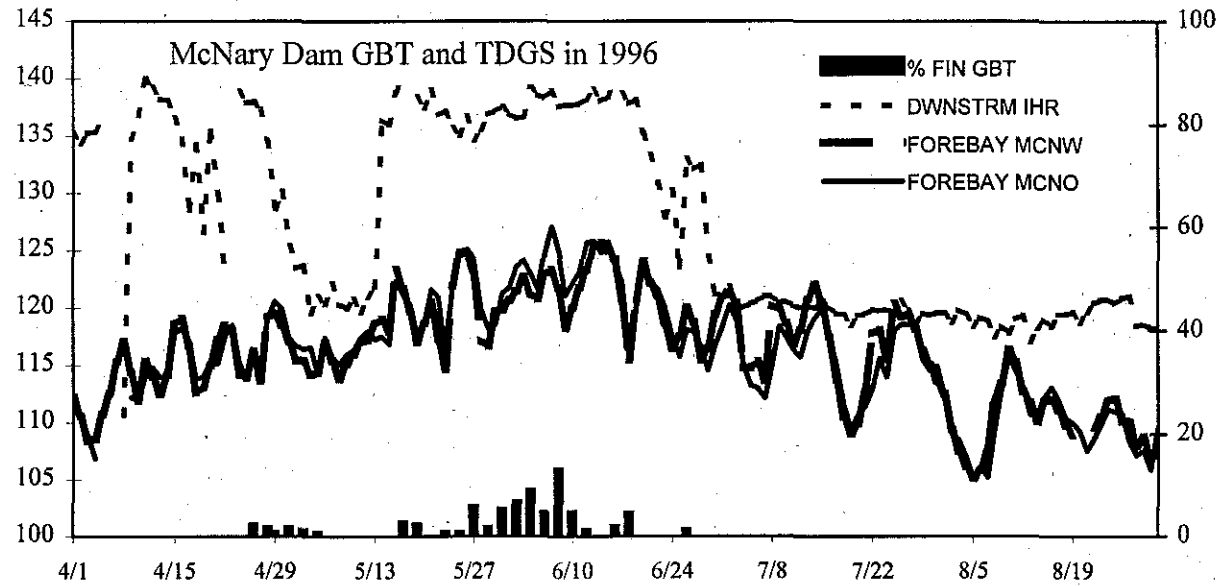
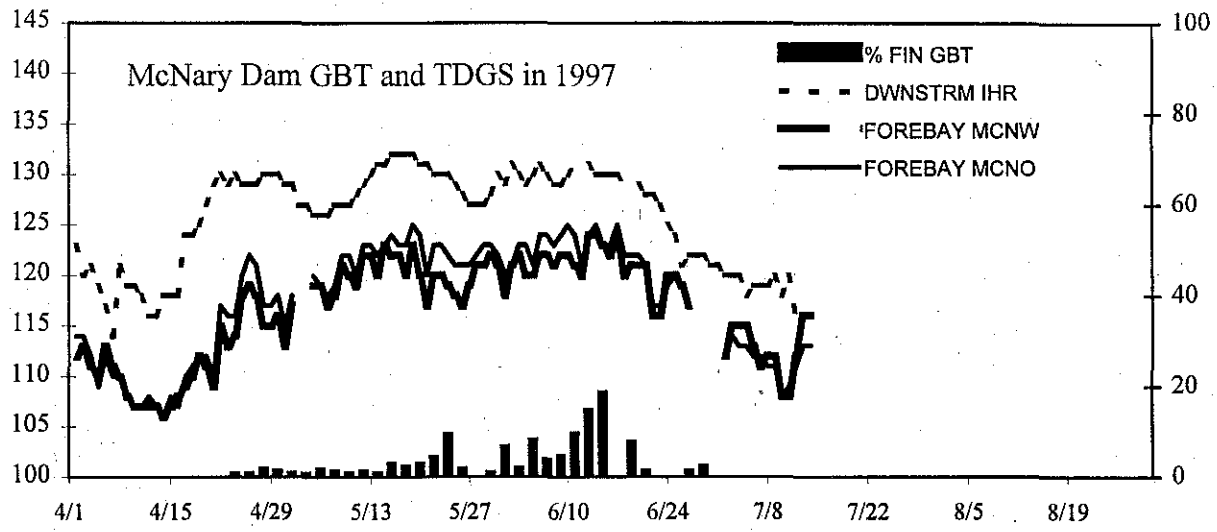




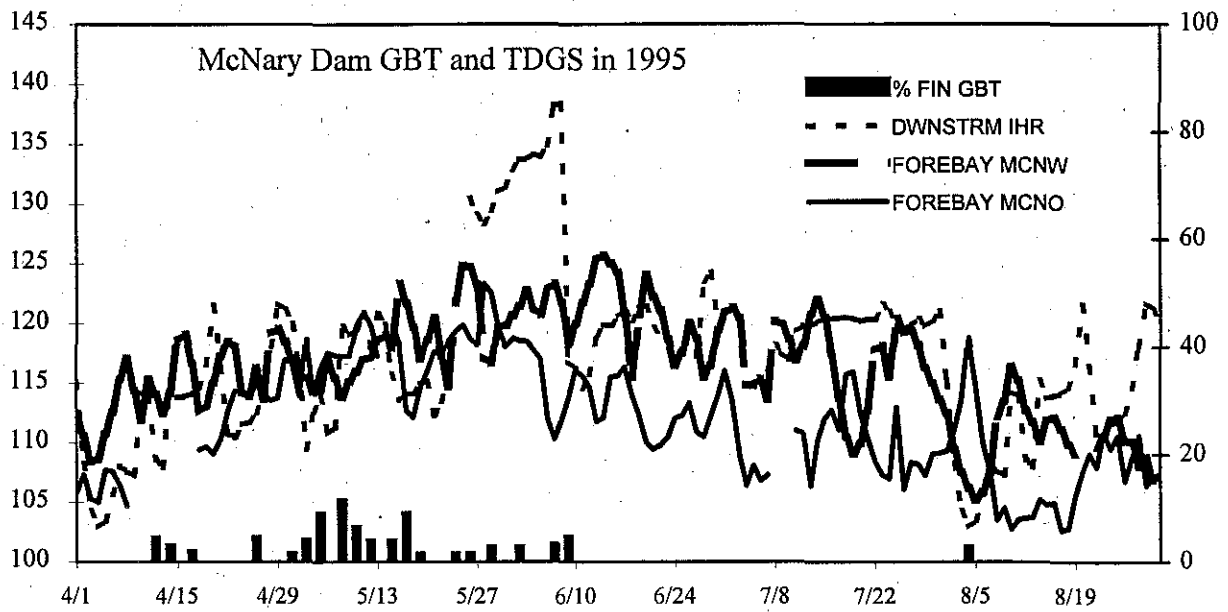
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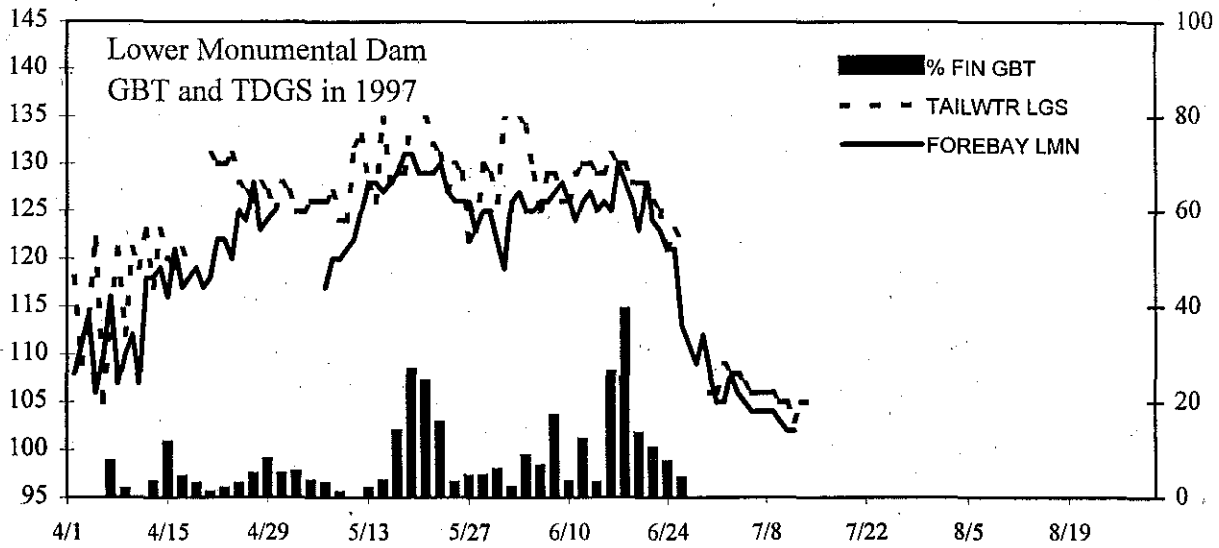
Percent of Fish with GBT Signs in Fins

Average of 12 Highest Hours TDGS

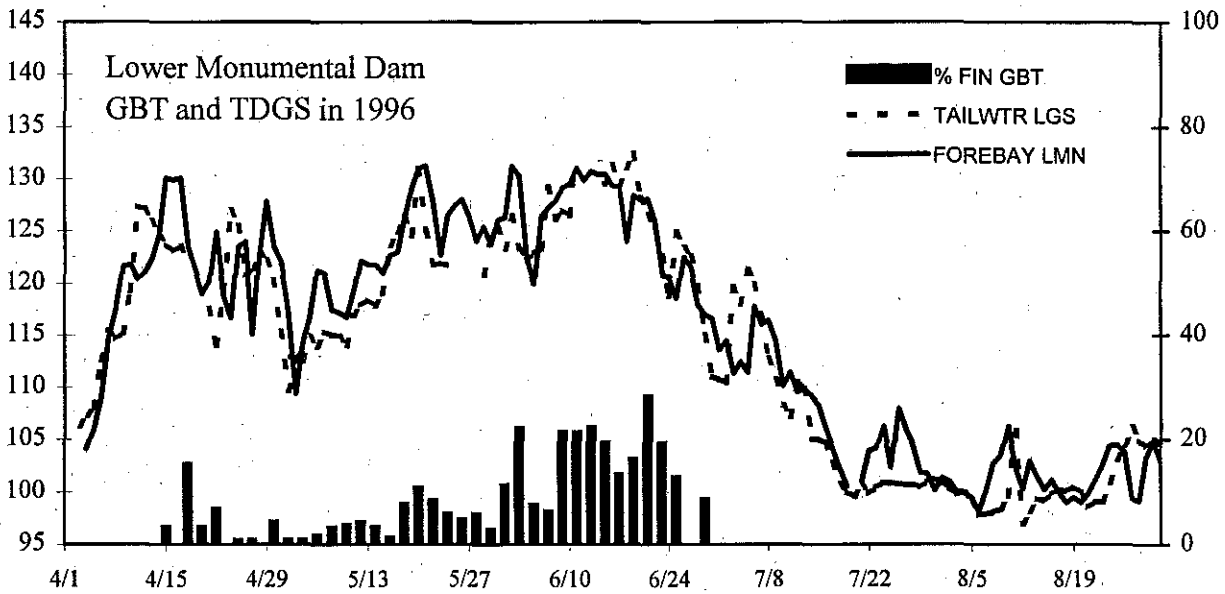


Percent of Fish with GBT Signs in Fins

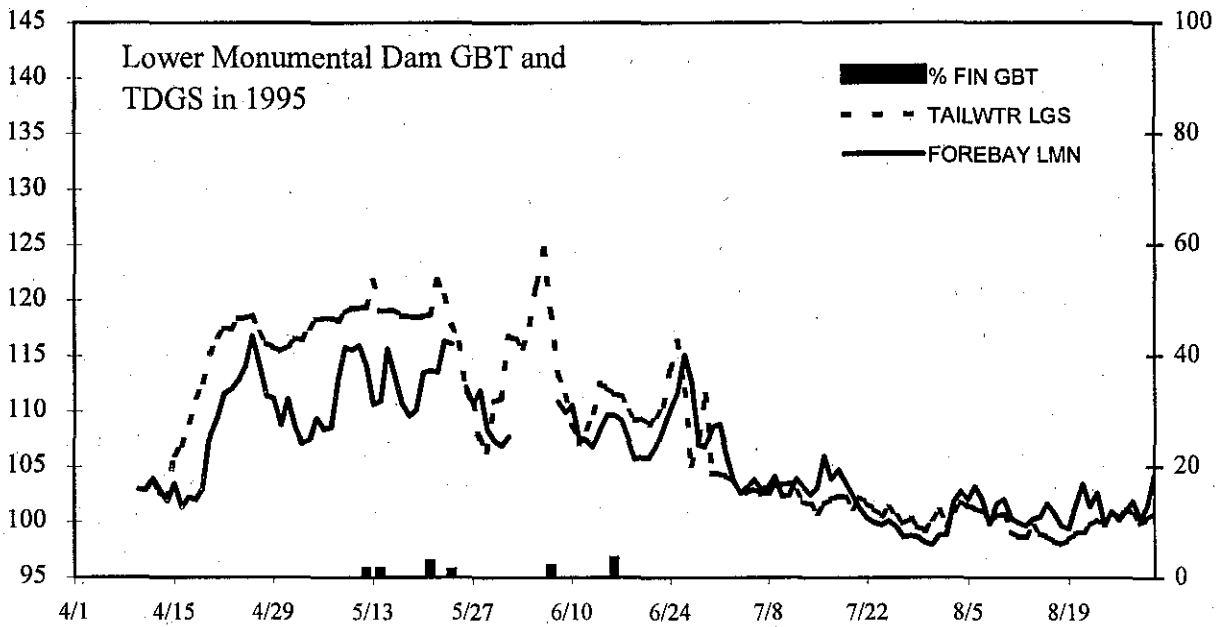


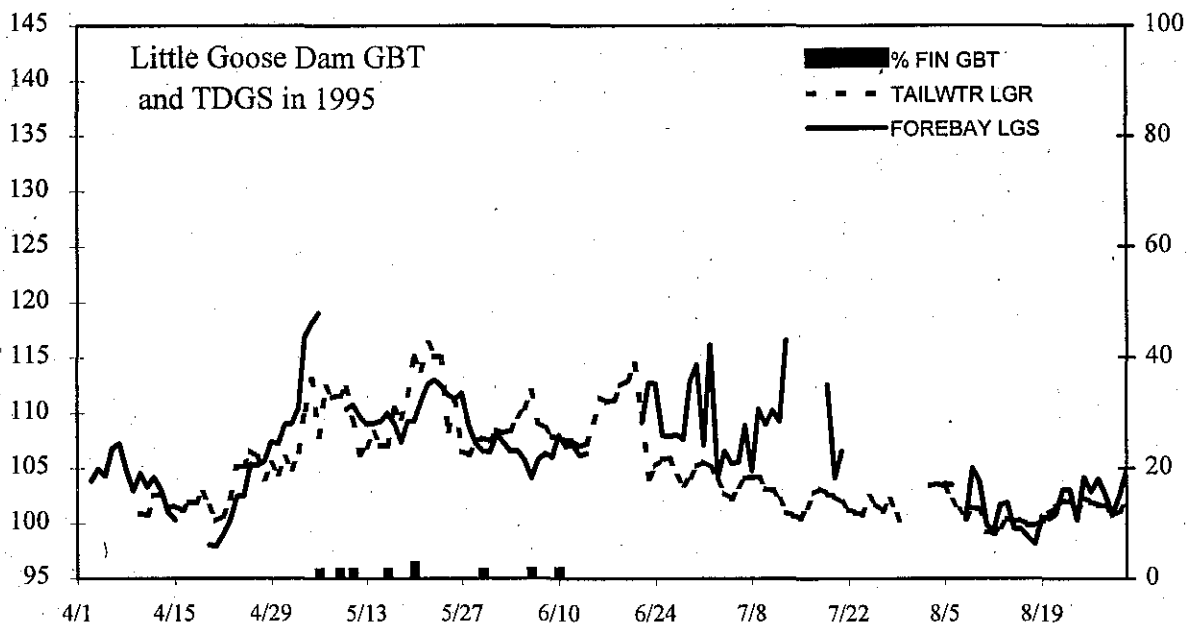
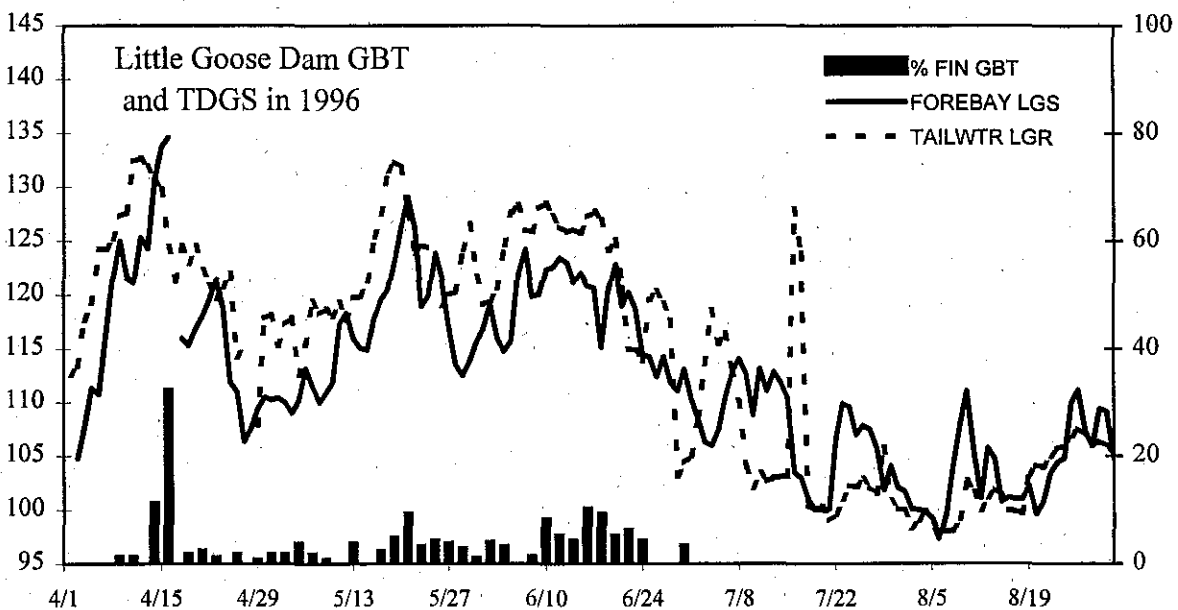
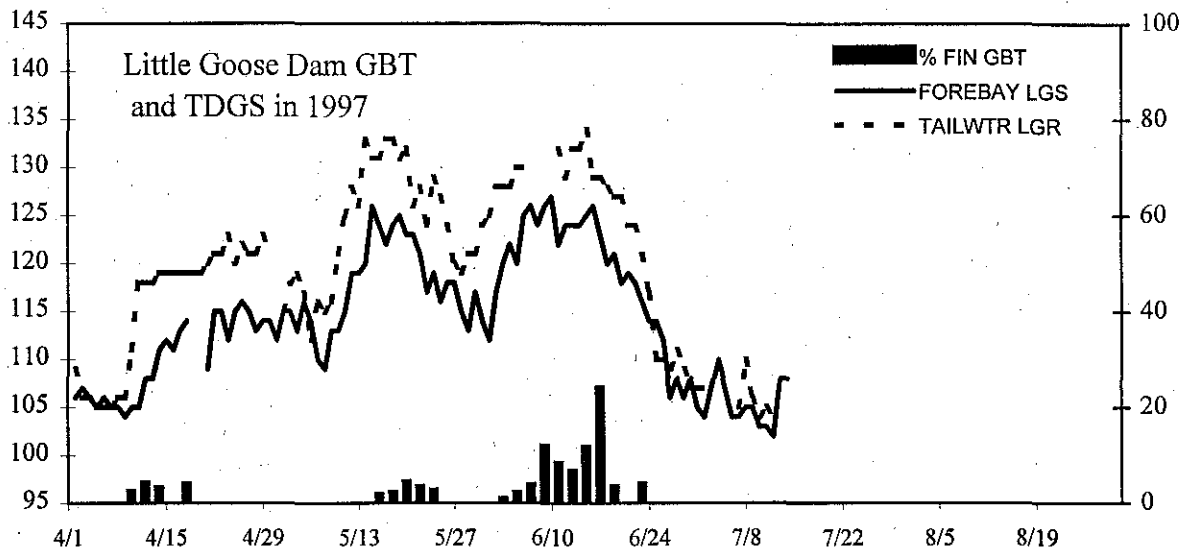


Average of 12 Highest Hours TDGS



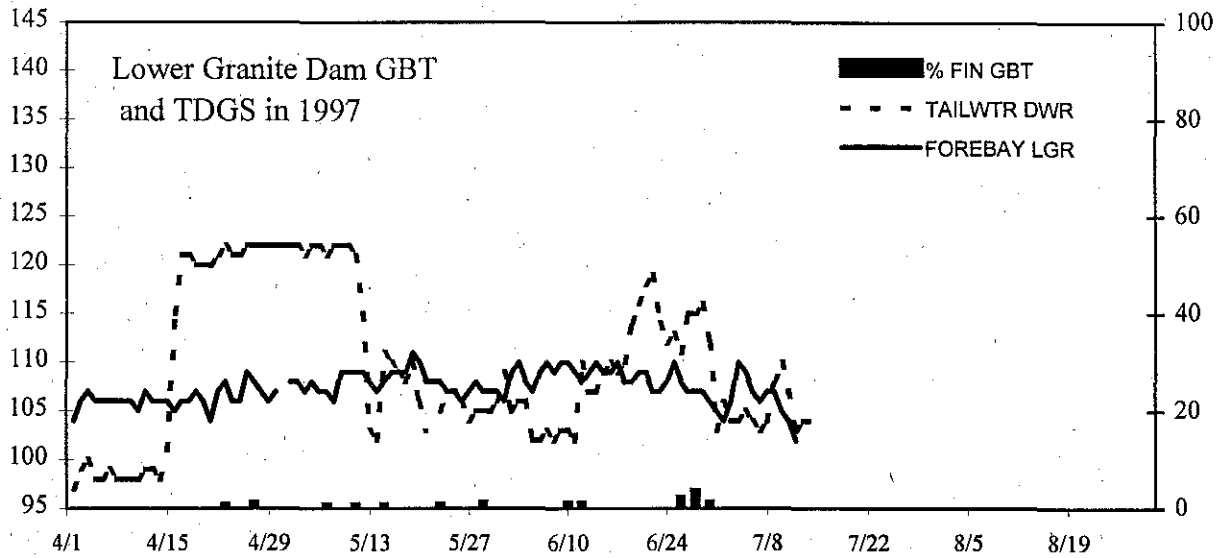
Percent of Fish with GBT Signs in Fins



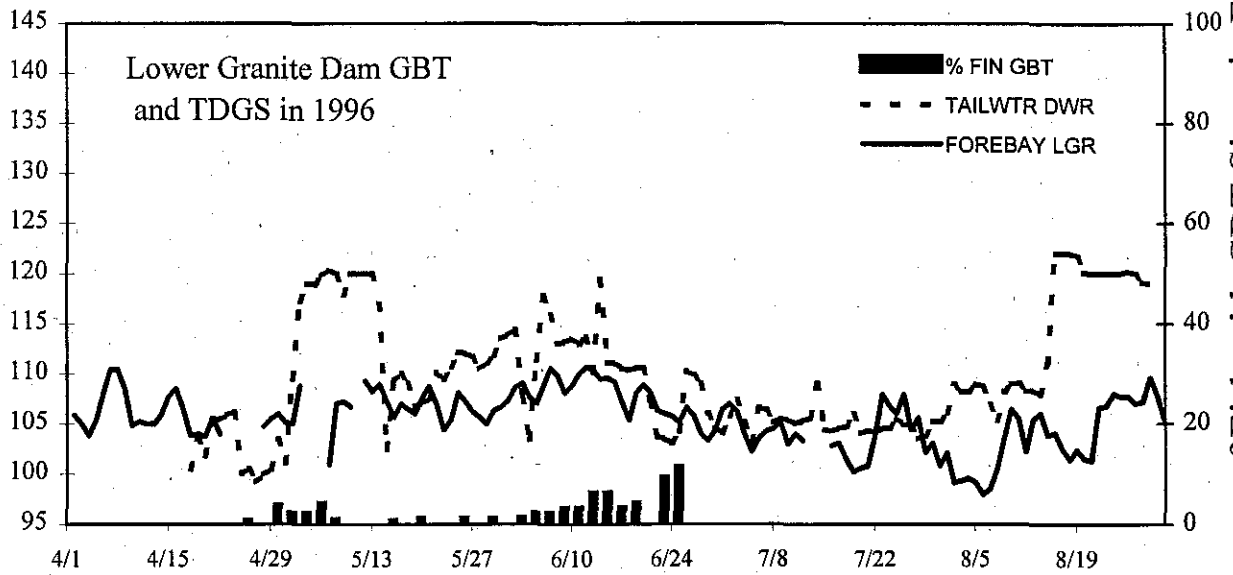


Average of 12 Highest Hours TDGS

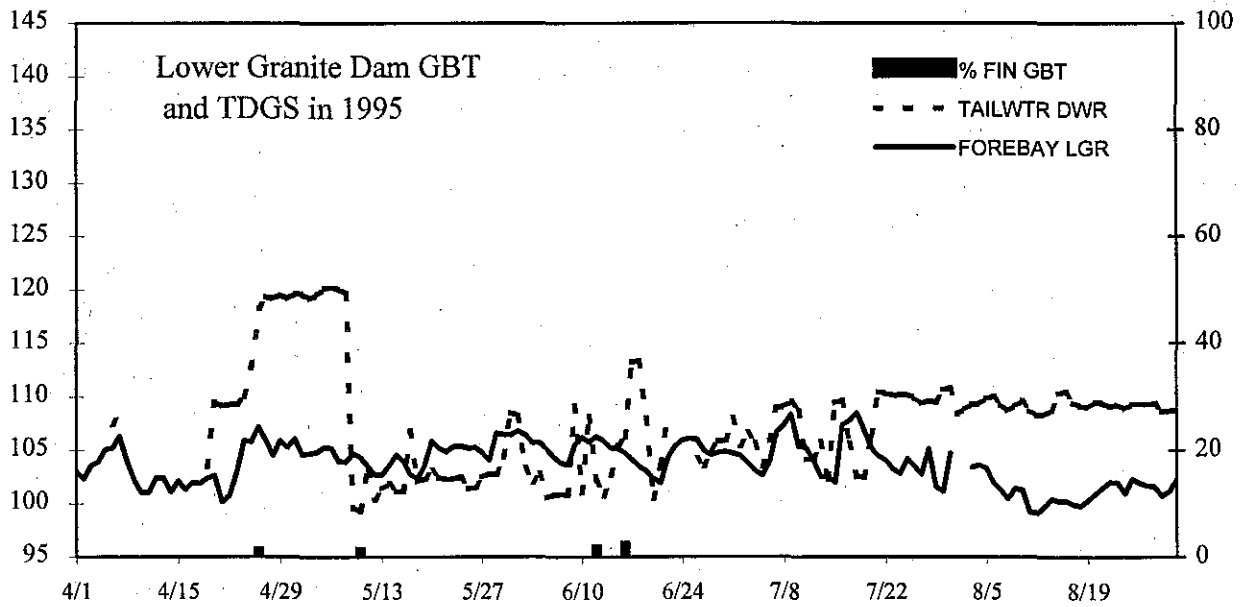
Percent of Fish with GBT Signs in Fins



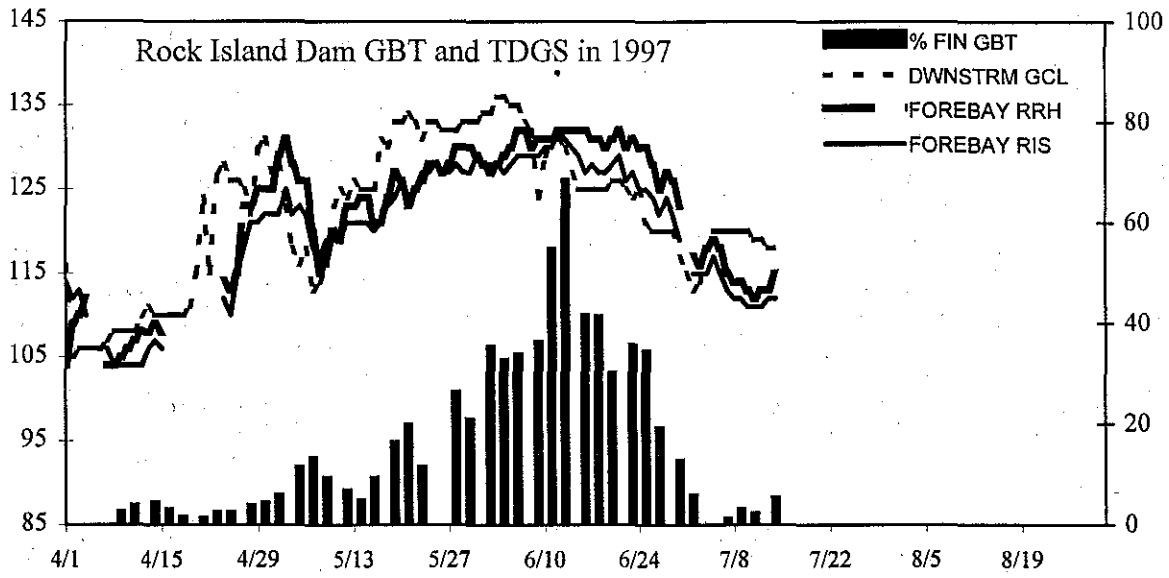
Average of 12 Highest Hours TDGS



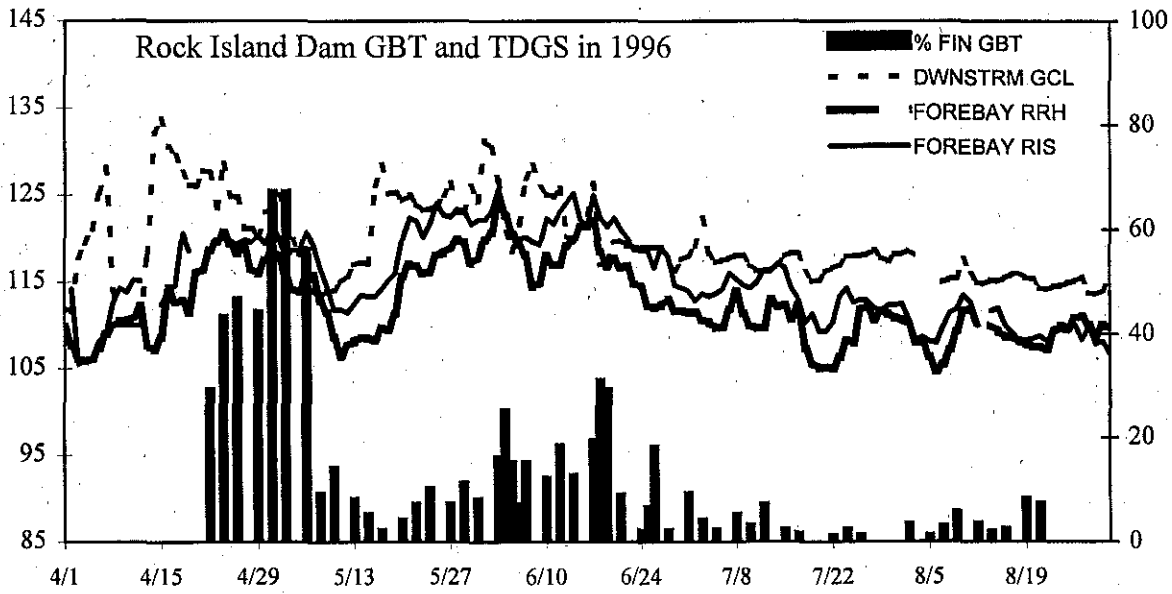
Percent of Fish with GBT Signs in Fins

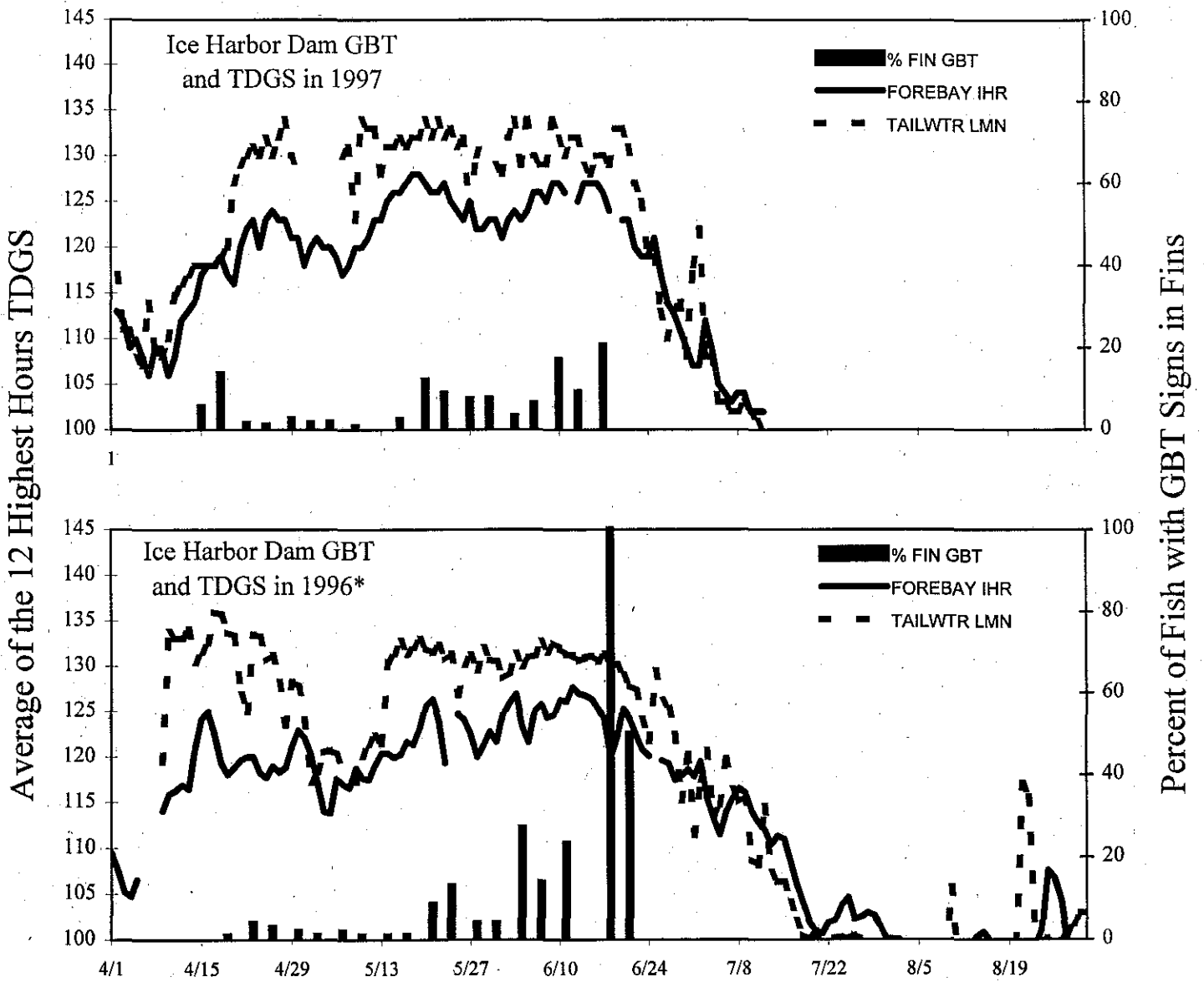


Average of 12 Highest Hours TDGS



Percent of Fish with GBT Signs in Fins





* Last two GBT bars in 1996 based on small sample size (n = 2 and 18 fish for 6/18 and 6/21 respectively)

SYSTEM OPERATIONAL REQUEST #97-18

TO: Brigadier General Griffin COE-NPD
William Branch COE-RCC
Cindy Henriksen COE-RCC
Bolyvong Tanovan COE-RCC
Dave Geiger COE-P
Randy Hardy BPA-Administrator
Greg Delwiche BPA-MGHH
Mark Maher BPA-MGHH

Raymond R. Boyce (RB)

FROM: Ron Boyce, Chairperson, Salmon Managers

DATE: June 10, 1997

SUBJECT: Actions to Reduce Total Dissolved Gas Levels

Specifications: We recommend that the COE implement the following actions to reduce the present levels of total dissolved gas.

1) TRANSFER SPILL OUTSIDE THE BASIN

During light load hours transfer spill outside the Basin. This includes transfer of spill to such projects as Cabinet Gorge, Noxon and the Cowlitz projects. Spill should occur at these projects up to the existing State Water Quality standards for total dissolved gas.

2) ALTER THE PRESENT RESERVOIR OPERATION

Alternative actions for the operation of the storage reservoirs were presented in System Operational Request #97-16. These recommendations remain in place for consideration and implementation.

3) MANIPULATION OF SPILL WITHIN THE FEDERAL HYDROSYSTEM

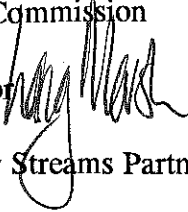
The COE is presently operating Dworshak Dam at full powerhouse capacity (approximately 10 kcfs) with no spill. Total dissolved gas levels below this project are below the total dissolved gas standards. We recommend that during light load hours megawatt generation be transferred from Dworshak Dam to other federal projects that are not operating at full capacity. The Dworshak project could then spill the excess water up to the 110% State of Idaho water quality standard.

Rationale: Several Snake and Lower Columbia river federal projects are operating at substantially less than full capacity during light load hours. This has resulted in elevated spill levels and considerably higher total dissolved gas levels during primary fish passage hours. Consequently, the levels of fish detected with signs of gas bubble trauma have increased. (See attached table). The fishery agencies and Indian tribes are concerned that the COE has not exhausted all possible alternatives for decreasing total dissolved gas levels in the hydrosystem. We urge the COE implement all of the actions described above.

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 30, 1997

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item G, Healthy Streams Partnership Report, EQC Meeting July 17, 1997

Statement of Purpose

The purpose of this report is to update the Commission on the Healthy Streams Partnership, to explain its relationship to salmon recovery, to bring the Commission up to date on actions being taken by the Department on Healthy Streams work, and to lay out our plans for the 1997-1999 biennium.

Background

On June 26, 1996, EPA approved Oregon's 1994/96 303d list of waterbodies not meeting water quality standards. The Clean Water Act requires that the state develop total maximum daily loads (TMDLs) of pollutants that can be assimilated by these waterbodies and return them to compliance with standards. As with other states in the Pacific Northwest, EPA has been sued by environmental groups to require Oregon to develop TMDLs on a defined schedule. We are yet to enter settlement negotiations with EPA and the plaintiffs, but our estimate is that we will have ten years to address the 870 listed waterbodies.

The Healthy Streams partnership, brokered by the Governor, and subsequently ratified by the legislature, lays the basis for addressing the water quality problems highlighted by the 303d list within a tight timeframe.

Healthy Streams Partnership Participants

The Healthy Streams Partnership comprised representatives from the agricultural community, forestry, environmental groups, federal and state agencies, and the Governor's office. A full list of participants is attached at Appendix A. Lydia Taylor and Lang Marsh represented DEQ.

Healthy Streams Partnership Principles and Agreement

The Partnership is designed to bring together private sector and public sector resources and knowledge to improve the health and function of aquatic systems and to enhance the beneficial

Memo To: Environmental Quality Commission
Agenda Item G, Healthy Streams Partnership Report, EQC Meeting Page 2

uses of Oregon's water. These improvements are to be achieved collaboratively based on scientifically defensible research projects and educational programs designed to identify all the causes of pollution and to develop alternative solutions.

The Agreement details the existing legislative authorities exercised by the Departments of Agriculture, Forestry and Environmental Quality that will be used to address waterbodies on the 303d list. The Agreement also expresses the intent for all parties to support the state agencies in their efforts. At the same time, the Agreement makes clear that landowners, and other affected individuals will have ample opportunity for input to decisions. A copy of the Agreement and principles is attached at Appendix B.

Senate Bill 1010 Agricultural Water Quality Management Plans

Senate Bill 1010 is triggered either when DEQ issues a notice of water quality impairment through its 303d list, or when a TMDL is set. Following this, ODA will confer with DEQ over the geographic boundaries to be addressed. ODA has indicated that it intends to focus its efforts at the sub-basin level. There are 91 sub-basins in Oregon, of which 79 have listed waterbodies. ODA will appoint an advisory committee, and may use a local agency, such as a Soil and Water Conservation District to act as technical support for the planning process.

A SB 1010 plan must contain:

1. problem identification
2. goal statement of water quality objectives
3. measures needed to establish goals (description of prohibited conditions)
4. implementation schedules
5. guidelines for public participation, including a statement of state and local government responsibilities
6. compliance establishment and reviews
7. monitoring of the plan for effectiveness
8. plan review schedule and revision process if conditions warrant
9. enforcement process and strategy

Local landowners will be encouraged to develop voluntary water quality management plans which will be evaluated by ODA. Technical support will be provided to such voluntary groups by ODA, OSU Extension Service and local Soil and Water Conservation District personnel.

ODA has committed to having plans for all basins completed by July 1, 2001.

Legislative Oversight Committee

A Joint Legislative Committee on Salmon and Stream Enhancement (JLCSSE) has been established to oversee activities relating to salmon restoration and healthy streams work. The committee comprises seven members, three from the House, three from the Senate and one from either body chosen by Committee members. The current composition of the Committee is:

| | |
|---------------|---------------|
| Sen. Ferrioli | Rep. Messerle |
| Sen. Dukes | Rep. Kruse |
| Sen. Kintigh | Rep. Thompson |
| Sen. Tarno | |

The functions of the Committee are to:

1. Receive informational reports from the Healthy Streams Partnership, committees and teams constituted under the Coastal Salmon Restoration Plan, and other sources. On the basis of these reports, to recommend changes to statewide stream and salmon enhancement efforts;
2. Review the actions of individuals and agencies implementing salmon and stream enhancement programs;
3. Review requests for, and make recommendations to the Joint Legislative Committee on Ways and Means or the Emergency Board regarding grant proposals and requests submitted by the Governor's Watershed Enhancement Board (GWEB) or other state agencies;
4. Review any Memorandum of Agreement to implement stream and salmon enhancements
5. Review the effectiveness of existing projects, programs and research projects and recommend implementation principles, priorities and guidance for statewide steam and salmon enhancement.

Agencies are required to notify aggrieved landowners who may be adversely affected by activities undertaken for stream and salmon enhancement of dispute resolution procedures and to report these instances to the JLCSSE. Any agency seeking additional funding for this work must submit a proposal to JLCSSE prior to submission to the Emergency Board.

Healthy Streams Staffing and Fiscal Resources

Under the Healthy Streams package, DEQ has been given 19 new positions. Of these, two will be located in headquarters, eight in the lab, and the remainder in regional offices.

**Memo To: Environmental Quality Commission
Agenda Item G, Healthy Streams Partnership Report, EQC Meeting Page 4**

Recruitment for these positions is underway, with some 500 applications having been received from across the country. The Department is currently screening all applicants to reduce the pool to a manageable size, following which interviews for appointment to the positions will occur.

The Department is currently putting together a comprehensive training package for new hires to these positions, along with existing DEQ staff who will be involved in Healthy Streams work. This training is being coordinated with ODA, which also received 19 new positions. Our hope is that some concurrent sessions of interest to both agencies can occur. For example, DEQ staff may provide a session on the Clean Water Act and TMDLs that will be valuable for both agencies. Similarly, ODA may provide a module on land-owner relations that will be useful for both. At this point we are shooting for this to occur in late September, to ensure that both agencies have new staff on board.

Relationship Between Healthy Streams Partnership and Oregon Coastal Salmon Restoration Plan

While the Healthy Streams Partnership and the Oregon Coastal Salmon Restoration Plan are two separate entities, in practice there is a great deal of overlap between them. DEQ, along with a number of State agencies have committed to undertaking a variety of activities to help restore coastal salmon populations. DEQ's commitments for salmon restoration substantially overlap with our commitments under the Healthy Streams Partnership. The development of TMDLs under the healthy streams partnership is also a requirement of salmon restoration. Some of the healthy streams positions destined for the DEQ lab will be undertaking monitoring activities that will support both programs.

As detailed above, the Legislative oversight committee will be reviewing activities under both programs.

DEQ's TMDL Schedule

DEQ has submitted to EPA a prioritization plan for the 870 waterbodies on the 1994/96 303d list, and has also specified the priorities for the next two years. These are:

1. Outstanding TMDLs from the 1987 Consent Decree:

Klamath TMDL

This TMDL is focusing on the Lost River sub-basin and includes 11 segments on the 303d list.

Umatilla TMDL

This TMDL is focusing on the Umatilla sub-basin, and includes 16 segments on the 303d list.

Columbia Slough TMDL

This is a single waterbody focused TMDL, incorporating a number of parameters, including toxics.

Grande Ronde TMDL

This TMDL is initially focused on the Grande Ronde River from its confluence with the Wallawa River to Five Point Creek. This should be completed later this year. Following that TMDLs will be developed for the remainder of the Upper Grande Ronde Basin which comprises 41 listed segments.

2. Priority Basin TMDLs:

Rogue Basin

The Rogue Basin comprises five sub-basins. The sub-basins, along with the number of TMDLs involved is as follows:

| | |
|--------------|----|
| Applegate | 10 |
| Illinois | 19 |
| Lower Rogue | 18 |
| Middle Rogue | 25 |
| Upper Rogue | 26 |

Umpqua Basin

The Umpqua Basin comprises three sub-basins. The sub-basins, along with the number of TMDLs involved is as follows:

| | |
|--------------|----|
| North Umpqua | 26 |
| South Umpqua | 24 |
| Umpqua | 12 |

Tillamook Sub-Basin

The Tillamook Sub-Basin is a single sub-basin, and contains 23 TMDL listings.

Each of these waterbodies may be listed for one or more parameters. For example, a stream segment may be listed for both temperature and dissolved oxygen. This counts as one TMDL in the table above.

These priorities, along with Oregon's 91 sub-basins are shown at Appendix C.

In addition, the Department will be working closely with Federal agencies (Forest Service and Bureau of Land Management) to solicit and evaluate existing plans where listed waterbodies are on federal land. To assist with this, the Department released nonpoint source TMDL guidance in April 1997. This guidance details the elements a plan must exhibit if it is to constitute a TMDL. EPA has signed off on this guidance, and assured the Department that any plan (federal or private) exhibiting these elements will be approvable as a TMDL. A copy of the guidance is appended at Appendix E. In summary, the ten elements are:

1. Condition assessment and problem description
2. Goals and objectives
3. Proposed management measures
4. Timeline for implementation
5. Identification of responsible participants
6. Reasonable assurance of implementation
7. Monitoring and evaluation
8. Maintenance of effort over time
9. Discussion of cost and funding

Authority of the Commission with Respect to the Issue

The Commission will be involved in this issue over the next ten years under Oregon Administrative Rules adopted by the Commission in relation to water quality. The Department may approach the Commission with rulemaking proposals to implement individual or basin TMDLs. The Department intends to keep the Commission fully apprised of progress in developing TMDLs under the Healthy Streams Partnership.

Summary of Public Input Opportunity

The public were able to have input at the Legislature when the Partnership provisions were adopted and resources allocated.

Intended Future Actions

The Department will keep the Commission informed of progress in implementing the provisions of the Partnership. In the meantime, the Department is going through the recruitment process to fill the nineteen new Healthy Streams Partnership positions as quickly as possible. The Department is working closely with representatives from the Oregon Departments of Agriculture, Forestry and Water Resources Department to develop a joint training package for the new positions. This will take place no later than the end of September 1997.

Department Recommendation

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



Attachments

- A. Healthy Streams Partnership Participants.
- B. Healthy Streams Partnership: Principles and Agreement.
- C. Oregon Sub-Basin Map, and Priority TMDL/Basins.
- D. Nonpoint Source TMDL Guidance Document.

Approved:

Section:

Division:

Report Prepared By: Russell Harding

Phone: (503) 229-5284

Date Prepared: June 30, 1997

APPENDIX A.

Healthy Streams Partnership Participants

| | |
|--------------------|--|
| John A. Kitzhaber, | Governor |
| Andy Anderson, | Oregon Farm Bureau |
| Bruce Andrews, | Oregon Department of Agriculture |
| Ward Armstrong, | Oregon Forest Industry Council |
| Ken Bierly, | Governor's Office |
| Paula Burgess, | Governor's Office |
| Paul Cleary, | Division of State Lands |
| Jeff Curtis, | Water Watch |
| Wayne Elmore, | Bureau of Land Management |
| Todd Heidgerken, | Water for Life |
| Geoff Huntington, | Water Resources Department |
| John Ledger, | Associated Oregon Industries |
| Joni Low, | League of Oregon Cities |
| Steve Marks, | Governor's Office |
| Langdon Marsh, | Department of Environmental Quality |
| Dave Nelson, | Oregon Dairy Farmers |
| Fred Otley, | Oregon Cattlemen's Association |
| Martha Pagel, | Water Resources Department |
| Geoff Pampush, | Oregon Trout |
| Lydia Taylor, | Department of Environmental Quality |
| Phil Ward, | Oregon Department of Agriculture |
| Ray Wilkeson, | Oregon Forest Industry Council |
| Terry Witt, | Oregonians for Food and Shelter |
| Pat Wortman, | Wallowa County Commissioner |
| Jill Zarnowitz, | Oregon Department of Fish and Wildlife |

Governor John A. Kitzhaber Healthy Streams Partnership PRINCIPLES AND AGREEMENT

Oregon Healthy Streams Mission Statement

The Oregon Healthy Streams Partnership will integrate private sector energy, resources and knowledge with the public sector to improve the health and function of aquatic systems and enhance beneficial uses of water for future generations. The integration of our best scientific information with intensive monitoring of individual water bodies will help test and refine our knowledge of aquatic systems, water quality standards and management alternatives. The partnership will address all of the factors impacting water quality in high priority streams in the most intensive and progressive manner possible while also enhancing positive ongoing programs throughout Oregon.

The strategic prioritization of streams and the integration of available resources and programs will greatly assist and increase the effectiveness of ongoing programs. Collective knowledge, positive cooperative efforts, stewardship incentives, increased technical assistance and outreach, and educational programs will be implemented at all levels of planning and management.

Working to develop a new level of trust, cooperation and knowledge will build a permanent partnership and stewardship process that will carry to future generations. Managing for the proper function of aquatic systems and watersheds will help make those systems more productive for all beneficial uses, improve water quality and develop a legacy and model of how to work together for shared goals and objectives.

Principles:

The parties to this agreement believe the following principles are important as a foundation to restoring Oregon's streams to a healthy condition.

- Oregonians strongly support protecting and improving water quality in Oregon's streams.
- Although there have recently been significant voluntary programs undertaken to improve stream health, many of Oregon's streams do not meet the state's water quality standards.
- Statewide, the causes of stream impairment include point source discharges from commercial, industrial, and residential land uses in urban and suburban areas as well as non-point source discharges from agriculture, forestry and urbanized landscapes, recreation and natural conditions.
- Failure of the state of Oregon to address water quality issues will result in the U.S. Environmental Protection Agency becoming responsible for water quality management in Oregon.
- To effectively improve water quality, stream function and watershed health, all Oregonians must support protection and enhancement programs and modify damaging activities in a cooperative manner.

- Science based educational programs and research projects are necessary to develop effective watershed programs.
- The development of collaborative ways to solve problems requires the identification of all causal factors, the development of alternative solutions and the effective implementation of locally appropriate solutions.
- Attainment of proper functioning condition is a primary element in achieving water quality standards associated with non-point source pollution.
- Oregon has several legislative authorities in place to address water quality problems based on the Clean Water Act and Oregon's water quality laws administered by the Departments of Environmental Quality, Forestry, and Agriculture.
- The state can not effectively implement Oregon's laws to address the water quality problems facing the state with current staffing and funding resources.
- In order to enhance Oregon's watersheds over the long term, the state must consistently invest in watershed restoration.
- The parties believe that integrated solutions that include all landowners in the planning and implementation are necessary to improve water quality in Oregon.
- The Governor and the parties will reach out to the legislative leadership to make this approach work.

Agreement:

This agreement identifies the general approach and limitation that all parties have discussed and agree to in order to address the non-point source water quality problems facing Oregon.

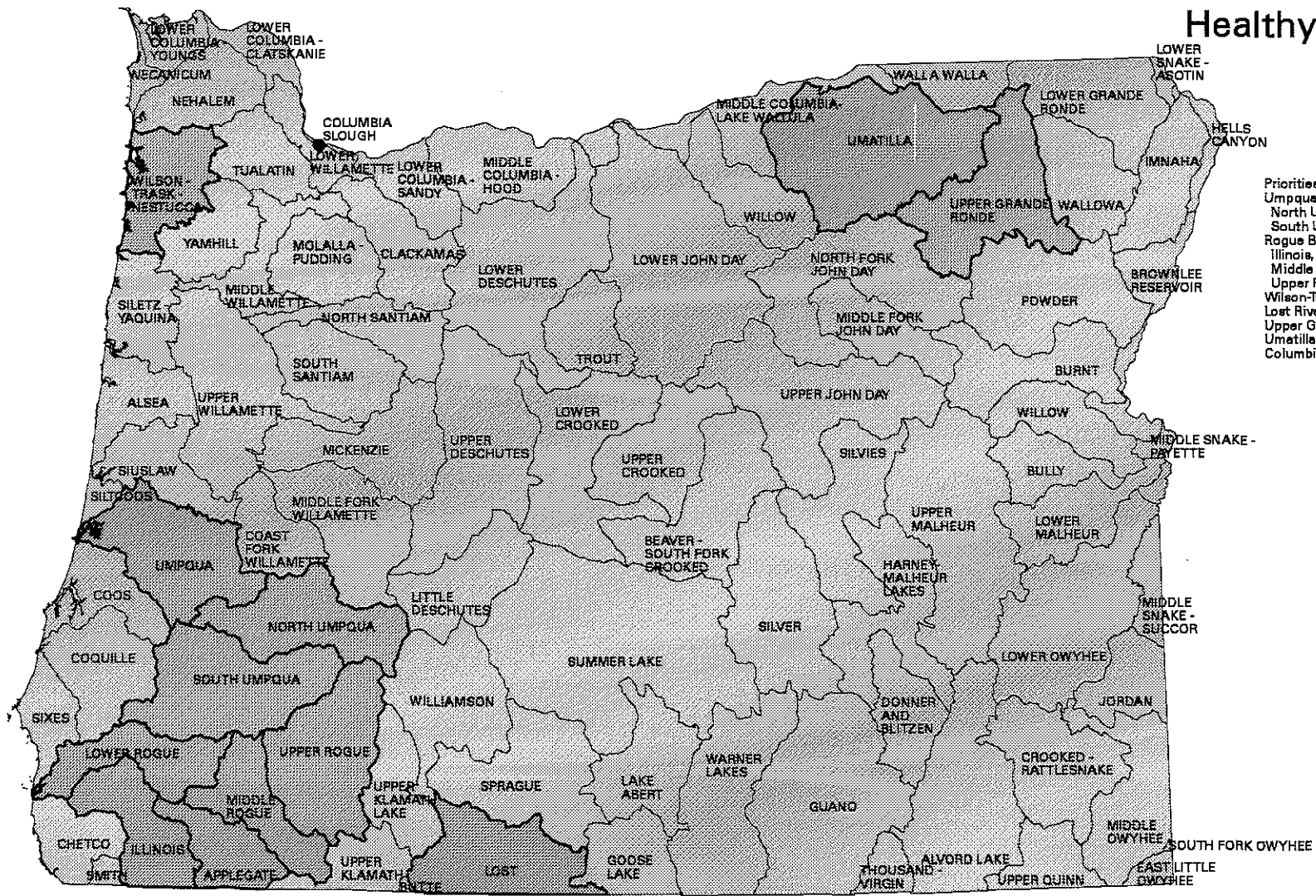
- Water quality management area plans for agricultural areas designated under Senate Bill 1010 for the stream segments on the 1996 303(d) list will be adopted by the Board of Agriculture by July of 2001. Watersheds with listed and/or candidate species will be given special consideration in setting priorities. (See Attachment A for description.)
- Total Maximum Daily Load requirements will be completed by July of 2007. Prioritization of the basins to work on will be completed by January 1997. (See Attachment B for description.)
- An agricultural water quality management area plan must be completed before enforcement action is taken under Senate Bill 1010. Landowners shall also be notified and given reasonable opportunity to respond.
- The parties agree to cooperate with the Department of Agriculture in developing administrative rules that specify a procedure for the public to notify the agency and trigger an investigation and appropriate enforcement action where a violation of an adopted plan is demonstrated.
- The parties agree to support the staff for the Departments of Agriculture and Environmental Quality necessary to meet the time schedules in this agreement.
- Individual landowners and community groups, for example, watershed councils, Soil and Water Conservation Districts and interest groups, will be eligible for project funding to improve and monitor water quality while area management plans are being developed, and to share in the implementation of water quality plans.
- Projects/programs will be eligible for statutorily defined technical assistance grants from _____ watershed improvement grant funds, given priority to those projects/programs which directly result in on-the-ground improvement.

- The parties agree to work with the legislature to secure a dedicated fund for watershed improvement programs emphasizing projects designed to achieve water quality standards.
- All parties agree to work in good faith to secure the funding and implement the approach established in this agreement.
- The parties encourage the Governor to submit a recommended budget to the Legislature to fund and implement the provisions of this agreement. The Governor has developed a recommended budget to meet the time frames of this agreement that totals \$5.8 million for 19 FTE's each in both the Department of Agriculture and the Department of Environmental Quality. The Governor has also identified a need and proposal for a dedicated watershed improvement fund providing \$20 to \$35 million per biennium. (See Attachment C for the budget summary and Attachment D for a description of the improvement fund.)
- All parties agree to work together on the implementation of this cooperative partnership to improve water quality in Oregon. (See Attachment E for elements of Work Plan.)

Participants:

John A. Kitzhaber, Governor
 Andy Anderson, Oregon Farm Bureau
 Fred Otley, Oregon Cattlemen's Association
 Pat Wortman, Wallowa County Commissioner
 Terry Witt, Oregonians for Food and Shelter
 Dave Nelson, Oregon Dairy Farmers
 Todd Heidgerken, Water for Life
 Ward Armstrong, Oregon Forest Industry Counsel
 Ray Wilkeson, Oregon Forest Industry Counsel
 Geoff Pampush, Oregon Trout
 Jeff Curtis, Water Watch
 Wayne Elmore, Bureau of Land Management
 Paul Cleary, Division of State Lands
 Bruce Andrews, Department of Agriculture
 Phil Ward, Department of Agriculture
 Lang Marsh, Department of Environmental Quality
 Lydia Taylor, Department of Environmental Quality
 Martha Pagel, Water Resources Department
 Geoff Huntington, Water Resources Department
 Jill Zarnowitz, Department of Fish and Wildlife
 Steve Marks, Governor's Office
 Paula Burgess, Governor's Office
 Ken Bierly, Governor's Office

Healthy Streams Priorities



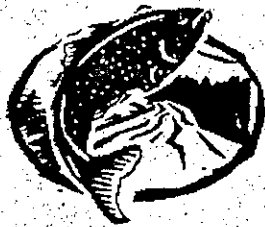
Priorities:
 Umpqua Basin - Umpqua,
 North Umpqua and
 South Umpqua Sub-Basins
 Rogue Basin - Lower Rogue,
 Illinois, Applegate,
 Middle Rogue and
 Upper Rogue Sub-Basins
 Wilson-Trask-Nestucca Sub-Basin
 Lost River Sub-Basin
 Upper Grande Ronde Sub-Basin
 Umatilla Sub-Basin
 Columbia Slough

Final



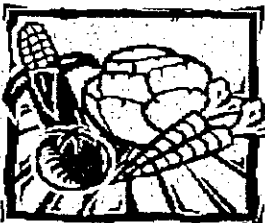
Forestry

Rivers



Grazing

Wetlands



Farming

**Guidance For
Developing Water
Quality Management
Plans That Will
Function As TMDLs
For Nonpoint Sources**

April 15, 1997



***Oregon Department of Environmental Quality
Water Quality Division — Watershed / Basin Section
811 Sixth Avenue * Portland, Oregon 97204***

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Guidance For Developing Water Quality Management Plans That Will Function As TMDLs For Nonpoint Sources

1 PURPOSE AND SUMMARY

This Guidance describes the elements necessary in a Water Quality Management Plan (WQMP) if it is to serve as a TMDL to address nonpoint sources. ("TMDL" is the abbreviation for a program of "Total Maximum Daily Loads"; see Section 2 of this report).

This Guidance is written for those who will be involved in preparing and implementing WQMPs. The reader is assumed to have a basic understanding of water quality issues and watershed management principles, and is assumed to be interested in detailed guidance on nonpoint source TMDL development

To be acceptable as a nonpoint source TMDL, a Water Quality Management Plan must be a thorough, objective-driven, adequately funded, fully monitored, long-term, watershed enhancement approach with significant commitment demonstrated by local land owners and managers. Most importantly, the goals and objectives of the WQMP must focus on achieving water quality standards at the earliest possible date.

This Guidance emphasizes the **outcomes** requir-

ed by Section 303(d) of the federal *Clean Water Act* and thus also emphasizes the necessary **content** of a WQMP. However, this document is not meant as a thorough guide to the process of developing a WQMP and also cannot describe the many and varied issues and technical methods related to watershed management practice, water quality monitoring, and so on. Such guidance on process and technique is available through other sources; a few of which are listed at the end of this document.

Watershed-scale plans to manage natural resources can take many forms in response to the local situation. The WQMP elements described in this Guidance can be included in any watershed plan, regardless of its particular format.

Similarly, the specific management practices and objectives of each watershed plan will be selected to suit the local situation. This Guidance does not recommend management practices or objectives, but does describe the necessary qualities of key elements in a WQMP.

The discussion of these key WQMP elements is in Section 5 of this report. Other sections of this Guidance provide additional background and explanation.

2 TMDLs, WATER QUALITY LIMITED WATERS, AND THE 303(d) LIST

A Total Maximum Daily Load (TMDL) is a strategy for bringing a waterbody back into compliance with water quality standards – that is, for improving water quality to the point where recognized beneficial uses of the water are fully supported.

A TMDL addresses pollution problems by systematically identifying those problems, linking them to watershed characteristics and management practices, establishing objectives for water quality improvement, and identifying and implementing new or altered management measures designed to achieve those objectives.

Section 303(d) of the 1972 federal *Clean Water Act* (as amended) requires states to develop a list of waterbodies that do not meet water quality standards and thus require additional pollution controls. These waters are referred to as “water quality limited” (WQL) and must be periodically identified in each state by the federal Environmental Protection Agency (EPA) or by the state agency designated with this responsibility. In Oregon, this responsibility rests with the Department of Environmental Quality (DEQ). Water quality limited waters requiring the application of TMDLs (or other sufficiently stringent pollution control requirements) are identified in a document commonly referred to as the “303(d) list”. This list, developed by the Department, is subject to public review and must be approved by EPA.

It is important to remember that the 303(d) list is really a sub-set of the larger list of “water quality limited” (WQL) waters. WQL waters are defined **not** by whether they meet the standards, but by whether treatments above and beyond “best available technology”, “best practicable treatment”, and normally applied “best management practices” are required to protect beneficial uses. In other words, a waterbody will retain its “water quality limited” status so long as the attainment

of water quality standards requires a heightened level of treatment or watershed management, even if standards are currently being met or a TMDL is being implemented. Those of the WQL waters which (a) don’t meet standards, and (b) haven’t yet received TMDLs or TMDL equivalents are placed on the 303(d) list. The other WQL waterbodies will still be identified in DEQ’s regular *Water Quality Status Assessment (305(b)) Report*.

A full TMDL development process determines the pollutants or stressors causing water quality impairments, identifies maximum permissible loading capacities for the waterbody in question, and then, for each relevant pollutant, assigns load allocations (Total Maximum Daily Loads) to each of the different sources, point and nonpoint, in the watershed.

Different TMDL development processes will be used in different situations depending on the types of sources involved. More complex and lengthy processes are required where the contributions of both point sources (e.g., sewage treatment plants, industrial facilities) and nonpoint sources (e.g., forestry, agriculture, grazing, and untreated urban stormwater runoff) make the situation complex. Where only nonpoint sources are involved, the TMDL development process will generally be less complex, although a thorough understanding of the watershed and its water quality are necessary in either case.

3 WATER QUALITY MANAGEMENT PLANS AS TMDLs FOR NONPOINT SOURCES

This Guidance describes the elements necessary in a Water Quality Management Plan (WQMP) if it is to serve as a TMDL to address nonpoint sources (NPS). Such a WQMP is particularly useful where NPS is the only pollution source, but has the following possible applications:

- ◆ In most cases, an approved WQMP can stand

alone as a TMDL for any watershed where non-point sources are the only sources of water pollution.

- ◆ For NPS-only watersheds that are a part of a larger basin for which a complex TMDL is being prepared to address both point and nonpoint sources throughout the entire area, the WQMP still **may** be all that is required for the smaller watershed in the context of the basin-wide TMDL. This decision will have to be made in cooperation with those who are assembling the basin-wide multi-source TMDL.
- ◆ While the process for preparing TMDLs in a watershed with both point sources and nonpoint sources is different from that of preparing TMDLs where there are only nonpoint sources, the basic elements required for the TMDLs are essentially the same. Therefore, one or more WQMPs developed according to this Guidance and addressing particular NPS land use activities (e.g., agriculture, forestry) in the watershed **may** be adequate to address the NPS component of a complex multi-source TMDL. Again, this decision will have to be made in cooperation with those who are assembling the basin-wide TMDL.

Nonpoint source (NPS) pollutants are substances of widespread origin which run off, wash off, or seep through the ground, eventually entering surface waters or groundwaters. NPS pollution results from diffuse sources rather than from discharge at a specific location (such as the outfall pipe from a sewage treatment plant), and the greatest loads of NPS pollution often are associated with a few heavy storm events spread out unpredictably over the year.

These characteristics of nonpoint sources mean that very seldom – if ever – will NPS control programs actually use “Total Maximum **Daily Load**” allocations as a means to specify or measure pollutant reductions in forest, farm, ranch, untreated urban stormwater runoff, and other

typical NPS situations. Consequently, the term “TMDL” may be seen as awkward when applied to NPS situations. However, quantifiable maximum pollution loads for nonpoint sources may still be set by larger geographic units (watersheds) and by longer time periods (seasons or years). Also, a “TMDL” program is understood to be a program of special, intensive, and focused strategies for reducing pollution and bringing 303(d) listed waters back into compliance with water quality standards, and this is as appropriate a strategy for NPS as it is for point sources.

WQMP Geographic Scope: As noted previously, a WQMP must address whole watershed units. A “watershed” is simply an area of land within which all surface runoff drains to a single receiving waterbody. The most practical watershed scale for a WQMP depends on local factors, but generally will be at the fourth, fifth, or sixth “field” (ranging from larger to smaller) as defined by the U.S. Geologic Survey. For example, the Tualatin River Sub-Basin is a “fourth field” watershed; it consists of several smaller “fifth field” watersheds, each of which in turn is made up of several “sixth field” watersheds.

4 REMOVING WATERS FROM THE 303(d) LIST

● Why Bother to Remove Waters from The List?

The waterbodies on the 303(d) list have significant water quality problems. One or more of the beneficial uses of those waters – for example, their ability to fully support fish and other aquatic life – is impaired. Federal and state laws require the protection of water quality and aquatic beneficial uses. An equally important motivation for action is the strong and widely-held belief by Oregonians that our waters must be clean and healthy, not only for the sake of humans but also for the protection

of those other species that depend on us to protect Oregon's water resources. This means that the water quality problems of the listed waters must be addressed and corrected, one way or another, and the sooner the better.

The Department believes that the best solutions to water quality problems are those with broad and active local support and involvement. Citizens all over Oregon are anxious to proceed – and in some cases already are proceeding – with ambitious watershed enhancement projects. However, in those areas with listed waters where an effective local commitment to water quality improvement is slow to form, the Department (or other agencies of state or federal government) will have to move ahead with whatever actions are necessary to implement the law and protect water quality. If we fail to do this in a timely manner, citizens may sue through the courts to force implementation of the law, a likelihood well documented by the citizen law suits of the past decade. The result could be watershed management plans developed and imposed with less local involvement and support than all of us prefer to see. The best way to avoid this unsatisfactory situation is for local citizens and government agencies to join in partnership to sufficiently address water quality problems and to thus remove waters from the 303(d) list as soon as possible.

● **Removing Waters from The 303(d) List**

There are several ways that waterbodies may be removed from the 303(d) list:

- ◆ The data or analysis used by DEQ to list the water is shown to be inaccurate or inadequate (i.e., the water quality in question actually does meet standards after all).
- ◆ The water quality standard violated by the waterbody is changed so the waterbody no longer is in violation. This in-

cludes the possibility that local conditions may be officially recognized as the local standard (e.g., allowing a higher stream temperature in a particular waterbody in recognition of "natural" conditions).

- ◆ Water quality improves to meet standards.
- ◆ A fully quantified TMDL covering both point and nonpoint sources is set and implemented.
- ◆ Other pollution control requirements (e.g., stemming from agriculture or forestry management programs) are determined to be sufficiently stringent to qualify as a TMDL equivalent.
- ◆ A WQMP is approved for implementation as a NPS TMDL.

5 BASIC ELEMENTS OF A WQMP

A Water Quality Management Plan must include and adequately address the elements described below:

- ① Condition Assessment and Problem Description.
- ② Goals and Objectives.
- ③ Proposed Management Measures.
- ④ Timeline for Implementation.
- ⑤ Identification of Responsible Participants.
- ⑥ Reasonable Assurance of Implementation.
- ⑦ Monitoring and Evaluation.
- ⑧ Public Involvement.
- ⑨ Maintenance of Effort Over Time.
- ⑩ Discussion of Costs and Funding.

These ten elements follow from guidance on TMDLs and on the 303(d) list provided by the

Environmental Protection Agency, and in particular, from EPA's *Guidance Document for Listing Waterbodies in the Region 10 303(d) Program* (November 1995). That EPA guidance document describes the four categories of characteristics that a management program must have to sufficiently address waters on the 303(d) list. Oregon's ten WQMP elements respond to requests to provide more detail on the four EPA categories. The WQMP elements listed above fit with EPA's categories as follows:

◆ **EPA Category: Data Analysis**

Description: Identifies the water quality concerns and their causes, establishes targets for water quality improvement, describes the specific pollution controls or management measures to be undertaken, and demonstrates that the selected measures will successfully achieve the water quality goals.

Related Oregon WQMP Elements: 1, 2, and 3.

◆ **EPA Category: Implementation Mechanisms**

Description: Identifies the mechanisms by which the selected pollution control and management measures will be implemented, and describes the authorities, regulations, permits, contracts, commitments, or other evidence sufficient to ensure that implementation will take place.

Related Oregon WQMP Elements: 5, 6, 8, 9, and 10.

◆ **EPA Category: Time Frame for Attaining Standards**

Description: Describes when implementation will take place, identifies when various tasks or action items will begin and end and when mid-term and final objectives will be met, and establishes target dates for meeting water quality goals.

Related Oregon WQMP Elements: 4 and 9.

◆ **EPA Category: Monitoring**

Description: Tracks implementation of the selected pollution control measures, collects and

analyzes information on the effectiveness of the specific measures at achieving the water quality (and related) goals, provides a "feedback" or "adaptive management" process by which the results of implementation can be used to modify and improve the pollution control program as necessary, and provides information for use in subsequent 303(d) listing processes.

Related Oregon WQMP Elements: 7.

The following sub-sections provide more detail about the ten elements of Oregon's WQMP program. Technical assistance on how to successfully develop these elements is available from the resources listed at the end of this document.

● **Element 1: Condition Assessment and Problem Description**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

A thorough description of the situation, including:

- ◆ The water quality standards and criteria of concern, including the beneficial uses being impaired.
- ◆ Water quality conditions.
- ◆ The types of pollution causing the problem.
- ◆ The sources of this pollution in terms of:
 - ◆ Location.
 - ◆ Land management practice, natural cause, or other source.
 - ◆ The relative contribution of each source.

FURTHER DISCUSSION

The water quality action plan must be based on a clear understanding of the problems to be solved and the causes to be dealt with, and be addressed on the watershed scale. Information on water quality conditions, the water quality standards and criteria of concern, and the beneficial uses being impaired is available from the Department, which used this information in its determination

that the waterbody should be included on the 303(d) list. Other sources of information will include other public agencies, watershed councils, special districts, and a variety of local sources.

To some extent, the types and sources of pollution causing the problem may be inferred from the nature of the problem and from patterns of local land use and management practice. In some cases, however, it will be necessary to additionally document watershed conditions and causes of water quality problems.

When is enough data enough? This is always a difficult question, and the answer will be different for each watershed. On the one hand, inadequate information obviously can lead to inadequate or misguided objectives in the watershed action plan, and short-cutting the assessment phase also tends to reduce the opportunity for local watershed interests to fully examine and understand the issues and to reach consensus. On the other hand, spending too much time and effort on the assessment phase can delay – and draw resources away from – the watershed enhancement phase.

To thoroughly document all the factors in a watershed that influence water quality is very difficult, partly because of natural variability. Therefore, water quality management plans must accommodate a degree of uncertainty. But the law requires that water quality standards, including the targets set as part of a TMDL, provide a “margin of safety” in protecting the sensitive beneficial uses, and the greater the uncertainty in the watershed condition assessment, the wider the margin of safety must be in the WQMP goals to provide that adequate protection. So, to avoid expending energy and resources in pursuing unnecessary objectives, enough data and other information should be collected so that the goals of the WQMP may be as focused as possible.

In many cases, information about certain watershed and water quality condition parameters will be more plentiful or easier to obtain than information about other parameters. A good example

in Oregon is temperature and sediment. Being relatively easy and inexpensive to collect, water temperature data is plentiful for many basins. Information on sediment, however, is scarce, and then is often in the form of a narrative description rather than numeric data. Notwithstanding this disparity in documentation, the preponderance of expert opinion acknowledges that both temperature and sediment problems are major contributors to water quality degradation and beneficial use impairment.

Each WQMP process will have to deal with this difficulty in its own way. One possible approach is to develop a phased plan which addresses the better understood problems first. Other issues that are not as well understood can be further studied and then addressed in a later phase of the plan. Another possibility is that WQMP stakeholders will agree to base different kinds of decisions on different kinds of information; for example, to base temperature decisions on data but to base sediment decisions on the best available expert judgment. However this is dealt with, the WQMP should describe what kind of data or information was used for which decisions.

Overall, the point of a WQMP is to employ the best information available at the time to reduce pollution and improve water quality and beneficial use support, **not** to exhaustively study natural systems. This Condition Assessment and Problem Description element of a WQMP will be adequate if it can describe problems and their causes well enough to justify the objectives and actions proposed in the watershed enhancement action plan.

● **Element 2: Goals and Objectives**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

A statement of the water quality improvement and protection goals of the plan, accompanied by objectives which quantify the desired change in water quality, beneficial use support, pollution loading, and/or other measurable indicators of stream or watershed conditions. In addition, the plan should specify pollution load allocations, as-

sign those allocations to responsible parties, and provide target dates for achievement of the goals and objectives.

FURTHER DISCUSSION

For purposes of the WQMP, "goals" are general statements of intent, policy, and desired outcome or future condition. "Objectives" are specific, quantified statements of products to be created or conditions to be attained. The achievement of objectives is always measurable. WQMP objectives should identify the time frame for implementation, the roles and responsibilities of the various parties involved, how progress will be measured, and how successful achievement will be determined.

The ultimate goal of every WQMP is the attainment of water quality standards (including beneficial use support) at the earliest possible date, and the objectives of the WQMP should be designed to pursue this goal.

The WQMP's goals and objectives are essential because they are the basis for detailed implementation workplans and also for the evaluation of program effectiveness. To repeat, the objectives must be explicit about what is to be achieved, where, when, and by whom, and must identify the indicator(s) by which achievement will be measured.

In particular, the objectives should assign pollution load allocations to those sources most responsible for the pollution and/or most likely to successfully reduce it.

Beneficial use support and water quality condition are the ultimate measures of success for a WQMP. Other aspects of watershed condition (such as erosion, riparian and upland vegetation, shade cover, and stream channel morphology) often are quite useful in the short run as indicators of trends that will lead to water quality improvements. It is also useful to track indicators of the successful implementation and maintenance of the program (such as public information sharing, the provision of technical and financial assistance to land man-

agers, and project effectiveness monitoring).

The most important thing is that the goals and objectives:

- ◆ Adequately address water quality issues, with the appropriate margin of safety;
- ◆ Be realistic and achievable;
- ◆ Be measurable; and
- ◆ Be matched to the findings in the condition assessment and problem statement.

A WQMP may include shorter-term and longer-term watershed enhancement objectives. For example, if sediment reduction is a goal of the WQMP, short-run objectives might include changing management practices in the riparian zone to protect (and perhaps to reintroduce) beneficial vegetation. Intermediate-range objectives might include road culvert replacement. And long-term objectives might include road reconstruction, relocation, or abandonment.

DEQ recommends that WQMP implementation include "milestones" – interim or mid-term objectives designed to mark progress toward longer-term goals and objectives.

Finally, some WQMPs will be adapted from watershed management plans originally developed to address resources other than or in addition to water quality, so these WQMPs may include goals and objectives relating to these other resource values as well as to water quality.

As discussed more fully later in this Guidance (Section 8), the products of Elements 1 and 2 should be submitted to DEQ for interim review before the remaining elements are finalized.

● **Element 3: Proposed Management Measures**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

A description of the proposed watershed im-

provement measures, including the specific activities or collections of activities and how they will control the pollution problem and achieve the goals and objectives.

FURTHER DISCUSSION

Application of effective water pollution controls and management measures is crucial to achieving the goals and objectives of the WQMP. Consequently, the WQMP must be explicit about which management measures, "best management practices" (BMPs) or systems of practices, and other activities and tasks will be employed to achieve which objectives, where and when the measures will be used, and how application of the measures will achieve the stated objectives.

EPA guidance specifically identifies several criteria by which management measures will be judged:

- ◆ A data-based analysis showing that the selected measures have been demonstrated to be effective in addressing the issue or objective in question (i.e., a history of successful application in similar situations);
- ◆ An explanation of the mechanisms by which application of the measures will be assured;
- ◆ Evidence that the measures chosen can lead to attainment of water quality standards within a reasonable time frame; and
- ◆ A plan for tracking the implementation and effectiveness of the measures.

The Department will use these criteria in evaluating the likelihood that selected measures will achieve the goals and objectives of the WQMP.

The selection of measures may be very site-specific, and may change over time in response to

changing conditions, opportunities, land manager preferences, and lessons learned. To the extent that measures can be anticipated to change over time, then the WQMP must also describe the decision making process by which future measures will be selected, how effectiveness monitoring and other inputs will factor into the selection, and how interested stakeholders will be involved in the decisions.

Effective watershed enhancement action plans generally are designed to be flexible and adaptable over time. Therefore, it may be most appropriate to include detailed descriptions of the measures in an attachment to the WQMP that can easily be updated on a regular basis.

● **Element 4: Timeline for Implementation**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

The timeline for implementation of the watershed improvement measures, for achievement of the plan's objectives, and for attainment of water quality standards.

FURTHER DISCUSSION

Each objective (and any associated workplans) should specify dates for starting and completing the work, and perhaps also for interim products or "milestones" where appropriate. The discussion of mid-term reviews and effectiveness evaluations is particularly important.

Pursuit of the WQMP's objectives and application of the selected management practices throughout a whole watershed may take years, even decades, and so it may be desirable to break implementation of the plan into logically sequenced phases. Remember, however, that the WQMP should seek achievement of water quality standards at the earliest possible date, and aggressive measures in pursuit of this goal should be utilized in the earliest stages of WQMP implementation.

At the least, WQMP implementation must last as long as it takes to bring the waters in question back into compliance with the water quality standards.

The situation will be unique in each watershed, but two general guidelines for WQMP phasing are:

- ◆ Address the causes of problems first, then remediate the symptoms or effects; and
- ◆ Work from the top of the watershed on down (e.g., upstream before downstream, tributaries before the main stem).

Having said this, please note that adhering rigidly to these first two general guidelines can slow down implementation of the WQMP unnecessarily, so also keep these next two guidelines in mind:

- ◆ WQMP implementation may be faster and more efficient if measures are applied simultaneously across a whole watershed or if measures are implemented at selected sites throughout the watershed in a carefully considered and coordinated way; and
- ◆ Where irreplaceable resources – such as threatened or endangered aquatic species – are at immediate risk, the WQMP should move as quickly as possible to enhance critical water quality conditions, even if these short-run enhancements do not solve the whole problem or eliminate its causes (e.g., if fish are impaired due to both sediment loads and elevated temperature due to riparian vegetation removal, it may be best to immediately concentrate on re-establishing shade cover, and then shift the emphasis to controlling upland sediment sources).

As noted above, the time table for WQMP implementation should include “milestones” designed to mark progress toward longer-term goals and objectives.

● **Element 5: Identification of Responsible Participants**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

An identification of who will be responsible for implementing the practices.

FURTHER DISCUSSION

The WQMP must identify the roles, responsibilities, and commitments of the various public and private participants. This will be achieved largely through the description of the plan’s objectives, each of which will include mention of the responsible parties. However, other more general commitments from WQMP supporters also may be worth indicating. For example: certain entities may commit resources to monitoring, public information sharing, technical assistance, administrative oversight, and so on.

This description of who will do what is crucial to a full understanding of how the WQMP will be implemented, which in turn is crucial to an assurance that the WQMP **will** be implemented.

● **Element 6: Reasonable Assurance of Implementation**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

Evidence that participants in the plan are committed to full and timely implementation, or, alternatively, an explanation of how and by whom the implementation of the action plan will be assured.

FURTHER DISCUSSION

A WQMP must provide reasonable assurance that it will be implemented. Every WQMP must:

1. Provide assurance that the responsible parties acknowledge and agree to their

roles and obligations as described in the plan;

2. Define what constitutes a "bad actor" in the context of WQMP development and implementation and describe how this problem will be dealt with if it arises; and
3. Indicate how and by whom the implementation of management measures will be enforced if necessary to achieve water quality standards.

The Department's approach to WQMPs is that they should be voluntarily developed and voluntarily implemented, and the three requirements listed above should not be interpreted to mean that the plan must be narrowly prescriptive in nature or rely on regulatory mechanisms for success. In fact, the Department encourages the development of plans which maximize the options from which land managers may select effective pollution control measures. Furthermore, good watershed plans will strongly promote and reward voluntary stewardship efforts. The ideal watershed action plan is one which results in water quality standards being met as soon as possible **and** which has strong and widespread local support and to which land managers are enthusiastically committed.

It is necessary, however, for the WQMP to demonstrate this voluntary commitment and to address the potential need for enforcement should the voluntary effort not materialize.

The term "reasonable assurance" obviously has a range of meanings, and the brief discussion below offers clarification pertaining to the three items listed above:

Item 1: Provide assurance that the responsible parties acknowledge and agree to their roles and obligations as described in the plan.

This commitment may be demonstrated by a

number of different means, including but not limited to the following examples:

- ◆ Signed agreements by which landowners and managers have committed to the plan;
- ◆ Signed commitments from agencies, local governments, schools, volunteer stewardships groups, or other watershed stakeholders;
- ◆ Signed contracts, loans, licenses, or permits which include stipulations relating to plan implementation;
- ◆ Evidence that financial support for implementation has been formally secured or committed;
- ◆ Financial incentives (e.g., cost-share funds, grants, crop support payments, HEL/CRP agreements) are in place and have been committed to implementation;
- ◆ The parties responsible for implementation have a proven track record of successful program implementation; and
- ◆ The parties responsible for implementation have assembled a strong WQMP which thoroughly addresses each of the elements crucial to a successful NPS TMDL.

Item 2: Define what constitutes a "bad actor" in the context of WQMP development and implementation and describe how this problem will be dealt with if it arises.

In the context of WQMP development and implementation, the expression "bad actor" may be used to refer to an individual who's refusal to join with neighbors in constructively addressing the needs of the watershed puts the success of the WQMP at risk. A "bad actor" is not just someone who expresses different opinions or goes their

own way; diverse approaches can make a valuable contribution, and the allowance for such normal human individualism and ingenuity should be built into any good WQMP. Rather, a "bad actor" is a person or interest whose refusal to participate constructively and in good faith or whose persistent and determined application of inappropriate management practices threatens to undermine or undo the hard work and sacrifices of other operators in the watershed who are working in good faith toward improved water quality. There is no doubt that dealing with "bad actors" can be one of the least pleasant and most difficult aspects of watershed enhancement, and many watershed groups will be lucky enough to avoid this problem, but the WQMP must face up to how this will be dealt with if it arises.

Item 3: Indicate how and by whom the implementation of management measures will be enforced if necessary to achieve water quality standards.

The WQMP must identify the legal or contractual authority which can, if necessary, be employed to assure implementation. Such authorities may include but are not limited to those of the following examples that are applicable in the watershed addressed by the plan:

- ◆ Authorities relating to enforcement of provisions of the federal *Clean Water Act* by state or federal agencies;
- ◆ Authorities associated with the *Oregon Forest Practices Act* or the *Agricultural Water Quality Act* of 1993 ("Senate Bill 1010");
- ◆ Permit, lease, or contract enforcement authorities of federal and other public land management agencies;
- ◆ Enforceable obligations stemming from any grants or loans taken or any fees or taxes assessed to assist in funding WQMP implementation; and

- ◆ Land use and other local ordinances.

● **Element 7: Monitoring and Evaluation**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

A process for monitoring plan implementation and effectiveness, and for adjusting the WQMP over time as suggested by monitoring results.

FURTHER DISCUSSION

Monitoring for implementation and effectiveness of the WQMP should be guided by the goals and objectives of the plan. Effectiveness monitoring should evaluate not only the immediate results of implementing various management approaches but also the longer-range issue of whether or not the water quality and associated beneficial use support is improving – or is likely to, given documented trends in watershed condition.

EPA guidance defines an adequate monitoring plan as tracking these three things:

- ◆ Implementation of BMPs or other controls;
- ◆ Water quality improvements; and
- ◆ Progress toward meeting water quality standards.

The monitoring plan should specify:

- ◆ The goals and objectives of the monitoring program – why it's being done;
- ◆ What measurable indicators will be monitored and why;
- ◆ The monitoring program tasks, who will do them, when, and where;
- ◆ Sampling methods employed;

- ◆ Quality assurance and quality control procedures;
- ◆ How and by whom the resulting data will be handled, stored, and made available for review by others;
- ◆ Analytical methods used, when and by whom;
- ◆ How the information collected will be used to improve the effectiveness of the WQMP; and
- ◆ How the monitoring program will be funded.

Water quality itself is an obvious and necessary condition to monitor, but WQMP objectives relating to other aspects of watershed condition (e.g., riparian shade cover) that are related to water quality must also be monitored. The monitoring approach may be adjusted to suit the local situation and the nature of the action plan. Monitoring report formats, contents, and frequency also will vary depending on the particular nature of the WQMP.

However, monitoring methods and data analysis must follow well established conventions, and must always be technically sound and include procedures for quality control and quality assurance. Citizen volunteer monitoring may be an important part of the overall monitoring plan, but the volunteers must be adequately trained and equipped and their data also subjected to quality assurance checks. DEQ will provide additional guidance on monitoring methods and data handling.

A high degree of commitment to ongoing monitoring of project effectiveness is a very important element of the WQMP, and funding for monitoring activities over the life of the plan is an important issue. The failure to adequately fund and carry out monitoring is nearly as serious as the failure to implement the plan itself.

It is very important to use the monitoring results

to evaluate the effectiveness of the WQMP and to improve the plan if need be. Dates for interim program review must be built into the time table for WQMP implementation. Similarly, the monitoring plan must include at least a brief discussion of how and by whom the collected data will be analyzed and how the results will be used to effect revisions in the WQMP.

● **Element 8: Public Involvement**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

A process for involving interested and affected publics in the development, implementation, and evaluation of the plan.

FURTHER DISCUSSION

Each watershed will have a unique set of interested and affected persons with a stake in developing and implementing the action plan. Ideally, those who will be most closely involved in WQMP implementation should also be closely involved in development of the plan, right from the start. The point is to seek as much public and private support for the plan as possible in order to maximize its likelihood of success

Interested stakeholders may include local land owners, other residents of the watershed, local governments, special districts, state and federal agencies, natural resource stewardship groups with local interests, and others. It is important to note that in addition to those who manage land in the watershed there are other people who will be affected by the WQMP and who will have an active interest in it. Many of these other people also will have important contributions to make to the successful implementation of the plan.

Many private land owners and managers are understandably reluctant to have other people become involved in their private management decisions, but such interference is not the point of WQMP public involvement and can be avoided.

Rather than offering up every private land management plan for review, the emphasis instead should be on a general understanding of the condition of the watershed, what needs to be done within each land use type on an area-wide basis, and how everyone in the watershed can work together in a mutually supportive way. Although specific management measures for the watershed must be identified in the WQMP (see sub-section 5, Element 3), there is no requirement that they be approved by any public process.

At a minimum, those who prepare the WQMP are responsible for involving interested and affected persons in the development of the plan, and the WQMP must identify who these interested people are and how they have been involved in the process. Beyond this, the distribution of all or portions of the draft WQMP for public review and meetings of interested persons may or may not be useful, depending on the local situation.

● **Element 9: Maintenance of Effort Over Time**

SUMMARY OF WHAT IS NEEDED IN THE WQMP

A strategy for maintaining WQMP implementation and the resulting water quality improvements over the long term.

FURTHER DISCUSSION

It is important for the WQMP to demonstrate an ongoing commitment to long-range plan implementation and to describe how this will be assured over the lifetime of the plan. This commitment to ongoing implementation also should be reflected in a number of the plan's elements (e.g., in its goals and objectives, time table for implementation, monitoring plan, and funding strategy).

In most cases, the problems leading to water quality limitations and 303 (d) listing have accumulated over many decades, and may require

a number of years to remedy. Some management measures can produce measurable – even visible – results within a year or two. However, it may take a few years to implement the type of wide scale treatments often necessary to improve water quality throughout the whole watershed, and additional years of continued effort may be necessary before the new practices have their desired effect – the achievement **and** maintenance of water quality standards.

Some of the measures and practices implemented through the WQMP may need to become the normal way of doing things rather than just a temporary fix for the problem.

● **Element 10: Discussion of Costs and Funding**

Summary of What is needed in the WQMP

A description of estimated costs and funding sources.

FURTHER DISCUSSION

Each watershed management action plan must estimate the costs associated with plan implementation (including monitoring) and identify committed and potential funding sources which will support action plan implementation throughout its life span. Unfortunately, an action plan with no funding will result in little or no action – and will not be adequate to remove a waterbody from the 303(d) list.

The action plan should document committed funding for at least the first 3 years of implementation. Beyond that, the plan should identify potential sources of funding, the mechanisms by which those sources will be tapped, and who will conduct the fundraising effort.

Funds may come from any public or private source, and will include the investments made by the landowners themselves, grants, cost-share

funds, in-kind contributions, and donations. The plan should explore the potential to raise funds both outside and inside the watershed.

6 RE-LISTING WATERS

Waterbodies that have been removed from the 303(d) list may be re-listed at any time if DEQ becomes aware of anything that weakens, compromises, cancels, or otherwise reduces the effectiveness of the WQMP below the level necessary to make adequate progress toward achieving water quality standards.

These are the most likely reasons for re-listing:

- ◆ Implementation of the selected management measures is poorly done or lags considerably behind schedule;
- ◆ The monitoring plan is not carried out; or
- ◆ The selected management measures prove to be ineffective but are not revised.

Failure to implement the WQMP, including the management measures and the monitoring plan, may be due to lack of technical assistance, funding, political support, or land manager support, or to delays brought on by unusual weather or other natural causes. Whatever they may be, the obstacles to implementation should be identified and special efforts made to eliminate them in a constructive and cooperative manner before the waterbody is re-listed.

The effectiveness and adequacy of the applied management measures will be revealed through the results of the WQMP's monitoring program. For most measures, several cycles of data collection will be necessary to evaluate effectiveness.

As noted elsewhere in this Guidance, the onset of desired improvements in water quality and aquatic beneficial use support may lag behind the implementation of watershed enhancement mea-

asures. Therefore, the continuation of water quality problems for several years after initiation of the WQMP is not in itself reason to re-list the waterbody. The important thing is that the WQMP be implemented actively and in good faith, and that the monitoring results show that the plan – or an improved version of the plan – **will** achieve the stated water quality goals and objectives.

If circumstances oblige the re-listing of a waterbody, the Department will redouble its efforts to assemble and provide assistance to a locally based partnership that can successfully lead implementation of the WQMP – either in its original form or in a revised form if necessary. But all the waters on the current 303(d) list must be addressed by TMDLs or TMDL equivalents in 10 years – by the year 2008, so there is a sense of urgency about developing and implementing WQMPs. Within this time frame, the state and federal agencies with jurisdiction will have to begin to take charge of the WQMP programs for those waters where plan development and/or implementation have been too slow or have been unsuccessful. At this point, the Department will still make every effort to give leadership to local interests and to emphasize cooperative and incentive-based approaches, but also will have to move the process forward at a rapid pace. Ultimately, if voluntary implementation has failed, management measures to protect water quality will be enforced using the authorities provided in federal and state law.

7 WATERSHED MANAGEMENT EFFORTS WHICH MAY CONTRIBUTE TO A WQMP

Many existing watershed management efforts already include a number of the essential elements of a WQMP. In some cases, it will require only a relatively minor adjustment or expansion of these management plans for them to qualify as a WQMP. In other

cases, existing watershed management plans and projects which lack several key WQMP elements still can serve as the basis for an expanded program. The WQMP concept is flexible enough to allow for considerable variation in specific activities, time frames, and geographic scale of effort.

As discussed in detail in previous sections of this Guidance, any watershed-scale natural resource management program with the appropriate water quality objectives can be the heart of a WQMP if it:

- ◆ Has, as a basic goal, water quality that meets or exceeds standards,
- ◆ Fully describes and adequately address specific water quality issues and objectives,
- ◆ Includes an action plan with quantifiable and measurable objectives,
- ◆ Is developed and implemented with the involvement and leadership of local stakeholders,
- ◆ Is adequately monitored and adjusted over time as indicated by the monitoring results, and
- ◆ Has enough funding and local commitment to be actively implemented until the objectives are achieved.

Watershed management efforts resulting from the programs listed below may contribute significantly to WQMPs. The reader should keep in mind that these listed programs vary considerably in their nature and scope from one to another, and that the site-specific plans resulting from any one of these programs also may vary considerably from one to another in form and content. The programs are listed here in alphabetical order, but no attempt has been made to group them by similar characteristics, nor are they evaluated according to their suitability to

serve as the basis for WQMPs. Each program is described here only in the briefest way, and much additional detail is available from the sponsoring agencies and organizations. Other programs not listed here may also contribute to WQMP development and implementation.

● **Clean Lakes Program**

The first phase of this *Clean Water Act* program produces a through condition assessment and problem description, and results in development of a lake management plan. Phase two implements the plan. Taken together, these two Clean Lakes phases may provide the basis for a WQMP.

● **Clean Water Act Section 208 Plans**

Before addition of Section 319 to the *Clean Water Act* in 1987, Section 208 provided support to NPS water quality planning. A number of these plans were completed for different issues and areas in Oregon between 1976 and 1982, and a few of these plans have been updated since then. Wherever they do exist and are still valid, these plans could serve as the basis for WQMPs.

● **Coastal NPS Control Program**

Established by Section 6217 of the *Coastal Zone Reauthorization Act* of 1990, this program describes and mandates the application of a broad array of management measures designed to control NPS pollution that affects coastal aquatic resources. It also calls for special NPS control efforts in particularly sensitive or high priority areas. In addition to potentially contributing to a WQMP, the mandates in Coastal NPS Control Program also must be included in any WQMPs developed within the coastal zone.

● **Coastal Salmon Restoration Initiative**

A high priority of the Governor, this initiative

works to coordinate and improve state and federal agency programs related to the protection and enhancement of salmon (particularly coho) populations in coastal areas.

● **Comprehensive Land Use Plans**

These plans, required for all areas of Oregon by state law, address the protection and management of a number of natural resource values, including water resources. Developed by cities and counties in accordance with statewide goals and guidelines, these plans are based on detailed inventories and are implemented through enforceable local ordinances which govern the location and execution of many land use and land management activities.

● **Coordinated Resource Management Plans**

As a well-established mechanism for addressing watershed-scale issues through local consensus and group action, CRMPs come in many forms and often include elements of a WQMP.

● **Groundwater Management Areas**

Mandated by the *Oregon Groundwater Protection Act* of 1989, these area-wide, long-term, multi-element programs resemble a TMDL for groundwater. Where surface waters in these areas require TMDLs, the established groups, processes, and momentum of the GWMA program could contribute to development of a WQMP for surface water.

● **Habitat Conservation Plans**

Multi-species HCPs developed under Section 10 of the federal *Endangered Species Act* are very similar to TMDLs. HCPs for aquatic species also focus on water quality and aquatic habitat considerations, restoration needs, and monitoring.

The process of developing an HCP is flexible enough that some may also serve as a WQMP.

● **Model Watershed Action Plans**

Established and funded by the Bonneville Power Authority's Power Planning Council, Model Watershed action plans could be the basis for a WQMP.

● **National Estuary Program**

This multi-phase program includes well-developed elements on condition assessment, public involvement, goal setting, objective-based action plans, and monitoring, and the program operates at the sub-basin or large watershed scale.

● **Northwest Forest Plan**

This program has an Aquatic Conservation Strategy intended to protect the beneficial uses identified by the state's water quality standards. Watershed plans and restoration projects resulting from this program incorporate many elements of a WQMP.

● **NPDES Municipal Separate Storm Sewer Permits**

The effort involved in this program results in a number of products, including a stormwater management plan, which may contribute to a WQMP.

● **Oregon Forest Practices Act (FPA)**

The forestry practices resulting from this program have been approved by EPA as the "best management practices" (BMPs) for water quality protection on state and private forest lands within the boundary of the Coastal NPS Control Program. Water quality protections in federal forest practices must meet or exceed the effec-

tiveness of the FPA practices. The Oregon Department of Forestry has already served as the lead agency for TMDL development on state and private forest lands in several basins.

● **Public Land Management Plans**

Between them, the U.S. Forest Service and Bureau of Land Management manage over 50 percent of Oregon's land area, and federal lands in National Parks, federal wildlife refuges, and military reservations are another 5 or 6 percent. These federal lands are a large majority of the area in many rural watersheds. Federal laws require detailed management plans for these lands, and the law also requires that the plans be consistent with the *Clean Water Act* and with state environmental protection programs. Consequently, federal land management plans (such as grazing allotment management plans and forest plans) could provide all of the elements of a WQMP.

● **Rural Clean Water Program**

Another program stemming from the *Clean Water Act*, RCWPs have a 20-year history of successful watershed planning and enhancement. They include elements which could contribute to a WQMP.

● **Senate Bill 1010**

More formally known as the *Agricultural Water Quality Protection Act* of 1993, this program gives the Oregon Department of Agriculture authorities and tools with which to lead or coordinate development and implementation of WQMPs for agricultural activities in watersheds where TMDLs are required.

● **USDA Water Quality Programs**

A number of U.S. Department of Agriculture programs include or contribute support to key

WQMP elements. These programs include Hydrologic Unit Areas, PL 566 Small Watershed Plans, Water Quality Incentive Program projects, and the Environmental Quality Incentives Program. Conservation plans for individual farms and ranches developed by the Natural Resources Conservation Service and Soil and Water Conservation Districts also may contribute to WQMPs.

● **Watershed Council Action Plans**

Watershed stewardship groups come in all varieties and have formed in response to a number of different stimuli. If properly constituted, they will represent all the interests in a watershed and are a good organization to sponsor development of a WQMP. In recent years, over 60 watershed councils have formed in Oregon, promoted and assisted by state legislation, by the Watershed Health Program (technical assistance, funding) and by the Governor's Watershed Enhancement Board (funding, public information). As a result, enhancement action plans now exist for a number of watersheds throughout the state, particularly in the northeast and southwest parts of the state, where the Watershed Health Program (now merged with GWEB) was focused. Each of these action plans includes key elements of a WQMP.

● **Wild and Scenic River Management Plans**

In Oregon, there are both federal and state versions of these plans, depending on the river in question. They typically address river corridors rather than whole watersheds, but still contain most of the elements of a WQMP.

● **Miscellaneous Programs**

A number of other natural resource programs offer planning, technical assistance, funding, monitoring, or some other elements that can contribute to some part of a WQMP, sometimes in a

crucial way. Briefly listed, some of these programs are:

- ◆ Farm and ranch plans,
- ◆ SWCD programs,
- ◆ Extension Service programs,
- ◆ Wetlands Protection Plans,
- ◆ Oregon Department of Fish and Wildlife habitat Restoration and Enhancement plans,
- ◆ Stormwater runoff plans,
- ◆ Erosion control plans,
- ◆ Irrigation plans, and
- ◆ Wildlife management plans.

8 PROCESS FOR DEVELOPMENT, REVIEW, AND APPROVAL OF NPS TMDLS

● Development

Water Quality Management Plans may be developed by many different groups and organizations and in many different ways, and may even be developed by individual landowners in cases where those landowners manage large areas of land encompassing whole watersheds. In most cases, however, a partnership of watershed stakeholders will form to produce WQMPs to the model described in this Guidance. Even if an agency of government provides administrative leadership for this WQMP development, success will depend on how effective and broadly representative the local partnership is.

As a result of their existing programs or mandates, certain agencies and organizations are par-

ticularly likely to take the lead on WQMP development. These include the Oregon Departments of Agriculture (ODA), Forestry (DOF), and Fish and Wildlife (ODFW), as well as DEQ. Likely federal agencies include the Forest Service, Bureau of Land Management (BLM), Fish and Wildlife Service, and Natural Resources Conservation Service (NRCS). Likely locally organizations include cities and counties, soil and water conservation districts and other special districts, watershed councils, and coordinated resource management and planning (CRMP) groups. The brief listing in this paragraph is not meant to be exclusive, and entities not listed here still are eligible to prepare WQMPs.

As of the date on this Guidance, agreements between DEQ and several of the agencies listed above and relating to WQMPs are under development. Provisions in these agreements will address how the different agencies will go about development of proposed WQMPs using the programs and mandates at their disposal (for example: the *Forest Practices Act* for DOF and the *Agricultural Water Quality Protection Act* for ODA.

Federal law requires that the waters on the 303(d) list be prioritized. Those higher on the list after prioritization are those deemed to be in more urgent need of TMDLs or equivalent measures. To the extent that public agencies are limited in their ability to address waters on the 303(d) list, then they will generally focus their limited resources first on the higher priority waters. However, motivated watershed stewards are encouraged to address water quality problems on any waterbody on the list as soon as possible, regardless of how it may be prioritized.

● Review and Approval

Review and approval processes for TMDLs have undergone a number of changes over the years and may change again in the future in response to the changing roles and relationships between various federal and state agencies. In general, the following holds true:

- ◆ If the WQMP is intended as a TMDL, DEQ will review the plan and pass it along with a recommendation to EPA. Federal law requires that EPA be the agency to approve all TMDLs. At this point, EPA's rules require that it approve or reject a proposed TMDL within 30 days of the proposal being submitted. EPA is not required to invite public comment on the proposal or on its decision to approve or disapprove.
- ◆ If the WQMP is offered as all or part of an implementation plan for a TMDL or is presented as an "other pollution control requirement," DEQ will review it to determine whether it is adequate to warrant removal of the waterbody in question from the 303(d) list. DEQ is required to invite public comment on each updated 303(d) list when it is released (approximately every 2 years), and the individual listing and de-listing decisions made by the Department may be examined at this time.

Proposed WQMPs, whether new plans tailored specifically to the elements described herein or preexisting plans, will be evaluated using the criteria presented in this Guidance document.

The Department prefers to review proposed TMDLs — including WQMPs — in two phases. The first review will examine the products of the first two steps (or "elements" as described in Section 5): the watershed condition assessment and the setting of quantifiable WQ goals and objectives. This first review is intended to certify that water quality issues are thoroughly identified and that the goals and quantifiable objectives address those issues adequately. Correcting deficiencies at this point will prevent the rest of the WQMP from heading off in a wrong direction and wasting the time and energy of those doing the development. The second review will examine the remaining elements (numbers 3 through 10) of the WQMP. Those developing WQMPs are encouraged to contact the Department before and during plan development so that these two reviews may be scheduled and coordinated.

9 SOURCES OF ADDITIONAL INFORMATION

The best single source of information about a wide range of topics relating to watershed enhancement is the **Governor's Watershed Enhancement Board (GWEB): (503) 378-3589** in Salem. GWEB offers a "starter kit" of materials for watershed councils and others working to initiate locally based watershed stewardship efforts. GWEB also is a repository for other materials on group process, watershed assessment, management practices, and case studies of past watershed management projects.

Oregon Departments of Environmental Quality and Land Conservation and Development. *Nonpoint Source Pollution Control Guidebook for Local Government.* 1994. Available from DEQ: (503) 229-6893.

Bauer, S.B. and T.A. Burton. *Monitoring Protocols to Evaluate Water Quality Effects of Grazing Management on Western Rangeland Streams.* 1993. U.S. EPA Region 10, 1200 6th Ave., Seattle, Washington 98101. Publ. No. 910/ R-93-017.

MacDonald, Lee with A.W. Smart and R.C. Wissmar. *Monitoring Guidelines to Evaluate Effects of Forestry Activities on Streams in the Pacific Northwest and Alaska.* 1991. U.S. EPA Region 10, 1200 6th Ave., Seattle, Washington 98101. Publ. No. 910/9-91-001.

United States Environmental Protection Agency. *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters.* Available from USEPA, Office of Water, Washington, D.C.

Schueler, Thomas R., Peter A. Kumble, and Maureen A. Heraty. *A Current Assessment of Urban Best Management Practices: Techniques for Reducing Non-Point Source Pollution in the Coastal Zone.* March 1992. U.S. EPA, Office of Wetlands, Oceans and Watersheds, Washington, D.C.

United States Environmental Protection Agency. *Ecosystem Analysis at the Watershed Scale: Federal Guide for Watershed Analysis.* August 1995.

Tillamook Bay National Estuary Project. *Watershed Assessment Manual: Preliminary Methods for Coastal Oregon.* Tillamook National Estuary Program, Tillamook, Oregon.

Spence, B. C., G. A. Lomnick, R.M. Hughes, and R.P. Novitzki. *An Ecosystem Approach to Salmonid Conservation.* TR-4501-96-6057. Man Tech Environmental Research Services Corp., Corvallis, OR. Available from the National Marine Fisheries Service, Portland, OR.

The Pacific Rivers Council, Inc. *Healing the Wa-*

tershed: A Guide to the Restoration of Watersheds and Native Fish in the West. First Edition, July 1996, Workbook II of the Healing the Watershed Series.

National Academy of Sciences. *Upstream: Salmon and Society in the Pacific Northwest.* 1996. Committee on Protection and Management of Pacific Northwest Anadromous Salmonids, Board on Environmental Studies and Toxicology, Commission on Life Sciences, Washington, D.C.

Others: Most federal and state natural resource agencies offer reference materials and technical assistance that watershed and water quality stewards will find useful. Many private organizations also offer valuable assistance.

DEQ Legislative Report - DRAFT

General Legislation

Bills that Passed

SB 185 - Sanitarians Registration Board Exemption

Senate Bill 185 was introduced by the Department to prevent the Sanitarians Registration Board from expanding its registration requirements to an additional 400 DEQ employees and certain employees of local governments. This bill does NOT change the status quo.

DEQ employees who work in the sub-surface sewage program are currently registered Sanitarians. Other DEQ are not registered Sanitarians. The Sanitarians Registration Board sought to require DEQ staff who are not currently registered to become registered. The Department opposed additional staff registration, based on a belief that it is unnecessary and too costly for the benefit achieved. The Department found that only 14 other states have a Sanitarians registration. None of those states requires registration for work outside the area of public health. There is no evidence that the public health and environment is not being currently protected because DEQ staff are not registered Sanitarians.

The bill was amended in the House to include an exemption for employees of local government who are not currently required to be registered.

SB 1114 - Receipts Authority

This bill was introduced by Associated Oregon Industries. A similar bill was introduced by the Department in the House (HB 2120). The bill allows the Department to operate more efficiently by hiring some staff based on demand for services. The need will be driven by the regulated community which will decide when it is critical to pay for additional environmental services from the Department. Revenues would be collected and expenditures incurred only when services are requested. Examples of environmental services may include:

- Preparation of data or modeling which may be needed for total maximum daily load development out-of-priority order;
 - water quality or engineering studies which require DEQ quality assurance/control oversight;
 - complex 401 certifications where extra staff needs to be hired or contracted;
-

- complex mixing zone studies; dispersion studies outside the normal permit work, and other complex permit analysis at request of applicant.

HB 3457 - Green Permits

Weyerhaeuser sponsored this bill which allows DEQ and LRAPA to explore new methods of promoting "environmental excellence". The bill was significantly amended in a Legislative workgroup that included industry, environmental, DEQ and Governor's office representation. The bill gives the Environmental Quality Commission authority to adopt rules governing regulatory innovation.

HB 3571 - Environmental Audit Privilege Expansion

This bill, introduced by Associated Oregon Industries, expands the so-called Environmental Audit privilege to cover property sales. It allows a facility to share the results of an audit to any party or to DEQ as part of a sales negotiation without giving up the privilege. The audit privilege may encourage companies to do an environmental assessment - and to share that information - in cases where they might otherwise be reluctant to share information.

Bills that Failed

HB 3491 - Representational Standing

Air Quality

Bills that Passed

SB 187 - Golf Cart Exemption

This bill exempts golf carts and all terrain vehicles from the vehicle inspection program. The bill was introduced at the request of the Department. Some individuals have registered these kinds of vehicles so they can be driven short distances on public roadways. However, at the time of registration DMV requires an emissions certification from DEQ. Since the Department does not have equipment to test the vehicles, the Department requested this exemption so these people are not bounced back and forth between DEQ and DMV.

An amendment was added in the House to exempt natural gas powered vehicles that are manufactured (not converted) to run on natural gas. There are currently very few natural gas powered vehicles on the road and the additional air pollution from exempting those vehicles would be extremely small.

SB 946 - Title V Stringency

The bill, sponsored by Associated Oregon Industries, requires DEQ to continue implementing Title V of the Clean Air Act consistent with minimum federal requirements, unless there is a scientifically defensible need to be more stringent. The bill simply extends the sunset of this provision from 1998 to 2005. DEQ has the authority to exceed federal minimums if needed to protect the health of Oregonians.

HB 3401 - Mint Propane Burning

Willamette Valley Mint growers introduced this bill to exempt the propane flaming of mint fields from air quality regulations. During the Department's evaluation of this bill, several issues pertaining to the agricultural burning program were identified. It was not possible to address all of these issues in the context of this bill. The Department committed to work with the Department of Agriculture and agricultural interests to address these other issues during the interim and possibly next session.

The Department testified that it intends to closely monitor complaints from the public and any smoke impacts from propane burning and will return to the next Legislative Session if a problem is discovered.

Bills that Failed

SB 186 - VIP Fee Modifications

This bill would have modified the fee requirements for the Vehicle Inspection Program. Current law allows collection of a fee only when a certificate of compliance is issued. The bill would have allowed the Department flexibility to charge a fee for each test (or to provide one free retest), and for other services such as reservations. The bill passed out of the Senate Livability Committee but failed on the floor because of concerns about increased fees.

HB 3566 - VIP Privatization

This bill directed the Department of Administrative Services to award a contract for operating the vehicle inspection programs in Portland and Medford utilizing a competitive bidding process. The bill would have allowed DEQ to submit a bid. The bill passed out of the House Agency Oversight and Efficiency Committee but failed on the floor.

Bills that were Vetoed

HB 2937 - VIP Boundary

This bill exempts individuals who live within the vehicle inspection boundary but not in Multnomah, Clackamas or Washington County from the vehicle inspection test if they do not use the vehicle to commute into the Tri-County area..

OTHER

HB 3455 Heavy Duty Diesel Exemption

This bill started out to exempt certain vehicles from the vehicle inspection test, but was gutted and stuffed with an amendment to exempt heavy duty diesel vehicles from the test. Under the existing statute, trucks used in interstate commerce (apportioned) are already exempt and those that are not exempt by statute are not tested because no emission standards have been established by the Environmental Quality Commission. However, because of the new fine particulate standard currently under consideration by EPA, it may be necessary and appropriate to test these types of the vehicles at some time in the future. Since diesel vehicles are significant contributors of particulate pollution, this exemption would eliminate one option available to communities if particulate reductions are necessary to achieve or maintain healthy air quality. Along with diesel vehicles other options would include industry, woodstoves and road dust. (The Department has no plans to require testing before the next Legislative Session.)

Waste Management and Cleanup

Bills that Passed

SB 146 - Toxic Use Reduction law changes

This bill was introduced by the Department to make minor mid-course improvements in Oregon's Toxics Use Reduction Law that will allow both DEQ and Oregon facilities to better focus on the economic and environmental benefits of toxics and hazardous waste reduction planning.

It recognizes that industry developed environmental management systems that duplicate reduction planning requirements. It allows certain users of toxic chemicals to develop customer education programs in lieu of meeting reduction

plan requirements and encourages reduction planning for smaller businesses by extending the planning deadline and eliminating annual reporting.

The bill makes numerical reduction a goal and environmental cost information optional.

SB 420 - Hazardous Waste TSD permit fee changes

This DEQ sponsored bill addresses specific inequities in the present hazardous waste fee system: It allows DEQ to recover its costs for work specifically requested by a facility, that benefits only that facility. Recovery of costs incurred in responding to these special requests will not divert resources from broader program activities.

The bill allows full recovery of actual costs associated with processing new permit applications and modifications, and removes statutory fee limits for issuing new permits. It establishes a fee on used oil processors, to pay for the DEQ's used oil technical assistance, inspection and enforcement program. Fees are not currently assessed.

SB 543 - Out-of-State Waste

This bill exempts out-of-state jurisdictions disposing of solid waste in Oregon from the requirement to demonstrate they have recycling programs equal to Oregon's UNLESS they send over 75,000 tons a year to Oregon.

The bill allows solid waste to come into the state from smaller communities without determining if those communities have recycling requirements equivalent to Oregon's. The practical effect of the bill is minimal because it addresses only waste from smaller communities and the state most likely to send waste to Oregon (Washington) has good recycling programs. Solid waste coming to Oregon from larger out-of-state communities is of concern, but remains covered by existing law.

It repeals a provision expressing Oregon's right to ban disposal of solid waste generated outside the region. This provision has no practical effect because bans have been found unconstitutional by the US Supreme Court.

The language in existing law expressing Oregon's desire to charge higher fees on out-of-region waste, if allowed by Congress, is retained.

SB 1044 - Recycled Glass

This Bill maintains and clarifies the applicability of glass recycled content and reporting requirements. Those requirements would apply only to those glass

containers made in Oregon, and glass containers made elsewhere and sold (empty) to packagers located in Oregon.

It allows glass container manufacturers to avoid the minimum content requirements if glass cullet is not available in sufficient quantities. Glass used in secondary end uses will count toward the 50% recycled requirement beginning January 1, 2000. It postpones enforcement of the 35% recycled glass content requirement until January 1, 1999 and postpones enforcement of the 50% recycled glass content requirement until January 1, 2002.

The Bill maintains current recycled content requirements for glass containers made in Oregon or used by Oregon packagers. These content requirements are extremely important to maintain markets in the northwest for recycled glass.

HB 2402 - Court submittals on Recycled Paper

This bill requires that filings in Oregon courts be on recycled paper (paper with recycled content) if the paper is readily available at a reasonable price. The bill encourages persons who make filings to use paper that has been printed on both sides and prohibits courts from rejecting filings which are printed on both sides.

HB 3227 - Financial assistance for selected ports with USTs

This bill provides financial assistance to port authorities (marine and air) that need to upgrade their underground storage tanks to meet state and federal requirements. The Marine Board and the ODOT Aeronautics Division are providing additional funds and would administer the grants. Grants would go to ports that are sole suppliers of fuel and may otherwise lose their fueling facilities. Likely recipients are Gold Beach, Port Orford, Hood River and Umatilla.

The bill adds \$450,000 in special payments for grants and 0.3 FTE for DEQ grant coordination and technical assistance.

HB 3282 - Arlington Fee

HB 3282 modifies the fee assessed on waste being disposed at the hazardous waste landfill near Arlington. The new fee structure sunsets December 31, 1999.

The bill was pushed by Waste Management, Inc., the owner of the landfill, in response to the Idaho Legislature's action earlier this year. Idaho lowered its fee on waste disposed at the one hazardous waste landfill in that state. The primary effect of HB 3282 is to lower the disposal fee on hazardous waste from one-time cleanups. The three primary options for managing cleanup waste in the northwest are the Arlington site, the Idaho site or managing cleanup waste on-

site. The lower fee may or may not bring additional cleanup waste to Arlington site.

HB 3385 - Financial assistance for rural gas stations/UST fee increase

This bill establishes a priority system for awarding grants to rural gasoline service stations so they can upgrade their underground storage tanks to meet state and federal requirements. The upgrades must be completed by December, 1998 and there are more than 70 facilities that may qualify for new grants. Any new grants would go to facilities that provide the most essential community services (mechanic, groceries, post office, etc.). The 1997 Legislature did not provide additional money for more grants but passed these procedural changes in case money for more grants is provided by the Emergency Board.

The bill also temporarily raises the annual state permit fee on underground storage tanks. The fee increase would be for two years, would only apply to tanks that have not been upgraded and would be used to fund existing DEQ staff that provide technical assistance to tank owners that must meet the requirements.

HB 3456 - Recycling law changes

HB 3456 makes several small but positive changes to existing recycling law. It eases recycling reporting requirements for local governments, Metro and DEQ. It adds flexibility and additional choices to local recycling programs. It adds non-mandatory local government programs to encourage "moving up the solid waste management hierarchy" – programs for waste prevention, reuse and home composting and requires counties to adopt new waste recovery "goals."

The bill encourages more commercial recycling, and establishes a joint Legislative Task Force on Commercial Recycling and Recycling Market Development. It directs public contracts to include conditions to salvage or recycle construction debris and to compost yard waste, if feasible and cost-effective. It directs state agencies to increase purchases of products containing recycled paper and plastics resin and extends Recycling Markets Development Council for six years to December 31, 2003.

HB 3724 Encourages brownfields redevelopment

This bill provides financial assistance towards redevelopment of brownfields (properties that are hindered by actual or possible environmental contamination) through the Oregon Economic Development Department (OEDD). The financial assistance should increase the capability of local governments and the private sector to clean up and reuse contaminated sites.

A Brownfields Redevelopment Coordinator will provide information about funding options and facilitate the funding process. A Brownfields Redevelopment Loan Fund is established for "environmental evaluations" – the investigations which determine if further cleanup is needed at the brownfield site. The bill includes a framework for the Brownfields Redevelopment Loan program, including borrower eligibility requirements and project criteria for OEDD to consider. It also requires OEDD to consult with DEQ before making loans from the fund.

HB 3740 - Umatilla County Fees for Chemical Agents

HB 3740 allows a county where a site for the storage or disposal of chemical agents is located to determine the effects on communities within the county of remediating the agents, and to charge an annual fee to mitigate the effects. This bill only applies to the nerve agent incineration which is scheduled to occur at the Umatilla Army Depot in Umatilla County. The fee is limited to 5% of the total cost of the remedial action.

SB 1143 Directs tax on sale of oil heat to DEQ

The bill funds DEQ's effort to address all leaking heating oil tanks. The existing assessment on heating oil would be used to provide approximately 2000 grants per year for decommissioning heating oil tanks (i.e., pump out fuel and fill or remove tank) and to fund DEQ staff to provide technical assistance and cleanup approval with out additional charge to homeowners. The bill an incentive to stop abandoning heating oil tanks and should significantly increase the number decommissioned, catching many before expensive cleanups are needed.

Once implemented, this would shift \$3.2 million per biennium in revenue from the Oil Heat Commission to DEQ. Position authority and expenditure limitation still needs to be approved by the Emergency Board.

Bills that Failed

HB 2114 - Spill prevention fee increase

Opposed by fee payers; never received a hearing

SB 144 - Comprehensive recycling improvements

Opposed by business interests; never received a hearing

SB 145 - UST permit fee increase

Opposed by Petroleum Marketers; never received a hearing
(fee increase became part of HB 3385)

Bills that Passed

HB 2119 - Hydro Reauthorization

Without this bill, stringent fish and wildlife standards that were intended for new hydroelectric projects would apply, and most existing facilities could not receive 401 Certifications. The bill does not affect DEQ's authority to assure that water quality standards are met; rather it changes the standards for fish and wildlife impacts/mitigation that are referenced in the state 401 statute. The bill provides DEQ funding for one FTE for an ongoing hydroelectric certification program, and allows state agencies to recover the full costs associated with individual certifications.

HB 2177 - Emergency Fee Waivers

The bill gives the Environmental Quality Commission the authority to waive fees related to septic tanks in a declared "state of emergency."

HB 2178 - WPCF Permits

The bill makes two changes to the statute governing certain state wastewater discharge permits. First, it provides an exemption from state WPCF permitting for de minimis discharges. Examples of de minimis discharges could include fire hydrant flushing or discharges from swimming pools, spas and hot tubs. The Department believes that these discharges should be regulated, but that the costs and time required for a permit are not justified when compared to the environmental benefit gained. This bill would allow the Environmental Quality Commission to adopt rules to regulate these discharges deemed to cause minimal environmental harm.

Second, the bill would remove the requirement that state water quality permits be limited to no more than five years in duration. The Department intends to work with an Advisory Committee of stake holders to develop rules establishing a longer renewal time and procedures to periodically review compliance, to assure the state's water quality and public health are adequately protected.

Eliminating expiration dates on WPCF permits allows the Department the flexibility to concentrate limited resources where they are most needed. Further, the Department would have the flexibility to renew permits on a geographic basis,

enabling better management of facilities within the context of a watershed or sub basin.

HB 2095 - Land Application of Industrial Wastewater

In the absence of the provisions of HB 2095, the goals and objectives of the Oregon Water Resources Department (OWRD) and the Department of Environmental Quality (DEQ) have at times been polarized. This is particularly the case where DEQ advocates land application of industrial wastewater as environmentally protective while at the same time the requirements of OWRD cause irrigators to risk forfeiture of underlying water rights when implementing the same practice. HB 2095 has been structured to remove this polarization between the two agencies.

DEQ generally views land application of industrial wastewater as the most protective means for treatment and disposal of such wastes. Nutrient-bearing wastewater generated by food processing industries and confined animal feeding operations can support agricultural crops, thus reducing the need for application of commercial fertilizers for this purpose. Use of this wastewater by irrigators provides an additional benefit by decreasing the demand on unappropriated surface water and groundwater sources thus helping to prevent depletion of stream flows.

HB 2413 - Geothermal Water Permits

This bill requires DEQ to issue a general permit, instead of a more complex individual permit, for the discharge of geothermal spring water into surface water if:

- 1) the chemical nature of the spring is not changed;
- 2) the temperature of the spring remains unchanged or reduced; and
- 3) the discharge is at the location where the geothermal spring water and surface water naturally converge.

This bill has extremely limited application and will have no negative impact on water quality.

HB 2611 - Surety Bonds

This bill eliminated the requirement that large on-site sewage systems obtain a surety bond. The Surety Bond requirement began over 30 years ago. It was originally intended that the bond would provide a measure of financial capacity in the event something went wrong with. Today, the Department has a different system in place to ensure that facilities are constructed, operated and maintained

appropriately. The Department believes that the surety bond requirement is not effective and is no longer necessary.

HB 3720 - Temperature Standard Alternative/ Use attainability

This bill began as an attempt direct the Department to create a new standard that would be an alternative to the temperature standard. It was greatly amended to only require the Department to conduct a use attainability analysis in several basins. Funding was provided for a DEQ staff person.

5 basins

Bills that Failed

HB 2003 - 401 Certifications

The bill declares it the policy of the State of Oregon to not require 401 certification for activities which result in a discharge from non-point sources of pollution.



HB 3525 - Pristine Waters

This bill proposed to make some critical changes in how water quality standards are established. It would have required standards to protect all beneficial uses "equally", and it would have prevented standards from returning waters to "pristine or pre-human conditions." The Department believed that both requirements were in conflict with the federal Clean Water Act and implement a water quality program in compliance with the requirements of

HCR 13 - 401 Certification Clarifications

This bill requested clarification from Congress that 401 certifications are only required for discharges as defined in the Clean Water Act. The effort would be to confine section 401 to point source discharges.

STATEMENT OF NEED AND EMERGENCY JUSTIFICATION
Before the Environmental Quality Commission

| | | |
|---|---|----------------------------|
| In the matter of Amending OAR 340-45-075, |) | Statutory Authority, |
| Permit Fee Schedule, Industrial Water Quality |) | Statement of Need, |
| Permitting Program |) | Principal Documents Relied |
| |) | Upon and Statement of |
| |) | Justification |

1. Effective July 17, 1997, the Department of Environmental Quality is temporarily amending Oregon Administrative Rule 340-45-075, Permit Fee Schedule, relating specifically to industrial water quality permit fees.
2. **Citation of statutory authority:** ORS 468.020, ORS 468.065, ORS 468B.050
3. **Need for the rules:** This temporary rule amendment is needed to implement the most recent legislative changes made to the permit fee schedule, particularly affecting industrial water quality permits, found in OAR 340-45-075. The changes were made through the 1997-99 legislatively adopted budget.

The current rule reflects actions taken by the EQC in September 1994, when industrial water quality permit fees were increased by about 100%. Subsequent to the EQC action, the 1995 legislature rolled back the EQC-adopted fee increase about 70%, and set a new fee schedule as part of the 1995-97 budget bill. Since the fee schedule was set in the budget statute, the Department concluded that it was not necessary to go through the rulemaking process to revise the fee schedule.

The 1997-99 legislatively adopted budget authorizes an approximate 20% increase to the fees set in the 1995-97 budget; however, a new fee schedule was not adopted legislatively as part of this process. With the adoption of the 1997-99 budget, the previous budget statute expires, as does that fee schedule. A revised fee schedule now needs to be made part of rule, to assure that the appropriate fees are in place and to assure no break in permitting services to the regulated community or environmental protection to the public.

The rule will be temporarily amended to reflect the most recent legislative changes to fees. The temporary rule would take effect upon adoption by the EQC. Permanent rulemaking will occur prior to expiration of the temporary rule, with appropriate opportunity for public notification.

4. **Documents relied upon:** 1997-99 Legislatively Adopted Budget; Permit Fee Schedule OAR 340-45-075
5. **Justification of temporary rules:** The Department finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest. The temporary rulemaking will allow the Department to promptly send out invoices reflecting the new fees, and thus assure that there will be no interruption of permitting services to the regulated community or environmental protection to the public.
6. **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.

7/17/97
Date


Signature

45-033 and request for a Special Permit pursuant to OAR 340-14-050. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed. The following filing fees are waived:

- (a) Small gold mining suction dredges which qualify for General Permit 700, and with an intake hose diameter of four inches or less;
- (b) Small gold mining operations which qualify for General Permit 600, and which can process no more than five cubic yards of material per day.

(2) **Application Processing Fee.**⁵ Unless waived by this rule, an application processing fee shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) New Applications:

| | | |
|---|----------------------|--|
| (A) Major industries ¹ | \$ 40,000 | <i>97-99 LAB</i> <u>31,400</u> 6,280 |
| (B) Minor industries..... | \$ 8,000 | |
| (C) Major domestic ² | \$ 20,000 | |
| (D) Minor domestic ³ : | | |
| (i) Categories Da, Db..... | \$ 4,000 | |
| (ii) Category E..... | \$ 2,000 | |
| (iii) Category F..... | \$ 500 | |
| (E) Agricultural..... | \$ 8,000 | 6,280 |

(b) Permit Renewals (including request for effluent limit modification):

| | | |
|---|----------------------|--------|
| (A) Major industries ¹ | \$ 20,000 | 15,700 |
| (B) Minor industries..... | \$ 4,000 | 3,140 |
| (C) Major domestic ² | \$ 10,000 | |
| (D) Minor domestic ³ : | | |
| (i) Categories Da, Db..... | \$ 2,000 | |
| (ii) Category E..... | \$ 1,000 | |
| (E) Agricultural..... | \$ 4,000 | 3,140 |

(c) Permit Renewals (without request for effluent limit modification):

| | | |
|---|----------------------|-------|
| (A) Major industries ¹ | \$ 10,000 | 7,850 |
| (B) Minor industries..... | \$ 1,500 | 1,180 |
| (C) Major domestic ² | \$ 5,000 | |
| (D) Minor domestic ³ : | | |
| (i) Categories Da, Db..... | \$ 750 | |

| | | | |
|-----|--|----------------------|--------|
| | (ii) Category E..... | \$ 500 | |
| | (iii) Category F..... | \$ 200 | |
| (E) | Agricultural..... | \$ 1,500 | 1,180 |
| (d) | Permit Modifications (involving increase in effluent limitations): | | |
| | (A) Major industries ¹ | \$ 20,000 | 15,700 |
| | (B) Minor industries..... | \$ 4,000 | 3,140 |
| | (C) Major domestic ² | \$ 10,000 | |
| | (D) Minor domestic ³ : | | |
| | (i) Categories Da, Db..... | \$ 2,000 | |
| | (ii) Category E..... | \$ 1,000 | |
| (E) | Agricultural..... | \$ 4,000 | 3,140 |
| (e) | Permit Modifications (not involving an increase in effluent limits): All categories..... | | |
| | | \$ 500 | |
| (f) | Special Permits issued pursuant to OAR 340-14-050..... | | |
| | | \$ 250 | |
| (g) | Modifications of septage alkaline stabilization facilities permits..... | | |
| | | \$ 200 | |
| (h) | New General Permits, by permit number: | | |
| | (A) 100, 200, 400, 500, 600 (over 1,500 cubic yards per year), 900, 1000, 1200D, 1200S, 1400A.... | \$ 100 | 80 |
| | (B) 300, 1200F, 1300, 1400B, 1500, 1600..... | \$ 200 | 155 |
| | (C) All other 1200, 1700..... | \$ 300 | 235 |
| | (D) Others not elsewhere specified..... | \$ 300 | 235 |
| (E) | In addition, the following fees shall be added to categories (A) through (D) when the listed activities are a required part of the application review process: | | |
| | (i) Disposal system plan review..... | \$ 400 | 315 |
| | (ii) Site inspection and evaluation..... | \$ 1,000 | 785 |
| (i) | Renewal of General Permits, as listed in | | |

subsection (2)(h) of this rule..... \$ 100

(j) Application processing fees described in subsections (2)(h) and (i) of this rule above are waived for specific categories as follows:

(A) Small gold mining operations which qualify for General Permit 600, and which can process no more than five cubic yards of material per day, or more than five cubic yards of material per day but less than 1,500 cubic yards of material per year.

(B) Small gold mining suction dredges which qualify for General Permit 700.

(3) **Technical Activities Fee.**^{4,5} All permittees shall pay a fee for NPDES and WPCF permit-related technical activities, as follows:

| | |
|---|----------|
| (a) New or substantially modified sewage treatment facility..... | \$ 4,600 |
| (b) Minor sewage treatment facility modifications and pump stations | \$ 500 |
| (c) Pressure sewer system, or major sewer collection system expansion | \$ 350 |
| (d) Minor sewer collection system expansion or modification..... | \$ 100 |
| (e) New or substantially modified water pollution control facilities utilizing alkaline agents to stabilize septage | \$ 500 |

(4) **Annual Compliance Determination Fee Schedule:**⁵

(a) Domestic Waste Sources — Initial and Annual Fee is based on Dry Weather Design Flow, Population Served by Facility, Type of Facility and Applicable Special Fees as follows:

| <u>Category</u> | <u>Fees</u> |
|---|-------------|
| (A ₁) Sewage Disposal — 50 MGD or more | \$ 42,410 |
| (A ₂) Sewage Disposal — At least 25 MGD but less than | |

| | |
|---|-----------|
| 50 MGD | |
| (A ₃) Sewage Disposal — At least 10 MGD but less than 50 MGD | \$ 11,020 |
| (B _a) Sewage Disposal — At least 5 MGD but less than 10 MGD | \$ 6,700 |
| (B _b) Sewage Disposal — At least 5 MGD but less than 10 MGD — Systems where treatment occurs in lagoons that discharge to surface waters | \$ 3,070 |
| (C _{1a}) Sewage Disposal — At least 2 MGD but less than 5 MGD | \$ 4,175 |
| (C _{1b}) Sewage Disposal — At least 2 MGD but less than 5 MGD — Systems where treatment occurs in lagoons that discharge to surface waters | \$ 1,825 |
| (C _{2a}) Sewage Disposal — At least 1 MGD but less than 2 MGD | \$ 2,510 |
| (C _{2b}) Sewage Disposal — At least 1 MGD but less than 2 MGD — Systems where treatment occurs in lagoons that discharge to surface waters | \$ 1,060 |
| (D _a) Sewage Disposal — Less than 1 MGD, and not otherwise categorized under Category E, | \$ 955 |
| (D _b) Sewage Disposal — Less than 1 MGD — Systems where treatment occurs in lagoons that discharge to surface waters which are not otherwise categorized under Category E, | \$ 625 |
| (E) Sewage Disposal — Systems where treatment is limited to lagoons which do not discharge to surface waters | \$ 600 |
| (F) Septage alkaline stabilization facilities..... | \$ 200 |
| (G) Sources determined by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40 CFR, Part 403; January 28, 1981) shall pay an additional \$1,000 | |

per year plus \$335 for each significant industrial user specified in their annual report for the previous year.

(H) Population Based Fee — All permittees shall pay an annual fee computed as follows: population served by the facility multiplied by a rate of 0.08038.

(I) In addition to applicable fees specified above, special Annual Compliance Fees for Tualatin Basin Pollution Abatement Activities will be applied to the following permittees until Fiscal Year 1998:

| | | |
|-------|--|-----------|
| (i) | Unified Sewerage Agency _ Durham | \$ 26,720 |
| (ii) | Unified Sewerage Agency _ Rock Creek | \$ 22,995 |
| (iii) | Unified Sewerage Agency _ Forest Grove | \$ 5,450 |
| (iv) | Unified Sewerage Agency _ Hillsboro | \$ 4,240 |
| (v) | Unified Sewerage Agency _ Banks | \$ 185 |
| (vi) | City of Portland _ Tryon Creek | \$ 910 |

(b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee).

(For multiple sources on one application select only the one with highest fee)

| | | |
|-------|--|----------------------------|
| | | <u>97-99 LAB</u> |
| (A) | Major pulp, paper, paperboard, hardboard, and other fiber pulping industry..... | \$ 12,000 9,420 |
| (B) | Major sugar beet processing, potato and other vegetable processing, and fruit processing industry..... | \$ 12,000 9,420 |
| (C) | Seafood Processing Industry: | |
| (i) | Bottom fish, crab, and/or oyster processing..... | \$ 1,350 1,060 |
| (ii) | Shrimp processing..... | \$ 1,350 1,060 |
| (iii) | Salmon and/or tuna processing..... | \$ 2,400 1,885 |
| (iv) | Surimi processing..... | \$ 2,400 1,885 |
| (D) | Electroplating industry (excludes facilities which do | |

anodizing only):

97-99 LAB

| | | | |
|-------|--|----------------------|-------|
| (i) | Rectifier output capacity of 15,000 Amps, or more | \$ 12,000 | 9,420 |
| (ii) | Rectifier output capacity of less than 15,000 Amps but more than 5000 Amps | \$ 6,000 | 4,710 |
| (E) | Primary Aluminum Smelting..... | \$ 12,000 | 9,420 |
| (F) | Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities | \$ 12,000 | 9,420 |
| (G) | Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above | \$ 6,000 | 4,710 |
| (H) | Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters | \$ 12,000 | 9,420 |
| (I) | Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater | \$ 12,000 | 9,420 |
| (J) | Cooling water discharges in excess of 20,000 BTU/sec \$ | 6,000 | 4,710 |
| (K) | Milk products processing industry which processes in excess of 250,000 pounds of milk per day | \$ 12,000 | 9,420 |
| (L) | Major mining operations (over 500,000 cubic yards per year) | \$ 12,000 | 9,420 |
| (M) | Minor mining and/or processing operations: | | |
| (i) | Medium (100,000 to 500,000 cubic yards per year) mechanical processing | \$ 4,000 | 3,140 |
| (ii) | Medium using froth flotation | \$ 6,000 | 4,710 |
| (iii) | Medium using chemical leaching..... | \$ 8,000 | 6,280 |

| | | | |
|------|--|---------------------|-------|
| (iv) | Small (less than 100,000 cubic yards per year) mechanical processing | \$ 1,000 | 785 |
| (v) | Small using froth flotation | \$ 2,000 | 1,570 |
| (vi) | Small using chemical leaching..... | \$ 4,000 | 3,140 |
| (N) | All facilities not elsewhere classified with disposal of process wastewater | \$ 2,400 | 1,885 |
| (O) | All facilities not elsewhere classified which dispose of non-process wastewaters (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) | \$ 1,500 | 1,180 |
| (P) | Dairies and other confined feeding operations on individual permits | \$ 900 | 705 |
| (Q) | All facilities which dispose of wastewaters only by evaporation from watertight ponds or basins | \$ 900 | 705 |
| (R) | General permits, as listed under paragraph (2)(h)(A) through (2)(h)(D) of this rule, except as follows: | \$ 350 | 275 |
| (i) | 1400A | \$ 200 | 155 |
| (ii) | Annual compliance determination fees are waived for gold mining activities which qualify for General Permit Categories 600 and 700. | | |

¹ Major Industries Qualifying Factors:

- 1- Discharges large BOD loads; or
- 2- Is a large metals facility; or
- 3- Has significant toxic discharges; or
- 4- Has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or
- 5- Any other industry which the Department determines needs special regulatory control.

² *Major Domestic Qualifying Factors:*

- 1- Serving more than 10,000 people; or
- 2- Serving industries which can have a significant impact on the treatment system.

³ *Minor Domestic Qualifying Factors:*

- 1- Do not meet major domestic qualifying factors;
- 2- Categories Da, Db discharge to surface waters;
- 3- Categories E and F do not discharge to surface waters, and are under Water Pollution Control Facilities (WPCF) Permit.

⁴ *Technical Activities Fee Qualifying Factors:*

- 1- Fee charged for initial submittal of engineering plans and specifications;
- 2- Fee not charged for revisions and resubmittals of engineering plans and specifications;
- 3- Fee not charged for facilities plans, design studies, reports change orders or inspections.

⁵ *Confined Animal Feeding Operations:*

Sections (2), (3), and (4) of this rule do not apply to General Permit 800, confined animal feeding operations, administered by the Oregon Department of Agricultural.

⁶ *On-site Sewage Disposal Systems:*

Fees for on-site sewage disposal systems, including those requiring WPCF permits, are found in OAR Chapter 340, Division 71.

[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. 466.165 & 468.065(2)

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92

EFFECT OF A PERMIT

PURPOSE

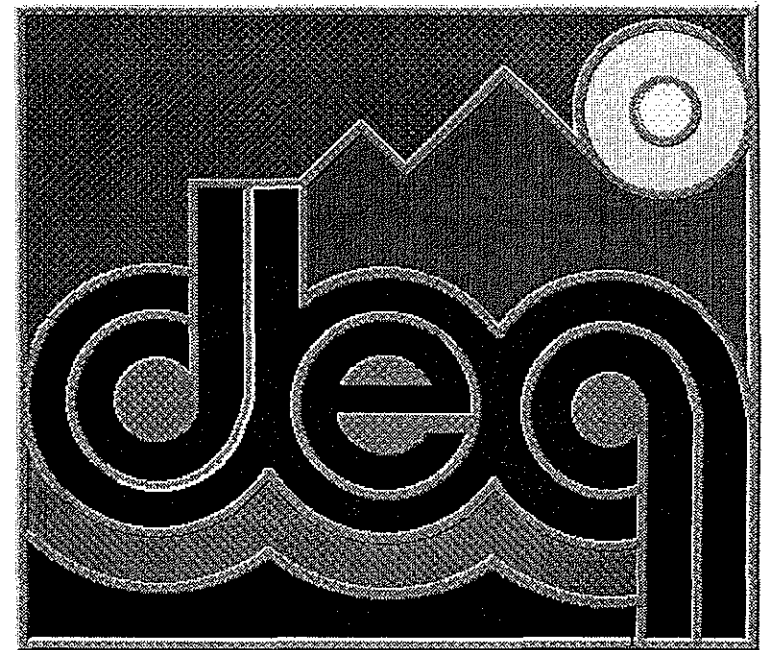
340-45-080

Oregon Department of Environmental Quality 1997-99 Budget

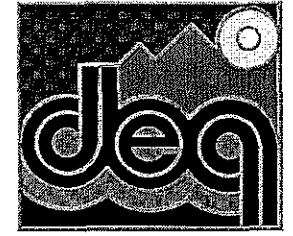
DEQ 1997-1999 Budget

Presented to the
Environmental Quality
Commission
July, 1997

Helen Lottridge
Administrator, Management Services
Division



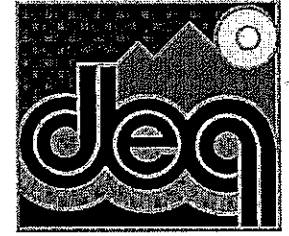
Bottom Line



DEQ Legislatively Adopted Budget

- Net of +1.5 FTE
- WQ will shuffle priorities--shortage in permitting, and emphasis on Salmon/Streams
- Most of the Arlington problem fixed--Spills merged with cleanup to save \$700K
- AQ saw a small cut in permitting
- 33 of 37 existing positions restored
- VIP Privatization failed--Will go to E-board
- No layoffs needed, but many programs will be tight for 97-99

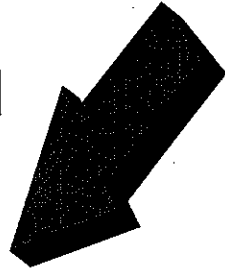
Tough Choices for 97-99



DEQ Legislatively Adopted Budget

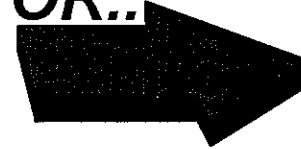
Risk to
Environmental
Protection

and



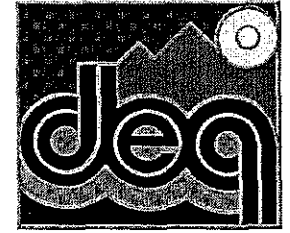
Unacceptable
Service

OR..



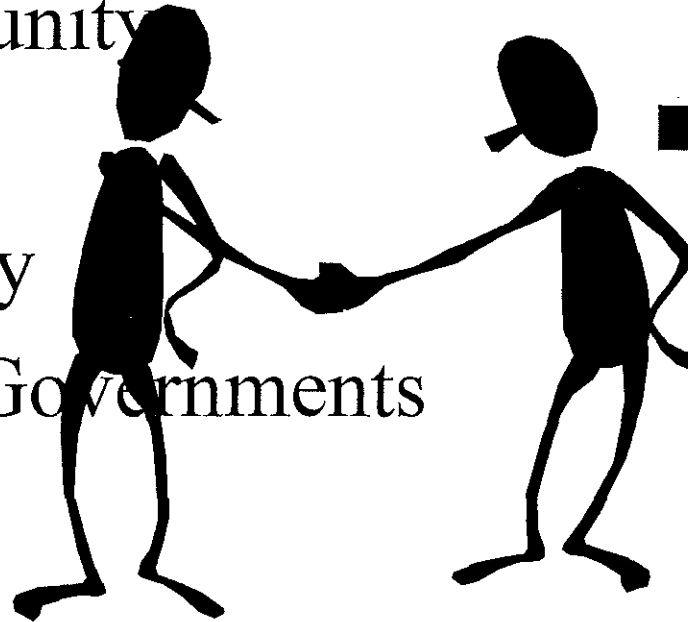
Seek New
Funds

Negotiated Solutions

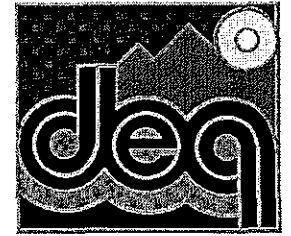


DEQ Legislatively Adopted Budget

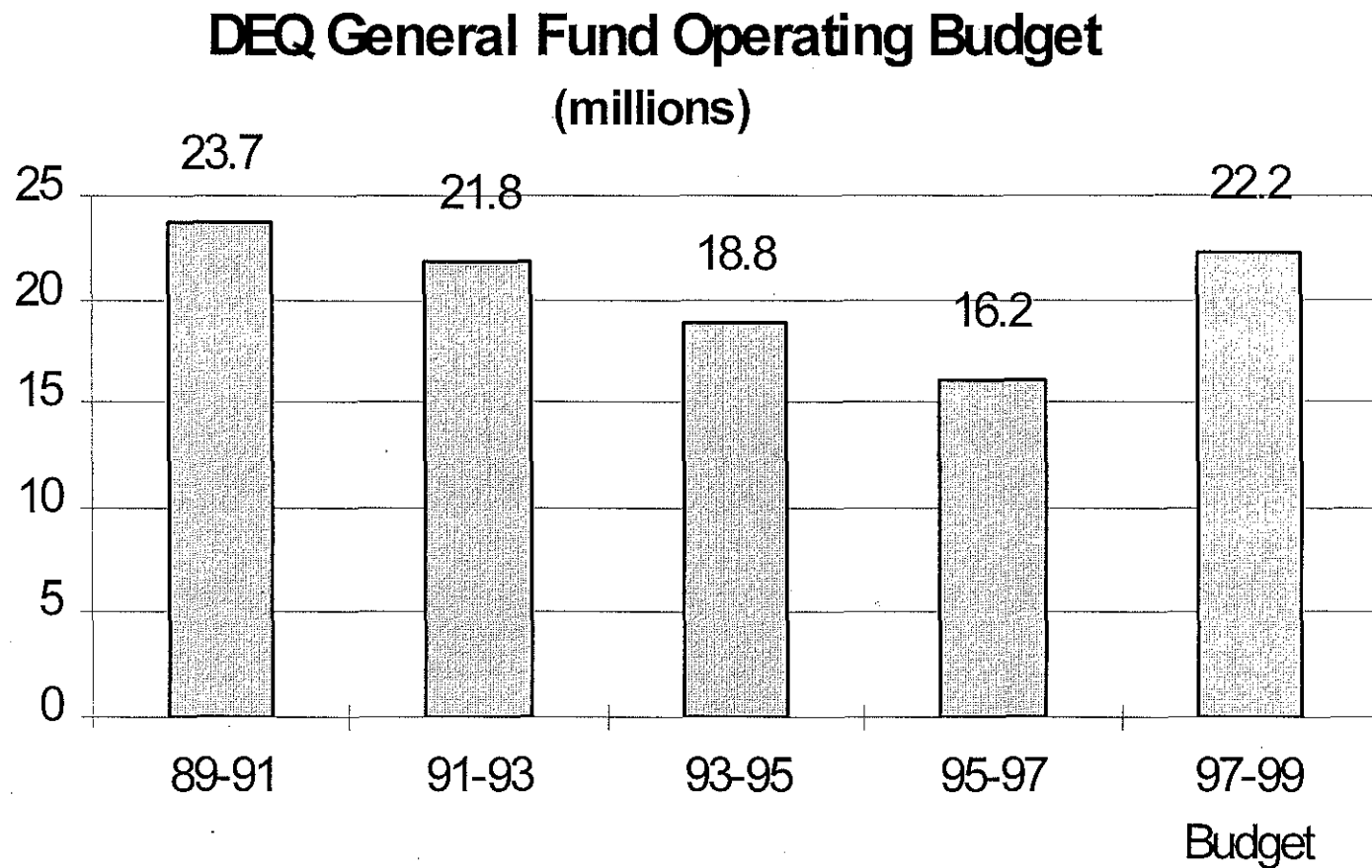
- Governor
- Legislators
- Environmental Community
- DEQ
- Industry
- Local Governments
- Scarce General Fund
- Reluctant Fee-payers
- General Support for DEQ Programs



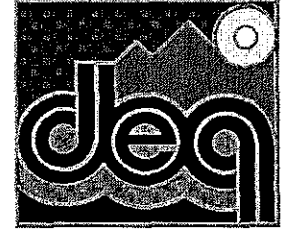
Reversing the General Fund Trend



DEQ Legislatively Adopted Budget



Agency Summary



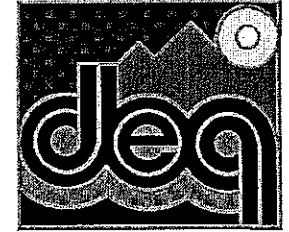
DEQ Legislatively Adopted Budget



Legislatively Adopted Budget Distribution

| | 1995-97 Total | | 1997-99 Total | |
|--------------------------------------|----------------|--------------|----------------|--------------|
| | (× 1,000) | FTE | (× 1,000) | FTE |
| Water Quality Total | 28,672 | 185.0 | 32,538 | 204.5 |
| Air Quality Total | 27,085 | 195.6 | 30,007 | 181.1 |
| Waste Management Total | 57,723 | 254.9 | 60,819 | 245.6 |
| Agency Management Total | 11,448 | 67.2 | 13,875 | 73.2 |
| Agency Total Operating Budget | 124,927 | 702.7 | 137,240 | 704.2 |
| Non-Limited & Debt Service | 128,983 | - | 109,481 | - |
| Agency Total Budget | 253,910 | 702.7 | 246,721 | 704.2 |

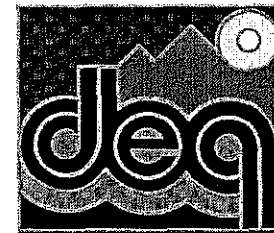
Fee Increase Summary



| Fee | Requested | Approved | Fee-payer Impact |
|----------------------------------|-----------|----------|------------------------------------|
| Air Contaminant Discharge Permit | 1,012,564 | 759,423 | 28% Increase |
| Water Quality Industrial Permit | 1,287,827 | 473,336 | 20% increase from 95-97 rate |
| Hazardous Waste Generators | 1,110,702 | 894,668 | 50% for all payers |
| Hazardous Waste Permits | 515,207 | 120,915 | Average of 18% (Restructured) |
| Underground Storage Tank Permit | 292,100 | 246,463 | 72% (\$25) for non-compliant tanks |
| New Spill Fee | 489,526 | - | None |
| Marine Spills Fee | 166,158 | - | None |
| Tax Credit Processing | 175,000 | 175,000 | 100% for large applications |

- Feepayer Resistance
- “Sticker shock” due to large percentages requested
- Willingness to consider alternatives
- Some General Fund available

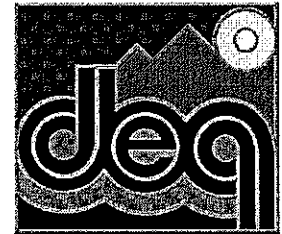
Additions to Governor's Budget



DEQ Legislatively Adopted Budget

- Healthy Streams/
Salmon Partnership
added 19 FTE
- SB 1114 authorized
401 certification fee
- SB 1143 transferred
Heating Oil surcharge
to DEQ for HOT
Cleanup
- \$500K lottery for
marine & airports tank
upgrade grants (HB
3227)
- General Fund, .5 FTE
for Green Permits (HB
3457)
- One FTE and funding to
re-examine 303(d) listed
waters (HB 3720)

Water Quality



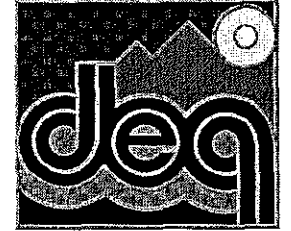
DEQ Legislatively Adopted Budget

Legislatively Adopted Budget Distribution



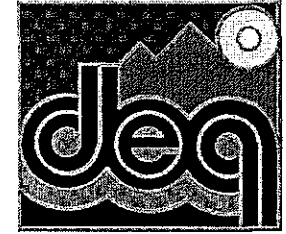
| | Base Budget | | Packages | | Total | |
|------------------------------------|-------------|-------|-----------|------|-----------|-------|
| | (× 1,000) | FTE | (× 1,000) | FTE | (× 1,000) | FTE |
| Industrial & Stormwater Permitting | 3,928 | 29.7 | 1,436 | 10.0 | 5,364 | 39.7 |
| Domestic Permitting & Epoc | 5,193 | 36.5 | - | - | 5,193 | 36.5 |
| Wastewater Financing | 2,304 | 17.3 | 88 | - | 2,392 | 17.3 |
| Onsite | 3,535 | 27.0 | - | - | 3,535 | 27.0 |
| Standards and Assessments | 1,182 | 11.5 | 1,161 | 4.5 | 2,343 | 16.0 |
| Non-point Source & Groundwater | 5,707 | 19.0 | 935 | 7.0 | 6,641 | 26.0 |
| Data/Monitoring | 2,365 | 23.0 | 1,055 | 8.0 | 3,420 | 31.0 |
| National Estuary Program | 2,621 | 3.0 | 249 | 2.0 | 2,870 | 5.0 |
| Receipts Authority | - | - | 780 | 6.0 | 780 | 6.0 |
| Total | 26,834 | 167.0 | 5,704 | 37.5 | 32,538 | 204.5 |
| 1995-97 Total Budget | | | | | 28,672 | 185.0 |

Water Quality Program Impacts



DEQ Legislatively Adopted Budget

- Salmon/Streams will be the top priority
 - Adds resources to TMDL/Non-point work
 - Priorities for existing resources will be affected
 - High profile inter-agency effort
- Continued shortage of permitting resources
- Rule-writing and funding necessary to use receipts authority positions
- On-site program will be smaller--expect summer backlogs



Air Quality

DEQ Legislatively Adopted Budget

Legislatively Adopted Budget Distribution

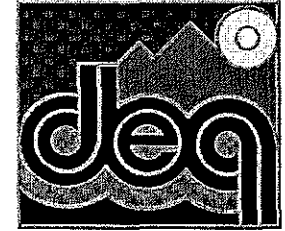


| | Base Budget | | Packages | | Total | |
|---------------------|-------------|-------|-----------|-------|-----------|-------|
| | (× 1,000) | FTE | (× 1,000) | FTE | (× 1,000) | FTE |
| Vehicle Inspection* | 6,971 | 63.5 | 3,097 | (8.8) | 10,068 | 54.8 |
| Title V | 5,510 | 38.2 | - | - | 5,510 | 38.2 |
| ACDP Permits | 8,682 | 61.3 | 759 | 6.0 | 9,441 | 67.3 |
| Other | 4,861 | 20.8 | 127 | - | 4,988 | 20.8 |
| Total | 26,024 | 183.8 | 3,983 | (2.8) | 30,007 | 181.1 |

1995-97 Total Budget 27,085 195.6

*Funds only 6 months of enhanced vehicle inspection program

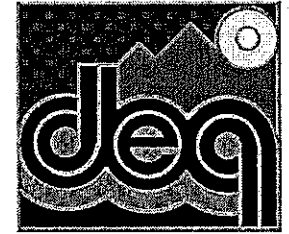
Air Quality Program Impacts



DEQ Legislatively Adopted Budget

- Vehicle Inspection has interim funding
 - Privatization bill failed
 - Proceed with enhanced program
 - Evaluate options
 - Return to E-board for limitation for next 18 months.
- Loss of 2 permit staff
 - Permitting process may need to change
 - Less time to devote to Technical Assistance--may contribute to higher emissions, more Title V permits

Waste Management & Cleanup



DEQ Legislatively Adopted Budget



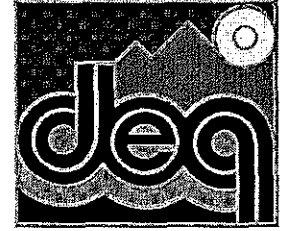
Legislatively
Adopted
Budget
Distribution

| | Base Budget | | Packages | | Total | |
|-----------------------------|---------------|--------------|---------------|------------|---------------|--------------|
| | (× 1,000) | FTE | (× 1,000) | FTE | (× 1,000) | FTE |
| Solid Waste | 9,040 | 47.3 | 28 | - | 9,068 | 47.3 |
| Hazardous Waste | 8,813 | 56.3 | 1,016 | 7.0 | 9,829 | 63.3 |
| Hazardous Substance Cleanup | 27,710 | 99.4 | 8,432 | 1.0 | 36,142 | 100.4 |
| Underground Storage Tanks | 3,811 | 25.9 | 990 | 3.2 | 4,802 | 29.1 |
| Hazardous Substance Spills | 1,331 | 7.0 | (352) | (1.5) | 979 | 5.5 |
| Total | 50,707 | 235.9 | 10,113 | 9.7 | 60,819 | 245.6 |

1995-97 Total Budget

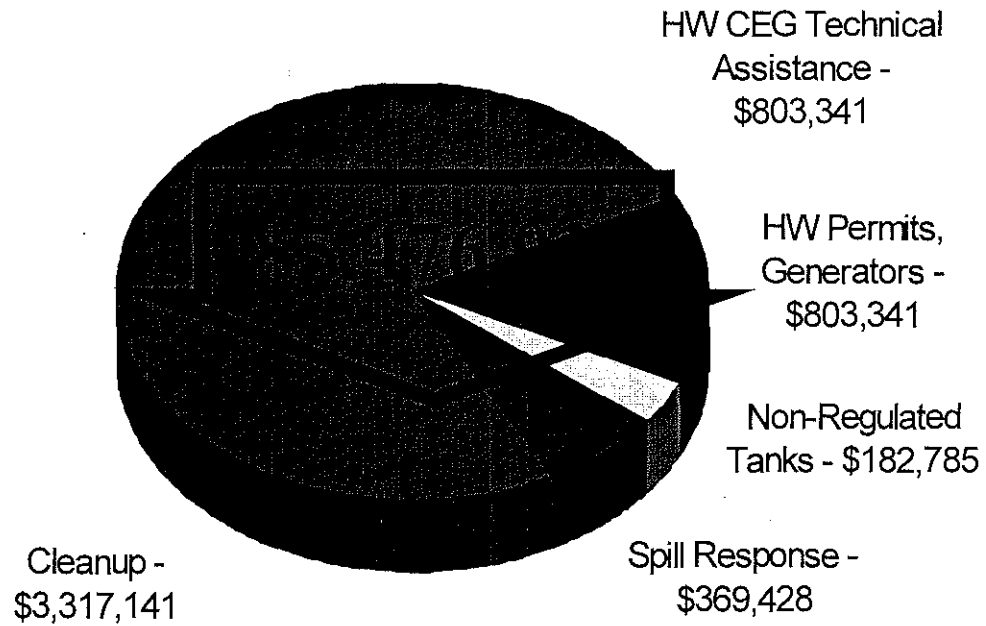
57,723 254.9

The Arlington Shortfall

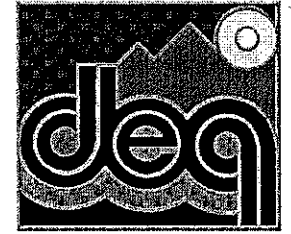


DEQ Legislatively Adopted Budget

FUNDING REDUCTIONS AT 80,000 TONS/YEAR



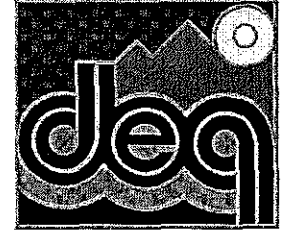
Arlington Solution Package



■ Details

- 1.35M General Fund
- 600K From deferred Orphan bond sale
- 2.4M cleanup cost recovery
- 900K Program cuts
 - » 700K for Spills
 - » 200K for Heating Oil Tanks
- 250K from ending balances

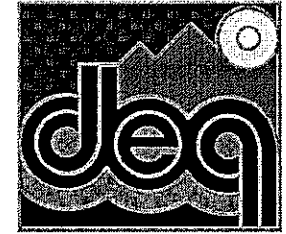
Waste Management Program Impacts



DEQ Legislatively Adopted Budget

- Tanks Compliance still in a squeeze
- Oil heat funding will support an enhanced program
- Cut support for HHW collection to keep some spills program
- M&B cleanup fully underway
- Minimal spill presence state-wide
 - Less local outreach
 - DEQ responds only to most serious spills
 - Spills compete with other contaminated sites--most dangerous will get the \$\$

Agency Management Budget



DEQ Legislatively Adopted Budget

| | Base Budget | | Packages | | Total | |
|------------------------------|-------------|------|-----------|-----|-----------|------|
| | (× 1,000) | FTE | (× 1,000) | FTE | (× 1,000) | FTE |
| Office of the Director | 1,367 | 7.7 | 143 | 0.5 | 1,510 | 8.2 |
| Public Affairs | 757 | 5.5 | - | - | 757 | 5.5 |
| Management Services Division | 11,123 | 58.5 | 485 | 1.0 | 11,608 | 59.5 |
| Agency Management Total | 13,247 | 71.7 | 628 | 1.5 | 13,875 | 73.2 |
| 1995-97 Total Budget | | | | | 11,448 | 67.2 |



■ New Packages

- Continuous Improvement
- One-stop Grant
- Green Permits

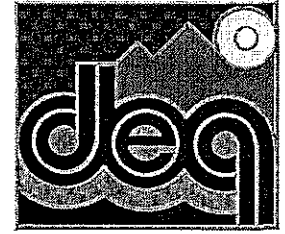
Upcoming Emergency Boards



DEQ Legislatively Adopted Budget

- SB 1143--Provided Heating oil revenue-- Request positions & Limitation in September
- HB 3385--Tanks Financial Assistance--September
- Vehicle Inspection continuing program-- November
- Drinking Water SRF--September

Needed: Better Ways to Fund Environmental Protection



- **Today's funding doesn't fit place-based approach**
- **Fee payers weary of multiple fee initiatives**
- **Many "band-aids" in budget**
 - Legislature, Legislative Fiscal Office interested in helping with solutions
- **Stable, long-term funding for the future**
 - Expect tiered effort:
 - » Governor, other Natural Resource agencies, DEQ-specific
 - Involve stakeholders