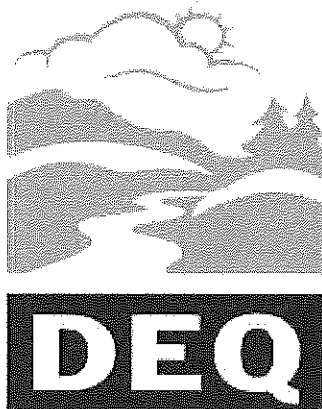


**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS 06/12/1998**



**State of Oregon  
Department of  
Environmental  
Quality**

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# \*\*\*Revised\*\*\* A G E N D A

## ENVIRONMENTAL QUALITY COMMISSION MEETING

June 11-12, 1998  
Smullin Education Center  
2825 Barnett Road  
Medford, 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 has designated from 6:00-6:30 p.m., June 11, for Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. The public comment period has already closed for the Rule Adoption items and, in accordance with ORS 183.335(13), no comments can be presented to the Commission on those agenda items. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

**Thursday, June 11, 1998**

*The Commission will tour Montezuma West Spill Site before the meeting*

***The Meeting will begin at 10:00 a.m.***

- A. Approval of Minutes
- B. Approval of Tax Credits
- C. †**Rule adoption:** Addition to OARs Affirming the Director's Intent to Respond to Comments on Confirmed Release List and Inventory Listing Proposals
- D. †**Rule Adoption:** Amend Oregon Hazardous Waste Administrative Rules
- E. †**Rule adoption:** Toxic Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments to OAR Chapter 340, Division 135
- F. **Action Item:** Amendment to the Tualatin Basin Total Maximum Daily Load Compliance Order

G. **Informational Item:** Update on the Southwest Community Center at Gabriel Park

H. †**Rule adoption:** LRAPA Rules and Modification of the State Implementation Plan (SIP)

I. †**Rule adoption:** Increase in Title V Operating Permit Fees

J. **Action Item:** ~~Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of William H. Ferguson, Case No. AQAB-WR-96-351~~

**This item has been postponed until the August meeting**

K. **Action Item:** Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of the City of Coos Bay, Case No. WQMW-WR-96-277

*The Commission will Break for Dinner*

6:00 - 6:30 p.m.      General Public Comment

6:30 - 7:00 p.m.

L. **Informational Item:** Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan Status

7:00 - 8:00 p.m.      Public Comment Regarding the Medford Carbon Monoxide Maintenance Plan Only

### **Friday, June 12, 1998**

*The Commission will tour Ashland Sewage Treatment Plant and other sites along Bear Creek before the Meeting*

***The Meeting will Begin at 9:30 a.m.***

M. **Informational Item:** Briefing on Bear Creek Water Quality Actions and Issues:

- Overview of Bear Creek TMDL
- Non-point Sources: Progress of Designated Management Agencies
- Update on Boise Cascade Log Pond Discharge

N. **Action Item:** Waiver of the Dilution Rule for the City of Ashland

12:00 - 1:30 p.m.

*The Commission will break for lunch with Local Officials*

## **O. Commissioners' Reports**

## **P. 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 break at 12:00 noon for lunch on Thursday; no commission business will be discussed.

The Commission has set aside August 6-7, 1998, for their next meeting in Portland, Oregon.

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 229-5301, 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)229-5301 (voice)/(503)229-6993 (TTY) as soon as possible but at least 48 hours in advance of the meeting.

June 3, 1998



April 30, 1998

To: Steve Greenwood, Division Administrator, Western Region

From: Dennis Belsky, Manager-WQ/South, Western Region

Subject: EQC-Draft Briefing by Bear Creek DMAs

This is the suggested outline for the briefing on the Bear Creek TMDL (OAR 340-41-385). The outline was developed as requested on April 29 due to you by May 6. Your comments and suggested improvements are welcomed.

Would you clarify who is making these arrangements and arranging transportation for possibly 8-14 DEQ/EQC persons? The earlier I can plan the time, the better I can help.

**Friday June 12, 1998**

**7:30 am - 9:30 am            Tour: City of Ashland sewage facilities and vicinity**

- POTW and treated sewage outfall into Ashland Creek.
- Proposed summer effluent storage and irrigation area
- Proposed waste activated sludge stabilization lagoons and application area
- Active Section 319 funded stormwater control project on Rocca Creek (if time permits).

DEQ Staff Resource: Dennis Belsky, Jon Gasik, Gary Arnold, John Blanchard

Probable City of Ashland Staff: Richard Marshal, Paula Brown, Greg Scoles

**EQC Meeting            Update implementation status of Bear Creek TMDL**

DEQ Presentation: Overview of Bear Creek TMDL (OAR 340-41-385)

- Brief history of legal drivers and approach  
DMAs and NPDES permittees  
Water quantity and quality considerations  
ESA listings and beneficial uses
- Map of Bear Creek basin  
Irrigation canals and summer vs. Winter flow regimes
- WQ issues-details on standards and how TMDL addresses

City of Ashland Presentation: Ashland Waste Load Allocation

- Direction city is taking
- Opportunity for Ashland to address EQC

DMA Presentations

*Oregon Department of Forestry*-staff resource not identified

- State and private forest

*Oregon Department of Agriculture*-staff resource not identified. Staff resource Mike Wolf or Lorna Youngs- Oregon Department of Agriculture . Pending question is how topic to be introduced as January 1998 Bear Creek Ag Plan was not well received. DEQ has met with Lorna Youngs and exchanged letters clarifying that SB1010 process will revisit Bear Creek sub-basin within a few years. While potentially, Oregon Department of Agriculture could be defensive about the 1998 plan, I feel this is not an opportunity

April 30, 1998  
EQC-Briefing by Bear Creek DMAs

to make Oregon Department of Agriculture uncomfortable. I suggest showcasing current levels of cooperation under Healthy Stream Partnership as being more productive in the long term.

- Agricultural land

*Jackson County/Cities of Medford, Central Point, Talent, Phoenix and Ashland.* Partial DMA resource identified. Need clarification if municipalities are necessary for presentation.

- Urban runoff
  - Jackson County- Paul Korbolic

*Bear Creek Basin Education Plan*

- Dave Jacobs or Dick Barbara

*Monitoring-Ambient/Stormwater*

- Bill Meyers-RVCOG (by Section 319 contract with DEQ)

*Industry-log pond discharges*

Of the original three sources, only Boise Cascade-Medford Sawmill remains. Timber Products has closed their log pond. Medford Corporation has shut their mill down, removed the pond, and sold the property. This is a minor source for the Bear Creek TMDL. The NPDES permit is on the permit backlog since 1993. A draft permit is expected to be on applicant review in late May 1998. I suggest that this DMA summary be covered in the EQC report.

**Healthy Stream Partnership and Western Region Basin Team Watershed Approach**

- Inform EQC on present efforts to organize Western Region Healthy Stream Partnership staff to meet commitments of Oregon Plan for Salmon and Watersheds.
- Opportunity for Lang, MikeL, or SteveG to present highlights. Alternatively, Dennis B and John Blanchard.
- Consider RVCOG and/or local Watershed Councils to make brief statements of their work at local level in Rogue sub-basins.

# Proposed Cleanup Plan for the Montezuma West Truck Spill Site



Oregon Department of Environmental Quality  
March 1998

## Introduction

This proposed plan summarizes the alternatives for cleaning up soil and groundwater contamination at the Montezuma West Truck Spill Site (Montezuma) near Central Point, Oregon. It also identifies the preferred alternative recommended by the Oregon Department of Environmental Quality (DEQ) for cleanup under Oregon's Environmental Cleanup Rules. The primary contaminants of concern include chlorinated volatile organic chemicals (VOCs). The VOCs of greatest concern are 1,1,1-trichloroethane (TCA), and 1,1-dichloroethene (DCE) a degradation compound of TCA.

The proposed plan also summarizes information explained in greater detail in numerous reports for the site, including the Baseline Human Health Risk Assessment, Ecological Risk Assessment, the Feasibility Study, and in the report titled: *Staff Report DEQ Recommended Remedial Action for the Montezuma West Truck Spill Site*, dated March 1998. (See Section 8 below)

We invite your comments on DEQ's recommended cleanup plan. Your comments are important to us in the process of selecting a final remedy for the Montezuma site.

### Table of Contents

- 1 Background
- 2 Investigation Results
- 3 Summary of Potential Site Risks
- 4 Cleanup Objectives & Goals
- 5 Summary of Cleanup Alternatives
- 6 Evaluation of Cleanup Alternatives
- 7 DEQ's Recommended Alternative
- 8 Information and Commenting

## 1. Background

On December 7, 1984, a truck owned and operated by Montezuma West Trucking Co. ran off Interstate 5 in a rural area approximately 2 miles northwest of Central Point (Figure 1). The tanker truck went down a steep highway embankment spilling approximately 50 gallons of acetone, 700 gallons of TCA, and 1,000 gallons of ethylene glycol on an unpaved and undeveloped site bounded by I-5 and the Southern Pacific Railroad spur. Shortly after the spill, approximately 150 cubic yards of contaminated soil was excavated from the spill area and transported to a hazardous waste landfill for disposal. Groundwater monitoring performed in September 1985 showed contamination of the upper groundwater aquifer with TCA. Additional soil was excavated from the spill area and stockpiled next to the spill site in 1985. The soil excavation pit remained unfilled and the soil stockpile remained in place until 1988. During this period, measures taken were not effective in preventing additional groundwater contamination from rainfall infiltration through contaminated soils to groundwater.

A groundwater extraction and treatment system was installed downgradient of the spill on the Superior Lumber property (formerly D&D Lumber Co.) in 1989 pursuant to the requirements of a consent order issued to Montezuma West Trucking Co. by the U.S. Environmental Protection Agency (EPA). The extraction and treatment system operated until October 1991 when the consent order expired and funding for the cleanup ended. All equipment was removed from the site and Montezuma West Trucking Company filed for bankruptcy.

In early 1994, EPA's contractor collected soil gas and soil samples from the spill location, and groundwater samples from site monitoring wells and

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downgradient domestic wells. The soil gas and soil sampling indicated a significant source of VOC contamination remains at the spill area. Eight domestic wells located downgradient of the spill site showed contamination with TCA and 1,1-dichloroethene (DCE); six of these wells show contamination near the federal maximum contaminant level (MCL) drinking water standard for 1,1-DCE of 7 micrograms per liter (ug/L). The EPA concluded that the Montezuma site did not qualify for federal funding under EPA's regulations and referred the site to the DEQ. In May 1994, DEQ installed activated carbon treatment units on the eight contaminated wells. DEQ subsequently designated the site as an "orphan" site (eligible for state funding) and began investigations of the site leading to implementation of interim removal action measures (IRAMs).

In June 1995, DEQ contractors installed a new groundwater extraction and treatment system on Superior Lumber property. This interim removal action measure (IRAM) was installed primarily to control the spread of contaminated groundwater. The contaminated groundwater is treated with an air stripper and activated carbon filters to remove the VOCs, before being discharged to a nearby drainage ditch under discharge requirements specified by DEQ's water quality rules.

In 1996, DEQ's contractor completed an evaluation of the groundwater extraction and treatment system. The evaluation indicated that the system was controlling the further spread of the groundwater VOC contaminant plume at the Superior Lumber property. Although the size of the dissolved VOC plume has decreased since startup of the system, dissolved VOC concentrations at the former spill location have not significantly declined. This is because undissolved TCA product remains in soils at the spill source area and continues to leach to the groundwater.

In 1997, DEQ funded a study performed by the University of Washington using poplar trees to degrade VOCs found in the shallow groundwater at the site. Six hundred poplar trees were planted within a 200' by 80' area immediately downgradient of the source area on Superior Lumber property. This process, called

phytoremediation, involves irrigating the maturing poplar trees with water from the treatment system during the first two summers, until root growth reaches the shallow aquifer.

In January 1998, DEQ's contractor completed the investigation of the site (remedial investigation or RI) and the study of cleanup options (feasibility study or FS). The RI/FS led to DEQ's proposed final remedy for the site.

## 2. Investigation Results

### 2.1 Soil

Residual TCA and 1,1-DCE contamination at the spill area is found at a depth ranging from 15 to 30 feet below ground surface. The volume of soil exceeding soil cleanup criteria for protection of groundwater is approximately 70 cubic yards. The mass of TCA remaining in the source area soil is estimated to be in the range of 2,000 pounds, or roughly one third of the original spill volume's weight of 7800 pounds.

### 2.2 Groundwater

The area of dissolved phase VOC contamination in the shallow aquifer is shown in Figure 1. The contaminant plume extends approximately 2,500 feet downgradient of the source area. The groundwater contamination plume covers an area of approximately 40 acres.

TCA concentrations in the shallow groundwater aquifer exceeding the drinking water MCL of 200 ug/L is limited to the spill site and Superior Lumber property. TCA concentrations downgradient and northeast of Superior Lumber property are below the MCL.

TCA which dissolved in groundwater has been degraded by natural microorganisms present in the soil. The primary degradation products are 1,1-dichloroethane (DCA), 1,1-DCE, and chloroethane. The MCL for 1,1-DCE is 7 ug/L. Groundwater contamination exceeding the MCL for 1,1-DCE

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extends off-site to residential properties. Currently, two of the eight supply wells with treatment systems installed by DEQ in 1994 remain contaminated at levels exceeding the MCL for DCE (i.e., the treatment systems cannot yet be removed).

VOC contamination was detected in the deep aquifer prior to 1995. The contamination was attributed to leakage down the well borings for one or more of the monitoring wells installed by Montezuma West. DEQ sealed the wells and installed a new monitoring well to assess the presence of contamination in the deep aquifer. Although TCA and 1,1-DCE were initially detected at low levels in the new well, they have not been detected in the deep aquifer well since November 1996. The monitoring results indicate the extent of contamination in the deep aquifer was not significant and quickly dispersed after sealing the leaky wells.

### 2.3 Groundwater Use Evaluations

A beneficial use survey was performed to verify current groundwater uses in the vicinity of the site. Groundwater on-site and downgradient of the site is the sole source of drinking water in the area. Three existing supply wells are located at the Superior Lumber Company. These wells draw water from the deep aquifer. One of these wells is currently used for drinking water for property tenants. The domestic supply wells downgradient of the site are completed in the shallow aquifer. These wells serve as the sole-source of potable water for the residential property owners shown in Figure 1.

### 3. Summary of Potential Site Risks

The remedial investigation included an assessment of potential human health and ecological risks posed by the site, in the absence of any further cleanup. The human health risk assessment evaluated both cancer and non-cancer risks associated with future use of contaminated groundwater.

Risk estimates from the human health evaluation indicate an unacceptable level of both

cancer and non-cancer risks to humans, if the contaminated groundwater were used as a source of domestic water supply without further cleanup or controls (e.g., treatment systems on private water supply wells). TCA and DCE were identified as the two compounds found at the site which pose the greatest risk to human health.

The ecological assessment evaluated the potential risk to wildlife from exposure to contaminated groundwater discharging to surface water in Bear Creek. The ecological assessment results indicate that no significant impacts to wildlife would occur in the absence of cleanup.

DEQ has concluded that releases of hazardous substances at the site, if not cleaned up, may present a hazard to public health and welfare.

### 4. Cleanup Objectives & Goals

Cleanup objectives developed to protect human health and the environment are summarized below. These objectives can be met by treating the contaminated soil and groundwater, eliminating the potential pathways for exposure to the contamination, or a combination of the above.

- Restore the shallow groundwater aquifer to protective concentrations, if feasible, in a reasonable time. If this is not feasible, minimize the extent of groundwater that contains contaminants exceeding MCLs,  $1 \times 10^{-6}$  (one in one million) excess cancer risk, or a non-cancer hazard index (HI) of 1.0 (whichever is more protective), and provide long-term containment for areas where concentrations are above MCLs or risk-based levels.
- Prevent ingestion of groundwater that contains contaminants of concern at concentrations above acceptable risk-based cleanup levels.
- Protect existing beneficial uses of groundwater resources at the site.

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- Reduce contaminant concentrations in, and prevent contaminant migration from, contaminated soil in the spill source area to the extent necessary to achieve the groundwater cleanup objectives defined above.

Cleanup levels for groundwater were developed for both on-site occupational and off-site domestic uses for the shallow aquifer. As mentioned above, TCA and 1,1-DCE are the two compounds which pose the greatest potential risk to human health in the absence of further cleanup. Although four other VOC compounds have been detected in groundwater, their concentrations are currently below MCLs or risk based concentrations and are not discussed further.

The risk based groundwater cleanup level for TCA and 1,1-DCE for on-site is 200 ug/L and 4 ug/L, respectively. For off-site domestic uses, the TCA and 1,1-DCE cleanup levels have been set at 60 ug/L and 0.2 ug/L, respectively. The cleanup to the risk based level for 1,1-DCE will result in cleanup of TCA and other VOCs to concentrations significantly below their respective MCLs or risk based cleanup levels.

Cleanup goals for soil have been set at concentrations that would not result in continued contamination of groundwater within the spill source area at levels exceeding the on-site risk based cleanup level for 1,1-DCE.

The proposed cleanup levels for groundwater are below ambient water quality criteria for surface water, and therefore protect potential ecological receptors in Bear Creek.

## 5. Summary of Cleanup Alternatives

Five potential remedial action alternatives were evaluated in the feasibility study (FS). These alternatives are summarized below. Each of the alternatives, except Alternative 1 - No Action, incorporate the following common elements:

- Continued operation of the existing IRAM groundwater control measures and individual domestic well treatment systems described in Section 1 of this document. Individual treatment systems would remain in place until 1,1-DCE concentrations are reduced to non-detectable levels of 0.5 ug/L.
- Monitoring of groundwater quality in nearby domestic supply wells, the Superior Lumber supply wells, and in monitoring wells, to assess progress in the cleanup;
- Institutional controls that will prevent new uses of the shallow groundwater aquifer within or in the vicinity of the contaminant plume that could potentially alter the migration of contamination or impact currently clean wells; and
- Continued evaluation of the effectiveness of poplar trees as an element of the cleanup process.

The summary for each alternative includes a time and cost estimate for completion of the cleanup. Cost estimates for each alternative are given in present dollar values and include design, construction, and long-term operation and maintenance costs.

### 5.1 Alternative 1

Alternative 1 would discontinue all the on-going actions described in Section 1 above. Inclusion of this alternative is required under Oregon rules to provide a basis of comparison for the remaining alternatives. All existing equipment and controls would be removed from the site including individual well head treatment systems on domestic wells, and monitoring discontinued

- Estimated Cost: \$20 thousand to decommission existing equipment and wells.
- Estimated Cleanup Time: The groundwater contaminant plume is predicted to increase in size and to have similar concentrations to existing conditions after 30 years. Due to undissolved product in the source area, contamination could persist for decades.

### 5.2 Alternative 2

Alternative 2 includes all the common remedial action elements described above. The existing IRAM extraction well network would continue to operate to prevent off-site migration of groundwater contamination. Cleanup of the off-site areas through natural processes would take an estimated 10-15 years. Based on the estimated mass of TCA in the source area, the IRAM extraction well system would need to be operated for approximately 40 years.

- Estimated Cost: \$1.01 million, which includes \$400 thousand for the existing IRAM and \$610 thousand for long-term operation and maintenance.

### 5.3 Alternative 3

Alternative 3 includes all the components of Alternative 2 and adds one additional extraction well downgradient of the spill source area, to improve the hydraulic control of the VOC plume. Alternative 3 also includes a contingency to install new water supply wells for two residential properties which currently have DCE contamination, and which might require continued wellhead treatment systems for a period of 10 years or more. The new wells would be completed in the deep aquifer eliminating the need for the treatment systems.

The additional extraction well is projected to reduce cleanup time frames for the on-site portion of the plume from 40 years to 29 years.

- Estimated Cost: \$1.02 million, which includes \$400 thousand for the existing IRAM, \$60 thousand for the new extraction well and two supply wells, and \$560 thousand for long-term operation and maintenance.

### 5.4 Alternative 4

Alternative 4 includes the remedial components for Alternative 3 and adds soil vapor extraction (SVE) to treat subsurface soil at the spill

source area. SVE involves inducing a vacuum in the subsurface soils to strip VOC vapors from soil. The objectives of SVE are to substantially increase contaminant mass removal rates that would occur through groundwater extraction, and to remove the residual contamination from the source area which would serve as a long-term source of groundwater contamination.

The SVE system would utilize the four existing SVE wells installed in the source area in 1994. Additional equipment which would be installed would be determined during remedial design, but would include a blower, valves, piping, well vaults, and security fencing. Electricity would be supplied to the area with the installation of an underground utility line beneath the railroad tracks via a horizontal boring.

Based on a SVE treatability study performed in 1997, initial VOC mass removal rates are estimated to be in the range of 2 pounds per day (lb/day) which is approximately 10 to 20 times the mass removal rate estimated for groundwater extraction alone.

The FS assumed the SVE system would operate for 6 months to 1 year. DEQ proposes continued operation of the SVE system until VOC removal rates decline by 95 percent (0.1 pounds/day). Based on a presumed mass of TCA of 2000 pounds in the source area, SVE may need to be implemented for up to 3 years. The additional mass removal from SVE was projected to reduce groundwater extraction time to 23 years.

- Estimated Cost: \$1.05 million, which includes \$400 thousand for the existing IRAM, \$140 thousand for the new extraction well, two supply wells and SVE, and \$510 thousand for long-term operation and maintenance.

### 5.5 Alternative 5

Alternative 5 includes the remedial components specified for Alternative 4 and adds groundwater extraction from the spill source area.

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The objectives of the source area groundwater extraction are to increase mass removal, increase the efficiency of contaminated groundwater removal, and lower the water levels at the source area to increase the thickness of the unsaturated zone to be treated by SVE.

Alternative 5 would convert two existing monitoring wells located at the source area to extraction wells (MW-16 and MW-17). Water extracted from the wells would be piped to the existing treatment system, by installing a discharge line within the horizontal boring beneath the railroad tracks for the SVE power source. The installation of the downgradient extraction well specified for Alternative 3 may not be necessary. During remedial design, DEQ would reevaluate whether this well would significantly improve cleanup times and decide whether or not to install this well.

The existing treatment system may need to be upgraded to increase the treatment capacity from its current limit of 50 gallons per minute. Dual phase extraction (i.e., SVE and groundwater) from wells MW-16 and MW-17 will be evaluated for feasibility during remedial design, to further increase VOC mass removal rates.

The operation time frame for the SVE is as described for Alternative 4. Operation of the groundwater extraction and treatment system was estimated to be reduced to 17 years, from the 23 years for Alternative 4.

- Estimated Cost: \$1.00 million, which includes \$400 thousand for the existing IRAM, \$150 thousand for additional remedial components, and \$450 thousand for long-term operation and maintenance.

## 6. Evaluation of Cleanup Alternatives

The cleanup alternatives described above were evaluated against the remedy selection criteria specified in Oregon Environmental Cleanup Rules, to

form the basis for DEQ's selection of a preferred cleanup alternative for the site.

### 6.1 Protection of Human Health and Environment

This criterion evaluated the ability of the alternatives to eliminate potential future exposure to soil, groundwater, and surface water contaminated at levels exceeding risk-based concentrations. All the alternatives, except Alternative 1 - No Action, were considered protective in varying degrees. The use of individual treatment systems and institutional controls should eliminate long-term human exposure to contaminated groundwater that might result in a risk exceeding the acceptable risk level specified in DEQ's rules of  $1 \times 10^{-6}$  excess cancer risk.

The residual risk assessment estimated an excess cancer risk of  $1 \times 10^{-6}$  from exposure to 1,1-DCE, if individual treatment systems were removed when 1,1-DCE are reduced to non-detectable levels (0.5 ug/L).

Alternative 5 best satisfies the cleanup objectives for the site described in Section 4. Alternatives 2 through 4 rated lower than Alternative 5. As discussed in Section 3, Alternative 1 (no action) is not protective and would result in significant additional cancer risk to current users of groundwater at the site.

### 6.2 Effectiveness

The evaluation of effectiveness considers the magnitude of untreated wastes remaining at the site following implementation of the remedy, the extent to which the cleanup restores or protects existing and future uses of groundwater, the adequacy of treatment technologies in meeting cleanup objectives, and the time until cleanup objectives would be met.

Alternative 5 was rated the most effective alternative, because it combines both groundwater extraction and SVE treatment of the spill source area, which should increase the VOC mass removal from this area, and reduce the time frame for achieving



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cleanup objectives. Alternative 4 rated lower than Alternative 5, because SVE alone is likely to be less effective than with groundwater extraction, resulting in longer cleanup time frames. Alternatives 2 and 3 rated lower than Alternative 4, because the source of significant groundwater contamination (i.e., VOCs leaching from the soil) would remain at the spill area, likely requiring hydraulic control for decades. Since Alternative 1 is not protective, it is not considered effective.

### **6.3 Long-Term Reliability**

This criterion evaluates the reliability of treatment technologies in meeting cleanup objectives, the reliability of engineering or institutional controls in managing risks associated with potential exposures, and the nature and degree of uncertainties associated with long-term management of the site.

Alternatives 2, 3, 4, and 5 are all expected to be reasonably reliable in controlling and eventually eliminating exposure of contaminants to human and environmental receptors. Alternative 5 is more likely to achieve treatment objectives for the spill source area than Alternative 4. Alternatives 2 and 3 are less likely to meet the treatment objectives for groundwater, thus requiring long-term hydraulic control. This would increase the probability of equipment failures.

The implementation of well head treatment systems has restored existing use of groundwater as a source of domestic water supply. Activated carbon is a proven technology for removal of VOCs from groundwater. The treatment systems have been effectively minimizing exposure to groundwater contamination since implementation in 1994, although periodic short-term exposures do occur when carbon becomes spent and is being replaced. Continued biannual or quarterly monitoring would prevent any long-term exposures due to carbon break through.

#### **6.3.1 Implementability**

The implementability criterion considers the technical and legal difficulties in implementing a cleanup alternative, the ability to monitor the effectiveness of the remedy, regulatory coordination and approvals from federal, state, and local agencies, and the availability of services, equipment and specialists to implement the remedial technologies.

Alternative 2 is considered the most implementable of the active alternatives, since it is already in effect. Alternative 5 is considered the least implementable of the active alternatives, since it includes more remedial elements than Alternatives 3 and 4. Although Alternative 5 was rated the most difficult to implement, the remedial elements are readily available and commonly implemented at groundwater cleanup sites involving VOCs.

#### **6.3.2 Implementation Risk**

This criterion evaluates potential impacts to the community, workers and the environment during implementation of a remedial action, the effectiveness of measures to protect them during remedy implementation, and the time until the cleanup is complete.

Alternative 2 would have the least implementation risk, since all remedial components are in place. For Alternatives 3 through 5, some short-term risk would be involved in the drilling of new drinking water supply wells at two residences. This is not an uncommon activity and risks can be effectively controlled with a proper health and safety program. Alternatives 4 and 5 would involve some construction activities in proximity to utilities within the railroad right-of-way. These situations are not uncommon in construction work and can be effectively minimized through close coordination with the railroad and utility companies during the remedial design and permitting phase of the remedy implementation.

### **6.4 Reasonableness of Cost**

The estimated total costs for Alternatives 2 through 5, summarized in Section 5, are within five

**DEQ Proposed Cleanup Plan - Montezuma West Truck Spill Site  
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percent of each other, as increased capital costs are offset by decreased cost for long-term operation and maintenance of the groundwater extraction and treatment system. Alternative 5 is estimated to be the least expensive, due to cost savings from the reduced time frame for operation and maintenance of the groundwater remediation components, and it provides the shortest time frame for removal of source area residual contamination.

### **7. DEQ's Recommended Cleanup Alternative**

DEQ recommends Alternative 5 for the cleanup of the soil and groundwater contamination at the Montezuma West spill site.

The recommended cleanup plan protects human health and the environment; is the most effective alternative, utilizing reliable technologies to permanently remove contaminants from the soil and groundwater to the maximum extent practicable; is readily implementable; does not pose significant implementation risks to the community, workers or the environment; and the costs are proportionate to the benefits created in restoring and protecting existing and future beneficial uses of groundwater. In addition, the recommended remedy would comply with applicable water quality, hazardous waste management, and air quality regulations.

### **8. Information and Comments**

DEQ's recommended cleanup plan is open for public comment from April 1, 1998 through April 30, 1998. Written comments should be sent to the attention of:

Bruce Gilles, Project Manager  
Department of Environmental Quality  
Waste Management & Cleanup Division  
811 S.W. Sixth Avenue  
Portland, Oregon 97204

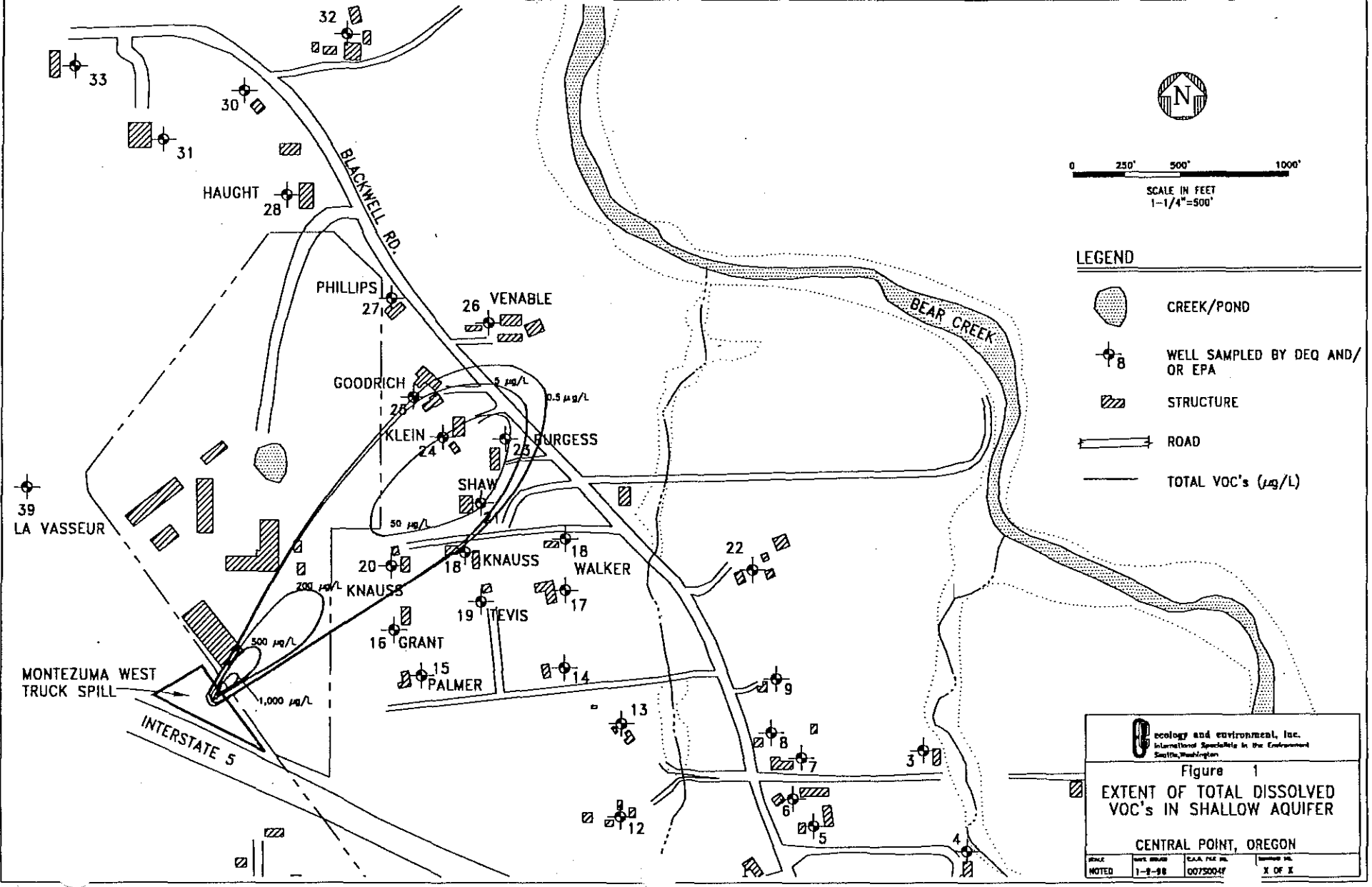
Copies of DEQ's Staff Report, investigation reports and other information utilized by DEQ in its selection of the recommended cleanup plan are available for public review at:

**DEQ Medford Offices  
201 W. Main Street, Suite 2-D  
Medford, Oregon  
Phone: (541) 776-6010  
or**

**DEQ Waste Management & Cleanup  
Division  
720 S.W. Washington, 4th Floor  
Portland, Oregon  
Hours: 8 a.m. to 5 p.m.  
Call: Barbara Petzing (503) 229-6769  
or Dan Murphy (503) 229-5815  
for an appointment**

DEQ will hold a public meeting on the recommended cleanup plan at the following location and time:

**Jackson County Courthouse Auditorium  
10 South Oakdale Street  
Medford, Oregon  
7p.m to 9p.m.  
May 12, 1998**



United States Environmental Protection Agency  
Office of Solid Waste and Emergency Response (5102G)  
EPA 542-F-96-014 September 1996



# A Citizen's Guide to Phytoremediation

Technology Innovation Office

Technology Fact Sheet

## What is phytoremediation?

Phytoremediation is the use of plants and trees to clean up contaminated soil and water. Growing and, in some cases, harvesting plants on a contaminated site as a remediation method is an aesthetically pleasing, solar-energy driven, passive technique that can be used along with, or in some cases, in place of mechanical cleanup methods.

Phytoremediation can be used to clean up metals, pesticides, solvents, explosives, crude oil, polyaromatic hydrocarbons, and landfill leachates.

### A Quick Look at Phytoremediation

- Is an aesthetically-pleasing, passive, solar-energy driven cleanup technique.
- Is most useful at sites with shallow, low levels of contamination.
- Is useful for treating a wide variety of environmental contaminants.

## How does phytoremediation work?

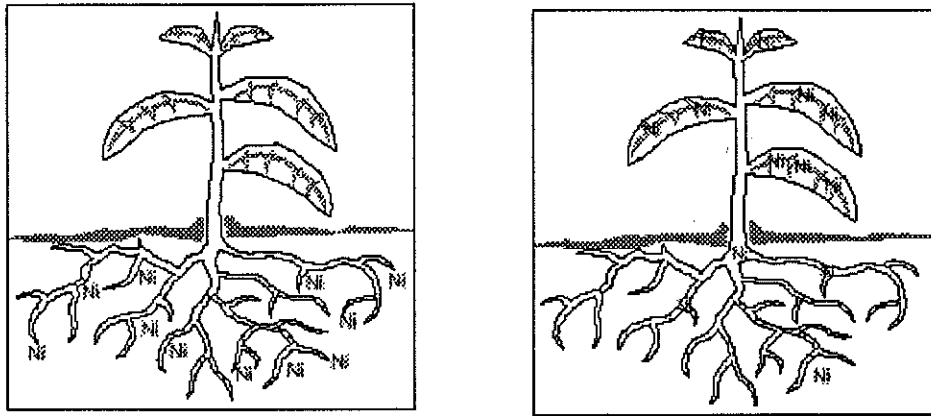
Phytoremediation (the term *phyto-* means *plant*) is a general term for several ways in which plants are used to clean up, or *remediate*, sites by removing pollutants from soil and water. Plants can break down, or *degrade*, organic pollutants or stabilize metal contaminants by acting as filters or traps. Some of the methods that are being tested are described in this fact sheet.

### Metals Remediation

At sites contaminated with metals, plants are used to either stabilize or remove the metals from the soil and ground water through two mechanisms: *phytoextraction* and *rhizofiltration*.

**Phytoextraction**, also called phytoaccumulation, refers to the uptake of metal contaminants by plant roots into plant stems and leaves (Figure 1). Certain plants absorb unusually large amounts of metals in comparison to other plants. One or a combination of these plants is selected and planted at a particular site based on the type of metals present and other site conditions. After the plants have been allowed to grow for some time, they are harvested and either incinerated or composted to recycle the metals. This procedure can be repeated as many times as necessary to bring contaminant levels in the soil down to allowable limits. If plants are incinerated, their ash must be disposed of in a hazardous waste landfill, but the volume of ash will only be about 10% of the volume that would be created if the contaminated soil itself were dug up for treatment.

Figure 1. Uptake of Metals (Nickel) by Phytoextraction



**Nickel is removed from soil by moving up into plant roots, stems, and leaves. The plant is then harvested and disposed of and the site replanted until the nickel in the soil is lowered to acceptable levels.**

Metals such as nickel, zinc, and copper are the best candidates for removal by phytoextraction because they happen to be the favorites of the approximately 400 known plants that absorb unusually large amounts of metals. Plants that absorb lead and chromium are being studied and tested.

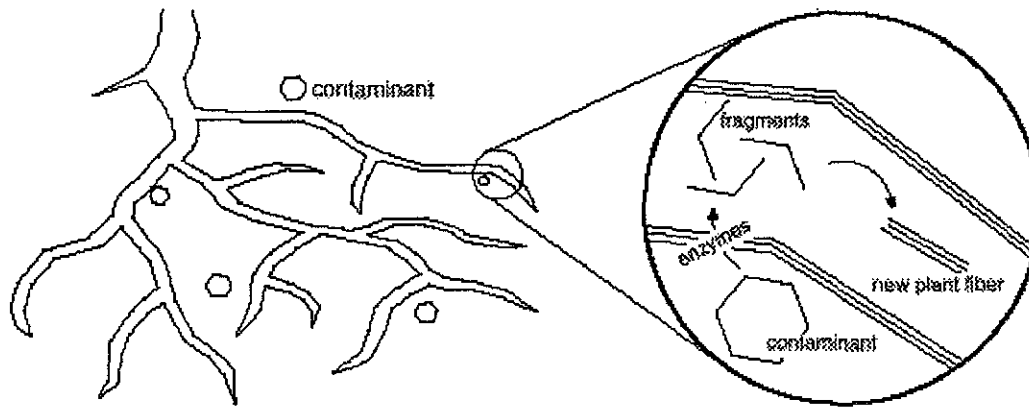
**Rhizofiltration** (*rhizo-* means *root*) has shown promise for dealing with metals contamination in water. Rhizofiltration is similar to phytoextraction, but the plants to be used for cleanup are raised in greenhouses with their roots in water rather than in soil. When the plants have developed a large root system, contaminated water is collected from a waste site and brought to the plants where it is substituted for their water source. The roots take up the water and the contaminants along with it. As the roots become saturated with contaminants, they are harvested and disposed of. In addition to being useful for removing metals from water, rhizofiltration may prove useful for industrial discharge, agricultural runoff, acid mine drainage, and radioactive contamination. For example, sunflowers were used successfully to remove radioactive contaminants from pond water in a test at Chernobyl, Ukraine.

### Treating Organic Contaminants

Organic contaminants (those that contain carbon and hydrogen atoms) are common environmental pollutants. There are several ways plants can be used for the phytoremediation of these contaminants: *phytodegradation*, *enhanced rhizosphere biodegradation*, *organic pumps*, and *phytovolatilization*.

**Phytodegradation** is a process in which plants are able to degrade (break down) organic pollutants. In some cases, the pollutants degraded into simpler molecules are used to help the plant grow faster (Figure 2). Plants contain *enzymes*, a broad category of chemical substances that cause rapid chemical reactions to occur. Some enzymes break down and convert ammunition wastes, others degrade chlorinated solvents such as trichloroethylene (TCE), and others degrade herbicides.

**Figure 2. Destruction of Organic Contaminants by Phytodegradation**



**Enzymes in plant roots break down (degrade) organic contaminants. The fragments are incorporated into new plant material.**

**Enhanced rhizosphere biodegradation** takes place in the soil surrounding the plant roots (the *rhizosphere*) and is a much slower process than phytodegradation. Microorganisms (yeast, fungi, or bacteria) consume and digest organic substances for nutrition and energy. Certain microorganisms can digest organic substances such as fuels or solvents that are hazardous to humans and break them down into harmless products in a process called *biodegradation*. Natural substances released by the plant roots—sugars, alcohols, and acids—contain organic carbon that provides food for soil microorganisms and the additional nutrients *enhance* their activity. Biodegradation is also aided by the way plants loosen the soil and transport water to the area. The fact sheet entitled *A Citizen's Guide to Bioremediation* describes the biodegradation process in detail.

Trees can act as **organic pumps** when their roots reach down toward the water table and establish a dense root mass that takes up large quantities of water. Poplar trees, for example, pull out of the ground 30 gallons of water per day, and cottonwoods can absorb up to 350 gallons per day. The pulling action caused by the roots decreases the tendency of surface pollutants to move downward towards ground water and into drinking water. Poplars planted along stream beds in agricultural areas reduce the amount of excess fertilizer and herbicides that get into the streams and ground water. In another similar application, trees planted on top of landfills as organic substitutes for the traditional clay or plastic caps, suck up rainwater that could otherwise seep through the landfill and come out the bottom as contaminated "leachate."

**Phytovolatilization** occurs as growing trees and other plants take up water and the organic contaminants in it. Some of these contaminants can pass through the plants to the leaves and evaporate, or, into the atmosphere. Poplar trees, for example, volatilize 90% of the TCE they suck up.

### Does phytoremediation work at every site?

Phytoremediation can be used to clean up metals, pesticides, solvents, explosives, crude oil, polyaromatic hydrocarbons, and landfill leachates. Phytoremediation is used in combination with other cleanup approaches as a "finishing" step. Although phytoremediation is significantly slower than mechanical methods, and is limited to the depth that the roots can reach, it can clean out the last remains of contaminants trapped in the soil that mechanical treatment techniques sometimes leave behind.

Generally, the use of phytoremediation is limited to sites with lower contaminant concentrations and contamination in shallow soils, streams, and ground water. However, researchers are finding that the

use of trees (rather than smaller plants) allows them to treat deeper contamination because tree roots penetrate more deeply into the ground. Contaminated ground water very deep underground may be treated by pumping the water out of the ground and using it to irrigate plantations of trees.

Further research is needed to study the effects on the food chain that could occur if insects and small rodents eat the plants that are collecting metals and are then eaten by larger mammals. Also, scientists still need to establish whether contaminants can collect in the leaves and wood of trees used for phytoremediation and be released when the leaves fall in the autumn or when firewood or mulch from the trees is used.

**Where has it been used?**

Phytoremediation has been successfully tested in many locations. In Iowa, poplar trees planted along a stream bank between a corn field and the stream acted as natural pumps to keep toxic herbicides, pesticides, and fertilizers out of the streams and ground water. When the trees were three years old, researchers tested the levels of the nitrate contamination in the ground water at the edge of the cornfield and found it to be 150 milligrams per liter (mg/L). The ground water among the poplar trees along the stream bank, however, had nitrate concentration of only 3 mg/L—well under the EPA nitrate limit of 45 mg/L in drinking water. Table 1 lists some phytoremediation projects.

**Table 1. Examples of Sites Testing Phytoremediation\***

Location	Application	Contaminants	Medium	Plant
Ogden, UT	Phytoextraction	Petroleum hydrocarbons	Soil Ground water	Alfalfa, Poplar Juniper, Fescue
Portsmouth, VA	Rhizofiltration Phytodegradation	Petroleum	Soil	Grasses Clover
Milan, TN	Phytodegradation	Explosives wastes	Sediment	Duckweed Parrot feather
Aberdeen, MD	Organic Pumps Phytovolatilization Rhizofiltration	Trichloroethylene Trichloroethane	Ground Water	Poplar trees

*\* Not all waste types and site conditions are comparable. Each site must be individually investigated and tested.*

*Engineering and scientific judgment must be used to determine if a technology is appropriate for a site.*

**What Is An Innovative Treatment Technology?**

*Treatment technologies* are processes applied to the treatment of hazardous waste or contaminated materials to permanently alter their condition through chemical, biological, or physical means. *Innovative treatment technologies* are those that have been tested, selected or used for treatment of hazardous waste or contaminated materials but lack well-documented cost and performance data under a variety of operating conditions.

**For More Information**

The publications listed below can be ordered free of charge by faxing your request to NCEPI at 513-489-8695. If NCEPI is out of stock of a document, you may be directed to other sources. If you choose, you may write to NCEPI at:

National Center for Environmental Publications and Information (NCEPI)  
P.O. Box 42419  
Cincinnati, OH 45242

- "Tree Buffers Protect Shallow Ground Water at Contaminated Sites," *Ground Water Currents* (newsletter), December 1993, EPA 542-N-93-011.
- Recent Developments for *In Situ* Treatment of Metal Contaminated Soils, (Available Fall 1996), EPA 542-R-96-008.
- *A Citizen's Guide to Bioremediation*, April 1996, EPA 542-F-96-007.
- *Soil Stabilization Action Team*, April 1996, EPA 542-F-96-010d.
- "Mother Nature's Pump and Treat," by Kalle Matso in *Civil Engineering*, October 1995, pages 46-49.
- "The Green Clean," by Kathryn Brown Sargeant in *BioScience*, October 1995, pages 579-582.

*NOTICE: This fact sheet is intended solely as general guidance and information. It is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. The Agency also reserves the right to change this guidance at any time without public notice.*



**BEAR CREEK BASIN NONPOINT SOURCE TMDL  
Executive Summary.**

May 22, 1998

In 1995 the Environmental Quality Commission adopted a modified implementation and compliance schedule which required action by local DMAs to reduce nonpoint source pollution within the Bear Creek Valley. Listed below is the 1995 implementation and compliance schedule with a brief summary of projects completed by the DMAs to meet the requirements of the schedule. Full descriptions of the summary project results will be available in an expanded document to be distributed at the June 12, 1998 meeting with the Environmental Quality Commission.

**1) MONITORING:**

**a) Submit to DEQ an acceptable ambient monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, methods of reporting results to DEQ, and quality assurance mechanisms. The ambient effort is intended to characterize the conditions of Bear Creek and its tributaries.**

**Completed:**

- Water quality monitoring program has 462 regularly scheduled samples per year plus hotspot monitoring upon request. *(9 ambient monitoring sites (1/month), 17 TMDL monitoring sites (2x/month), 16 storm drain sites (3x/year).*
- DEQ approved procedures for water quality monitoring are used.
- Quality Assurance - Quality Control plan established and currently under review with DEQ.
- Established yearly calendar to report analysis results to DEQ.

**b) Submit a draft plan to DEQ for comment and begin implementation. Identify budgets necessary to carry out the plan and document availability of resources. There should be at least a sub-set of sites at which each of the following parameters are measured on at least a quarterly basis (preferably more frequently to provide sufficient data for assessing trends): Phosphorus, dissolved oxygen, pH, bacteria, and temperature.**

**Completed:**

- Budgets for testing program administered by RVCOG have been identified and met. Program currently has full participation from all DMAs which collectively contribute \$32,000 /yr. Additional matching funds are generated from other sources.
- Lab space has been provided free of charge by the City of Medford.
- Current analytical capacity of the program includes: pH, Dissolved Oxygen, Conductivity, Continuous Temperature Monitoring, Total Phosphorous, Ammonia-nitrogen, Turbidity, Fecal Coliform, Total Suspended Sediment, biological Oxygen Demand (BOD5), Flow.

**c) Continue to implement monitoring efforts while finalizing monitoring plan. After the final plan is submitted, monitoring will be on-going but the monitoring program is expected to evolve over time. Data should be evaluated on an annual basis. Results of data evaluation may be used to justify changes to the monitoring plan. Implementation of the monitoring plan may occur in phases so long as there is at least a sub-set of sites that are sampled regularly for the parameters listed above and can be used for trending. DEQ staff will be available to assist with development of the plan and with data evaluation. DEQ may also assist**

with the implementation by providing partial funding and/or laboratory services. But the responsibility to insure that the minimum monitoring requirements are met lies with the DMA's.

**Completed:**

- Program has grown yearly in both the types of and sophistication of analysis and the number of sites
- Water quality monitoring program has 462 regularly scheduled samples as per above.
- DEQ works with RVCOG to analyze the data and present the results.
- Hot spot monitoring upon request to investigate water quality problems on behalf of the DMAs.
- DEQ and RVCOG annually evaluate the results of the water quality monitoring program. Adjustments are made to the program as needed.

d) Submit to DEQ an acceptable storm water monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, and quality assurance mechanisms. The storm water monitoring effort is intended to characterize the nature of effluent discharging from storm sewers to Bear Creek and its tributaries. At a minimum, this effort should include a representative sampling of effluent from flowing storm sewers during wet weather and during dry weather from any storm sewers found to have dry season flows. Parameters analyzed for should include phosphorus, BOD, pH, and bacteria.

**Completed:**

- Storm drain sampling plan approved by DEQ.
- Summary Storm drain report for 1997/1998 water years completed and submitted to DEQ and DMAs.
- An annual reporting calendar has been formalized with DEQ.
- 2 wet seasons and two dry seasons have been monitored as part of the storm drain sampling program; 16 sites, 3 times per year (2-4 sites per DMA).
- Storm Sewer maps have been received from each DMA (see *Storm Drain Systems* on page 4).
- Parameters analyzed for storm drain studies include: pH, conductivity, turbidity, BOD5, temp, flc PO4-P, fecal coliform.

## 2) PUBLIC AWARENESS

a) Develop and submit to DEQ draft, detailed, written public awareness plan. The plan should reflect a coordinated basin-wide effort that includes activities for all DMAs. The plan should identify specific activities/products and schedules which will be implemented prior to 12/94. The strategy should include such things as: developing exhibits that can be placed in shopping malls, colleges, area banks, etc., media involvement -- participation in local talk shows, generation of news stories, a series of well publicized seminars, a system for receiving public feedback. Identify budgets and schedules, document availability of resources. In addition, identify any optional activities/products to be implemented prior to 12/94 and activities/products which will be on-going. b) Submit a final acceptable awareness plan c) Implement the accepted public awareness plan. Submit copies of all printed public awareness/education materials to DEQ as they are produced.

**Completed:**

- Public awareness plans completed with input from all DMAs and submitted to DEQ in 1995 and 1998. Awaiting review and approval of plans.
- \$93,000 received in competitive grants in support of education program 1997-98 (\$69K grant EPA, \$24K GWEB).
- Governor Kitzhaber presented an award to program for Bear Creek, May 1998: *best government agency organized cleanup project 1997 from SOLV (Stop Oregon Litter and Violence)*.
- Governor Kitzhaber visited the our education program in the Rogue Valley in February 1998.
- 2 educational videos currently in production: Storm Drain Stenciling & Bear Creek Stewardship

overview.

- Training Workshops being held for watershed groups in conjunction with DEQ: 1 in 1997, 4 in 1998.
- All DMAs participating in the education effort.
- The education program included over 20 schools and 100 teachers and students.
- Many schools have adopted a creek or creek segment and do annual cleanups, water quality monitoring and other education activities.
- DEQ receives copies of all education materials as part of our reporting.

### **3) STREAM INVENTORIES**

a) Conduct a problem inventory of high priority sections of Bear Creek and its tributaries within the jurisdiction. This can be done using streamwalk methods, aerial evaluation, or other methods. Submit a report to DEQ which identifies and sets priorities for problems/locations identified that need attention/resolution. The report should include recommended course of action and schedule for action. Include such items as streambank erosion sites, pipes of unknown origin dumping into the stream, illegal dump sites, sites where re-vegetation is needed.

**Completed:**

- Jackson and Griffin Creeks identified as priorities by DEQ & TMDL Committee.
- Larson Creek identified as priority creek by RVCOG and North Medford High School.
- Roca Creek identified as priority creek by the city of Ashland.
- Creeks in agricultural zone prioritized by RVCOG using an air photo interpretation method.
- Flow study currently being completed to identify flows and pollutant loadings.
- Agriculture has identified 4 tributaries for water quality studies in 1998 & 1999.

b) Identify areas of responsibility for each DMA.

**Completed:**

- RVCOG performs initial investigation, hotspot checking to establish the presence and type of problem that exists.
- Each DMA is individually responsible for acting on information gained and taking corrective measures.

c) Prioritize stream segments for inventory.

**Completed:**

- Current priority streams identified by DEQ for urban DMAs.
- Priorities for the agricultural zone identified in SB1010 plan and determined by Local Agricultural Committee through results of an air photo study.
- Additional priorities will be set using the results of flow/loadings study.
- Through the TMDL committee we will be addressing a minimum of two streams per year.

d) Complete streamwalk/inventory of high priority segments. Submit report described above to DEQ.

**Completed:**

- Griffin Creek inventory nearing completion.
- Jackson Creek has been begun and is partially completed.
- The urban DMAs have inventoried areas within city limits.

e) Begin addressing problems identified and complete inventories for remaining segments. Submit report to DEQ identifying problems that have been addressed and schedule for addressing remaining problem sites.

**Completed:**

- 27 miles of Bear Creek trash/debris removed (217 cubic yards), larger debris location recorded, report issued to DMAs/DEQ.
- Yearly or twice yearly public cleanup events on Bear Creek.
- Coho and Steelhead plans established for Southwest Oregon.
- Bureau of Reclamation and US Forest Service projects to promote wetlands treatment.
- Restoration/hazard mitigation work on Roca Creek funded by the city of Ashland and 319 grant.
- Wetlands Park project in City of Talent and North Mountain Park in the City of Ashland.

f) Continue addressing problem sites identified. Periodically update DEQ on progress towards addressing problem sites.

**Completed:**

- A team of Oregon State University students is currently being interviewed to continue the stream inventory program.
- Ongoing meetings and reports issued to DEQ.

**4) LOCAL ORDINANCES**

a) Review existing ordinances and, if necessary, revise or adopt new ordinances to minimize the movement off site of soil, sediment, and contaminated runoff from development sites, or other sites where soils have been disturbed. Emphasis should be on prevention of erosion, rather than on control after the fact.

Encourage the installation of permanent runoff treatment systems for new development) Compile existing ordinances and provide to DEQ for comment. DEQ will comment on existing ordinances by June 30, 1995.

c) *1998-99 project* Conduct public hearings on new or modified local ordinances. Report to DEQ.

d) *1998-99 project* Adopt and enact new or modified local ordinances as necessary. Report to DEQ.

**Completed:**

- Ordinance review performed and sent to DEQ 1995.
- Ordinance review repeated February 1998. Results presented in February 1998 at a public meeting which included planning commissioners, city council members, commissioners, planning staff and public works staff for all jurisdictions.
- Working with DEQ staff and DMAs to develop model track-out ordinances which addresses both air and water quality concerns.

**5) ADDITIONAL PRACTICES**

a) Identify any other options, alternatives or BMP's and select those to be implemented. Develop implementation schedules for meeting TMDL requirements and maintenance of water quality. This may include but is not limited to: selection of practices, sites and schedules for construction of treatment facilities (including pilot projects), selection and implementation schedules for flow augmentation options or irrigation conversions, or other options or BMP's.

**Completed Report Items:**

- Through the TMDL and the Bear Creek Watershed Council a number of projects have been facilitated: Roca Creek project, PL566 program identified irrigation projects, Jackson Street Dam Removal, flow study 1994 & 1998, 319 projects that have targeted 303d listed parameters with DMAs, wetlands project at the Forest Service nursery, wetlands in the city of Phoenix, North Mountain park in Ashland and others (additional projects listed in public awareness plan).

## Tasks for Urban DMAs

### 6) STORM SEWER SYSTEMS

a) Investigate design and conditions of storm sewer system. Identify problems, develop a plan to address the identified problems, and implement the plan. Report to DEQ.

**Completed:**

- Storm sewer maintenance programs have been provided by each DMA.

b) Develop and refine storm sewer maps. Submit copies to DEQ.

**Completed:**

- Storm drain maps have been provided to RVCOG and DEQ.

c) Survey storm sewers for dry weather flows. If such flows are found, identify the sources and determine whether corrective actions are necessary. Set priorities and begin implementation of corrective actions.

Report status to DEQ.

**Completed:**

- RVCOG performs storm drain testing. Each DMA is individually responsible for acting on information and taking corrective measures.
- Storm drain report provided to DEQ.

d) Develop and/or refine an inspection and maintenance program for the storm sewer system. Include regular cleaning of drains and catch basins.

**Completed:**

- Storm sewer maintenance programs have been provided by each DMA (see table below).

e) Complete implementation of necessary corrective actions. Report on actions taken.

**Completed:**

- Extensive storm drain stenciling program undertaken annually.
- Storm drain testing program began in October 1996. 1997/98 Report will aid in identifying potential problem sites.

#### Summary of storm sewer information by jurisdiction.

DMA	Map s	Plan*	Expected Completion Date	COMMENTS
Ashland	Y	No	1999	The 1985 storm drain master plan does not address many areas of current concern. An extensive update is required and will be budgeted in the future. A contractor has been selected and an updated plan will begin in November 1998.
Central Point	Y	No	Unlikely before 2000	The City of Central Point is presently in the process of revisiting how storm runoff is handled throughout the city. Intent is to perform storm drain master plan in-house within the next two years.
Jacksonville	Y	Yes	Completed 1994	1994 Storm Drainage Study (KAS Engineering). Projects identified and priorities for improvements set. System development charges used to fund improvements.
Medford	Y	Yes	Completed 1997	Master plan 1997 is completed. Annually 1/5 of piped system cleaned. Roadside ditches are cleaned 1/3 per year.
Phoenix	Y	No	FY 98/99	Presently working on drainage master plan. First step of process identified drainage basins (3/21/97) RFP for master plan will be put out soon.
Talent	Y	No	unknown	Currently trying to get storm drain planning into budget. Engineers have been working on updating storm drain maps in FY98.

\* Plans should include flood protection and address water quality and natural resources as well.

## **TASKS FOR AGRICULTURE**

### **7) Confined Animal Feeding Operations (CAFO)**

- a) Complete inspections of all permitted CAFO's and, if needed, develop enforceable schedules that will result in all CAFO's being in compliance with permit conditions. Report to DEQ identifying all permitted CAFO's and their compliance status, and all actions taken or to be taken. b) Conduct aerial surveys. Report to DEQ.
- c) Conduct on-ground follow-up inspections. (To aerial surveys) d) Submit report to DEQ identifying all permitted CAFO's and their compliance status, and all actions taken or to be taken. e) Develop enforcement schedules for all permitted CAFO's not in compliance with permit conditions or water quality rules that will result in compliance.

#### **Completed**

- ODA has performed surveys and reported to DEQ on items a-e above. Mike Wolf will speak further regarding this topic at the EQC meeting in June 1998.

### **8) AGRICULTURAL WATER QUALITY MANAGEMENT PLAN**

- a) Develop an Agricultural Water Quality Management Plan for the Bear Creek basin to prevent and control water pollution from agricultural activities and soil erosion, and to achieve the water quality goals (e.g. TMDL's) and standards needed to protect the beneficial uses of Bear Creek and its tributaries ORS 568.900-933, OAR Chapter 603, Div. 90). The plan shall include a schedule for implementation. The plan shall address non-permitted CAFO's and other agricultural activities causing or contributing to water problems in Bear Creek or its tributaries.

#### **Completed:**

- Agricultural plan for the Bear Creek basin has been completed and is currently under review with ODA. Mike Wolf will speak further regarding this topic at the EQC meeting in June 1998.
- A new plan is currently underway to deal with subsequent 303d listed parameters.

### **9) NURSERIES**

- a) All containerized nurseries inspected, during the irrigation season, to determine compliance with container nursery requirements. Report to DEQ identifying status of all container nurseries.

#### **Completed:**

- ODA has performed survey and reported to DEQ. Mike Wolf will speak further regarding this topic at the EQC meeting in June 1998.

## **TASKS FOR JACKSON COUNTY**

### **10) SEPTIC SYSTEMS**

- a.) Develop and begin implementation of a program to identify and correct failing septic systems. Submit a report to DEQ identifying the program elements, schedule, budget requirements, and documentation of availability of resources.

#### **Completed:**

- Griffin, Bear & Larson Creeks stream walks 1997/1998 included a visual inspection for septic system inputs.
- RVCOG is available for hotspot testing to establish the presence of fecal coliform problem.
- Fecal coliform reporting through local media provides resource to public for septic system related questions.
- GIS maps provided by Jackson County identify septic systems county wide to allow for

- prioritization of inspections.
- Septic system inspection plan has been compiled by Jackson County and reported to DEQ.

### **11) COUNTY ROAD DITCHES**

**a)** Develop and begin implementation of a program to maintain county roadside ditches in such a way to minimize transport of sediment, nutrients and other pollutants to waters of the state. Include provisions for testing of effective vegetative cover(s) to be planted on county road right-of-ways. Where possible, convert ditches to vegetated swales and direct road discharge into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) Prior to entering waters of the state. Examine whether current herbicide application can be minimized. Submit an acceptable report to DEQ identifying the program elements, schedule, budget requirements and documentation of available resources. **b)** Report to DEQ on the effectiveness of program implementation to date, and additional ditch maintenance practices developed.

#### **Completed:**

- Integrated vegetation management program has been funded at \$100K and is currently in progress. Funding was obtained through a combination of state and federal sources to implement the program on a county-wide basis.
- Reports have been submitted to DEQ.

Approved \_\_\_\_\_  
Approved with Corrections \_\_\_\_\_

Minutes are not final until approved by the EQC

## **Environmental Quality Commission Minutes of the Two Hundred and Sixth-Eighth Meeting**

**April 3, 1998  
Work Session and Regular Meeting**

The Environmental Quality Commission toured the City of McMinnville Wastewater Treatment Plant before the work session and regular meeting was convened at 10:30 a.m. on Friday, April 3, 1998, at the McMinnville Community Center, 600 N Evans St, McMinnville, Oregon. The following members were present:

Carol Whipple, Chair  
Melinda Eden, Member  
Linda McMahan, Member  
Mark Reeve, Member  
Tony Van Vliet, Member

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice; Langdon Marsh, Director, Department of Environmental Quality; 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.

### **Work Session: Legislative Concepts**

Carolyn Young, Assistant to the Director, gave an informational report on the draft Legislative concepts. A copy of these concepts are part of the permanent file. The first draft of concepts is due to the Department of Administrative Services by April 15, 1998. Final concepts are due for drafting by August 3, 1998.

Commission members discussed the proposed concepts and did not make any objection to going forward with the concepts at this time.

### **Public Comment:**

Corinne Weber of the Maplewood Neighborhood Association and Joe Higgins of the Hayhurst Neighborhood Association presented public comment on the contamination of Vermont Creek due to the building of the Community Center adjacent to Gabriel Park. Neil Mullane, Regional Administrator of the Northwest Region, and Bob Baumgartner of Northwest Region reported for the Department. The Commission requested the Department send a report to them by April 15 documenting what has been done to date at this site and what is projected in the future. The Commission also requested a progress report at the June EQC meeting.



## A. Approval of Minutes

Commissioner Reeve made the following corrections the February 19-20, 1998 minutes: on page 6, paragraph 5, lines 1 through 3 should read, It was asked if the four findings as stated in the standard for granting the waiver, ~~specifically if a~~ *including whether a finding could be made that biological monitoring is occurring to document that the resident biological communities were protected.* Mr. Foster stated that *all requested findings could be met and that past resident fish monitoring of gas bubble disease indicated ....* He also indicated on page 6, paragraph 2, line 2, periods should be after the i and e. Commissioner Reeve moved the minutes be approved as corrected. The motion was seconded by Commissioner Van Vliet and was passed with five "yes" votes.

## B. Approval of Tax Credits

Maggie Vandehey asked that tax credit application 4806 (Willamette Industries, Inc. ) be removed from the Agenda Item at this time. Additionally, she asked the Commission to consider the Addendum to Agenda Item B, which presented a name change on Tax Credit Application 4802 . The application was submitted and processed under the name Pacific States Galvanizing. In the course of the review, the company was sold to Valmont Industries, Inc. The Department also recommended the transfer of Pollution Control Facility Certificate number 3560 from Willamette Industries, Inc., to Wood, Recycling, Inc.

The Department recommended the following approvals for certification:

App. #	Applicant	Description of Facility	Facility Cost	Percentage Allocable	Media
Pollution Prevention Approval					
4885	Richard T. Weichman Jr.	Installation of new equipment, Fimbimatic Drycleaning Machine, Model 380 Serial #130G70011.	\$ 37,500		Perc
Preliminary Pollution Control Approvals					
4944	McFarlane's Bark, Inc.	Scat self-propelled compost turner. Model # 4932			SW
4929	The Ridge Company	A Wester Pnumatic low pressure filter system for collecting wood scraps and debris for recycling.			SW
Final Pollution Control Approvals					
4775	Indian Brook, Inc.	Facility designed to separate dust particles from the exhaust air and deposit them in a hopper for collection by a feed processing.	\$ 50,000	100%	Air
4920	Robert Stafford, Inc.	Equipment used for the Recovery & Recycling of R-134A & R-12, Enviro Charge Plus, model 1213B.	\$ 4,100	100%	CFC
2389	Precision Castparts Corp.	Hazardous waste neutralization facility	\$ 937,667	55%	HW
4802	Valmont Industries, Inc.	A silfuric acid regeneration system.	210,297	100%	HW

4722	Rexius Forrest By-Products, Inc.	Modification will divert vehicle wash water discharge into City of Eugene Sanitary Sewer system for treatment. Valve will also direct rain water into storm water system.	\$ 19,775	100%	Water
4753	Morse Bros., Inc.	Washwater recycling facility includes one Karcher ASA 600-685 complete recycling system, serial #10140 and one Karsher HDS 1150 steam cleaner, serial #33687.	\$ 61,257	100%	Water
4783	Power Rents, Inc	Recycling Wash Facility for cleaning Construction Equipment.	\$ 45,146	100%	Water
4784	Power Rents, Inc	Recycling Wash Facility for cleaning Construction Equipment.	\$ 36,372	100%	Water
4785	Power Rents, Inc	Recycling Wash Facility for cleaning Construction Equipment.	\$ 112,001	100%	Water
4794	Willamette Industries, Inc.	A 25' x 94' facility for heavy duty cleaning of vehicles.	\$ 69,127	100%	Water
4795	Wimer Logging Company	A 24' x 56' self-contained vehicle washing facility.	\$ 32,173	100%	Water
4796	Wimer Logging Company	A 24' x 56' self-contained vehicle washing facility.	\$ 31,441	100%	Water
4892	Eagle Foundry Co.	Detention Pond designed to handle runoff from the current manufacturing facility.	\$ 94,252	100%	Water
			\$ 1,741,108		

Commissioner Eden made a motion to approve tax credits in attachment A with the exception of #4806 which was removed and to include the name change covered in the addendum. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

The Department recommended the following denials for certification:

Preliminary Pollution Control Denial

4917	Corvallis Disposal Co.	1996 Volvo truck used for hauling paper pulp fiber.			SW
------	------------------------	-----------------------------------------------------	--	--	----

Final Pollution Control Denial

4764	Willamette Industries, Inc.	New Broom Sweeper & Dewalt Dump Bin	\$ 22,292	100%	Air
4935	Willamette Industries, Inc.	One new Bobcat Skid-steer Loader, Model 763, Serial # 5122-16352.	\$ 22,035	100%	Air

Corvallis Disposal #4917 was unable to attend the EQC meeting. However, they prepared a letter which Maggie Vandehey read to the Commission. In the letter they stressed recycled paper residual has an economic benefit to the end users; is diverted from the landfill; and essentially acts as compost. The Department explained the truck claimed on the application was not directly involved in the pollution control endeavor.

Jim Aden of Willamette Industries asked that he have an opportunity to address the Commission regarding the denial for certification of #4764 and #4935, and the reduction in the facility cost on #4794. However, at the time the motion was made to approve or deny certification of pollution control and pollution prevention tax credits, Mr. Aden was not present.

Commissioner Eden moved that applications for #4917, #4764, and #4935 be denied and the motion was seconded by Commissioner McMahan. After a brief discussion, the motion was passed with five "yes" votes with the acknowledgment that Mr. Aden would have an opportunity to address the Commission should he arrive before the meeting was adjourned.

Willamette Industries, Inc. requested the transfer of Pollution Control Facility Certificate #3560 to Wood, Recycling, Inc. A motion was made by Commissioner Van Vliet to approve this transfer, was seconded by Commissioner Reeve and carried with five "yes" votes.

Mr. Aden arrived to testify on behalf of Willamette Industries, Inc. A motion was made by Commissioner Van Vliet to reopen discussion on certificates #4794, #4764, and #4935. It was seconded by Commissioner Reeve and carried with five "yes" votes.

The facility cost represented in tax credit application #4794 was reduced by the cost of fire protection (\$11,419.) Mr. Aden explained fire protection is not one of the specific items listed in ORS 468.155 (2)(d) and the items listed are quite different from the fire protection which was required to be installed by Linn County. He indicated the Department had not given the applicant adequate notice of this restrictive interpretation. Maggie Vandehey responded that in 1997 the Department presented a more stringent approach to the Commission that would exclude any distinct portion of the pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility as set out in ORS 468.155(2)(d). Their focus has shifted from "Was this expenditure necessary for the installation of the facility?" to "Would the pollution control benefit be compromised without the expenditure?" Commissioner Eden made the motion to approve the recommendation of staff on tax credit #4794. It was seconded by Commissioner Reeve and approved with five "yes" votes.

Regarding the denial of certification of the sweepers presented on tax credit application #4764 and #4935, Mr. Aden represented that the Department had approved tax credits for sweepers in the past and no new legislation had prompted the Department to change their position. He also indicated both these facilities were required under their air and storm water permits and claimed both facilities were principal purpose facilities. Being eligible under the "principal purpose" threshold, he claimed that they weren't required to look at "sole purpose." Ms. Vandehey responded the applications were submitted as sole purpose air pollution control facilities, that they reduced an insignificant amount of emissions to the outdoor atmosphere, and that they were not used exclusively for pollution control. Mr. Aden stated Willamette Industries did not have an opportunity to address the Departments' recommendation prior to receiving a copy of the Review Report by certified mail. Commissioner Reeve asked if the Department could review the applications as principal purpose air or water pollution control facilities. Larry Knudsen asked if the Department had set a precedence for allowing applicant's to amend their applications. Ms. Vandehey answered, "Yes."

A motion was made by Commissioner Van Vliet to deny applications #4764 and #4935. It was seconded by Commissioner Eden. A role call vote was taken as follows: Commissioner Eden, yes; Commissioner McMahan, no; Commissioner Reeve, no; Commissioner Van Vliet, yes; and Chair Whipple, yes. The motion carried with three "yes" votes.

Mitch West, Budget Manager, summarized the request for guidance regarding application #4825, Far West Fibers/ E Z Recycling. As a recycling business, the applicant would have to claim the facility as "integral to the applicant's business" using the definition applied to date; and this facility fails to meet the tests in the second paragraph of the definition, despite belonging to a recycling business. The effect of determining whether the facility was integral to the business, is that they would have to fund a more extensive accounting review, and would probably not qualify for a credit in the end. The Department sought guidance regarding application of the integral facility definition in a case where the two paragraphs of the definition in rule appear to conflict. Rick Paul and John Drew testified on behalf of Far West Fibers indicating the claimed facility was only a small portion of the current business, and was expected to operate at a loss for some time before contributing to the income of the business.

The members of the Commission concluded without a question or vote that the list in the first portion of the definition was not governing; the Department could consider the factors in the second paragraph in concluding whether the facility was integral to the business; and directed the Department to report back regarding the estimated impact of this decision.

### **C. Rule Adoption: Pollution Control Facility and Plastics Recycling Tax Credit Rules**

Helen Lottridge, Management Services Division Administrator, presented a brief background of the tax credit advisory committee process and discussed the two previous work sessions with the Commission regarding these rule adoptions.

Maggie Vandehey pointed out the Addendum to Agenda Item C which corrected three errors in the rule and the one error in the Director's Letter. She summarized the public involvement in the development of the Pollution Control and the Plastics Recycling Tax Credit rules and the Department's recommendation.

For Chapter 340 Division 16 (Pollution Control Tax Credit) which implements ORS 468.150 through 468.190, the Director recommended: amending ORS 340-016-0005 and 340-016-0010; repealing the ORS 340-016-0015 and 340-016-0050; and adopting ORS 340-016-0055 through 340-016-0080. For Chapter 340 Division 17 which implements ORS 468.451 through 468.491, the Director recommended amending the Plastics Recycling Tax Credit rules OAR 340-017-0010 through OAR 340-017-005.

Ms. Vandehey summarized the fee structure and the criteria for independent accounting review for the Pollution Control Tax Credit rules. Commissioner Van Vliet made a motion to amend ORS 340-016-0005 and 340-016-0010; repeal the ORS 340-016-0015 and 340-016-0050; and adopt ORS 340-016-0055 through 340-016-0080. Commissioner Eden seconded the motion and it was carried with five "yes" votes.

Maggie Vandehey then summarized the fee structure and the criteria for independent accounting review for the Plastics Recycling Tax Credit rules. Commissioner Van Vliet made a motion to amend OAR 340-017-0010 through OAR 340-017-005. The motion was seconded by Commissioner McMahan and carried with five "yes" votes.

### **D. Rule Adoption: Holding Tank Permanent Rule Amendments**

Martin Loring and Dennis Illingworth, Water Quality Division, presented the permanent holding tank rule. Holding tanks are septic tanks without a drainfield. As such, they need to be regularly pumped to avoid the threat to public health that would be posed by overflows of raw sewage. Because of the high cost of pumping, they have been regulated through an operating permit (WPCF General Permit 5400) rather than a construction- installation permit since 1995.

In response to the change in regulatory method, some holding tank owners complained that it was unfair to subject them to the requirement to pay for a second permit. Staff explained the proposed amendments to the holding tank rules are intended to cure this perceived inequity by forgiving one year's annual compliance determination fee of \$200 for those sources which obtained an operating permit and forgiving \$180 in application fees for those existing sources which come into compliance with the operating permit requirement by September 30, 1998.

Mr. Illingworth held a public hearing on the proposed rule amendments at which no testimony was offered. Neither were any written comments received by the close of the public comment period. Staff answered questions from Commissioners about the holding tank rule and other on-site rule amendments under consideration by the On-site Rule Technical Advisory Committee.

Commissioner Reeve made a motion to approve the permanent holding tank rule amendments. It was seconded by Commissioner Van Vliet, and the motion carried with five "yes" votes.

#### **E. Rule Adoption: Area Source NESHAP Standards for the Following Source**

Greg Green, Air Quality Administrator, introduced the topic, and then introduced John Kinney, Air Quality Environmental Engineer. Mr. Kinney reviewed the substantive points in the newly proposed rules and responded to questions about federal delegation and fees. Commissioner Van Vliet made a motion to approve the rule proposal as recommended by the Department. The motion was seconded by Commissioner McMahan, and was carried by five "yes" votes.

#### **F. Amendment to the Tualatin Basin Total Maximum Daily Load Compliance Order**

Bob Baumgartner, Water Quality, Northwest Region, presented a proposal action item recommending extending the final compliance data for a Commission Order until July of 1999. The order identifies implementation requirements for designated management agencies (DMAs) in the Tualatin Basin. The order is an integral part of the Total Maximum Daily Load (TMDL) basin plan for the Tualatin. The extension is needed to allow the Department to complete and update TMDL developed in 1987 and provide guidance to the DMAs to update their management plans. As a result of other high priorities, the Department elected not to provide staff to complete the Tualatin TMDL update as planned.

Jack Smith presented testimony on the proposed extension. In his testimony Mr. Smith presented recommendations of a sub-group convened from members of the Tualatin Basin Policy Advisory Committee (TBPAC). These recommendations focused on strategies for implementing the Tualatin TMDLs. Mr. Smith recommended the EQC not grant the extension in order to provide incentive to the DMAs to support staff for the DEQ to complete the TMDL update for the Tualatin Basin.

Testimony was also provided by Bill Gaffi and John Jackson of the Unified Sewerage Agency of Washington County (USA). The testimony provided support from the DMAs for the extension and provided an overview of the recommendations from the TBPAC. Mr. Gaffi, the general manager for USA, described their commitment to continue supporting DEQ staff resources.

The Environmental Quality Commission (EQC) asked the Department to provide a report that describes a plan and schedule of events for completing the Tualatin TMDL. The EQC indicated this plan should refer to and incorporate the recommendations presented by Jack Smith and the TBPAC. This report is to be presented at the June meeting. Commissioner Reeve made a motion to extend the compliance order until July 1, 1998. Commissioner Van Vliet seconded the motion and it was passed with five "yes" votes.

#### **G. Commissioners' Reports**

There were no reports from commissioners.

## H. Director's Report

The Director, Lang Marsh, distributed a Director's Report with the following items. To facilitate adjournment of the meeting, Mr. Marsh asked the Commission to read the report and if they had any questions to give him a call at his office.

"The Willamette River: Currents of Change" is the title of a 90-minute KGW Channel 8 special that will air from 7:30 to 9 pm on April 7. The program will start with a 30-minute documentary on the river's past, present and future challenges with emphasis on water quality and impacts of human development on the river. This will be followed by a one-hour, live town meeting conducted in the Senate Chambers in Salem. This special is an outgrowth of a report submitted by the governor's Willamette River Task Force.

The March 13, 1998, federal decision listing Steelhead in the lower Columbia and Willamette rivers has changed the nature of the Oregon Plan approach to date. For the first time, a major urban area faces operational changes to protect threatened fish. This will have a likely impact on DEQ work loads, as will addition of Steelhead commitments for Oregon Plan implementation along the coast.

In February, Paul Burnet began spending two days per week in Salem as part of a multi-agency Community Development Office created by the Governor. Also Lydia Taylor is spending two days per week working in the Governor's Natural Resource Office supporting implementation of the Healthy Streams Partnership. Their time will be well spent on work that directly relates to the DEQ mission. This demand for DEQ personnel services reflects well on the individuals and their skills, as well as the general respect the Governor's staff have for DEQ people.

The Department held seven public hearings in Tillamook, Roseburg, Coos Bay, Grants Pass, Portland, La Grande and Prineville to receive oral comments on the 303(d) list and the Priorities and Targets document. The public comment period will remain open until April 20, 1998 to receive further written comments. After consideration of all comments DEQ will submit a final list to EPA in June for their approval.

On March 31, 1998, sulfuric acid was intentionally released at the Kemwater North America chemical plant, 2800 NE Old Salem Road in Millersburg. The Albany hazardous materials team responded and contained the spill. DEQ also responded. Approximately 6,500 gallons of the acid were released spreading from the ground to a ditch and into nearby Murder Creek. ODFW reports some fish kill in the creek; there was never a need for evacuation; no one was injured; and the acid did not reach the Willamette. The incident is being investigated by OSP and the FBI.

DEQ has decided to take over management of the Rhone-Poulenc Ag. cleanup as an orphan site after the company demonstrated unwillingness to move forward on cleanup measures. The consent order was intended to develop remedial measures to clean up significant contamination of soil, groundwater and surface water by herbicides and pesticides at the facility located near the lower Willamette River in Portland.

Mr. Marsh has met with the tribal leaders of the Umatilla, Warm Springs, Klamath and Siletz Tribes. He will meet with the Coquille Tribe in mid April and complete his visits with remaining tribes by the end of May.

DEQ's strategic planning process continues to work as the basis for developing legislative concepts, budget requests, grant applications, and the performance partnership agreement with EPA Region 10. Nearly all of DEQ's programs have completed their first iteration of strategic planning is marked by the identification of changes in the work the Department does - shifting resources from low priority work and applying it to higher priority work. The Department is dedicated to creating meaningful systems for evaluating the effectiveness of the high priority work done and continue to develop measures.

The strategic planning process has also identified opportunities for process improvement. There are several process improvement efforts underway, with the intent of creating more effective outcomes and a more efficient investment of agency resources. For example, agency teams are reviewing how to streamline some permitting processes while expanding others for greater public involvement.

The meeting was adjourned at 4:55 p.m. An open house followed with local officials.

HARDY MYERS  
ATTORNEY GENERAL

JOHN D. SCHUMAN  
DEPUTY ATTORNEY GENERAL



RECEIVED  
JUN 1 1998  
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DEPARTMENT OF JUSTICE  
PORTLAND OFFICE

May 29, 1998

Maggie Vandehey  
DEQ — Water Quality  
811 SW Sixth Avenue  
Portland, Oregon 97204

Re: Pollution Control Tax Credit Delegation  
DOJ File No. 340-990-GN0266-98

Dear Ms. Vandehey:

You recently requested information regarding the EQC's authority to delegate certain aspects of the pollution control and prevention tax credit certification process to the Department of Environmental Quality. The attached memo, written in January 1996, addresses this subdelegation question directly.<sup>1</sup> The conclusions contained in the attached memo are still accurate, and they are also directly relevant to your inquiry.

In summary, the statutes do not explicitly prohibit the EQC from subdelegating tax credit certification authority to the Director. However, the statutes do divide some duties regarding tax credits between DEQ, the Director and the EQC. For example, the 1995 legislature re-enacted the pre-certification procedure and gave primary responsibility for this duty to the EQC. Under earlier statutes, the Department had complete responsibility for issuing preliminary certificates of approval. With the exception of the pre-certification process, however, there is little legislative history to suggest that the statutes are intended to bar subdelegation of the EQC's duties.

Subdelegation of purely "ministerial" matters is generally allowable. However, subdelegation of discretionary matters requires that the body given statutory responsibility retain the final decisionmaking authority. Therefore, valid subdelegation of discretionary tax credit certification authority requires the EQC to continue to act as the final decisionmaker. Oregon law indicates that the presence of an appeals process may adequately preserve final decisionmaking authority in the body given statutory responsibility. Thus, EQC's subdelegation of discretionary tax credit authority to the Director should be formalized by rule, should include criteria for the Director to follow when exercising that authority and should mandate that, on appeal, the EQC will make an independent determination of whether

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<sup>1</sup> "Delegation" technically refers to a transfer of authority from one branch of government to another, particularly from the legislative branch to the executive. Delegation within an agency or from an agency to other persons is technically a "subdelegation."



Maggie Vandehey  
May 29, 1998  
Page 2

tax credit certification should be granted or rejected. Within this framework, subdelegation of most tax credit responsibilities is allowable.

You indicated that the EQC is interested in delegating specific tax credit responsibilities. For example, the EQC may wish to delegate responsibilities associated with transfer of a tax credit certificate from one holder to another. The administrative procedures involved with this responsibility are purely ministerial. Therefore, subdelegation of this type of responsibility is allowable.


The signing of tax credit certificates is likewise ministerial and therefore can be subdelegated to the Director without the need to establish special criteria or appeals procedures. By rule, the Director already has the ability to sign and execute decisions made by the EQC in certain circumstances. See OAR 340-011-0136(2) (1998) (authorizing the Director to sign specified orders in contested cases). There is also a reasonable argument that the Director already has express or implied authority to sign for the EQC in other circumstances, including tax credits. Nonetheless, to avoid any serious legal dispute over this question, it may be advisable to include an express and specific delegation by rule.

However, delegating responsibility for granting time extensions may be more difficult. If the Commission provides fairly certain criteria for the Department to follow when making the decision whether or not to grant a time extension, this task would probably be considered ministerial. Since there may be some room for discretion, however, it would be best to establish an appeals process, so that the EQC would continue to have final decisionmaking authority over the issue.

In addition, you asked whether the EQC could establish certain criteria for determining when the Director may exercise authority over the certification process and when the EQC would continue to be the primary decisionmaker. For example, could the EQC continue to exercise authority over unusual tax credit applications (such as applications over a certain dollar amount or which deviate from the standard application in some way) and give the Director authority over standard, routine application decisions? The answer is probably yes. However, this subdelegation would appear to involve discretionary authority. Therefore, to minimize the risk of a successful legal challenge, the EQC should probably preserve an appeals process if it adopts this approach.

If you have any other questions regarding this matter, please feel free to contact me.

Sincerely,

  
Michael B. Huston  
Assistant Attorney General

Attachment

c: Larry Knudsen, AAG  
MH:HP:hp:kt/HEP0003.LET

## DEPARTMENT OF JUSTICE

Interoffice Memorandum

RECEIVED

JUN 1 1998

BUDGET DEPT.

DATE: January 24, 1996

TO: Larry Knudsen  
Assistant Attorney General

FROM: Robin Craig  
Law Clerk *RKC*

RE: Pollution Control Facility Tax Credit Delegation  
DOJ File No. 340-990-GNH0420-95

**QUESTION 1**

Do the pollution control facility tax credit statutes explicitly prohibit the EQC from subdelegating authority to approve pollution control facility tax credits to the Director?

**SHORT ANSWER**

No. The statutes are silent regarding subdelegation.

**QUESTION 2**

Does the legislative history of the pollution control facility tax credit statutes prohibit the EQC's proposed subdelegation of authority to the Director if the EQC includes an appeals process as part of the delegation?

**SHORT ANSWER**

Probably not. The statutes' legislative history suggests that the legislature purposefully divided some duties regarding pollution control facility tax credits between DEQ, the Director, and the EQC. In particular, the pre-certification procedure added in 1995 was originally the department's responsibility, suggesting that the legislature now intends the EQC to have and retain the authority to pre-certify pollution control facilities. Moreover, Oregon caselaw is not entirely clear that an appeals process adequately preserves the commission's final discretionary decisionmaking authority in the face of an unlawful subdelegation challenge.

Nevertheless, if the EQC's appeals process mandates substantive review by the EQC and requires the EQC to reach a decision that is independent of the Director's regarding any appealed matter, the appeals process should be adequate to comply with subdelegation law.

**2. The Legislative History Argument Against Subdelegation Is Strongest for the EQC's Authority to Approve Pre-Certifications**

Legislative action regarding the pollution control facility tax credit authority is most complex for pre-certification of pollution control facilities. In 1973, the legislature added a requirement that persons intending to seek certification of a pollution control facility for a tax credit "file a notice of construction with the *Department of Environmental Quality*." Or Laws 1973, ch 831, § 2 (codified as ORS 468.175). The department was in charge of prescribing the form of the application and of issuing approval of the construction. *Id.*

In 1975, the legislature changed the notice of construction to a "request for preliminary certification." Or Laws 1975, ch 496, § 5 (amending ORS 468.175). Even as amended, however, the *department* retained complete responsibility for issuing preliminary certificates of approval. *Id.*

In 1989, the legislature repealed the preliminary certification procedure. Or Laws 1989, ch 802, § 8. However, in 1995 the legislature re-enacted the pre-certification provision. Or Laws 1995, ch 746, § 6. Moreover, in this re-enactment, the legislature gave the certification authority to the commission, although the department may prescribe the form and the director may require additional information. *Id.* The pre-certification provisions thus now parallel the tax credit certification provisions, but authority for pre-certification has been transferred from the department to the EQC. Therefore, the EQC probably cannot delegate pre-certification final authority to the department without contradicting legislative intent.

However, as is discussed below, the inclusion of a process by which the taxpayer could appeal a preliminary decision by the Director to the EQC may be sufficient to preserve the EQC's final decisionmaking authority. As such, the EQC may still be able to subdelegate most of the pre-certification process to the Director.

least as plausible as any challenger's." *Booth v. Tektronix, Inc.*, 312 Or 463, 473, 823 P2d 402 (1991).

The courts' concern with procedural safeguards is a concern over government accountability. As a result, courts most often consider agency subdelegation unconstitutional when the agency delegates its final decisionmaking authority, especially to private individuals. The Oregon Supreme Court, for example, has stated that "the fundamental principle that a delegated power cannot be delegated" applies, "generally, to administrative officials when exercising discretionary or quasi judicial functions." *Voth v. Fisher*, 241 Or 590, 595, 407 P2d 848 (1965).

In practice, the courts have found an improper subdelegation of authority when an agency has abdicated all real involvement in its delegated decisionmaking responsibilities. Thus, when the OLCC allowed Class A liquor licensees to have the final say in whether a Class B licensee could host a meeting, the delegation of authority was unconstitutional:

Accountability of government is the central principle running through the delegation cases. When, as in this case, governmental power to make decisions granting or denying privileges is, in whole or part, delegated to private individuals who have a self-interest in the decisions, accountability is necessarily attenuated.

*Corvallis Lodge*, 67 Or App at 20. Similarly, when the Adult and Family Services Division had delegated, by rule, the authority to determine eligibility to a Medical Review Team (MRT) and the Division's hearings officers "did not look at the evidence and make individual assessments of eligibility" but instead "viewed MRT's recommendations as 'decisions' about eligibility that should be 'affirmed' unless wrong," the delegation was improper because staff experts and consultants had "no legal authority to make such decisions." *Amundson v. Adult and Family Services*, 63 Or App 313, 318-19, 663 P2d 810 (1983).

However, even though an agency "cannot delegate the authority to make the final decision," *Oregon Fire/Police Retirement Committee v. Oregon Public Employees' Retirement Board*, 62 Or App 777, 780, 662 P2d 729, *order supp* 65 Or App 465 (1983), *rev denied* 296 Or 464, *rev denied* 296 Or 486 (1984), delegations of investigatory authority are permissible if the agency itself makes the final decision on the record. Thus, when PERB by rule delegated the authority to make detailed comparisons of plans to an actuary, but the actuary had to follow PERB's specific guidelines and PERB had "the ultimate decisional authority," the rule was valid. *Id.* at 780-81.

ORS 468.170(4)(a) (emphasis added).

Given these criteria, the EQC may want to argue that its decisionmaking for certifying pollution control facility tax credits is ministerial. Even if subsections (A) and (B) require ministerial determinations, however, subsection (C) requires a discretionary interpretation of legislative and administrative policy determinations. Although explicit legislative statements of policy, intent, and purpose in many of the statutes may limit the EQC's discretion — *see, e.g.*, ORS 468A.015 (establishing the purpose of the air pollution control laws) and ORS 468B.015 (establishing the policy of the water pollution control statutes) — decisions to approve or deny a government benefit are almost *per se* discretionary decisions. *See, e.g.*, *Corvallis Lodge*, 63 Or App at 20 (invalidating subdelegation of the issuance or denial of liquor licenses); *Amundson*, 63 Or App at 318-19 (invalidating subdelegation of decisions regarding incapacity for Aid to Dependent Children eligibility). Therefore, valid subdelegation of pollution control facility tax credit authority requires the EQC to retain final decisionmaking authority.

**3. Although Tax Credit Decisions Are Discretionary, the Oregon Court of Appeals Has Recently Suggested that an Appeals Process Can Adequately Preserve Final Discretionary Decisionmaking Authority in a Subdelegation**

A recent Oregon Court of Appeals case involved the subdelegated decisionmaking procedures pursuant to the Malheur County ambulance service ordinance. *Pre-Hospital Medical Services, Inc. v. Malheur County By and Through Malheur County Court*, 134 Or App 481, 896 P2d 585 (1995). Malheur County enacted the ordinance pursuant to a state statute directing counties "to establish plans concerning the need for, coordination of and provision of efficient and effective ambulance services." *Id.* at 492. (citing ORS 823.180). Thus, the legislature has delegated discretionary decisionmaking authority to counties.

In its ordinance, Malheur County established the Malheur County Ambulance Service Advisory Board and listed methods for selecting ambulance providers. However, it subdelegated the actual decision to the Board, subject to an appeals process provided for in the ordinance. Pursuant to this subdelegated authority, the Board assigned the Ontario ambulance service area (ASA) to United Ambulance Service instead of Pre-Hospital Medical Services. Pre-Hospital appealed to the Malheur County Court, as the ordinance provided.

Pre-Hospital challenged the ordinance as being, *inter alia*, an unlawful subdelegation of the county's authority. The Court of Appeals upheld the subdelegation, stating:

The legislative directives are embodied in the policy and purposes section of the Ordinance. *See* Ordinance, ch 7, § 3-7-2:A. The Ordinance requires the Manager to review ASA assignment applications

- Recitation of the factors that the EQC has developed as a matter of consistent policy.
- A requirement that the Director consider these factors and, if applicable, weigh these factors consistently with the EQC's policies and practice.
- Guidelines as to what it means for a pollution control facility "to satisfy the intents and purposes" of the various DEQ statutes pursuant to ORS 468.170(4)(a)(C), if these guidelines are not inherent in the above policies and factors.
- A requirement that the Director follow any such guidelines.
- Procedures for determining tax credit eligibility, the amount of the tax credit, and pre-certification eligibility (if the EQC chooses to subdelegate that function) and for revoking and reinstating tax credits (if the EQC chooses to subdelegate that function).
- A requirement that the Director follow any such procedures.

In addition, in order to preserve final decisionmaking authority in the EQC and thus to support the legitimacy of the subdelegation, the formal subdelegation should include an appeals procedure to the EQC that requires the EQC to reach its own conclusion regarding any appealed tax credit application. To comply with the rule in *Amundson*, the EQC cannot view the Director's decisions as presumptively correct. *Amundson*, 63 Or App at 318-19. Indeed, the subdelegation in that case was improper because "the hearings officers did not look at the evidence and make independent assessments of eligibility." *Id.* at 318. In the court's terms, the EQC's review on appeal must be akin to a judicial *de novo* review of the application. *Id.* at 319. ~~As the Oregon Supreme Court has declared in a slightly different context:~~

~~State agencies, unlike federal agencies, are often composed of private citizens who are given crucial governmental responsibilities on a part-time basis \* \* \*. It is simply important that such non-professional agency heads not think of themselves as the agency and themselves as a reviewing body, but rather understand clearly that it is their personal responsibility to determine the facts and apply the standards imposed on them by [the legislature].~~

~~*Marbet v. Portland General Electric*, 271 Or 442, 468-70, 561 P2d 154 (1977).~~

30

## Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

**Agenda Item B**  
**June 11, 1998 Meeting**

**Title:**

Approval of Tax Credit Applications

**Summary:** Staff recommends approval of the following tax credits and their facility costs:

	Certified Cost	Value
<i><b>Approve</b></i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (3 applications)	\$267,566	\$133,783
Field Burning (4 applications)	\$275,482	\$137,741
Solid Waste (31 applications)	\$2,412,514	\$1,206,257
USTs (7 applications)	\$1,019,005	\$455,101
Water (4 applications)	\$1,037,056	\$518,528
<i>Pollution Control Facility Tax Credit (49 applications)</i>	\$5,011,623	\$2,451,410
 <i>Pollution Prevention Tax Credit</i>		
Perc (2 applications)	\$136,530	\$68,265
<i>Pollution Prevention Tax Credit (2 applications)</i>	\$136,530	\$68,265
<b>Approve (51 applications)</b>	\$5,148,153	\$2,519,675
 <i><b>Deny</b></i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (2 applications)	\$175,766	\$87,883
Solid Waste (1 application)	\$26,690	\$13,345
Water (1 application)	\$39,244	\$19,622
<i>Pollution Control Facility Tax Credit (4 applications)</i>	\$241,700	\$120,850
<b>Deny (4 applications)</b>	\$241,700	\$120,850

**Department Recommendation**

Approve issuance of tax credit certificates for the applications summarized in Attachment A and detailed in Attachment B of the staff report. Deny applications in Attachment C.

 Report Author	 Division Administrator	 Director
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May 28, 1998

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

## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item B  
June 11, 1998 Meeting

**Title:**

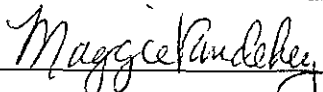


Approval of Tax Credit Applications

**Summary:** Staff recommends approval of the following tax credits and their facility costs:

	Certified Cost	Value
<i>Approve</i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (3 applications)	\$267,566	\$133,783
Field Burning (4 applications)	\$275,482	\$137,741
Solid Waste (31 applications)	\$2,412,514	\$1,206,257
USTs (7 applications)	\$1,019,005	\$455,101
Water (4 applications)	\$1,037,056	\$518,528
<i>Pollution Control Facility Tax Credit (49 applications)</i>	\$5,011,623	\$2,451,410
 <i>Pollution Prevention Tax Credit</i>		
Perc (2 applications)	\$136,530	\$68,265
<i>Pollution Prevention Tax Credit (2 applications)</i>	\$136,530	\$68,265
<b>Approve (51 applications)</b>	\$5,148,153	\$2,519,675
 <i>Deny</i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (2 applications)	\$175,766	\$87,883
Solid Waste (1 application)	\$26,690	\$13,345
Water (1 application)	\$39,244	\$19,622
<i>Pollution Control Facility Tax Credit (4 applications)</i>	\$241,700	\$120,850
<b>Deny (4 applications)</b>	\$241,700	\$120,850

**Department Recommendation**

Approve issuance of tax credit certificates for the applications summarized in Attachment A and detailed in Attachment B of the staff report. Deny applications in Attachment C.

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May 28, 1998

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**Date:** May 28, 1998  
**To:** Environmental Quality Commission  
**From:** Langdon Marsh, Director  
**Subject:** Agenda Item B, June 11, 1998, EQC Meeting  
Approval of Tax Credit Applications

**Statement of the Need for Action**

This staff report presents the staff analysis of tax credit applications and the Department's recommendation for Commission action on these applications.

Attachment A is the summary of all applications presented in this staff report. Attachment B contains the individual Review Reports presented for approval and Attachment C contains the applications presented for denial.

**Approval of Tax Credit Application 4825**

On April 3, 1998, the Department sought the Commission's direction regarding Far West Fibers/ E Z Recycling's application number 4825<sup>1</sup>. As presented to the Commission at this meeting, the applicant built the claimed facility to create a market demand where a market demand does not currently exist. Also, the applicant projects the claimed facility represents:

- Less than 25% of the operating assets of the applicant's business – currently 13%.
- Less than 50% of the business revenue – currently 3%.
- Less than 50% of the business operating expenses – currently 5%.

The Commission directed the Department to report the estimated impact of their conclusion that the list in the first portion of the definition<sup>2</sup> was not governing and that the Department could also consider the other portions of the definition when determining whether a facility is integral to the business.

Considering the relationship of the facility claimed on application 4825 to the applicant's overall business and the Commission's conclusion, the Department recommends the approval of the Far West Fibers/E Z Recycling application.

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<sup>1</sup> See April 3, 1998, EQC Meeting Agenda Item B - Director's Letter page 10 and Attachment C.

<sup>2</sup> List includes: commercial solid waste and hazardous waste landfills, solid and hazardous waste recycling businesses, and environmental service providers.

As directed by the Commission, the Department presents this report regarding the possible impact of their conclusion above. Below is a listing of businesses that could potentially take advantage of the pollution control tax credit program:

- **Material Recovery Facilities (MRF)**

There are ten clean and ten dirty solid waste recovery facilities. Only five made major capital investment in the last two years. However, another ten will do so in the next two years.

- **Transfer Stations**

There are nine transfer stations that process recyclable materials. This group will most likely submit tax credit applications for individual pieces of equipment ranging from about \$50K to \$200K per facility.

- **Solid Waste Collection Companies**

There are 100 solid waste collection companies involved in recycling. Three of those companies are heavy users of the tax credit program. Five additional companies have submitted applications once or twice. At least 25 more companies have made eligible investments but have not submitted an application for a tax credit. The amount of the recycling tax credit applications range from \$1,000 to \$200K. The three heavy users of the program have submitted over 75 applications. The recycling activities of these three companies do not differ greatly from any of the other solid waste collection companies with recycling programs.

*Note:* In the next two years the Portland recycling collection companies will be expanding their material processing facilities.

- **Recyclable Material Processing Facilities** Of the ten major processors, only three have submitted tax credit applications. All ten processors will make eligible investments within the next several years. Material processing facilities range from under \$50,000 for a single piece of equipment up to \$5,000,000 for a complete facility. There are three applications pending certification. The facility cost claimed on the applications are \$2.5M, \$1.7M and \$4.1M.
- **Composting Facilities** Two of the forty composting companies have applied for tax credits. About twenty of these companies have made eligible investments in the last two years and the remaining companies will do so in the next two years. Investments for eligible facilities will be in the \$200-500K range.

It is not possible for the Department to determine how many of the companies above have built or will build a facility where the relationship between the facility and the applicant's overall business is similar to the relationship between Far West Fibers/E Z recycling and their facility claimed on application number 4825.

The following is a summary of certificates issued to applicant's who's primary SIC Classification relates to the one of the areas of review (commercial solid waste and hazardous waste landfills, solid and hazardous waste recycling businesses, and environmental service providers):

- Sanitary services - 60 certificates - total certified facility cost of \$4M
- Scrap and waste materials - 11 certificates - total certified facility cost of \$640K
- Wood/wood fiber recycling - 66 certificates - total facility cost of \$60M
- Landfills - 9 certificates - total facility cost of \$24M

### **Background DENIALS: Attachment C**

#### **Denial of Application Number 4826**

Columbia Steel Casting's application number 4826 does **not** meet the definition of a pollution control facility in ORS 468.155 (1). The applicant's air pollution control equipment was not built in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority. Therefore, the primary or **principal purpose** of the facility was not to control, eliminate or reduce air pollution. The applicant meets their discharge permit requirements through facilities that have already been issued tax credit certificates.<sup>3</sup>The applicant claimed the **sole purpose** of the facility is to reduce emissions of nitrogen oxides and carbon monoxides from natural gas combustion. However, the facility is a natural gas fired oven used to heat-treat castings. Therefore, the exclusive purpose of the facility is not to reduce pollution.

#### **Denial of Application Number 4873**

Albany-Lebanon Sanitation's application number 4873 does **not** meet the definition of a pollution control facility in ORS 468.155:

(2) "Pollution control facility" or "facility" does not include: ...

d) Any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility including the following specific items:...

(F) Automobiles...

Additionally, the applicant's new Ford pickup was not purchased in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority. Therefore, the primary or **principal purpose** of the facility was not to control, eliminate or reduce solid waste by material recovery. This facility fails to meet the **sole purpose** criteria though the applicant claimed the

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<sup>3</sup> See Attachment C – Review Report for this application.

waste. The applicant is a garbage hauler and claimed the facility was eligible because it is used 50% of the time to transport recycling equipment. Because the pickup is also used for other purposes the remaining 50% of the time, it is not used exclusively for pollution control.

Additionally, the truck does not meet the requirements of ORS 468.155 (1)(b)(D) which states solid waste control shall be accomplished by, "The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005" since the truck only delivers the equipment that actually accomplishes the pollution control.

#### **Denial of Application Number 4837**

Don Rhyne Painting's application number 4837 does **not** meet the definition of a pollution control facility in ORS 468.155 (1). The applicant's air pollution control equipment was not built in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority. Therefore, the primary or **principal purpose** of the facility was not to control, eliminate or reduce air pollution. The claimed facility is a complete paint booth with air filtration system. The applicant claimed the facility was eligible as **sole purpose**. However, the applicant does not use this new installation exclusively to prevent, control or reduce a substantial quantity of air pollution. The applicant uses the facility to create a controlled environment for painting. Therefore, the facility does not meet the definition of a "pollution control facility."

#### **Denial of Application Number 4892**

Pioneer Truck Equipment's application number 4892 is **not eligible** for certification as a pollution control facility because it is excluded by statute. They claimed a truck and equipment washing installation located in an area where sanitary sewers are not available. Generally, a truck washing facility that prevents water pollution meets the definition of a pollution control facility. However, this facility also washes portable toilets containing human waste.

ORS 468.155 states a:

- (2) "Pollution control facility" or "facility" **does not** include:
  - (b) Septic tanks or **other facilities for human waste**;
  - (c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system...

#### **Conclusions**

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

#### **Recommendation for Commission Action**

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

Memo To: Environmental Quality Commission

Agenda Item B

May 28, 1998

Page 5

The Department recommends the Commission deny the applications presented in Attachment C of the Department's Staff Report.

**Intended Follow-up Actions**

Notify applicants of Environmental Quality Commission actions. Notify Department of Revenue of Issued, Transferred or Revoked certificates. Transmit electronic files to Department of Revenue.

**Attachments**

- A. Summary
- B. Approvals
- C. Denials

**Reference Documents (available upon request)**

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

Approved:

Section:

Division:



Report Prepared By: Margaret Vandehey

Phone: (503) 229-6878

Date Prepared: March 3, 1997

# *Attachment A*

## *Summary*

# Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
<b>Approve</b>					
<b>Pollution Control Facility Tax Credit</b>					
<b>Air</b>					
4902	PED Manufacturing, LTD	New 6,000 CFM FRD Counterflow Vertical Flume Scrubber System manufactured by Active Control Technologies, Inc. Serial # ACSB-2000.	\$39,025	100%	\$19,513
4904	Willamette Industries, Inc.	A new low pressure negative air system consisting of a Western Pneumatic 542 baghouse used to control particulate emissions.	\$101,688	100%	\$50,844
4950	Blount, Inc.	Chrome plating exhaust and scrubber system, Model KCH Spectra-U10000 chemical mist eliminator.	\$126,853	100%	\$63,427
<b>Air (3 applications)</b>			<b>\$267,566</b>		<b>\$133,783</b>
<b>Field Burning</b>					
4919	Neher: Larry Neher, Inc.	Rears 15' Pakchopper	\$12,051	100%	\$6,026
4930	Jenks-Olsen Farms, Inc.	Pole building with steel siding to keep straw dry until processing.	\$117,331	100%	\$58,666
4951	Ronald Schmidt	Heavy Weight offset disc series 1000, 12' by Green Line, Inc.	\$11,500	100%	\$5,750
4955	Mullen Farms, Inc.	New Holland bale wagon, model #1095, New Holland baler, model #515, and Allen hay rake, model #8827.	\$134,600	100%	\$67,300
<b>Field Burning (4 applications)</b>			<b>\$275,482</b>		<b>\$137,741</b>
<b>Solid Waste</b>					
4825	Far West Fibers, Inc.	Enterprise Baler Model 12-EZ RRB 100, 1995 Case 1845 Skid Steer #JAK0161997, 1991 CAT IT18B #4ZDO1058, 1996 Yale Flift #GLP050TF7, 1996 Rotator 8B660 2041448-0053P, 23 Fire Extinguishers, Krause Baler #KCS1008, & KCS1289.	\$1,729,683	100%	\$864,842
4853	United Disposal Service, Inc.	Five 3 Yard self-dumping Hoppers, serial #139616-139620 & One 4.5 Yard self-dumping Hoppers.	\$4,786	100%	\$2,393



# Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
<b>Pollution Control Facility Tax Credit</b>					
<b>Solid Waste</b>					
4854	United Disposal Service, Inc.	One thousand 14 gallon Recycle Bins for Residential curbside recycling. These Recycling Bins have no Serial numbers and are made of tough plastic material.	\$4,250	100%	\$2,125
4865	United Disposal Service, Inc.	One 30 yard SC style Drop Box w/domed crank up lid, serial #9239 and four 30 yard SC style Drop Boxes, serial #9235-9238.	\$16,388	100%	\$8,194
4871	United Disposal Service, Inc.	Ten 30 yard Drop Boxes, SC style standard, serial #9507-9516	\$29,918	100%	\$14,959
4878	United Disposal Service, Inc.	Five 48.9 yard drop boxes, SC style with domed crank-up reversible lids, serial #9517-21. One 4 yard front load cardboard container with lid lock.	\$24,772	100%	\$12,386
4886	United Disposal Service, Inc.	One 20 Yd. SC style Drop Box, Serial #9848. One 20 Yd. three section glass recycling Drop Box, Serial #9965. Ten 30 Yd. SC style Drop Boxes, Serial #9777-86.	\$37,606	100%	\$18,803
4887	United Disposal Service, Inc.	Fifteen 4 Yd. Front Load Cardboard Recycling containers with Lids and no casters, Invoice #029014.	\$6,693	100%	\$3,347
4897	United Disposal Service, Inc.	Eight 30 yd standard Drop Boxes, (Harvest Red) serial #9925-9932.	\$23,934	100%	\$11,967
4898	United Disposal Service, Inc.	One thousand fire red 14 gallon Recycling Bins. These bins have no serial numbers.	\$4,513	100%	\$2,257
4907	Albany-Lebanon Sanitation, Inc.	22 four yard Recycling Boxes used for the collection of recyclable materials, serial #141161-141180 & 134877-134881	\$9,699	100%	\$4,850
4908	Albany-Lebanon Sanitation, Inc.	60 two yard Recycling Boxes used in the collection of recyclable materials, serial #139649-139668 & 138938-138957 & 136273-136292	\$19,652	100%	\$9,826
4909	United Disposal Service, Inc.	One new 1997 Volvo Truck, model WX42T, serial # 4VDDBKNE8VR741595 & one Heil Rapid Rail Starr System, Body serial # 1H9BCGFE4V8270099.	\$171,850	100%	\$85,925
4913	Albany-Lebanon Sanitation, Inc.	One 40-Yard Recycling Drop Box used in collection of recyclable materials, serial # 8779.	\$3,834	100%	\$1,917

# Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
<b>Pollution Control Facility Tax Credit</b>					
<b>Solid Waste</b>					
4922	Capitol Recycling & Disposal, Inc.	Twenty 4-yd front load recycling cages, serial # 135467 - 135476; 135549 - 135558 & twenty 6-yd front load recycling cages, serial # 135487 - 135496; 135457 - 135466.	\$18,547	100%	\$9,274
4923	United Disposal Service, Inc.	Thirty Five 8-yd front load Cardboard Recycling Containers with steel one piece lid, serial # 147579 - 147598 & 147693 - 147707.	\$19,923	100%	\$9,962
4924	United Disposal Service, Inc.	Two 30-yd SC style standard drop boxes, serial #9943 & #9944.	\$5,984	100%	\$2,992
4925	Albany-Lebanon Sanitation, Inc.	384 - 95-Gal. Toter Carts which are used for the collection of yard debris for recycling, model 8540.	\$22,656	100%	\$11,328
4931	United Disposal Service, Inc.	330 95-Gallon yard debris carts, serial # YD9501251 - YD9501580	\$15,058	100%	\$7,529
4932	United Disposal Service, Inc.	500 14-Gallon storehouse white recycling bins for curbside recycling.	\$2,303	100%	\$1,152
4952	Corvallis Disposal Co.	8000 Red Recycling Bins	\$34,270	100%	\$17,135
4953	Corvallis Disposal Co.	864 95-Gallon Rehrig-Pacific Carts, serial #00001-00864	\$43,502	100%	\$21,751
4954	Corvallis Disposal Co.	576 101-Gallon Toter Carts, model #61001 & serial #YW009358-YW00993.	\$34,041	100%	\$17,021
4958	Capitol Recycling & Disposal, Inc.	Eight 48.9-yard SC Style Standard Drop Boxes, serial #8897-8900, 8903 & 8904.	\$31,532	100%	\$15,766
4960	United Disposal Service, Inc.	One 30-yard SC style standard Drop Box, serial #9239.	\$4,420	100%	\$2,210
4961	United Disposal Service, Inc.	Ten 4-yard front load cardboard recycling containers, serial #147421-147430.	\$4,756	100%	\$2,378
4962	Truitt Bros., Inc.	EZ-Pak Peabody Compactor, model # SP-DPR, serial #601-6-275.	\$15,000	100%	\$7,500
4970	Corvallis Disposal Co.	Fifteen 2-yd model #M73T, eight 4-yd model #M75T, serial #142185-142189 & 3 unknown, and four 6-yd model #M76T, serial #142239 & 142240 & 2 unknown Front load cardboard containers for recycling.	\$12,409	100%	\$6,205
4981	Willamette Industries, Inc.	A resin evaporator and a solvent distillation unit, model SC-100.	\$51,550	100%	\$25,775

# Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
<b>Pollution Control Facility Tax Credit</b>					
<b>Solid Waste</b>					
4994	United Disposal Service, Inc.	Four 3-yd self-dumping hoppers, serial #148052-148055 and two 4.5-yd self-dumping hoppers, serial #148126 & 148127.	\$5,067	100%	\$2,534
4995	United Disposal Service, Inc.	One 48.9-yd SC style standard drop box, serial #10187.	\$3,918	100%	\$1,959
<b>Solid Waste (31 applications)</b>			<b>\$2,412,514</b>		<b>\$1,206,257</b>
<b>USTs</b>					
4900	Stein Oil Co., Inc.	Installation of (3) doublewall fiberglass tanks, doublewall plastic piping, spill containment basins, automatic tank guage system with overfill alarm, line leak detectors, sumps, monitoring wells and Stage I & II vapor recovery equipment.	\$88,936	84%	\$37,353
4901	Laughlin Oil Company	(4) doublewall fiberglass tanks, doublewall plastic piping, spill containment basins, automatic tank guage system, overfill alarm, line/turbine leak detectors, sumps, automatic shutoff, monitoring wells, oil/water separator & Stage I vapor recovery equip.	\$288,793	86%	\$124,181
4949	Pacific Petroleum Corp.	(2) doublewall fiberglass steel tanks, doublewall fiberglass piping, spill containment basins, automatic tank guage, overfill alarm, line leak detectors, sumps, automatic shutoff valves, oil/water separators, Stage 1 vapor recovery & Stage 2 piping.	\$205,464	93%	\$95,541
4964	Dardanelles	Two compartment fiberglass/steel tank, doublewall flexible plastic piping, spill containment basins, automatic tank guage system, overfill alarm, line leak detectors, sumps, automatic shutoff valves and Stage I vapor recovery.	\$49,860	100%	\$24,930
4967	Wilco Farmers, INC.	Upgrade of existing Station's Pollution Control Equipment.	\$201,671	87%	\$87,727
4971	Cain Petroleum, Inc.	Upgrade Tank, Piping, Pollution Control Equipment.	\$169,275	92%	\$77,867
5002	Russell Oil Co.	Line/turbine leak detectors, sumps, and automatic shutoff valves.	\$15,006	100%	\$7,503

# Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
<b>Pollution Control Facility Tax Credit</b>					
<b>USTs</b>					
<b>USTs (7 applications)</b>					
			<b>\$1,019,005</b>		<b>\$455,101</b>
<b>Water</b>					
4727	Teledyne Industries, Inc. Wah Chang(ABN)	Wastewater dechlorinization treatment system consisting of 2-stage dechlorinization tanks with mixers, a 8,500 gal. hydrogen peroxide tank with lime pH adjustment control, & associated electrical and plumbing system.	\$105,567	100%	\$52,784
4828	Ernst Hardware Co., Inc.	Landa CL-600 D Clarifier & Filter Pac 30-780	\$24,679	100%	\$12,340
4933	Mt. Hood Metals, Inc.	A three stage facility, cleansing facility, protective canopy, stormwater collection & treatment system.	\$884,321	100%	\$442,161
4943	Willamette Industries, Inc.	A concrete berm with a building constructed on top for containment of stored oil and grease in the event of a leak or rupture.	\$22,489	100%	\$11,245
<b>Water (4 applications)</b>					
			<b>\$1,037,056</b>		<b>\$518,528</b>
<b>Summary for Pollution Control Facility Tax Credit (49 applications)</b>					
<b>Sum</b>			<b>\$5,011,623</b>		<b>\$2,451,410</b>
<b>Pollution Prevention Tax Credit</b>					
<b>Perc</b>					
4991	Priscilla E. Thompson	Upgrade of Dry Cleaning Equipment with a PD 60 Omega Petro-Dry Unit.	\$74,014	100%	\$37,007
4998	Estherwin, Inc.	Omega Model Petro-Dry Unit/PD60 petroleum dry cleaning aystem using DF2000 solvent.	\$62,516	100%	\$31,258
<b>Perc (2 applications)</b>					
			<b>\$136,530</b>		<b>\$68,265</b>
<b>Summary for Pollution Prevention Tax Credit (2 applications)</b>					
<b>Sum</b>			<b>\$136,530</b>		<b>\$68,265</b>
<b>Summary for Approve (51 detail records)</b>					
<b>Sum</b>			<b>\$5,148,153</b>		<b>\$2,519,675</b>

## Deny

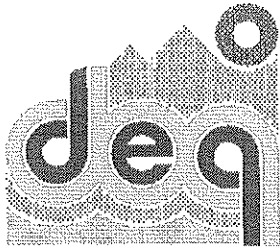
### Pollution Control Facility Tax Credit

# Application Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
<b>Pollution Control Facility Tax Credit</b>					
<b>Air</b>					
4826	Columbia Steel Casting Co., Inc.	Natural Gas Fired Oven used for heat treating steel castings, using low-Nox burners for reduction of nitrogen oxide emissions.	\$114,810	100%	\$57,405
4937	Don Rhyne Painting Co.	Installation of a Double Air Filter system.	\$60,956	100%	\$30,478
<b>Air (2 applications)</b>			<b>\$175,766</b>		<b>\$87,883</b>
<b>Solid Waste</b>					
4873	Albany-Lebanon Sanitation, Inc.	1996 Ford Pickup is used 50% of the time for the delivery of recycling carts, bins, and cardboard containers.	\$26,690	100%	\$13,345
<b>Solid Waste (1 application)</b>			<b>\$26,690</b>		<b>\$13,345</b>
<b>Water</b>					
4992	Pioneer Truck Equipment, Inc.	A Wastewater filtration & recovery system using a Karcher, model ASA 600.	\$39,244	100%	\$19,622
<b>Water (1 application)</b>			<b>\$39,244</b>		<b>\$19,622</b>
<b>Summary for Pollution Control Facility Tax Credit (4 applications)</b>					
			<b>Sum</b>		<b>\$241,700</b>
<b>Summary for Deny (4 detail records)</b>			<b>Sum</b>		<b>\$120,850</b>
			<b>Grand Total</b>		<b>\$5,389,853</b>
					<b>\$2,640,525</b>

# *Attachment B*

## *Approvals*



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Teledyne Industries, Inc.  
Wah Chang (ABN)**  
Application No. **4727**  
Facility Cost **\$105,567**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility Tax Credit: Water Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C Corporation operating as a manufacturer of nonferrous metals and their alloys taking tax relief under taxpayer identification number 95-2316679. The applicant's address is:

1600 NE Old Salem Rd.  
Albany, OR 97321-0460

### *Facility Identification*

The certificate will identify the facility as:

**Wastewater dechlorination treatment system consisting of 2-stage dechlorination tanks with mixers, a 8,500 gal hydrogen peroxide tank, lime pH adjustment control, and associated electronic control and plumbing system .**

The facility is located at:

1600 NE Old Salem Rd.  
Albany, OR 97321-0406

### *Technical Information*

The wastewater dechlorination treatment system was improved with the installation of a 2-stage dechlorination tanks with mixers, a 8,500 gallon hydrogen peroxide tank and associated electronic and plumbing system. Hydrogen peroxide at 50% concentration is pumped to the 2-stage dechlorination tanks controlled with an oxidation reduction potential monitoring system for dechlorination. pH is adjustment is done by using lime.

Wastewater from the zirconium and hafnium manufacturing processes, sand chlorination process and the pure chlorination process is pumped to the existing dechlorination system. Dechlorination occurs with the addition of sodium sulfite or sulfur dioxide. Then it overflows to the new hydrogen peroxide system for final dechlorination and finally discharged to the flume at the treated cells.

With the addition of the hydrogen peroxide system the use of sulfur dioxide for dechlorination has been discontinued.

**Eligibility**

- ORS 468.155 (1)(a) The **sole purpose** of this **improvement** is to reduce a substantial quantity of water pollution and the potential risk of air pollution. The improvement will ensure continuous compliance with the residual chlorine and toxicity limitations of the NPDES permit issued to Teledyne Wah Chang.
- ORS 468.155 (1)(b)(A) The reduction is accomplished with the use of treatment works for industrial waste as defined in ORS 468B.005.

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<b>02/06/1997</b>
<i>Application Substantially Complete</i>	<b>04/24/1998</b>
<i>Construction Started</i>	<b>09/01/1993</b>
<i>Construction Completed</i>	<b>02/15/1995</b>
<i>Facility Placed into Operation</i>	<b>02/15/1995</b>

**Facility Cost**

Facility Cost	<b>\$105,567</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<b>\$105,567</b>

A cost breakdown accompanied the application. Olson Straughn, PC provided the certified public accountant's statement.

**Facility Cost Allocable to Pollution Control**

According to ORS.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.



***Compliance***

The facility is in compliance with conditions of the NPDES permit issued to Teledyne Wah Chang. DEQ permits issued to facility: NPDES Waste Discharge Permit No. 100522 (issued 9/30/88)

Reviewers: R. C. Dulay



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **Approve**

Applicant **Far West Fibers, Inc.**  
Application No. **4825**  
Facility Cost **\$1,729,683**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility Tax Credit: Solid Waste

### Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a recycling business taking tax relief under taxpayer identification number 93-0788493. The applicant is the owner of the facility.

The applicant's address is:

E Z Recycling Division  
12820 NE Marx Street  
Portland, OR 97220-0636

### *Facility Identification*

The certificate will identify the facility as:

**The facility includes a 28,125 sq. ft. metal building with 12 ft. tip up concrete walls and equipment used to process recyclable materials. The equipment includes: one Enterprise baler model 12-EZ RRB 100; 1995 Case 1845 skid steer loader #JAK0161997; 1991 Cat IT18B #4ZDO1058, 1996 Yale fork lift #GLP050TF7; 1996 rotator 8B660 2041448-0053P; Krause conveyor #KCS1008, & KCS1289.**

The facility is located at:

12820 NE Marx Street  
Portland, OR 97220-0636

### *Technical Information*

Far West Fibers/ E Z Recycling is a waste paper and recyclable material broker and packing plant that processes recyclable materials that would otherwise be solid waste. The claimed clean material recovery facility is a sort center that processes commingled materials. The facility is currently recovering 1,000 tons of recyclables each month from material that had been going to the landfill. When the facility reaches capacity, it will recover an additional 3,000 tons each month from material that is going to the landfill. The applicant's business prior to this facility took only source-separated recyclable materials from generators and waste collectors. The applicant processes and consolidates those materials, and then supplies them to end-use recycling companies. The claimed facility provides a reliable supply of high quality of secondary material feedstock from a recyclable "wastestream" not previously processed by the applicant's business.

**Eligibility**

ORS 468.155 (1)(a) The **sole** purpose of this **new building and equipment** is to prevent, control or reduce a substantial quantity of solid waste.

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<b>08/22/1997</b>
<i>Application Substantially Complete</i>	<b>09/16/1997</b>
<i>Construction Started</i>	<b>08/01/1996</b>
<i>Construction Completed</i>	<b>08/01/1996</b>
<i>Facility Placed into Operation</i>	<b>01/27/1997</b>

<b>Facility Cost</b>	<b>\$2,099,115</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	
Fire extinguishers	\$ 1,709
Ineligible Costs	
Portion of building used for office space	\$ 367,723
Eligible Facility Cost	<b>\$1,729,683</b>

The independent accountant's review was performed by Coopers & Lybrand LLP on behalf of the Department.

**Facility Integral to Applicant's Business**

When a facility is operated by a material recycling business (Far West Fibers/ E Z Recycling) and the cost of the facility exceeds \$50,000, the Department looks to the definition of "Pollution Control Facilities Integral to the Operation of the Applicant's Business." This definition determines how the Commission considers the return on investment factor (ORS 468.190(1)(b)) when determining the portion of the facility cost properly allocable to pollution control. The definition of an integral facility is found in OAR 340-016-0030 (1)(g). One April 3, 1998, the Commission concluded that the list in the first portion of the definition (commercial solid waste and hazardous waste landfills, solid and hazardous waste recycling businesses, and environmental service providers) was not governing and that the Department could also consider the other portions of the definition when determining whether a

facility is integral to the applicant's business. Based on the relationship of the facility claimed on application 4825 to the applicant's overall business and the Commission's conclusion, the Department determined that the facility is not integral to the applicant's business. (See April 3, 1998, EQC Meeting Agenda Item B - Director's Letter page 10 and Attachment C.)

***Facility Cost Allocable to Pollution Control***

According to ORS 468.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity.	The sole purpose of the facility is recycling material which would otherwise be solid waste.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 18 years.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control would be 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree  
Margaret C. Vandehey  
Coopers & Lybrand L.L.P.



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Ernst Hardware Co. Inc.</b>
Application No.	<b>4828</b>
Facility Cost	<b>\$24,679</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>5 years</b>

## Pollution Control Facility Tax Credit: Water Final Certification

ORS 468.150 -- 468.190  
OAR 340-16-0005 -- 340-16-050

### *Applicant Identification*

The applicant is a C corporation operating as a retail tractor business taking tax relief under taxpayer identification number 93-0521521. The applicant's address is:

PO Box 38  
St. Paul, OR 97137

### *Facility Identification*

The certificate will identify the facility as:

**Oil/Water Separator: Landa CL-600 D  
Clarifier & Filter Pac 30-780.**

The facility is located at:

405 Hwy 99W  
McMinnville, OR 97128

### *Technical Information*

The claimed facility consists of a sump pump designed to handle waste stream with heavy solids; solids separator with coalescing cones; clean water manifold system; filter to produce recyclable water and storage tanks for recycled water and other solid wastes removed.

### *Eligibility*

- ORS 468.155 (1)(a) The **sole purpose** of this **new installation** is to control or reduce a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The disposal or elimination of or redesign to eliminate the use of treatment works for industrial waste as defined in ORS 468B.005.
- OAR-16-025 (2)(g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>08/27/1997</u>
<i>Application Substantially Complete</i>	<u>4/21/1998</u>
<i>Construction Started</i>	<u>10/01/1996</u>
<i>Construction Completed</i>	<u>10/01/1996</u>
<i>Facility Placed into Operation</i>	<u>11/01/1996</u>

***Facility Cost***

Facility Cost	<b>\$86,083</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	
Building	-\$47,940
Septic System	-\$3,152
Pro rata - electrical	-\$1,783
Pro rata - plumbing	-\$8,529
Eligible Facility Cost	<u><b>\$24,679</b></u>

Documentation substantiated the cost of the facility and Nichol, Hoots, Weyant & Baker, Certified Public Accountant's provided the CPA statement that accompanied the application.

According to OAR 340-16-010 (9) "Sole Purpose" means the exclusive purpose. The building is not exclusively used for pollution control because it is also used for equipment repair. The septic system is not eligible according to ORS 468.155 (2): "Pollution control facility" or "facility" does not include (b) Septic tanks or other facilities for human waste. The electrical and plumbing costs were reduced in proportion to the ineligible costs.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

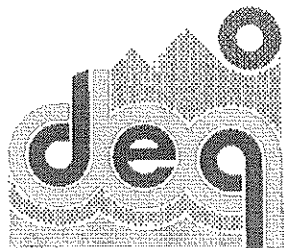
<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Considered other brands.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewer: Maggie Vandehey



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4853**  
Facility Cost **\$4,786**  
Percentage Allocable **100%**  
Useful Life **5 years**

**Pollution Control Facility Tax Credit: Solid Waste  
Final Certification**  
ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

## ***Applicant Identification***

The applicant is a C Corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

## ***Facility Identification***

The certificate will identify the facility as:

**Five 3-yard self-dumping hoppers, serial numbers 139616- through 139620. One 4.5- yard self-dumping hoppers.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

## ***Technical Information***

The containers are located at industrial and commercial customers facilities and are used to collect recyclable material separately from other solid waste.

## ***Eligibility***

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste..
- ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.



***Timeliness of Application***

The application was submitted within two years of the date construction was complete (ORS 468.165 (6)).

<i>Application Received</i>	<u>10/16/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>7/15/96</u>
<i>Construction Completed</i>	<u>7/15/96</u>
<i>Facility Placed into Operation</i>	<u>10/15/96</u>

***Facility Cost***

Facility Cost	\$4,786
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$4,786</u>

Invoices or canceled checks substantiated the cost of the facility. . Since this facility cost does not exceed \$20,000, an external certified public accountant's statement is not required.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control is 100% and, therefore, the percentage allocable to pollution control is 100%.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4854</b>
Facility Cost	<b>\$4,250</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## **Pollution Control Facility Tax Credit: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C Corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owned of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**One thousand 14 gallon recycle bins for residential curbside recycling. These recycling bins have no serial numbers and are made of tough plastic material.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### ***Technical Information***

The bins are provided to residential collection service customers and are used to separate recyclable material from other solid waste.

### ***Eligibility***

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste.

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>10/16/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>5/2/97</u>
<i>Construction Completed</i>	<u>5/2/97</u>
<i>Facility Placed into Operation</i>	<u>5/20/97</u>

***Facility Cost***

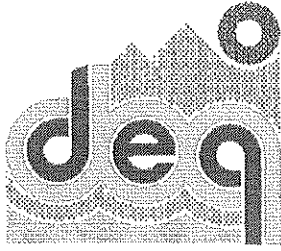
Facility Cost	<b>\$4,250</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$4,250</b></u>

Invoices or canceled checks substantiated the cost of the facility. Since this facility cost does not exceed \$20,000, an external certified public accountant's statement is not required.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4865</b>
Facility Cost	<b>\$16,388</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## **Pollution Control Facility Tax Credit: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C Corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owned of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**One 30-yard SC style drop box w/domed crank up lid, serial #9239 and four 30 yard SC style drop boxes, serial #9235-9238.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### ***Technical Information***

The containers are placed at commercial collection customer's facilities and are used solely for the collection of recyclable material separately form solid waste.

### ***Eligibility***

- ORS 468.155 (1)(a) The **sole** purpose of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste..
- ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>11/3/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>9/10/96</u>
<i>Construction Completed</i>	<u>9/10/96</u>
<i>Facility Placed into Operation</i>	<u>10/15/96</u>

***Facility Cost***

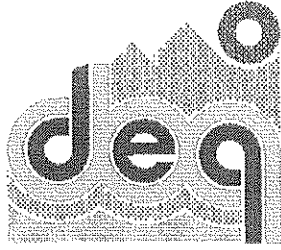
Facility Cost	<b>\$16,388</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$16,388</b></u>

Invoices or canceled checks substantiated the cost of the facility. Since this facility cost does not exceed \$20,000, an external certified public accountant's statement is not required.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control is 100% and, therefore, the percentage allocable to pollution control is 100%.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4871**  
Facility Cost **\$29,918**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owned of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**Ten 30 yard Drop Boxes, SC style standard,  
serial #9507-9516**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

The containers are placed at commercial collection customer's facilities and are used solely for the collection of recyclable material separately form solid waste.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from material  
(1)(b)(D) that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>11/13/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>12/15/96</u>
<i>Construction Completed</i>	<u>12/15/96</u>
<i>Facility Placed into Operation</i>	<u>2/5/97</u>

***Facility Cost***

Facility Cost	<b>\$29,918</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$29,918</b></u>

Invoices or canceled checks substantiated the cost of the facility. Theodore R. Ahre provided the certified public accountant's statement verifying the actual cost of the claimed facility.

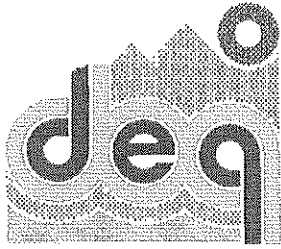
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control was the percentage of time the facility is used for pollution control. The percentage of time the facility was used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4878**  
Facility Cost **\$24,772**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**Five 48.9 yard drop boxes, SC style with domed crank-up reversible lids, serial #9517-21. One 4 yard front load cardboard container with lid lock.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

These containers and drop boxes are used by commercial collection service customers for separate collection of recyclable materials

### *Eligibility*

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste..

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.



***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>11/18/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>12/20/96</u>
<i>Construction Completed</i>	<u>12/20/96</u>
<i>Facility Placed into Operation</i>	<u>3/5/97</u>

***Facility Cost***

Facility Cost	\$24,772
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$24,772</u>

Invoices or canceled checks substantiated the cost of the facility. Theodore R Ahre provided the certified public accountant's statement verifying the actual cost of the claimed facility.

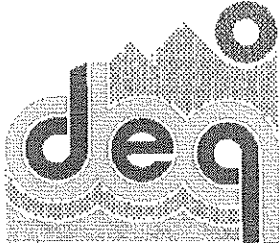
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4886</b>
Facility Cost	<b>\$37,606</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## **Pollution Control Facility Tax Credit: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial and industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front St.  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**One 20 Yd. SC style Drop Box, Serial #9848.  
One 20 Yd. three section glass recycling Drop  
Box, Serial #9965. Ten 30 Yd. SC style Drop  
Boxes, Serial #9777-86.**

The facility is located at:

2215 N Front St.  
Woodburn, OR 97071

### ***Technical Information***

These drop boxes are used solely for the collection of recyclable materials from commercial and industrial customers.

### ***Eligibility***

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to control or reduce a substantial quantity of solid waste..

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/15/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>6/2/97</u>
<i>Construction Completed</i>	<u>6/30/97</u>
<i>Facility Placed into Operation</i>	<u>7/5/97</u>

***Facility Cost***

Facility Cost	<b>\$37,606</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$37,606</b></u>

Invoices or canceled checks substantiated the cost of the facility. Theodore R. Ahre provided the certified public accountant's statement verifying the actual cost of the claimed facility.

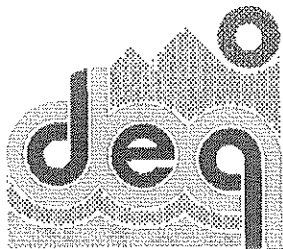
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4887**  
Facility Cost **\$6,693**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial and industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front St.  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**Fifteen 4 Yd. front load cardboard recycling containers with Lids and no casters, Invoice #029014.**

The facility is located at:

2215 N Front St.  
Woodburn, OR 97071

### *Technical Information*

These containers are used solely for the collection of source separated cardboard for commercial collection customers.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to control or reduce a substantial quantity of solid waste..  
(1)(a)  
ORS 468.155 The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.  
(1)(b)(D)

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/15/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>9/1/97</u>
<i>Construction Completed</i>	<u>9/21/97</u>
<i>Facility Placed into Operation</i>	<u>10/10/97</u>

***Facility Cost***

Facility Cost	<b>\$6,693</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$6,693</b></u>

Invoices or canceled checks substantiated the cost of the facility. Since the facility cost does not exceed \$20,000, an independent certified public accountant's statement is not required for this review.

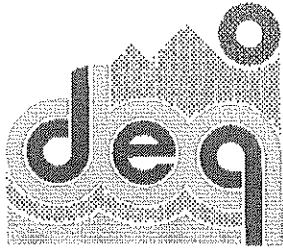
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4897</b>
Facility Cost	<b>\$23,934</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial and industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**Eight 30 yd standard Drop Boxes, (Harvest Red) serial #9925-9932.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

These drop boxes are located at commercial collection service customer's facilities and are used solely for the collection of source separated recyclable materials.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from material  
(1)(b)(D) that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/16/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>8/1/97</u>
<i>Construction Completed</i>	<u>8/29/97</u>
<i>Facility Placed into Operation</i>	<u>9/20/97</u>

***Facility Cost***

Facility Cost	\$23,934
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$23,934</u>

Invoices or canceled checks substantiated the cost of the facility. Theodore R. Ahre provided the certified public accountant's statement verifying the actual cost of the claimed facility.

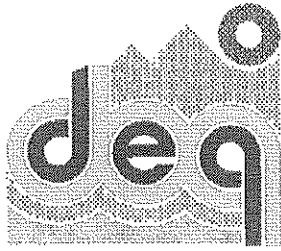
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control was the percentage of time the facility is used for pollution control. The percentage of time the facility was used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4898**  
Facility Cost **\$4,513**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial and industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**One thousand fire red 14 gallon Recycling Bins. These bins have no serial numbers.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

These recycling bins are used solely for the collection of source separated recyclable materials from residential collection service customers.

### *Eligibility*

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste.

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.



### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/16/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>8/20/97</u>
<i>Construction Completed</i>	<u>8/31/97</u>
<i>Facility Placed into Operation</i>	<u>9/15/97</u>

### ***Facility Cost***

Facility Cost		<b>\$4,513</b>
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u><b>\$4,513</b></u>

Invoices or canceled checks substantiated the cost of the facility.

### ***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control was the percentage of time the facility is used for pollution control. The percentage of time the facility was used for pollution control and therefore the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Stein Oil Co., Inc.  
19805 McLoughlin Blvd.  
Gladstone, OR 97027

The applicant owns and operates a retail gas station and cardlock station at 22025 Beavercreek Rd., Beavercreek, OR 97004, Facility ID No. 11573.

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

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are three doublewall fiberglass tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system with overflow alarm, line leak detectors, sumps, monitoring wells and Stage I and II vapor recovery equipment.

Claimed facility cost \$88,936  
(Accountant's certification was provided)

3. Procedural Requirements

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

The facility was substantially completed on March 1, 1997 and placed into operation on March 1, 1997. The application for certification was submitted to the Department on December 18, 1997, and was considered to be complete and filed on April 10, 1998, within two years of the completion date of the project.

4. Evaluation of Application

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

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

- 1) For corrosion protection - Doublewall fiberglass tanks and doublewall flexible plastic piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps and an overflow alarm.
- 3) For leak detection - Automatic tank gauge system, line leak detectors and monitoring wells.

In addition, the following was installed to reduce air quality emissions.

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

The Department concludes that the costs claimed by the applicant (\$88,936) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose the method recommended by their contractor. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
<u>Corrosion Protection:</u>			
Doublewall fiberglass tank & flexible plastic piping	\$48,195	73% (1)	\$35,182
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	709	100	709
Sumps	1,382	100	1,382
<u>Leak Detection:</u>			
Tank gauge system w/alarm	11,588	90% (2)	10,429
Line leak detectors	1,137	100	1,137
Monitoring wells	158	100	158
<u>VOC Reduction:</u>			
Stage I & II vapor recovery	13,052	100	13,052
Labor, material, misc parts	12,715	100	12,715
Total	\$88,936	84%	\$74,764

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$48,195 and the bare steel system is \$12,800, the resulting portion of the eligible tank and piping cost allocable to pollution control is 73%.
- (2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.
- d. The portion of the facility cost that is properly allocable to pollution control is 84%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$88,936 with 84% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4900.

Barbara J. Anderson  
(503) 229-5870  
April 10, 1998

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Laughlin Oil Company  
1920 Lafayette Avenue  
McMinnville, OR 97128

The applicant owns and operates a retail and commercial bulk and cardlock gas and diesel facility at 1920 Lafayette Ave., McMinnville, OR 97128, Facility ID No. 7145.

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

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are four doublewall fiberglass tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm, line/turbine leak detectors, sumps, automatic shutoff valves, monitoring wells, oil/water separator and Stage I vapor recovery equipment.

Claimed facility cost \$397,114  
(Accountant's certification was provided)

The Department concludes that the eligible facility cost for the project is \$288,793. This represents a net decrease of \$108,321 from the applicant's claimed cost of \$397,114 due to a determination by the Department that expenses for and related to construction of a carwash and canopy, the cost of dispensers and pumps, and costs for environmental cleanup work claimed by the applicant are not eligible pursuant to the definition of a pollution control facility in ORS 468.155.

3. Procedural Requirements

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

The facility was substantially completed on July 23, 1997 and placed into operation on September 28, 1997. The application for certification was submitted to the Department on December 19, 1997, and was considered to be complete and filed on April 10, 1998, within two years of the completion date of the project.

4. Evaluation of Application

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

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

- 1) For corrosion protection - Doublewall fiberglass tank and doublewall flexible plastic piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps, automatic shutoff valves, oil/water separator and an overflow alarm.
- 3) For leak detection - Automatic tank gauge system, line/turbine leak detectors and monitoring wells.

In addition, the following was installed to reduce air quality emissions.

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



b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose the method considered to be the most cost-effective. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
<u>Corrosion Protection:</u>			
Doublewall fiberglass tanks & flexible plastic piping	\$85,682	55%(1)	\$47,125
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	1,702	100	1,702
Sumps	6,031	100	6,031
Automatic shutoff valves	2,333	100	2,333
Overfill alarm	300	100	300
Oil/water separator	7,575	100	7,575
<u>Leak Detection:</u>			
Tank gauge system	11,990	90%(2)	10,791
Line/turbine leak detectors	6,811	100	6,811
Monitoring wells	241	100	241
<u>VOC Reduction:</u>			
Stage I vapor recovery	741	100	741
Labor, material, misc parts	165,387	100	165,387
Total	\$288,793	86%	\$249,037

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$85,682 and the bare steel system is \$38,664, the resulting portion of the eligible tank and piping cost allocable to pollution control is 55%.
- (2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

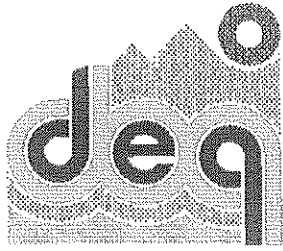
5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.
- d. The portion of the facility cost that is properly allocable to pollution control is 86%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$288,793 with 86% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4901.

Barbara J. Anderson  
(503) 229-5870  
April 14, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **PED Manufacturing, LTD**  
Application No. **4902**  
Facility Cost **\$39,025**  
Percentage Allocable **100%**  
Useful Life **8 years**

## **Pollution Control Facility Tax Credit: Air Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a metal casting foundry taking tax relief under taxpayer identification number 93-0605811. The applicant is the owner of the facility. The applicant's address is:

**13963 Fir Street  
PO Box 5299  
Oregon City, OR 97045-8299**

### ***Facility Identification***

The certificate will identify the facility as:

**A new 6,000 CFM FRD Counterflow Vertical Flume Scrubber System manufactured by Active Control Technology, Inc. Serial number ACSB-2000.**

The facility is located at:

**13963 Fir Street  
Oregon City, OR 97045-8299**

### ***Technical Information***

The new 6,000 CFM flume scrubber manufactured by Active Control Technology (ACT) was installed to replace an older 400 CFM Harrington scrubber which had a pollution control efficiency of 50% at 70 microns and <5% at 20 microns. The new ACT equipment is used to remove residual refractory material from the metal casings produced. The new ACT scrubber uses a high efficiency mist eliminator that provides an efficiency of nearly 100% at 4 micros and 65% at 2 micros. Test results show a 95% efficiency for HCl and NaOH fumes at 4 microns.

**Eligibility**

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to control or reduce a substantial quantity of air pollution.
- ORS 468.155 (1)(b)(B) The disposal or elimination of or redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005
- OAR 340-16-025(g) The new scrubber is not a “replacement” because the replaced scrubber was denied certification because it was not filed in a timely manner (OAR 340-16-020 and ORS 468-165.)

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/29/97</u>
<i>Application Substantially Complete</i>	<u>4/13/98</u>
<i>Construction Started</i>	<u>10/14/97</u>
<i>Construction Completed</i>	<u>10/14/97</u>
<i>Facility Placed into Operation</i>	<u>10/16/97</u>

**Facility Cost**

Facility Cost	<b>\$39,025</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$39,025</b></u>

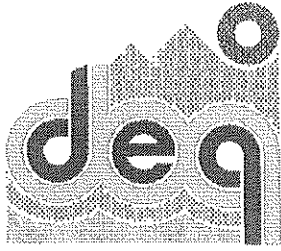
A single invoice for the total cost of the facility accompanied the application. Perrin, McMillan and Miller provided the certified public accountant’s statement indicating that the applicant made the investment claimed on the application.

**Facility Cost Allocable to Pollution Control**

According to ORS 468.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control is 100% and therefore, the percentage allocable to pollution control is 100%.

**Compliance**

Based on file review and the applicant’s claims, the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: NPDS GEN 12H, File #101827 issued on 10/9/92; Minimal Source Air Permit # 03-2505 issued on 4/12/85



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**  
Application No. **4904**  
Facility Cost **\$101,688**  
Percentage Allocable **100%**  
Useful Life **7 years**

## Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a paper mill taking tax relief under taxpayer identification number 93-0312940. The applicant is the owner of the facility. The applicant's address is:

1300 SW Fifth Avenue, Suite 3800  
Portland, OR 97201

### *Facility Identification*

The certificate will identify the facility as:

A new low pressure negative air system consisting of a Western Pneumatic 542 baghouse used to control particulate emissions.

The facility is located at:

East Saginaw Road  
Saginaw, OR 97472

### *Technical Information*

The facility consists of a low pressure negative air system, utilizing a 542 baghouse with a design inflow rate of 38,107 cfm. The system has a 5.3 to 1 air to bag ratio and removes approximately 99.99% of particulate emissions. The old positive air handler had a 7.1 to 1 ratio.

### *Eligibility*

- ORS 468.155 The **principal purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of air pollution as required by DEQ's air contaminant discharge permit #27-0177.
- ORS 468.155 The disposal or elimination of or redesign to eliminate air contamination  
(1)(b)(B) sources and the use of air cleaning devices as defined in ORS 468A.005

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/30/97</u>
<i>Application Substantially Complete</i>	<u>4/13/98</u>
<i>Construction Started</i>	<u>12/28/96</u>
<i>Construction Completed</i>	<u>1/31/97</u>
<i>Facility Placed into Operation</i>	<u>1/31/97</u>

**Facility Cost**

Facility Cost		<b>\$116,435</b>
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs		
	Cyclone	<u>-\$ 14,747</u>
Eligible Facility Cost		<b>\$101,688</b>

A summary invoice for the total cost of the facility accompanied the application. KPGM-Peat Marwick, LLP provided the independent accountant's statement.

**Facility Cost Allocable to Pollution Control**

According to ORS.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Alternatives were investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

**Compliance**

The facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: ACDP 20-0518

Reviewers: Cascade Earth Sciences, JH Dave Kauth Maggie Vandehey



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Albany-Lebanon Sanitation, Inc.**  
Application No. **4907**  
Facility Cost **\$9,699**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial and industrial solid waste recycler taking tax relief under taxpayer identification number 93-0593828. The applicant is the owner of the facility. The applicant's address is:

PO Box 1929  
Albany, OR 97321

### *Facility Identification*

The certificate will identify the facility as:

**22 four yard Recycling Boxes used for the collection of recyclable materials, serial #141161-141180 & 134877-134881**

The facility is located at:

1214 SE Montgomery Street  
Albany, OR 97321

### *Technical Information*

These containers are used for the collection of source separated cardboard for commercial collection service customers.

### *Eligibility*

ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..

ORS 468.155 The use of a material recovery process which obtains useful material from material  
(1)(b)(D) that would otherwise be solid waste as defined in ORS 459.005.



***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/31/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>1/18/96</u>
<i>Construction Completed</i>	<u>2/18/96</u>
<i>Facility Placed into Operation</i>	<u>2/18/96</u>

***Facility Cost***

Facility Cost		<b>\$9,699</b>
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u><b>\$9,699</b></u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$20,000 and therefore, the independent certified public accountant's statement is not required.

***Facility Cost Allocable to Pollution Control***

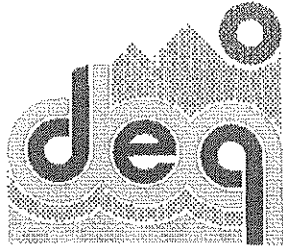
According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Albany-Lebanon Sanitation, Inc.</b>
Application No.	<b>4908</b>
Facility Cost	<b>\$19,652</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0593828. The applicant is the owner of the facility. The applicant's address is:

PO Box 1929  
Albany, OR 97321

### *Facility Identification*

The certificate will identify the facility as:

**60 two yard commercial recycling collection containers used in the collection of recyclable materials, serial #139649-139668 & 138938-138957 & 136273-136292**

The facility is located at:

1214 SE Montgomery Street  
Albany, OR 97321

### *Technical Information*

These containers are used for the collection of source separated cardboard for commercial collection service customers.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>12/31/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>3/20/96</u>
<i>Construction Completed</i>	<u>4/20/96</u>
<i>Facility Placed into Operation</i>	<u>4/20/96</u>

***Facility Cost***

Facility Cost	\$19,652
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$19,652</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$20,000 and therefore, an external certified public accountant's statement is not required.

***Facility Cost Allocable to Pollution Control***

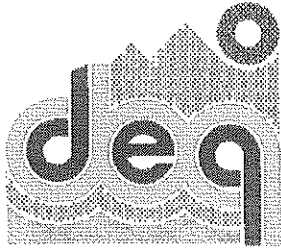
According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4909**  
Facility Cost **\$171,850**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial and industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**One new 1997 Volvo Truck, model WX42T, serial # 4VDDBKNE8VR741595 & one Heil Rapid Rail Starr System, Body serial # 1H9BCGFE4V8270099.**

The facility is located at:

9613 Mill Creek Road, SE  
Aumsville, OR 97325

### *Technical Information*

This truck is used solely for the collection of source separated yard debris from residential collection service customers. The yard debris is transferred to a facility where it is processed and composted.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment and machinery** is to prevent, control or reduce a substantial quantity of solid waste..
- (1)(a)
- ORS 468.155 The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.
- (1)(b)(D)

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>1/5/98</u>
<i>Application Substantially Complete</i>	<u>2/26/97</u>
<i>Construction Started</i>	<u>12/31/96</u>
<i>Construction Completed</i>	<u>4/25/97</u>
<i>Facility Placed into Operation</i>	<u>7/1/97</u>

***Facility Cost***

Facility Cost	<b>\$171,850</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<b>\$171,850</b>

Invoices or canceled checks substantiated the cost of the facility. Theodore R. Ahre provided the certified public accountant's statement verifying the actual cost of the claimed facility.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (1), the following factors were used to determine the percentage of the facility cost allocable to pollution control.

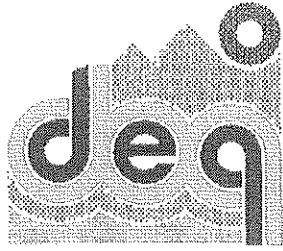
<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	The facility is used 100% to recover material that will be converted into a salable and usable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 5 years. Using the average annual cash flow for the claimed facility, the return on investment factor was 18.62 and the portion of actual cost allocable to pollution control are 100%.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewer: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Albany-Lebanon Sanitation, Inc.</b>
Application No.	<b>4913</b>
Facility Cost	<b>\$3,834</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0593828. The applicant is the owner of the facility. The applicant's address is:

PO Box 1929  
Albany, OR 97321

### *Facility Identification*

The certificate will identify the facility as:

**One 40-Yard Recycling Drop Box used in collection of recyclable materials, serial # 8779.**

The facility is located at:

1214 SE Montgomery Street  
Albany, OR 97321

### *Technical Information*

This compartmentalized drop box is used to collect and transport three different recyclable material from commercial collection service customer's facility to the applicant's recycling facility.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from material  
(1)(b)(D) that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>1/9/98</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>3/25/96</u>
<i>Construction Completed</i>	<u>4/25/96</u>
<i>Facility Placed into Operation</i>	<u>4/25/96</u>

***Facility Cost***

Facility Cost	<b>\$3,834</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$3,834</b></u>

Invoices or canceled checks substantiated the cost of the facility. Since this facility cost does not exceed \$20,000, an external certified public accountant's statement is not required.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:

Reviewers: William R Bree



State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Larry Neher, Inc.  
28485 Brownsville Rd  
Brownsville OR 97327

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

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

2. Description of Claimed Facility

The equipment described in this application is a Rears 15' Pakchopper, located at 28485 Brownsville Rd, Brownsville, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$12,051  
(The applicant provided copies of the invoice and canceled check.)

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

The applicant has 900 acres of annual and 900 acres of perennial grass seed varieties under cultivation. Larry Neher, Inc. has progressively reduced acres open field burned over the last several years. They continue to increase their efforts to remove straw by baling and flail chopping. The Pakchopper will help increase the acreage they treat in this manner as an alternative to open field burning.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 30, 1997. The application was submitted on January 14, 1998; and the application for final certification was found to be complete on January 27, 1998. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

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

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

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

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

6. Summation

- a. The equipment was constructed in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$12,051, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4919.

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

JB:rc  
Mon, May 11, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Capitol Recycling & Disposal, Inc.**  
Application No. **4922**  
Facility Cost **\$18,547**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-1197641. The applicant is the owner of the facility. The applicant's address is:

1890 16th Street, SE  
Salem, OR 97302

### *Facility Identification*

The certificate will identify the facility as:

**Twenty 4-yd front load recycling cages, serial # 135467 - 135476; 135549 - 135558 & twenty 6-yd front load recycling cages, serial # 135487 - 135496; 135457 - 135466.**

The facility is located at:

1890 16th Street, SE  
Salem, OR 97302

### *Technical Information*

These recycling cages are collection containers for source separated recyclable cardboard. They are located at the commercial collection service customers facility and services by a recycling collection truck.

### *Eligibility*

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste..
- ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>1/20/98</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>1/5/96</u>
<i>Construction Completed</i>	<u>2/7/96</u>
<i>Facility Placed into Operation</i>	<u>2/10/96</u>

### ***Facility Cost***

Facility Cost	<b>\$18,547</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$18,547</u>

Invoices or canceled checks substantiated the cost of the facility. The cost of this facility does not exceed \$20,000 and therefore, an external certified public accountant's statement was not required.

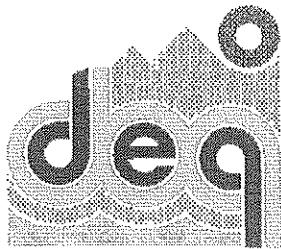
### ***Facility Cost Allocable to Pollution Control***

According to ORS 468.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4923**  
Facility Cost **\$19,923**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**Thirty Five 8-yd front load Cardboard Recycling Containers with steel one piece lid, serial # 147579 - 147598 & 147693 - 147707.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

These containers are specialized for cardboard collections and are located at commercial collection service customers' facilities. They are serviced by a separate cardboard collection truck.

### *Eligibility*

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste..

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>1/21/98</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>10/15/97</u>
<i>Construction Completed</i>	<u>10/29/97</u>
<i>Facility Placed into Operation</i>	<u>11/5/97</u>

***Facility Cost***

Facility Cost	<b>\$19,923</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$19,923</b></u>

Invoices or canceled checks substantiated the cost of the facility. The cost of this facility does not exceed \$20,000 and therefore, an external certified public accountant's statement is not required

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4924**  
Facility Cost **\$5,984**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owned of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**Two 30-yd SC style standard drop boxes,  
serial #9943 & #9944.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

These drop boxes are located at commercial and industrial collection services customers' facilities and are used for collection of source separated recyclable materials.

### *Eligibility*

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of solid waste..

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.



***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>1/21/98</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>9/15/97</u>
<i>Construction Completed</i>	<u>10/3/97</u>
<i>Facility Placed into Operation</i>	<u>10/17/97</u>

***Facility Cost***

Facility Cost	<b>\$5,984</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$5,984</b></u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$20,000 and therefore, an external certified public accountant's statement is not required.

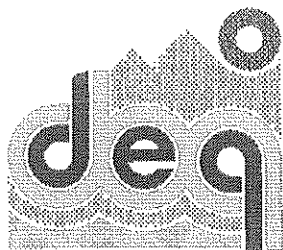
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Albany-Lebanon Sanitation, Inc.**  
Application No. **4925**  
Facility Cost **\$22,656**  
Percentage Allocable **100%**  
Useful Life **6 years**

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0593828. The applicant is the owner of the facility. The applicant's address is:

PO Box 1929  
Albany, OR 97321

### *Facility Identification*

The certificate will identify the facility as:

**384 - 95-Gal. Toter Carts which are used for the collection of yard debris for recycling, model 8540.**

The facility is located at:

1214 SE Montgomery St.  
Albany, OR 97321

### *Technical Information*

This facility consist of on-route collection containers for yard debris collection from residential customers. Collected material is processed and composted into a usable product. Collection of compostable material is one option in providing the opportunity to recycle as required by statute and Department rules.

### *Eligibility*

ORS 468.155 (1)(a) The **sole purpose** of this **new facility** is to prevent, control or reduce a substantial quantity of solid waste..

ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>1/29/98</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>6/4/96</u>
<i>Construction Completed</i>	<u>7/4/96</u>
<i>Facility Placed into Operation</i>	<u>7/4/96</u>

***Facility Cost***

Facility Cost	<b>\$22,656</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$22,656</b></u>

Invoices and canceled checks substantiating the cost of the facility were provided.. Boldt, Carlisle & Smith, LLC provided the certified public accountant's statement verifying the claimed facility cost.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Jenks-Olsen Farms, Inc.  
8930 Suver Road  
Monmouth, OR 97361

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

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

2. Description of Claimed Facility

The facility described in this application is a 162' x 132' x 30' pole construction, grass seed straw storage building, located at 8930 Suver Road, Monmouth, Oregon. The land and the buildings are owned by the applicant.

Claimed facility cost: \$117,331  
(Accountant's Certification was provided.)

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

The applicants have 3,400 acres of perennial and 100 acres of annual grass seed under cultivation. Prior to adopting alternatives to thermal field sanitation they open field burned about 700 acres annually.

The alternative selected on their perennial acreage includes baling off the bulk straw and flail chopping the stubble.

To ensure that custom balers will continue to bale their fields, the applicants need to provide straw storage on their farm.

4. Procedural Requirements

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

Construction of the facility was substantially completed on August 1, 1996. The application for final certification was found to be complete on March 16, 1998. The application was filed within two years of substantial completion of the facility.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from inclement weather.
2. The estimated annual percent return on the investment in the facility.  

The actual cost of claimed facility (\$117,331) divided by the average annual cash flow (\$5,756) equals a return on investment factor of 20.38. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 0%. Using the annual percent return of 0% and the reference annual percent return of 5.2, 100% is allocable to pollution control.
3. The alternative methods, equipment and costs for achieving the same pollution control objective.  

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.
4. Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.  

There is an increase in operating costs of \$2,500 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.
5. Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air pollution.  

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

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

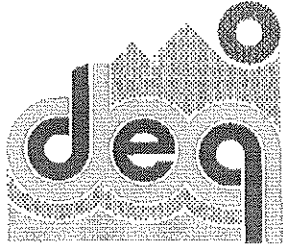
6. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$117,331, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4930.

Jim Britton, Manager  
Smoke Management Program  
Natural Resources Division



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4931</b>
Facility Cost	<b>\$15,058</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**330 95-Gallon yard debris carts, serial #  
YD9501251 - YD9501580**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

This facility consist of on-route collection containers for yard debris collection from residential customers. Collected material is processed and composted into a usable product. Collection of compostable material is one option in providing the opportunity to recycle as required by statute and Department rules.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>2/3/98</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>8/1/97</u>
<i>Construction Completed</i>	<u>8/12/97</u>
<i>Facility Placed into Operation</i>	<u>8/20/97</u>

***Facility Cost***

Facility Cost	<b>\$15,058</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$15,058</b></u>

Invoices or canceled checks substantiated the cost of the facility. Since this facility cost does not exceed \$20,000, an external certified public accountant's statement is not required.

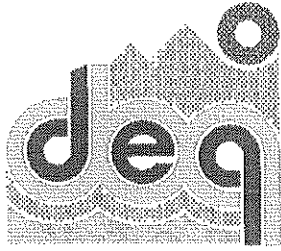
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4932**  
Facility Cost **\$2,303**  
Percentage Allocable **100%**  
Useful Life **10 years**

## **Pollution Control Facility Tax Credit: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**500 14-Gallon storehouse white recycling bins  
for curbside recycling.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### ***Technical Information***

These collection bins will be used for the collection of source separated recyclable materials from residential collection service customers.

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste.  
ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.



***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>2/3/98</u>
<i>Application Substantially Complete</i>	<u>5/13/98</u>
<i>Construction Started</i>	<u>9/1/97</u>
<i>Construction Completed</i>	<u>9/10/97</u>
<i>Facility Placed into Operation</i>	<u>9/20/97</u>

***Facility Cost***

Facility Cost	\$2,303
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$2,303</u>

Invoices or canceled checks substantiated the cost of the facility.

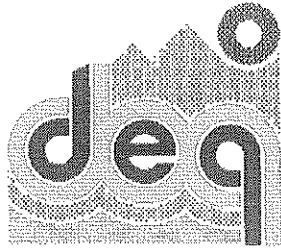
***Facility Cost Allocable to Pollution Control***

According to ORS 468.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control was the percentage of time the facility is used for pollution control. The percentage of time the facility was used for pollution control and therefore the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Mt. Hood Metals, Inc.</b>
Application No.	<b>4933</b>
Facility Cost	<b>\$877,644</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a S corporation operating as a scrap metal salvage facility taking tax relief under taxpayer identification number 93-1038032. The applicant is the owner of the facility. The applicant's address is:

9645 N Columbia Blvd.  
Portland, OR 97283

### *Facility Identification*

The certificate will identify the facility as:

**A three stage facility; cleansing facility, protective canopy, stormwater collection & treatment system.**

The facility is located at:

9645 N Columbia Blvd.  
Portland, OR 97283

**Technical Information** The claimed facility received a Preliminary Certification on 10/11/96. The facility built as represented on the Preliminary Application consists of three components: 1) a cleansing facility, 2) a protective canopy, and 3) a storm water collection and treatment system.

1) The cleansing facility consists of a 16 foot by 16 foot lean-to shed housing an oil water separator (Landa Maze CL-602A Clarifier) and an oil-water evaporator (Landa Blaze HB-1100C). An attached 45 foot by 40 foot canopy provides storm water shelter for delivery trucks while unloading heavily contaminated scrap.

2) A 150 foot by 160 foot protective canopy covers the processing and storage area for contaminated scrap.

3) A large portion of the site was covered with a concrete and asphalt cap, which along with drains and a culvert, forms a collection system to convey runoff to a sedimentation basin. The basin and an associated oil-water separator (Utility Vault

818-3-CPS) treat storm water before discharge to the Columbia Slough.

### **Eligibility**

- ORS 468.155 The **sole purpose** of this equipment, paving, and structures is to prevent, control  
(1)(a) or reduce a substantial quantity of water pollution..
- ORS 468.155 The disposal or elimination of or redesign to eliminate the use of treatment  
(1)(b)(A) works for industrial waste as defined in ORS 468B.005.
- OAR-016-0025 Installation or construction of facilities which will be used to detect, deter, or  
(2)(g) prevent spills or unauthorized releases.

### **Timeliness of Application**

The application was submitted within  
the timing requirements of ORS  
468.165 (6).

<i>Application Received</i>	<u>2/3/98</u>
<i>Application Substantially Complete</i>	<u>3/30/98</u>
<i>Construction Started</i>	<u>3/18/96</u>
<i>Construction Completed</i>	<u>11/1/96</u>
<i>Facility Placed into Operation</i>	<u>11/1/96</u>

### **Facility Cost**

Facility Cost	<b>\$884,321</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	
Fire wall	-\$ 6,677
Eligible Facility Cost	<u><b>\$877,644</b></u>

Invoices or canceled checks substantiated the cost of the facility. Copeland, Landye, Bennet and Wolf, LLP provided a certification signed by a bookkeeper employed by Mt. Hood Metals, Inc. Symonds, Evans & Larson, P.C. provided the accounting review on behalf of the Department.

### **Facility Cost Allocable to Pollution Control**

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 20

ORS 468.190(1)(c) Alternative Methods  
ORS 468.190(1)(d) Savings or Increase in Costs  
ORS 468.190(1)(e) Other Relevant Factors

years. No gross annual revenues associated with this facility.

Other alternatives more costly.

No savings or increase in costs.

No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

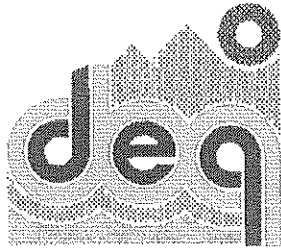
***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:

1200R Storm Water permit. 1200Z is pending development of a special 1200Z permit for Columbia Slough facilities.

Reviewers: Elliot J. Zais  
Symonds Evans & Larson



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Mt. Hood Metals, Inc.**  
Application No. **4933**  
Facility Cost **\$884,321**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility: Water Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a S corporation operating as a scrap metal salvage facility taking tax relief under taxpayer identification number 93-1038032. The applicant is the owner of the facility. The applicant's address is:

9645 N Columbia Blvd.  
Portland, OR 97283

### *Facility Identification*

The certificate will identify the facility as:

**A three stage facility; cleansing facility, protective canopy, stormwater collection & treatment system.**

The facility is located at:

9645 N Columbia Blvd.  
Portland, OR 97283

**Technical Information** The claimed facility received a Preliminary Certification on 10/11/96. The facility built as represented on the Preliminary Application consists of three components: 1) a cleansing facility, 2) a protective canopy, and 3) a storm water collection and treatment system.

1) The cleansing facility consists of a 16 foot by 16 foot lean-to shed housing an oil water separator (Landa Maze CL-602A Clarifier) and an oil-water evaporator (Landa Blaze HB-1100C). An attached 45 foot by 40 foot canopy provides storm water shelter for delivery trucks while unloading heavily contaminated scrap.

2) A 150 foot by 160 foot protective canopy covers the processing and storage area for contaminated scrap.

3) A large portion of the site was covered with a concrete and asphalt cap, which along with drains and a culvert, forms a collection system to convey runoff to a sedimentation basin. The basin and an associated oil-water separator (Utility Vault

818-3-CPS) treat storm water before discharge to the Columbia Slough.

**Eligibility**

- ORS 468.155 (1)(a) The **sole purpose** of this equipment, paving, and structures is to prevent, control or reduce a substantial quantity of water pollution..
- ORS 468.155 (1)(b)(A) The disposal or elimination of or redesign to eliminate the use of treatment works for industrial waste as defined in ORS 468B.005.
- OAR-016-0025 (2)(g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases.

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<b>2/3/98</b>
<i>Application Substantially Complete</i>	<b>3/30/98</b>
<i>Construction Started</i>	<b>3/18/96</b>
<i>Construction Completed</i>	<b>11/1/96</b>
<i>Facility Placed into Operation</i>	<b>11/1/96</b>

**Facility Cost**

Facility Cost	<b>\$884,321</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<b>\$884,321</b>

Invoices or canceled checks substantiated the cost of the facility. Copeland, Landye, Bennet and Wolf, LLP provided a certification signed by a bookkeeper employed by Mt. Hood Metals, Inc. Symonds, Evans and Larson provided the accounting review on behalf of the Department.

**Facility Cost Allocable to Pollution Control**

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 20 years. No gross annual revenues associated

ORS 468.190(1)(c) Alternative Methods	with this facility.
ORS 468.190(1)(d) Savings or Increase in Costs	Other alternatives more costly.
ORS 468.190(1)(e) Other Relevant Factors	No savings or increase in costs.
	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

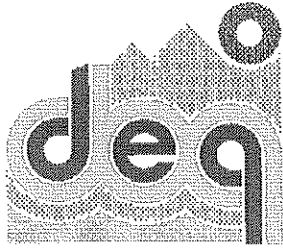
***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:

1200R Storm Water permit. 1200Z is pending development of a special 1200Z permit for Columbia Slough facilities.

Reviewers: Elliot J. Zais  
Symonds Evans & Larson



# Tax Credit Review Report

Revised 2/27/98

Director's  
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**  
Application No. **4943**  
Facility Cost **\$22,489**  
Percentage Allocable **100%**  
Useful Life **7 years**

## **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation that operates a particleboard manufacturing plant in Albany, Oregon, and is taking tax relief under taxpayer identification number 93-0312940. The applicant is the owner of the facility. The applicant's address is:

**Duraflake Division  
1300 S.W. Fifth Avenue, Suite 3800  
Portland, OR 97201**

### ***Facility Identification***

The certificate will identify the facility as:

**Oil and grease barrel containment building  
addition with berm.**

The facility is located at:

**2550 Old Salem Road NE  
Albany, OR 97321**

### ***Technical Information***

The water pollution control facility consists of a one room addition to the Jitney repair area for storage of oil and grease barrels. The addition includes a concrete berm for spill containment with a building structure on top. Previously about half of the barrels were stored outside without containment. The area of the addition is about 724 square feet.

This building addition could hold between 100 and 150 fifty-five gallon drums or between 5500-8250 gallons. An oil drum leak is unlikely, however, oil is prone to accumulate on the top of the barrels during normal operation. When stored outside, the oil is washed onto the ground during rainy periods. The water carries the oil through the storm system and into the nearby Willamette River. This is the most effective method of preventing or controlling water contamination from oil or grease barrels.



### ***Eligibility***

ORS 468.155 (1)(a) The **sole purpose** of this **new building installation** is to reduce the possibility of a substantial quantity of water pollution.

ORS 468.155 (1)(b)(B) The disposal or elimination of or redesign to eliminate industrial waste sources and the use of treatment works for industrial waste as defined in ORS 468B.005.

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>2/13/98</u>
<i>Application Substantially Complete</i>	<u>3/20/98</u>
<i>Construction Started</i>	<u>10/30/96</u>
<i>Construction Completed</i>	<u>1/31/97</u>
<i>Facility Placed into Operation</i>	<u>1/31/97</u>

### ***Facility Cost***

Facility Cost	\$22,489
Salvage Value	
Government Grants	
Other Tax Credits	
Insignificant Contribution (ORS 468.155(2)(d))	
Ineligible Costs	
Eligible Facility Cost	<u>\$22,489</u>

Invoices substantiated the cost of the facility. No certified public accountant's statement was provided.

### ***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the claimed facility cost did not exceeded \$50,000 and therefore, the following factors used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. this facility is used 100% of the time for pollution control.

### ***Compliance/Other Tax Credits***

The facility complies with Department statutes and permit requirements.

The applicant received one Pollution Control Tax Credit (Certificate 4324 issued 3/3/1995) for a baler as an alternative to field burning.

Reviewers: Lois L. Payne, SJO Consulting Engineers, Inc.  
Dennis E. Cartier, Associate, SJO Consulting Engineers, Inc.  
Maggie Vandehey, DEQ

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

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

The applicant owns and operates a retail service station at 1795 North 5th St., Springfield, OR 97477, Facility ID No. 446.

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

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are two doublewall fiberglass/steel tanks, doublewall fiberglass piping, spill containment basins, automatic tank gauge system, overfill alarm, line leak detectors, sumps, automatic shutoff valves, oil/water separator, stage I vapor recover and stage II vapor recovery piping.

Claimed facility cost \$205,464  
(Accountant's certification was provided)

3. Procedural Requirements

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

The facility was substantially completed on March 16, 1996 and placed into operation on March 16, 1996. The application for certification was submitted to the Department on February 23, 1998, and was considered to be complete and filed on March 2, 1998, within two years of the completion date of the project.

4. Evaluation of Application

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

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

- 1) For corrosion protection - Doublewall fiberglass/steel tanks and doublewall fiberglass piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps, oil/water separator, automatic shutoff valves and an overfill alarm.
- 3) For leak detection - Automatic tank gauge system and line leak detectors.

In addition, the following was installed to reduce air quality emissions.

- 1) For VOC reduction - Stage I vapor recovery and stage II vapor recovery piping.

The Department concludes that the costs claimed by the applicant (\$205,464) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose the method considered the most cost-effective. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
	-----	-----	-----
<u>Corrosion Protection:</u>			
Doublewall fiberglass/steel tank and fiberglass piping	\$32,590	57% (1)	\$18,576
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	3,888	100	3,888
Sumps	898	100	898
Oil/water separator	2,300	100	2,300
Automatic shutoff valves	918	100	918
Overfill alarm	119	100	119
<u>Leak Detection:</u>			
Tank gauge system	4,986	90% (2)	4,487
Line leak detectors	576	100	576
<u>VOC Reduction:</u>			
Stage I vapor recovery & Stage II piping	1,396	100	1,396
Labor, material, misc parts	157,793	100	157,793
	-----	-----	-----
Total	\$205,464	93%	\$190,951

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$32,590 and the bare steel system is \$13,999, the resulting portion of the eligible tank and piping cost allocable to pollution control is 57%.
- (2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.
- d. The portion of the facility cost that is properly allocable to pollution control is 93%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$205,464 with 93% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4949.

Barbara J. Anderson  
(503) 229-5870  
April 10, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Blount, Inc.**  
Application No. **4950**  
Facility Cost **\$126,853**  
Percentage Allocable **100%**  
Useful Life **10 years**

## **Pollution Control Facility: Air Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a Manufacture of saw chain & other fabricated metal products taking tax relief under taxpayer identification number 63-0593908. The applicant is the owner of the facility. The applicant's address is:

**PO Box 22127  
Portland, OR 97269**

### ***Facility Identification***

The certificate will identify the facility as:

**Chrome plating exhaust and scrubber system,  
Model KCH Spectra-U10000 chemical mist  
eliminator.**

The facility is located at:

**4909 International Way  
Portland, OR 97222**

### ***Technical Information***

Blount replaced their previously existing exhaust ventilation system with a new exhaust ventilation system to be in compliance with EPA 40CFR63, Subpart N before January 25, 1997. The air pollution equipment included in the new system consists of ten in-line mist eliminators installed above the chrome plating tanks, a KCH Spectra-U-10000 chemical mist eliminator with a four stage composite mesh pad system, a centrifugal NH fan No. 27, system controls, piping and electrical. The Oregon DEQ Small Business Technical Assistance Program presented a manual titled *Clean Air Compliance for Chrome Electroplaters, Strategies for Reducing Hazardous Air Pollutants, Pollution Prevention and Regulatory Compliance*, dated November 15, 1995, which was used as a reference for the requirements of the installed system.

Their previously existing system included a chevron type mist eliminator which could not meet the new emission requirements imposed by the EPA, the ductwork could not be reused with the new system because of its age and condition. The interior ductwork is an ineligible part of the facility cost as submitted and as indicated in this report.

The system presently installed is an effective method of preventing or controlling chrome emissions.

### ***Eligibility***

- ORS 468.155 (1)(a) The **principal purpose** of this **Equipment** is to prevent, control or reduce a substantial quantity of air pollution.  
The requirement is imposed by the federal Environmental Protection under 40CFR 63, Subpart N, - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- ORS 468.155 (1)(b)(B) The disposal or elimination of or redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/4/98</u>
<i>Application Substantially Complete</i>	<u>5/7/98</u>
<i>Construction Started</i>	<u>7/1/96</u>
<i>Construction Completed</i>	<u>7/7/96</u>
<i>Facility Placed into Operation</i>	<u>7/8/96</u>

### ***Facility Cost***

Facility Cost	\$ 143,321
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs:	
Interior ventilation ductwork	\$ -16,468
Eligible Facility Cost	<u>\$ 126,853</u>

Invoices substantiated the cost of the facility and a copy of the project cost general ledger was provided. The ineligible cost was for interior ductwork and the adder for a premium efficiency 25 Hp fan motor. Coopers and Lybrand L.L.P. provided the certified public accountant's statement.



***Facility Cost Allocable to Pollution Control***

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Alternative methods were considered and alternative providers were investigated but were found to be less cost effective.
ORS 468.190(1)(d) Savings or Increase in Costs	Operating costs will increase \$30,960 per year.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility: Application approval is in progress at DEQ.

Reviewers: Dave Kauth, DEQ  
Lois L. Payne, SJO Engineers  
Dennis Cartier, Associate, SJO Engineers

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Ronald Schmidt  
6573 Sunnyview Road N.E.  
Salem, OR 97305

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

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

2. Description of Claimed Facility

The facility described in this application is a Green Line, Inc. heavy weight, offset disc, series 1000, located at 6573 Sunnyview Road N.E., Salem, Oregon. The land and the buildings are owned by the applicant.

Claimed facility cost: \$11,500  
(The applicant provided copies of dealer invoices.)

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

The applicant has 150 acres of perennial grass seed under cultivation. Initially, Mr. Schmidt open field burned as many acres as the weather and smoke management program permitted. Subsequently, the applicant baled and propane flamed the acreage as an alternative to open field burning but found that method too expensive and ineffective.

Beginning last season, Mr. Schmidt incorporated flail chopping the remaining stubble after the bulk straw was baled off. This alternative requires disking, plowing, and rolling and harrowing much more often on each field.

4. Procedural Requirements

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

Construction of the facility was substantially completed on December 23, 1997. The application for final certification was found to be complete on April 2, 1998. The application was filed within two years of substantial completion of the facility.

5. Evaluation of Application

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

processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.”

b. Eligible Cost Findings

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

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

The facility does not recover or convert waste products into a salable or usable commodity.
2. The estimated annual percent return on the investment in the facility.  

There is no annual percent return on the investment as applicant claims no gross annual income.
3. The alternative methods, equipment and costs for achieving the same pollution control objective.  

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.
4. Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.  

There is an increase in operating costs of \$1,800 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.
5. Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air pollution.  

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

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

6. Summation

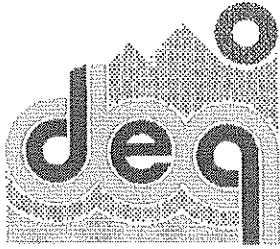
- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 100%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$11,500, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4951.

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

JB:br  
Thu, May 14, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Corvallis Disposal Co.**  
Application No. **4952**  
Facility Cost **\$34,270**  
Percentage Allocable **100%**  
Useful Life **5 years**

## Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0422468. The applicant is the owner of the facility. The applicant's address is:

PO Box 1  
Corvallis, OR 97339

### *Technical Information*

These bins will be used for the collection of source separated recyclable material from residential on-route collection

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

### *Facility Identification*

The certificate will identify the facility as:

### **8000 Red Recycling Bins**

The facility is located at:

110 NE Walnut Blvd.  
Corvallis, OR 97330

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/10/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>4/15/96</u>
<i>Construction Completed</i>	<u>5/1/96</u>
<i>Facility Placed into Operation</i>	<u>5/10/96</u>

***Facility Cost***

Facility Cost	\$34,270
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$34,270</u>

Invoices or canceled checks substantiated the cost of the facility. Boldt, Carlisle & Smith, LLC provided the certified public accountant's statement.

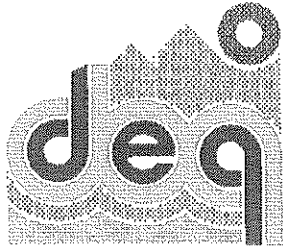
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's Recommendation: **APPROVE**

Applicant	<b>Corvallis Disposal Co.</b>
Application No.	<b>4953</b>
Facility Cost	<b>\$43,502</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>6 years</b>

## Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### Applicant Identification

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0422468. The applicant is the owner of the facility. The applicant's address is:

PO Box 1  
Corvallis, OR 97339

### Facility Identification

The certificate will identify the facility as:

**864 95-Gallon Rehrig-Pacific Carts, serial #00001-00864**

The facility is located at:

110 NE Walnut Blvd.  
Corvallis, OR 97330

### Technical Information

These carts will be used for the collection of yard debris from residential collection service customers.

### Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this (**New Equipment**) is to prevent, control or reduce a substantial quantity of solid waste..
- ORS 468.155 (1)(b)(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005.

### Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/10/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>3/19/97</u>
<i>Construction Completed</i>	<u>4/21/97</u>
<i>Facility Placed into Operation</i>	<u>4/30/97</u>

***Facility Cost***

Facility Cost	<b>\$43,502</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<hr/> <b>\$43,502</b>

Invoices or canceled checks substantiated the cost of the facility. Boldt, Carlisle & Smith, LLC provided the certified public accountant's statement.

***Facility Cost Allocable to Pollution Control***

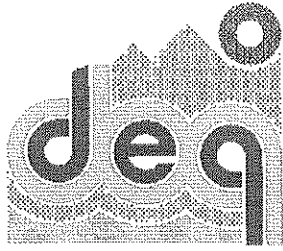
According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree





# Tax Credit Review Report

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Director's  
Recommendation: **APPROVE**

Applicant **Corvallis Disposal Co.**  
Application No. **4954**  
Facility Cost **\$34,041**  
Percentage Allocable **100%**  
Useful Life **6 years**

## **Pollution Control Facility: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0422468. The applicant is the owner of the facility. The applicant's address is:

PO Box 1  
Corvallis, OR 97339

### ***Facility Identification***

The certificate will identify the facility as:

**576 101-Gallon Toter Carts, model #61001 &  
serial #YW009358-YW00993.**

The facility is located at:

110 NE Walnut Blvd.  
Corvallis, OR 97330

### ***Technical Information***

These carts will be used for the collection of yard debris from residential collection service customers.

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/10/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>6/1/96</u>
<i>Construction Completed</i>	<u>6/28/96</u>
<i>Facility Placed into Operation</i>	<u>7/11/96</u>

***Facility Cost***

Facility Cost	<b>\$34,041</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$34,041</b></u>

Invoices or canceled checks substantiated the cost of the facility. Boldt, Carlisle & Smith, LLC provided the certified public accountant's statement.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

DEQ permits issued to facility:

Reviewers: William R Bree

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

**Tax Credit Application 4955**

1. Applicant

Gerald P. Mullen  
Mullen Farms, Inc.  
17792 River Road NE  
St. Paul, OR 97137

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 17792 River Road NE, St. Paul, Oregon. The equipment is owned by the applicant.

New Holland bale wagon	\$85,600
New Holland baler	\$31,900
Allen hay rake	\$17,100

Claimed equipment cost: \$134,600  
(Accountant's Certification was provided.)

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

The applicant has 440 acres of perennial grass seed under cultivation. Prior to incorporating alternatives the applicant open field burned as many acres as the weather and smoke management program permitted.

The applicant's alternatives include baling, stacking, flail chopping, mulching, vacuuming and giving the straw away. Some of these practices were accomplished by using equipment borrowed and rented from neighboring operations. To facilitate the continued, timely removal of straw the applicants feel it is necessary to own the rake, baler and bale wagon.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on December 10, 1997. The application was submitted on March 12, 1998; and the application for final certification was found to be complete on April 2, 1998. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

- a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as

required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f) A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a usable commodity by providing removal from the fields and packaging.

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

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

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

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

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

There is an increase in operating costs of \$2,550 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

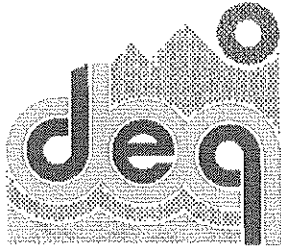
- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$134,600, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4955.

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

JB/br  
Wed, May 13, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **Capitol Recycling & Disposal, Inc.**  
Application No. **4958**  
Facility Cost **\$31,532**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-1197641. The applicant is the owner of the facility. The applicant's address is:

1890 16th Street, SE  
Salem, OR 97302

### *Facility Identification*

The certificate will identify the facility as:

**Eight 48.9-yard SC Style Standard Drop Boxes, serial #8897-8900, 8903 & 8904.**

The facility is located at:

1890 16th Street, SE  
Salem, OR 97302

### *Technical Information*

These drop boxes will be used to collect recyclable material from commercial and industrial collection service customers.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this (**New Equipment**) is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/16/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>3/20/96</u>
<i>Construction Completed</i>	<u>4/29/96</u>
<i>Facility Placed into Operation</i>	<u>5/10/96</u>

### ***Facility Cost***

Facility Cost	<b>\$31,532</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$31,532</b></u>

Invoices or canceled checks substantiated the cost of the facility. Theodore R. Ahre, CPA provided the certified public accountant's statement.

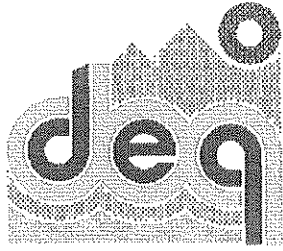
### ***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4960</b>
Facility Cost	<b>\$4,420</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>5 years</b>

## **Pollution Control Facility: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**One 30-yard SC style standard Drop Box,  
serial #9239.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### ***Technical Information***

This drop box will be used to collect and transport color sorted source separated glass for recycling

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this (**New Equipment**) is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.



### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/19/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>9/15/97</u>
<i>Construction Completed</i>	<u>10/30/97</u>
<i>Facility Placed into Operation</i>	<u>11/5/97</u>

### ***Facility Cost***

Facility Cost	\$4,420
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$4,420</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$20,000 and therefore, an external accounting review was not required.

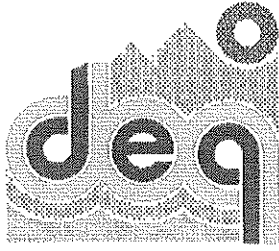
### ***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>United Disposal Service, Inc.</b>
Application No.	<b>4961</b>
Facility Cost	<b>\$4,756</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>5 years</b>

## **Pollution Control Facility: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**Ten 4-yard front load cardboard recycling containers, serial #147421-147430.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### ***Technical Information***

These containers will be used to collect source separated recyclable materials from commercial and industrial collection service customers.

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/19/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>9/15/97</u>
<i>Construction Completed</i>	<u>10/10/97</u>
<i>Facility Placed into Operation</i>	<u>10/20/97</u>

***Facility Cost***

Facility Cost		<b>\$4,756</b>
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u><b>\$4,756</b></u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$20,000 and therefore, an external accounting review was not required.

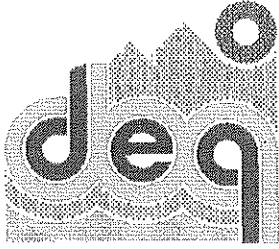
***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Truitt Bros., Inc.</b>
Application No.	<b>4962</b>
Facility Cost	<b>\$15,000</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>7 years</b>

## **Pollution Control Facility: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a food processor taking tax relief under taxpayer identification number 93-0612606. The applicant is the owner of the facility. The applicant's address is:

1105 Front Street, NE  
Salem, OR 97301

### ***Facility Identification***

The certificate will identify the facility as:

**EZ-Pak Peabody Compactor, model # SP-DPR, serial #601-6-275.**

The facility is located at:

1105 Front Street, NE  
Salem, OR 97301

### ***Technical Information***

This compactor will be used to process waste cardboard prior to its collection for recycling .

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this **new equipment**) is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>3/16/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>3/20/97</u>
<i>Construction Completed</i>	<u>5/1/97</u>
<i>Facility Placed into Operation</i>	<u>5/15/97</u>

***Facility Cost***

Facility Cost	<b>\$15,000</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$15,000</b></u>

The facility cost does not exceed \$20,000 and therefore, an external accounting review was not required.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dardanelles  
P. O. Box 708  
Gold Hill, OR 97525

The applicant owns and operates a retail gas station at 9625 Old Stage Rd., Central Point, OR 97502, Facility ID No. 359.

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

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are one two-compartment fiberglass/steel tank, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm, line leak detectors, sumps, automatic shutoff valves and Stage I vapor recovery equipment.

Claimed facility cost \$49,860  
(Accountant's certification was provided)

3. Procedural Requirements

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

The facility was substantially completed on September 22, 1997 and placed into operation on September 22, 1997. The application for certification was submitted to the Department on March 23, 1998, and was considered to be complete and filed on April 10, 1998, within two years of the completion date of the project.

4. Evaluation of Application

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

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

- 1) For corrosion protection - Fiberglass/steel tank and doublewall flexible plastic piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps, automatic shutoff valves and an overflow alarm.
- 3) For leak detection - Automatic tank gauge system and line leak detectors.

In addition, the following was installed to reduce air quality emissions.

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

The Department concludes that the costs claimed by the applicant (\$49,860) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

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

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

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

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



	Eligible Facility Cost	Percent Allocable	Amount Allocable
<u>Corrosion Protection:</u>			
Fiberglass/steel tank and & flexible plastic piping	\$10,085	100%	\$10,085
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	365	100	365
Sumps	1,458	100	1,458
Automatic shutoff valves	583	100	583
Overfill alarm	295	100	295
<u>Leak Detection:</u>			
Tank gauge system	4,189	100	4,189
Line leak detectors	502	100	502
<u>VOC Reduction:</u>			
Stage I vapor recovery	111	100	111
Labor, material, misc parts	32,272	100	32,272
Total	\$49,860	100%	\$49,860

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$49,860 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4964.

Barbara J. Anderson  
(503) 229-5870  
April 10, 1998

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Wilco Farmers  
P O Box 258  
Mt. Angel, OR 97362

The applicant owns and operates a retail/commercial fueling station at 1395 1st Avenue, Stayton, OR 97383, Facility ID No. 11583.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are three doublewall fiberglass/steel tanks (two with 2-compartments), doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overfill alarm, line/turbine leak detectors, sumps, oil/water separator and monitoring wells.

Claimed facility cost \$201,671  
(Accountant's certification was provided)

3. Procedural Requirements

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

The facility was substantially completed on June 1, 1996 and placed into operation on June 10, 1996. The application for certification was submitted to the Department on March 25, 1998, and was considered to be complete and filed on April 14, 1998, within two years of the completion date of the project.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air.

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

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

- 1) For corrosion protection - Doublewall fiberglass/steel tanks and doublewall flexible plastic piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps, oil/water separator and an overflow alarm.
- 3) For leak detection - Automatic tank gauge system, line/turbine leak detectors and monitoring wells.

The Department concludes that the costs claimed by the applicant (\$201,671) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose the method considered to be the most cost-effective. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
	_____	_____	_____
<u>Corrosion Protection:</u>			
Doublewall fiberglass/steel tanks & flexible plastic piping	\$54,657	56% (1)	\$30,608
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	558	100	558
Sumps	14,179	100	14,179
Overfill alarm	277	100	277
<u>Leak Detection:</u>			
Tank gauge system	14,553	90% (2)	13,098
Line/turbine leak detectors	4,551	100	4,551
Monitoring wells	254	100	254
Labor, material, misc (incl. oil/water separator	112,642	100	112,642
	_____	_____	_____
Total	\$201,671	87%	\$176,167

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$54,657 and the bare steel system is \$23,921, the resulting portion of the eligible tank and piping cost allocable to pollution control is 56%.
- (2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

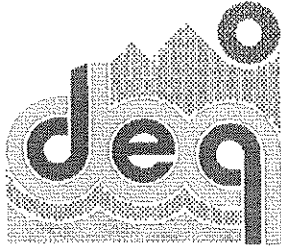
5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.
- d. The portion of the facility cost that is properly allocable to pollution control is 87%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$201,671 with 87% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4967.

Barbara J. Anderson  
(503) 229-5870  
April 14, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Corvallis Disposal Co.</b>
Application No.	<b>4970</b>
Facility Cost	<b>\$12,409</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>8 years</b>

## **Pollution Control Facility: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0422468. The applicant is the owner of the facility. The applicant's address is:

PO Box 1  
Corvallis, OR 97339

### ***Facility Identification***

The certificate will identify the facility as:

**Fifteen 2-yd model #M73T, eight 4-yd model #M75T, serial #142185-142189 & 3 unknown, and four 6-yd model #M76T, serial #142239 & 142240 & 2 unknown Front load cardboard containers for recycling.**

The facility is located at:

110 NE Walnut Blvd.  
Corvallis, OR 97330

### ***Technical Information***

These containers will be used for the collection of source separated cardboard from commercial collection service customers.

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>4/1/98</u>
<i>Application Substantially Complete</i>	<u>4/21/98</u>
<i>Construction Started</i>	<u>11/8/96</u>
<i>Construction Completed</i>	<u>11/24/96</u>
<i>Facility Placed into Operation</i>	<u>12/3/96</u>

***Facility Cost***

Facility Cost	<b>\$12,409</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$12,409</b></u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$20,000 and therefore, an external accounting review was not required.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Cain Petroleum, Inc.  
2624 Pacific Avenue  
Forest Grove, OR 97116

The applicant owns and operates a retail gas station at 39191 Procter Blvd., Sandy, OR 97055, Facility ID No. 141.

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

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are three fiberglass coated steel doublewall tanks, doublewall flexible plastic piping, spill containment basins, automatic tank gauge system, overflow alarm, sumps, automatic shutoff valves and Stage II vapor recovery equipment.

Claimed facility cost \$169,275  
(Accountant's certification was provided)

3. Procedural Requirements

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

The facility was substantially completed on August 14, 1996 and placed into operation on August 14, 1996. The application for certification was submitted to the Department on April 1, 1998, and was considered to be complete and filed on April 27, 1998, within two years of the completion date of the project.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal

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

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

- 1) For corrosion protection - Doublewall fiberglass coated steel tanks and doublewall flexible plastic piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps, overflow alarm and automatic shutoff valves.
- 3) For leak detection - Automatic tank gauge system.

In addition, the following was installed to reduce air quality emissions.

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

The Department concludes that the costs claimed by the applicant (\$169,275) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

The equipment does not recover or convert waste products into a salable or usable commodity.
- 2) The estimated annual percent return on the investment in the facility.  

There is no annual percent return on investment as the applicant claims no gross annual income from the facility.
- 3) The alternative methods, equipment and costs for achieving the same pollution control objective.

The applicant chose the most cost effective alternative. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
<u>Corrosion Protection:</u>			
Fiberglass coated steel tanks & flexible plastic piping	\$35,452	64% (1)	\$22,689
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	1,277	100	1,277
Overfill alarm	300	100	300
Automatic shutoff valves	428	100	428
<u>Leak Detection:</u>			
Tank gauge system	7,650	90% (2)	6,885
<u>VOC Reduction:</u>			
Stage II vapor recovery	12,253	100	12,253
Labor, material, misc. parts (including sumps)	111,915	100	111,915
Total	\$169,275	92%	\$155,747

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$35,452 and the bare steel system is \$12,616, the resulting portion of the eligible tank and piping cost allocable to pollution control is 64%.
- (2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

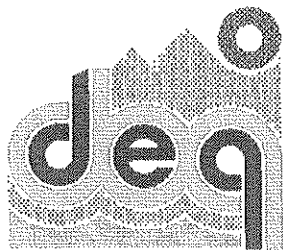
5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.
- d. The portion of the facility cost that is properly allocable to pollution control is 92%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$169,275 with 92% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4971.

Barbara J. Anderson  
(503) 229-5870  
April 27, 1998



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant	<b>Willamette Industries, Inc.</b>
Application No.	<b>4981</b>
Facility Cost	<b>\$51,550</b>
Percentage Allocable	<b>100%</b>
Useful Life	<b>7 years</b>

## Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a paper mill taking tax relief under taxpayer identification number 93-0312940. The applicant is the owner of the facility. The applicant's address is:

1300 SW Fifth Avenue  
Suite 3800  
Portland, OR 97201

### *Facility Identification*

The certificate will identify the facility as:

**A resin evaporator and a solvent distillation unit, model SC-100.**

The facility is located at:

2812 Old Salem Road  
Albany, OR 97321

### *Technical Information*

There are two piece of equipment included in this application. The solvent recovery system recycles solvent back into the manufacturing process. This solvent would otherwise been disposed of as solid or hazardous waste. The resin evaporator separates solvent and water from waste resin. The dry resin is then disposed of. This equipment does not recover any material for recycling and therefore is not eligible for tax credit certification.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<b>4/2/98</b>
<i>Application Substantially Complete</i>	<b>4/21/98</b>
<i>Construction Started</i>	<b>9/1/95</b>
<i>Construction Completed</i>	<b>12/1/96</b>
<i>Facility Placed into Operation</i>	<b>12/1/96</b>

**Facility Cost**

Facility Cost	<b>\$56,446</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	
Resin Evaporator	-\$ 4896
Eligible Facility Cost	<b>\$51,550</b>

The resin evaporator does not use a material recovery process to recover a usable product from solid waste. This equipment only concentrates the waste resin prior to disposal. Invoices or canceled checks substantiated the cost of the facility. KPMG Peat Marwick LLP provided the certified public accountant’s statement.

**Facility Cost Allocable to Pollution Control**

According to ORS 468.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. The savings in recovered material for recycling are very small and do not result in a reduction of the portion of the claimed facility allocable to pollution control.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	No other relevant factors.

Considering these factors, the percentage allocable to pollution control is 100%.

**Compliance**

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT  
POLLUTION PREVENTION PILOT PROGRAM

---

1. Applicant

Mailing Address

Priscilla E. Thompson  
1111 4<sup>th</sup> Street  
Tillamook, Oregon 97141

Priscilla E. Thompson  
1111 4<sup>th</sup> Street  
Tillamook, Oregon 97141

The applicant owns and operates a dry-cleaning shop located at 1111 4<sup>th</sup> Street, Tillamook, Oregon.

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

2. Description of Facility

The claimed facility is a new dry-cleaning machine using the petroleum based SELL solvent 142 HT, which was installed as a replacement for a dry-cleaning machine which used perchloroethylene as a solvent. The new machine eliminates the emissions of perc to the atmosphere.

Claimed Facility Cost:       \$ 74,014

3. Procedural Requirements

The facility is governed by ORS 468A.095 through 468A.098, and by OAR Chapter 340, Division 16.

The facility met all regulatory deadlines in that:

Installation of the pollution prevention facility was substantially completed on December 8, 1997. The application for final certification was received by the Department on April 13, 1998. The application was found to be complete on April 20, 1998, within one year of installation of the facility.

4. Evaluation of Application

Rationale For Eligibility

- (1) The pollution prevention facility is eligible because it meets the requirement of avoiding the requirements of the National Emission Standard for Hazardous Air Pollutants (NESHAP), specifically 40 CFR 63.320 to 63.325 national perchloroethylene air emissions standard for dry cleaning facilities.

The new dry-cleaning facility was installed between January 1, 1996 and December 31, 1999.

The facility does not qualify for a pollution control tax credit under ORS 468.165 and 468.170.

- (2) The owner installed equipment which resulted in the elimination of perchloroethylene use and is in-turn not subject to the NESHAP.
- (3) The dry cleaning facility has registered under the Clean Air Act Title III National Emissions Standards for Hazardous Air Pollutants.

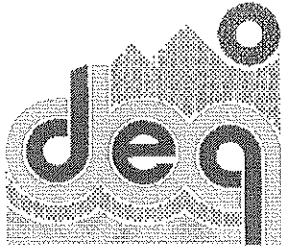
5. Summation

- a. The pollution prevention facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that it meets the definition of a pollution prevention facility for this pilot program.
- c. The applicant indicated that the tax credit program was not a determining factor in installing this equipment.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Prevention Facility Certificate bearing the cost of \$ 74,014 be issued for the facility claimed in Tax Credit Application No. T-4991.





# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4994**  
Facility Cost **\$5,067**  
Percentage Allocable **100%**  
Useful Life **5 years**

## **Pollution Control Facility: Solid Waste Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### ***Facility Identification***

The certificate will identify the facility as:

**Four 3-yd self-dumping hoppers, serial #148052-148055 and two 4.5-yd self-dumping hoppers, serial #148126 & 148127.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### ***Technical Information***

These hoppers are placed with commercial and industrial collection service customers and are used for the collection of source separated recyclable materials.

### ***Eligibility***

- ORS 468.155 The **sole purpose** of this **equipment** is to prevent, control or reduce a substantial (1)(a) quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from (1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>4/21/98</u>
<i>Application Substantially Complete</i>	<u>5/5/98</u>
<i>Construction Started</i>	<u>10/1/97</u>
<i>Construction Completed</i>	<u>10/29/97</u>
<i>Facility Placed into Operation</i>	<u>11/10/97</u>

### ***Facility Cost***

Facility Cost		<b>\$5,067</b>
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u><b>\$5,067</b></u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an external accounting review was not required.

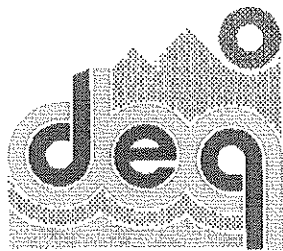
### ***Facility Cost Allocable to Pollution Control***

According to ORS 468.190(3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**  
Application No. **4995**  
Facility Cost **\$3,918**  
Percentage Allocable **100%**  
Useful Life **10 years**

## Pollution Control Facility: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

2215 N Front Street  
Woodburn, OR 97071

### *Facility Identification*

The certificate will identify the facility as:

**One 48.9-yd SC style standard drop box,  
serial #10187.**

The facility is located at:

2215 N Front Street  
Woodburn, OR 97071

### *Technical Information*

This drop box will be used by one of the applicant commercial collection service customers for the collection of source separated recyclable material.

### *Eligibility*

- ORS 468.155 The **sole purpose** of this **new equipment** is to prevent, control or reduce a  
(1)(a) substantial quantity of solid waste..
- ORS 468.155 The use of a material recovery process which obtains useful material from  
(1)(b)(D) material that would otherwise be solid waste as defined in ORS 459.005.

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>4/21/98</u>
<i>Application Substantially Complete</i>	<u>5/5/98</u>
<i>Construction Started</i>	<u>12/5/97</u>
<i>Construction Completed</i>	<u>12/23/97</u>
<i>Facility Placed into Operation</i>	<u>1/10/98</u>

### ***Facility Cost***

Facility Cost	<b>\$3,918</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u><b>\$3,918</b></u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an external accounting review was not required.

### ***Facility Cost Allocable to Pollution Control***

According to ORS 468.190(3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: William R Bree

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT  
POLLUTION PREVENTION PILOT PROGRAM

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1. Applicant Mailing Address

Estherwin, Inc.  
The Cleanery East Salem  
3700 Market Street NE  
Salem, Oregon 97302

Estherwin, Inc.  
The Cleanery East Salem  
3700 Market Street NE  
Salem, Oregon 97302

The applicant owns and operates a dry-cleaning shop located at 3700 Market Street NE Salem, Oregon.

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

2. Description of Facility

The claimed facility is a new dry-cleaning machine using Exxon DF 2000 solvent, which was installed as a replacement for a dry-cleaning machine which used perchloroethylene (perc) as a solvent. The new machine eliminates the emissions of perc to the atmosphere.

Claimed Facility Cost:       \$ 62,516

3. Procedural Requirements

The facility is governed by ORS 468A.095 through 468A.098, and by OAR Chapter 340, Division 16.

The facility met all regulatory deadlines in that:

Installation of the pollution prevention facility was substantially completed on May 7, 1997. The application for final certification was received by the Department on April 22, 1998. The application was found to be complete when processed on May 8, 1998. A complete application was submitted within one year of installation of the facility.

4. Evaluation of Application

Rationale For Eligibility

- (1) The pollution prevention facility is eligible because it meets the requirement of avoiding the requirements of the National Emission Standard for Hazardous Air Pollutants (NESHAP), specifically 40 CFR 63.320 to 63.325 national perchloroethylene air emissions standard for dry cleaning facilities.

The new dry-cleaning facility was installed between January 1, 1996 and December 31, 1999.

The facility does not qualify for a pollution control tax credit under ORS 468.165 and 468.170.

- (2) The owner installed equipment which resulted in the elimination of perchloroethylene use and is in-turn not subject to the NESHAP.
- (3) The dry cleaning facility has registered under the Clean Air Act Title III National Emissions Standards for Hazardous Air Pollutants.

5. Summation

- a. The pollution prevention facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that it meets the definition of a pollution prevention facility for this pilot program.
- c. The applicant indicated that the tax credit program was not a determining factor in installing this equipment.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Prevention Facility Certificate bearing the cost of \$ 62,516 be issued for the facility claimed in Tax Credit Application No. T-4998.

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Russell Oil Co.  
P O Box 7  
Boardman, OR 97818

The applicant owns and operates a retail gas station at 401 Locust Street, Arlington, OR, Facility ID No. 1717.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are line/turbine leak detectors, sumps and automatic shutoff valves.

Claimed facility cost \$15,006  
(Documentation of cost was provided)

3. Procedural Requirements

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

The facility was substantially completed on January 1, 1997 and placed into operation on January 1, 1997. The application for certification was submitted to the Department on April 30, 1998, and was considered to be complete and filed on May 7, 1998, within two years of the completion date of the project.

4. Evaluation of Application

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

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

- 1) For spill and overflow prevention - Sumps and automatic shutoff valves.
- 2) For leak detection - Line/turbine leak detectors.

The Department concludes that the costs claimed by the applicant (\$15,006) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose the method considered to be the most cost-effective. The methods chosen are acceptable for meeting the requirements of federal regulations.



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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
	_____	_____	_____
<u>Spill &amp; Overfill Prevention:</u>			
Sumps	2,385	100%	2,385
Automatic shutoff valves	893	100	893
<u>Leak Detection:</u>			
Line/turbine leak detectors	2,236	100	2,236
Labor, material, misc parts	9,492	100	9,492
	_____	_____	_____
Total	\$15,006	100%	\$15,006

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements according to signed statements made by the installation service provider and/or owner.

- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules in that the appropriate compliance documents relating to the project have been submitted.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$15,006 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-5002.

Barbara J. Anderson  
(503) 229-5870  
May 7, 1998

# *Attachment C*

## *Denials*



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **DENY**

Applicant **Columbia Steel Casting Co., Inc.**  
Application No. **4826**  
Claimed Facility Cost **\$114,810**  
Claimed Percentage Allocable **100%**  
Useful Life **7 years**

## Pollution Control Facility: Air Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a manufacturer of steel alloy castings taking tax relief under taxpayer identification number 93-0336095. The applicant is the leasee of the facility. The applicant's address is:

**PO Box 83095  
10425 N Bloss Avenue  
Portland, OR 97283**

### *Facility Identification*

The certificate will identify the facility as:

**Natural Gas Fired Oven used for heat treating steel castings, using low-Nox burners for reduction of nitrogen oxide emissions..**

The facility is located at:

**10425 N Bloss Avenue  
Portland, OR 97283**

### *Technical Information*

The claimed facility is a natural gas fired oven used to heat-treat castings. The new low NO<sub>x</sub> combustion system heats the oven, as did the old system it replaced. The claimed facility is the cost of the newer equipment. The burner manufacturer's data predicts 38% reduction of NO<sub>x</sub> and a 39-69% reduction of CO. Based on this prediction, the applicant forecast usage is 72-120 hr/week, using 35.5 terms/hr of gas. The net annual pollution reduction would be approximately 600 lb/yr No<sub>x</sub> and 550 lb/yr CO.

The original burners were about 20 years old. They were designed and manufactured before nitrogen oxides were recognized as an environmental problem.

**Eligibility**

ORS 468.155 (1)(a) This **new installation** was not built in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority and therefore, the primary or **principal purpose** of this facility is not to control, eliminate or reduce air pollution. The applicant meets their discharge permit requirements through facilities already issued tax credit certificates (listed below.) The applicant claims the **sole purpose** of this facility is to reduce emissions of nitrogen oxides and carbon monoxides from natural gas combustion. However, the facility is a natural gas fired oven used to heat-treat castings and therefore, the exclusive purpose of the facility is not to reduce pollution.

ORS 468.155 (1)(b)(B) The disposal or elimination of or redesign to eliminate air contamination sources and the use of air cleaning devices as defined in ORS 468A.005

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>08/25/1997</u>
<i>Application Substantially Complete</i>	<u>4/3/1998</u>
<i>Construction Started</i>	<u>07/01/1996</u>
<i>Construction Completed</i>	<u>07/01/1996</u>
<i>Facility Placed into Operation</i>	<u>12/20/1996</u>

**Facility Cost**

Facility Cost	<b>\$114,810</b>
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	<u>-\$114,810</u>
Eligible Facility Cost	<b>\$ 0</b>

The certified public accountant's statement was provided by Jones & Company, P.C. who certified that the costs were valid costs to the applicant.

**Facility Cost Allocable to Pollution Control**

According to ORS.190 (1), the facility cost exceeds \$50,000 and therefore, the following factors would have been used to determine the percentage of the facility cost allocable to pollution control. The applicant claimed:

<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the

return on investment consideration is 30 years. No gross annual revenues associated with this facility.

ORS 468.190(1)(c) Alternative Methods  
 ORS 468.190(1)(d) Savings or Increase in Costs  
 ORS 468.190(1)(e) Other Relevant Factors

No alternative investigated.  
 No savings or increase in costs.  
 No other relevant factors.

The applicant claimed the percentage allocable to pollution control is 100%. Since the principal or sole purpose of the facility is not to reduce, eliminate or control air pollution, the Department did not verify the applicant's claims.

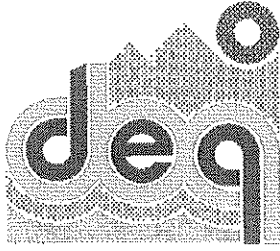
**Compliance and Other Tax Credit Certificates**

The applicant claimed they are in compliance with Department rules and statutes and with EQC orders. Other tax credit certificates issued to this applicant at this location are:

Description of Facility	Facility Cost	Certificate	Issue Date
WHEELABRATOR NO. 8OR MODEL 126-D KNOCKED DOWN TYPE, FOUR COMPARTMENT, CONTINUOUS AUTOMATIC DUSTUBE COLLECTOR ("BAGHOUSE") INCLUDING CONCRETE FOUNDATIONS, ELECTRIC MOTORS, STARTERS, WIRING AND PANELS, AND DUCT WORK.	\$61,715.00	2	01/19/1968
BAGHOUSE FOR COLLECTING PARTICULATE EMISSIONS FROM TWO NEW ELECTRIC ARC FURNACES.	\$158,396.00	655	03/12/1976
A FULLER COMPANY 6 ZONE MODEL 96-6-600 PLENUM PULSE BAGHOUSE, GARDEN CITY MODEL 445 BF BLOWER, MARS MINERAL SERIES 20 AGGLOMERATOR, DUCTING, AND ASSOCIATED EQUIPMENT AND MATERIALS.	\$140,131.00	860	12/16/1977
FUULLER 3 ZONE MODEL 96, S/N 79-21047-325 BAG TYPE PLENUM PULSE DUST COLLECTOR WITH A FULLER MODEL 290 I.E. FOR S/N 79-21047-112, 100 H.P. MOTOR, DUCTWORK, CONTROLS AND DUST DISCHARGE SCREW CONVEYOR.	\$90,297.00	1496	07/16/1982
NATIONAL AIR SYSTEMS BAG FILTER DUST COLLECTOR CONSISTING OF FOUR MODEL NO. 240-203-10 MODULES, GARDEN CITY BLOWER MODEL NO. 445 BF (S/N 99998), FURNACE HOOD & DUCTING TO THE DUST COLLECTOR.	\$217,271.00	1531	10/15/1982
DUST COLLECTION SYSTEM CONSISTING OF A 6P DUST COLLECTOR, PACE SIZE 40 FAN, DUCTING AND ASSOCIATED CONTROLS.	\$88,184.00	1774	12/14/1984
NEW DUST COLLECTION SYSTEM AND RELOCATION OF AN EXISTING DUST COLLECTION SYSTEM.	\$106,390.00	1778	12/14/1984

BAG FILTER DUST COLLECTION SYSTEM CONSISTING OF A FABRIC FILTERS NORTHWEST MODEL 81-10 DUST COLLECTOR, PACE SIZE PB-27 FAN, ASSOCIATED CONTROLS AND DUSTING.	\$45,898.00	1788	04/19/1985
EXPANSION OF AN EXISTING BAGHOUSE BY ADDITION OF PANGBORN DUST COLLECTOR MODULE.	\$45,423.00	1890	09/12/1986
PULSE JET DUST COLLECTOR FOR THE CASTING CLEANING MACHINE	\$31,254.00	1989	07/08/1988
BAG FILTER DUST COLLECTION TO CONTROL EMISSION FROM THE SAND SHAKEOUT SYSTEM	\$145,588.00	2007	12/09/1988
DUST COLLECTOR	\$37,343.00	3205	10/29/1993
COMPLETE CLOSED-LOOP RECYUCLING SYSTEM FOR CONTACT & NON-CONTACT PROCESS COOLING WATER	\$174,223.00	3420	03/03/1995
Wheelabrator fabric filter baghouse, Model # 6D-112-AC	\$44,900.00	3777	08/22/1997

Reviewers: Dave Kauth  
Maggie Vandehey



Director's  
Recommendation: **DENY**

Applicant	<b>Albany-Lebanon Sanitation, Inc.</b>
Application No.	<b>4873</b>
<u>Claimed</u> Facility Cost	<b>\$26,690</b>
<u>Claimed</u> Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

# Tax Credit Review Report

Revised 9/30/97

## Pollution Control Facility Tax Credit: Solid Waste Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a residential, commercial & industrial solid waste recycler taking tax relief under taxpayer identification number 93-0593828. The applicant is the owner of the facility. The applicant's address is:

PO Box 1929  
Albany, OR 97321

### *Facility Identification*

The certificate will identify the facility as:

**1996 Ford Pickup is used 50% of the time for the delivery of recycling carts, bins, and cardboard containers.**

The facility is located at:

1214 SE Montgomery Street  
Albany, OR 97321

### *Technical Information*

The claimed facility is a 1996 Ford pickup truck used 50% of the time to deliver recycling containers to collection service customers. It is not used to directly handle recyclable material.

### *Eligibility*

ORS 468.155 (2) The facility, a Ford truck, does **not** meet the definition of a pollution control facility because it is excluded by the statute which states: "**Pollution control facility**" or "facility" **does not include**: ... (d) Any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or sole purpose of the facility including the following specific items: ... (F) **Automobiles**



ORS 468.155 (1) The facility was not purchased in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority and therefore, the primary or **principal purpose** of the facility was not to control, eliminate or reduce solid waste by material recovery. This **new truck** fails to meet the **sole purpose** criteria, as the applicant claimed, because the exclusive purpose of the facility is not to prevent, control, or reduce a substantial quantity of solid waste. The applicant is a garbage hauler and claimed the facility is eligible because it is used 50% of the time to transport recycling equipment.

ORS 468.155 (1)(b)(D) The truck does not meet the requirements of ORS 468.155 (1)(b)(D) which states solid waste control shall be accomplished by, "The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005." It is the equipment that the truck delivers that actually accomplishes the pollution control not the truck.

***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>11/14/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>11/9/95</u>
<i>Construction Completed</i>	<u>11/9/95</u>
<i>Facility Placed into Operation</i>	<u>12/9/95</u>

***Facility Cost***

Facility Cost	\$26,690
Ineligible Costs	-\$ 26,690
Eligible Facility Cost	<u>\$0</u>

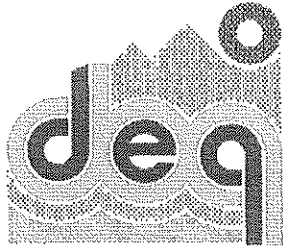
Invoices or canceled checks substantiated the cost of the facility. Boldt, Carlisle & Smith LLC provided the certified public accountant's statement verifying the actual cost of the claimed facility.

***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time the facility is used for pollution control and therefore, the percentage allocable to pollution control is 0%.

***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **DENY**

Applicant	<b>Don Rhyne Painting Co.</b>
Application No.	<b>4937</b>
<u>Claimed</u> Facility Cost	<b>\$60,956</b>
<u>Claimed</u> Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## Pollution Control Facility: Air Final Certification

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### *Applicant Identification*

The applicant is a C corporation operating as a painting contractor taking tax relief under taxpayer identification number 93-0956792. The applicant is the owner of the facility. The applicant's address is:

19800 SE Damascus Lane  
Boring, OR 97009

### *Facility Identification*

The claimed facility is:

**Installation of a paint booth with a double air filter system.**

The facility is located at:

19800 SE Damascus Lane  
Boring, OR 97009

### *Technical Information*

The applicant claimed a paint booth for certification as a pollution control facility. A double air filter is one of the components of the paint booth. The facility is used to create a controlled environment for painting parts. The booth is a piece of production equipment.

### *Eligibility*

ORS 468.155 (1)(a) This new installation was not built in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority and therefore, the primary or **principal purpose** of this facility is not to control, eliminate or reduce air pollution. The facility fails to meet the **sole purpose** criteria since it is **not** used exclusively to prevent, control or reduce a substantial quantity of air pollution. It is used to create a controlled environment for painting and therefore, the purpose of the claimed facility is to paint parts and not to control pollution.

**Timeliness of Application**

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<b>2/9/98</b>
<i>Application Substantially Complete</i>	<b>2/20/98</b>
<i>Construction Started</i>	<b>3/7/96</b>
<i>Construction Completed</i>	<b>4/23/96</b>
<i>Facility Placed into Operation</i>	<b>5/15/96</b>

**Facility Cost**

Facility Cost	<b>\$60,956</b>
Ineligible Costs	-\$ 60,956
Eligible Facility Cost	<b>0.00</b>

Baker & Colson, P.C. provided the certified public accountant's statement.

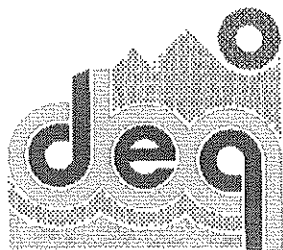
**Facility Cost Allocable to Pollution Control**

According to ORS.190 (1), the facility cost exceeds \$50,000. Since this facility is not eligible, the Department did not verify the applicant's representation of the following factors were used to determine the percentage of the facility cost allocable to pollution control.

<b>Factor</b>	<b>Applied to This Facility</b>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 30 years. Gross annual revenues associated with this facility indicated a 39.14% allocable to pollution control.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase in costs.
ORS 468.190(1)(e) Other Relevant Factors	The applicant included the cost of the production equipment in the application for pollution control tax credit. Pollution control tax credits are not applicable to production equipment.

Considering these factors, the percentage allocable to pollution control based on the application is 39%.

Reviewers: M.C.Vandehey



# Tax Credit Review Report

Revised 9/30/97

Director's  
Recommendation: **DENY**

Applicant	<b>Pioneer Truck Equipment, Inc.</b>
Application No.	<b>4992</b>
<u>Claimed</u> Facility Cost	<b>\$39,244</b>
<u>Claimed</u> Percentage Allocable	<b>100%</b>
Useful Life	<b>10 years</b>

## **Pollution Control Facility: Water Final Certification**

ORS 468.150 -- 468.190  
OAR 340-016-0005 -- 340-016-0050

### ***Applicant Identification***

The applicant is a C corporation operating as a truck equipment supplier taking tax relief under taxpayer identification number 93-0585823. The applicant is the owner of the facility. The applicant's address is:

4355 Turner Road, SE  
Salem, OR 97301

### ***Facility Identification***

The certificate will identify the facility as:

**A closed loop wastewater filtration & recovery system using a Karcher, model ASA 600.**

The facility is located at:

4355 Turner Road, SE  
Salem, OR 97301

### ***Technical Information***

The system is a Karcher Model ASA 600, automatic flocculent based treatment system with bag filtration and an ozone degermination unit combined to complete a zero effluent discharge system. It includes a concrete pad collects the wash water, a sump pump that transfers the wastewater through a bag filter that removes free oil and grease, the ASA 600 that mixes the water with a clay based flocculent and the emulsified oil, grease and TSS are encapsulated in a non-leachable sludge. The sludge is collected in a filter and the cleaned water is held in a 300 gallon tank. The water is then recirculated through a pump and ozone is injected into the water to oxidize any residual organics. The water is then recycled as wash water.

As claimed by the applicant, the facility cleans trucks, garbage containers, and portable toilets. The wastewater contains oil, grease, waste food products, urine and body waste.

### ***Eligibility***

- ORS 468.155 (2) This facility is **not eligible** for certification as a pollution control facility based on the definition of a pollution control facility
- (2) "Pollution control facility" or "facility" **does not include**:
- (b) Septic tanks or **other facilities for human waste**;
- (c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

### ***Timeliness of Application***

The application was submitted within the timing requirements of ORS 468.165 (6).

<i>Application Received</i>	<u>4/14/98</u>
<i>Application Substantially Complete</i>	<u>5/13/98</u>
<i>Construction Started</i>	<u>5/19/97</u>
<i>Construction Completed</i>	<u>6/1/97</u>
<i>Facility Placed into Operation</i>	<u>6/1/97</u>

### ***Facility Cost***

Facility Cost	\$39,244
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -39,244
Eligible Facility Cost	<u>\$0</u>

Invoices or canceled checks substantiated the cost of the facility. Fisher, Hayes & Associates, P.C. provided the certified public accountant's statement.

### ***Facility Cost Allocable to Pollution Control***

According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for pollution control and therefore, the percentage allocable to pollution control is 100%.

### ***Compliance***

The facility is in compliance with Department rules and statutes and with EQC orders.

Reviewers: Maggie Vandehey

## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C  
June 11, 1998 Meeting

**Title:**

Addition To OARs Affirming The Director's Intent To Respond To Comments On Confirmed Release List & Inventory Listing Proposals

**Summary:**

Oregon Administrative Rules (OAR) require DEQ to maintain a *Confirmed Release List (CRL)*. This is a list of sites with documented contamination that could threaten human health or the environment. Similarly, the rules require DEQ to maintain an *Inventory of Hazardous Substance Sites (Inventory)*, a subset of CRL sites where Preliminary Assessments have been completed and where the Department has determined that further investigative and cleanup actions are necessary.

Prior to adding a site to the list, the owner and operator are provided an opportunity to comment on the proposed listing. Since 1991, internal Department policy has been to respond to those comments in writing.

During the 1997 Legislative session, the Department committed to add new rule language to formalize the existing Department policy. The proposed rule language requires the Department to respond, in writing, to substantive comments and any material new data submitted during the CRL and Inventory listing proposal comment period.

**Department Recommendation:**

It is recommended that the Commission adopt the rule amendments formalizing the Department's policy for responding to CRL and Inventory listing proposal comments, as presented in Attachment A of the Department Staff Report.



Report Author



Division Administrator



Director

State of Oregon  
Department of Environmental Quality

Memorandum

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**Date:** May 28, 1998  
**To:** Environmental Quality Commission  
**From:** Langdon Marsh  
**Subject:** Agenda Item C, Addition to OARs affirming the Director's intent to respond to comments on Confirmed Release List & Inventory listing proposals, EQC Meeting June 11, 1998

**Background**

Oregon Administrative Rules (OAR) require DEQ to maintain a *Confirmed Release List (CRL)*. This is a list of sites with documented contamination that could threaten human health or the environment. Similarly, the rules require DEQ to maintain an *Inventory of Hazardous Substance Sites (Inventory)*, a subset of CRL sites where Preliminary Assessments have been completed and where the Department has determined that further investigative and cleanup actions are necessary.

On April 14, 1998, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules that would require the Department to respond in writing to owner/operator comments on Department proposals to add sites to the Confirmed Release List (CRL) or Inventory of Hazardous Substance Sites (Inventory). (Since 1991, although not required to do so, the Department has observed a policy of responding in writing to such comments. Therefore, the new rule language would merely formalize existing Department policy. See Attachment F for a brief summary of the Department's listing process.)

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on May 1, 1998. On April 14, 1998, 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.

A Public Hearing was held May 15, 1998, 10 a.m., at 811 SW 6<sup>th</sup> Ave., Portland, Room 3A, with Gil Wistar serving as Presiding Officer. Written comments were accepted through May 18, 1998. As indicated in the Presiding Officer's Report (Attachment C), no one showed up for the hearing and no written comments were received on the proposed rule adoption.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the Commission's 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 be implemented, and a recommendation for Commission action.

Memo to: Environmental Quality Commission

**Agenda Item C**, Addition to OARs affirming the Director's intent to respond to comments on Confirmed Release List and Inventory listing proposals, EQC meeting, June 11, 1998

Page 2

**Issue this Proposed Rulemaking Action is Intended to Address**

This is essentially a "housekeeping" measure, because it has long been the policy of the Waste Management and Cleanup Division to respond in writing to all substantive comments received on listing proposals. During the 1997 Legislative session, however, the Department added a property to the CRL where the site owner did not feel that the Department had provided adequate response to this party's comments on the initial proposal to list the site. This specific situation was raised in the 1997 session, apparently leading some to believe that the Department disregarded comments on listing proposals, and did not afford owners or operators due process on listing decisions. During the session, the Department agreed to add new language to the rules demonstrating its commitment to respond to all significant comments or new data received in response to Department listing proposals.

**Relationship to Federal and Adjacent State Rules**

Not applicable. There is no federal equivalent to the CRL or Inventory.

**Authority to Address the Issue**

The Commission has the statutory authority to address this issue under ORS 465.400(1), 465.405, 465.410, and 468.020.

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

During the 1997 Legislative Session, a proposal arose to add language to ORS 465.215 and 465.225 requiring the Department to respond to comments on listing proposals. As an alternative to such statutory changes, the Department proposed to add the following language to existing rules (OAR 340-122-074(3)(b) and 340-122-075(3)(b)):

**However, whenever the Director makes a decision to add a facility to the list, the Director must make available a response to each significant comment and any significant new data submitted during the comment period.**

On March 19, 1998, the Department brought this issue to the attention of the Cleanup Advisory Committee (CAC -- see Attachment D for this committee's membership list). The CAC concurred with the general intent of the rule amendment, but suggested the following slightly modified language (which is the language the Department submitted for public comment and is now requesting approval from the Commission to add to OAR):

**Whenever the Director makes a decision to add a facility to the list, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period.**



Memo to: Environmental Quality Commission

**Agenda Item C**, Addition to OARs affirming the Director's intent to respond to comments on Confirmed Release List and Inventory listing proposals, EQC meeting, June 11, 1998

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

The Department submitted the rule language shown above for public hearing/comment. No one came to the May 15, 1998 public hearing, and no one submitted written comments as of the comment closing date of May 18, 1998.

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

This rule will be self-implementing. As mentioned above, the Waste Management and Cleanup Division has long had a policy of responding in writing to owner/operator comments on listing proposals. As a result, the new rule language will require no changes to existing CRL/Inventory listing procedures, and no implementation or training plan is necessary. Refer to Attachment F for a brief summary of the Department's CRL and Inventory listing process, which the new rule language would not change.

Memo to: Environmental Quality Commission

**Agenda Item C**, Addition to OARs affirming the Director's intent to respond to comments on Confirmed Release List and Inventory listing proposals, **EQC** meeting, June 11, 1998

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**Recommendation for Commission Action**

It is recommended that the Commission adopt the rules/rule amendments regarding the Department's responses to CRL and Inventory listing proposals, 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. Presiding Officer's Report on Public Hearing
- D. Cleanup Advisory Committee (CAC) Membership Roster
- E. Rule Implementation Plan
- F. Brief Summary of the Department's CRL/Inventory Listing Process

**Reference Documents (available upon request)**

(Documents supporting rule development process or proposal)

Approved:

Section:

*Jeffrey D. Christy for DP*

Division: \_\_\_\_\_

Report prepared by: Gil Wistar

Phone: (503) 229-5512

Date prepared: May 19, 1998

gmw:gmw

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**Attachment A: Oregon Administrative Rules Regarding CRL and Inventory Listing Procedures, with proposed language additions (see OAR 340-122-074(3)(b) and 340-122-075(3)(b))**

**Development of Confirmed Release List**

**340-122-074** (1) For the purpose of providing public information, the Director shall develop and maintain a Confirmed Release List of all facilities for which the Director has confirmed a release of a hazardous substance in accordance with OAR 340-122-073.

(2) The list shall include, at a minimum, the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

(d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility;

(f) Manner of release of the hazardous substance;

(g) Concentration, distribution, and characteristics of a hazardous substance, if any, in groundwater, surface water, air, and soils at the facility; and

(h) Status of removal or remedial actions at the facility.

(3)(a) At least 60 days before adding a facility to the Confirmed Release List, the Director shall notify the owner and operator, if known, of all or any part of the proposed facility by certified mail or personal service, and shall provide an opportunity to comment on the proposed listing within 45 days after receiving the notice. For good cause shown, the Department may grant an extension of up to 45 days for comment;

(b) The Director shall consider relevant and appropriate information submitted to the Department in determining whether to add a facility to the Confirmed Release List. Whenever the Director makes a decision to add a facility to the list, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period.

*Stat. Auth.: ORS 465.400(1), 465.405 & 468.020*

*Stats. Implemented: ORS 465.200 to 465.455, 465.900 and 466.706 to 466.835 and 466.895*

*Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 2-1997, f. & cert. ef. 2-7-97*

## Development of Inventory

**340-122-075** (1) For the purpose of providing public information, the Director shall develop and maintain an Inventory of facilities for which the Director:

- (a) Has confirmed a release of a hazardous substance in accordance with OAR 340-122-073; and
- (b) Based on a preliminary assessment approved or conducted by the Department, has determined that additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action are required to assure protection of present and future public health, safety and welfare, and the environment.

(2) The Inventory shall include, at a minimum, the items required for the Confirmed Release List, described in OAR 340-122-074(2), and the following items, if known:

- (a) Hazard ranking and narrative information regarding threats to the environment and public health; and
- (b) Information that indicates whether the remedial action at the facility will be funded primarily by:
  - (A) The Department through the use of moneys in the Hazardous Substance Remedial Action Fund;
  - (B) An owner or operator or other person under an agreement, order, or consent decree under ORS Chapter 465; or
  - (C) An owner or operator or other person under other state or federal authority.

(3)(a) At least 60 days before a facility is added to the Inventory the Director shall notify the owner and operator, if known, of all or any part of the facility of the proposed listing by certified mail or personal service. The notice shall include a copy of the preliminary assessment on which the listing is based, and the documentation used to calculate a site score in accordance with OAR 340-122-076(1)(a). The notice may reference these documents if they have been previously provided. The notice shall inform the owner and operator of the opportunity to comment on the information contained in the preliminary assessment and on the proposed site score within 45 days after receiving the notice. For good cause shown, the Department may grant an extension of up to 45 days for comment.

(b) The Director shall consider relevant and appropriate information submitted to the Department in determining whether to add a facility to the Inventory. Whenever the Director makes a decision to add a facility to the list, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period.

(4) At least quarterly, the Department shall publish notice of updates to the Inventory. The notice shall include a brief description of the facilities added or removed, and shall be published in the Secretary of State's Bulletin and submitted to local newspapers of general circulation in locations affected by the listings and to interested persons or community organizations.

*Stat. Auth.: ORS 465.000(1), 465.400(1), 465.405, 465.410 & 468.020*

*Stats. Implemented: ORS 465.200 to 465.455, 465.900 and 466.706 to 466.835 and 466.895*

*Hist.: DEQ 29-1990, f. & cert. ef. 7-13-90; DEQ 5-1991, f. & cert. ef. 3-18-91; DEQ 2-1997, f. & cert. ef. 2-7-97*

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING**  
A Statement of Need and Fiscal Impact accompanies this form.

DEQ - Waste Management & Cleanup Division      Chapter 340  
Agency and Division      Administrative Rules Chapter Number  
Susan M. Greco      (503) 229-5213  
Rules Coordinator      Telephone  
811 SW 6th Avenue, Portland, OR 97204  
Address

May 15, 1998      10:00 - 11:00 a.m. (unless extended by Hearings Officer)  
Hearing Date      Time

Portland - 811 SW 6<sup>th</sup> Ave. Rm. 3A      Gil Wistar  
Location of Hearing      Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?  
x Yes       No

**RULEMAKING ACTION**

**AMEND:** OAR 340-122-074(3)(b) and 340-122-075(3)(b).

Stat. Auth.: ORS 465.400(1); 465.405; 465.410; 468.020  
Stats. Implemented: ORS 465.200 to 465.455; 465.900; 466.706 to 466.835; 466.895

**RULE SUMMARY**

This proposed rule amendment would require DEQ to provide written responses to comments submitted by owners or operators whose sites DEQ has proposed to be added to the Confirmed Release List (CRL) or Inventory of Hazardous Substance Sites (Inventory). Since 1990, DEQ has had a policy of responding in writing to comments on proposed CRL and Inventory site listings. This rule addition is needed to formalize the existing policy and require DEQ to respond to substantive comments and material new data submitted in response to the Department's CRL and Inventory listing proposals.

May 18, 1998  
Last Day for Public Comment

*Suzanne Taylor* 4/14/98  
Authorized Signer and Date

## **Attachment B-2: Fiscal and Economic Impact Statement**

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Rulemaking Proposal**

for

*Proposed Addition to Oregon Administrative Rules Affirming the Director's Intent to Respond to Comments on Confirmed Release List and Inventory Listing Proposals*

## **Fiscal and Economic Impact Statement**

### **Introduction**

This rulemaking proposal has no fiscal or economic effect on any party, since the proposed new rule language simply codifies administrative procedures that the Department first implemented in 1990 and has been observing ever since.

### **General Public**

No fiscal or economic effects.

### **Small Business**

No fiscal or economic effects.

### **Large Business**

No fiscal or economic effects.

### **Local Governments**

No fiscal or economic effects.

### **State Agencies**

No fiscal or economic effects.

### **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: Land Use Evaluation Statement**

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for

*Proposed Addition to Oregon Administrative Rules Affirming the Director's Intent to Respond to  
Comments on Confirmed Release List and Inventory Listing Proposals*

**Land Use Evaluation Statement**

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

This proposal would require DEQ to provide written responses to comments submitted by owners or operators whose sites DEQ has proposed to be added to the CRL or Inventory.

**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? No.**

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

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?  Yes  No (if no, explain):

c. If no, apply the following criteria to the proposed rules. (Not applicable.)

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
  - a. resources, objectives or areas identified in the statewide planning goals, or
  - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

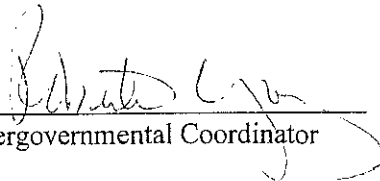
**In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.**

These rules address administrative procedures for listing sites on the Confirmed Release List and Inventory and are not considered programs affecting land use.

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

Not applicable.

\_\_\_\_\_  
Division

  
\_\_\_\_\_  
Intergovernmental Coordinator

4/13/98  
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?**

None.

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

N/A

**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?**

N/A

**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?**

N/A

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

N/A

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

N/A

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

N/A

**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?**

N/A

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

N/A

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

N/A

## Attachment B-5: Cover Memorandum from Public Notice

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** April 15, 1998

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal and Rulemaking Statements - *Addition to Oregon Administrative Rules Affirming the Director's Intent to Respond to Comments on Confirmed Release List and Inventory Listing Proposals*

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) for new rule language on administrative procedures for adding contaminated sites to the Confirmed Release List (CRL) and Inventory of Hazardous Substance Sites (Inventory). Pursuant to Oregon Revised Statutes (ORS) 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would require DEQ to provide written responses to comments submitted by owners or operators whose sites DEQ has proposed to be added to the CRL or Inventory.

The Department has the statutory authority to address this issue under ORS 465.400(1), 465.405, 465.410, and 468.020.

### What's in this Package?

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

- Attachment A The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
- Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
- Attachment D The actual language of the proposed rule, highlighted in boldface within existing rules OAR 340-122-074(3)(b) and 340-122-075(3)(b).

### 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, May 18, 1998. Please forward all comments to Department of Environmental Quality, Attn: Gil Wistar, 811 SW 6<sup>th</sup> Avenue, Portland, Oregon, 97204, or hand-deliver to the Department of Environmental Quality, 811 SW 6<sup>th</sup> Ave., 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. Wednesday, May 13, 1998.

### **What Happens After the Public Comment Period Closes?**

Following close of the public comment period, the Department will prepare a report that summarizes 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 public comments.

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is June 11-12, 1998. This date may be delayed if needed to provide additional time for evaluation and response to 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 this Rulemaking Proposal**

#### Why is there a need for this rule?

Oregon Administrative Rules (OAR) require DEQ to maintain a *Confirmed Release List (CRL)*. This is a list of sites with documented contamination that could threaten human health or the environment. Similarly, the rules require DEQ to maintain an *Inventory of Hazardous Substance Sites (Inventory)*, a subset of CRL sites where Preliminary Assessments have been completed and where DEQ has determined that further investigative and cleanup actions are necessary.

During the 1997 State Legislative Session, DEQ agreed to amend OAR concerning procedures for adding facilities to the CRL and Inventory. DEQ committed to new rule language requiring the Department to respond to comments submitted by owners or operators of facilities that have been proposed for the CRL and/or Inventory. Rulemaking by the Environmental Quality Commission is necessary to add the new language to OAR 340-122-074(3)(b) and 340-122-075(3)(b).

The Department has the statutory authority to address this situation under ORS 465.400(1), 465.405, 465.410, and 468.020.

#### How was the rule developed?

During the 1997 Legislative Session, a proposal arose to add language to ORS 465.215 and 465.225

requiring DEQ to respond to comments on listing proposals. As an alternative to such statutory changes, DEQ proposed to add the following language to existing rules (OAR 340-122-074(3)(b) and 340-122-075(3)(b)):

**However, whenever the Director makes a decision to add a facility to the list, the Director must make available a response to each significant comment and any significant new data submitted during the comment period.**

On March 19, 1998, DEQ brought this issue to the attention of the Cleanup Advisory Committee, which concurred with the general intent of the rule amendment, but suggested the following slightly modified language (which is the language that DEQ is now proposing to add to OAR):

**Whenever the Director makes a decision to add a facility to the list, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period.**

The only document relied upon in the development of this rulemaking proposal is a one-page letter dated May 27, 1997 from Mary Wahl, Administrator of DEQ's Waste Management and Cleanup Division, to Thomas Gallagher, a lobbyist during the 1997 Legislative Session. Copies of this document can be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon, 8<sup>th</sup> floor. Please contact Gil Wistar at (503) 229-5512 for times when this 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?

Because DEQ has been implementing the intent of this new rule language since 1990, its adoption will not cause any changes in whom the listing rules affect, nor to the ways in which the listing rules affect property owners/operators, their agents/representatives, and the general public.

Are there time constraints?

There are no deadlines imposed by federal requirements or state law that constrain the schedule for this rulemaking action.

### **Contact for More Information**

If you would like more information on this rulemaking proposal, please contact:

Gil Wistar  
DEQ Waste Management & Cleanup Div.  
811 SW 6<sup>th</sup> Ave.  
Portland, OR 97204  
(503) 229-5512

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*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

State of Oregon  
Department of Environmental Quality

Memorandum

Date: May 18, 1998

To: Environmental Quality Commission  
From: Gil Wistar  
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: May 15, 1998, beginning at 10 a.m.  
Hearing Location: 811 SW 6<sup>th</sup> Ave., Portland, Room 3A

Title of Proposal: *Addition to Oregon Administrative Rules Affirming the  
Director's Intent to Respond to Comments on Confirmed  
Release List and Inventory Listing Proposals*

The rulemaking hearing on the above-titled proposal was never formally convened, because no one showed up between the scheduled hours of 10 a.m. to 11 a.m.

There were no people in attendance, and no one signed up to give testimony.

Summary of Oral Testimony

None received.

Written Testimony

No one handed in written comments in lieu of presenting oral testimony.

The hearing was closed at the scheduled hour of 11 a.m.

## **Attachment D - Cleanup Advisory Committee (CAC) Membership Roster**

DON HAAGENSEN, CHAIR  
CABLE HUSTON BENEDICT & HAAGENSEN LLP  
1001 SW 5<sup>th</sup> AVE., STE 2000  
PORTLAND, OR 97204-1136

DICK BACH, STOEL RIVES  
900 SW 5<sup>th</sup> AVE. ROOM 2300  
PORTLAND, OR 97204

JAN BETZ, CITY OF PORTLAND  
315 CITY HALL  
1220 SW 5<sup>th</sup> AVE  
PORTLAND, OR 97204

BRIAN CHENOWETH  
1001 SW 5<sup>th</sup> AVE, SUITE 1300  
PORTLAND, OR 97204

RICH CRAIG, CONFEDERATED TRIBES OF WARM SPRINGS  
P.O. BOX C  
WARM SPRINGS, OR 97761

BILL FUNK, NORTHWESTERN SCHOOL OF LAW OF LEWIS & CLARK COLLEGE  
10015 SW TERWILLIGER BLVD  
PORTLAND, OR 97219

KEVIN GODBOUT, WEYERHAEUSER  
CHIK29-OFFICE OF ENVIRONMENT  
TACOMA, WA 98477

SHEILA HOLDEN, PACIFIC POWER & LIGHT  
P.O. BOX 12699  
PORTLAND, OR 97212-0699

TOM NOVICK, M&R STRATEGIC SERVICES  
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PORTLAND, OR 97205

JIM OWENS, COGAN OWENS COGAN PLANNING & COMMUNICATION  
10 NW 10<sup>th</sup> AVE  
PORTLAND, OR 97209

RANDY TUCKER, OSPIRG  
1536 SE 11<sup>th</sup> AVE  
PORTLAND, OR 97214

STEVE SHAIN, ZIDELL RESOURCES, INC.  
3121 SW MOODY AVE  
PORTLAND, OR 97201

JULIE WILSON, GEO ENGINEERS  
7504 SW BRIDGEPORT ST  
PORTLAND, OR 97224

## Attachment E: Rule Implementation Plan

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for:

*Addition to Oregon Administrative Rules Affirming the Director's Intent to Respond to Comments on Confirmed Release List and Inventory Listing Proposals*

### Rule Implementation Plan

#### Summary of the Proposed Rule

During the 1997 session of the State Legislature, the Department agreed to amend OAR concerning procedures for adding facilities to the Confirmed Release List (CRL) and Inventory of Hazardous Substance Sites (Inventory). The Department committed to new rule language requiring the Department to respond to comments submitted by owners or operators of facilities that have been proposed for the CRL and/or Inventory. Note that this is essentially a "housekeeping" measure, because it has long been the policy of the Waste Management and Cleanup Division to respond in writing to all substantive comments received on listing proposals. Under this proposal, the same sentence would be added to both OAR 340-122-074(3)(b) and 340-122-075(3)(b):

**"Whenever the Director makes a decision to add a facility to the list, the Director shall make a written response to each substantive comment and any material new data submitted during the comment period."**

#### Proposed Effective Date of the Rule

Proposed to be effective as of the date of filing with the Secretary of State.

#### Proposal for Notification of Affected Persons

Affected persons are the owners and operators of facilities that the Department proposes to add to the CRL and/or Inventory. Since 1990, the rules have required that the Department give these persons the opportunity to comment on CRL/Inventory listing proposals before listing decisions are made. Since that time, it has also been Cleanup Program policy to respond in writing to substantive comments and new data submitted in response to listing proposals. The current listing proposal letter explicitly notifies owners/operators of both their opportunity to comment and our intention to respond to comments. In summary, this new rule language codifies actions we are already taking, and affected persons already are informed about administrative procedures associated with CRL/Inventory listing. Therefore, further notifications are not considered necessary.

#### Proposed Implementing Actions

The rule will be self-implementing. As mentioned above, the Cleanup Program has long had a policy of responding in writing to owner/operator comments on listing proposals. As a result, the new rule language will require no changes to the existing CRL/Inventory listing process.

#### Proposed Training/Assistance Actions

None needed.












## **Attachment F: Brief Summary of the Department's CRL/Inventory Listing Process**

1. A regional Project Manager from the Department's Cleanup Program recommends a site's proposal for the CRL and/or Inventory.
2. Within two months of this recommendation, the Department informs site owners and operators by letter of the proposal to add the site to the CRL and/or Inventory. This letter states that owners and operators have 45 days to comment on the listing proposal, with the potential for an automatic extension of another 45 days at the request of the owner/operator.
3. Within 60-90 days after receiving comments on the listing proposal, the regional Project Manager prepares written responses, which are incorporated into a listing decision letter. In some cases, comments or new site information submitted by the owners/operators convince the Department that, in fact, the site does not meet listing criteria, which is reflected in the listing decision letter. Often, no comments are received. In this case, the Department sends a generic letter to the owners/operators indicating that the site has been listed. Sometimes, at the request of an owner/operator, the Department holds a meeting to discuss site issues before making its listing decision. Depending on the nature of the issues raised at such a meeting, the Department prepares a letter to document its decision either to list or not list the site.
4. The Department adds (or declines to add) the site to the CRL/Inventory, and updates ECSI, the Department's electronic **Environmental Cleanup Site Information** database, to reflect the decision.

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D  
June 11, 1998 Meeting

<b>Title:</b> Amend Oregon Hazardous Waste Administrative Rules			
<b>Summary:</b> Amend the Department's rules to cost recover for processing hazardous waste management facility permits and permit renewals; to charge for implementing corrective action; to assess fees for processing hazardous waste permit modifications, hazardous waste delistings and declassifications, petitions for listing hazardous waste as universal waste, requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste; to modify the process for assessing late charges; to clarify that hazardous wastewater managed outside of Resource Conservation and Recovery Act (RCRA) exempt wastewater treatment units is regulated, including generator fees; to adopt the federal hazardous waste regulations through April 30, 1998; and to align the Oregon Universal Waste Regulations with the federal law.			
<b>Department Recommendation:</b> 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; vertical-align: bottom;"> Report Author</td><td style="width: 33%; text-align: center; vertical-align: bottom;"> Division Administrator</td><td style="width: 33%; text-align: center; vertical-align: bottom;"> Director</td></tr></table>	 Report Author	 Division Administrator	 Director
 Report Author	 Division Administrator	 Director	

State of Oregon  
Department of Environmental Quality

Memorandum

Date: May 29, 1998

**To:** Environmental Quality Commission  
**From:** Langdon Marsh, Director  
**Subject:** Agenda Item D, EQC Meeting June 11, 1998

**Statement of Purpose**

These proposed rule changes:

- amend the Department's rules for incurring costs for processing hazardous waste management facility permits and permit renewals; charging for implementing corrective action; assessing fees for processing hazardous waste permit modifications, hazardous waste delistings and declassifications, petitions for listing hazardous waste as universal waste, requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste;
- modify the process for assessing late charges;
- clarify that hazardous wastewater managed outside of Resource Conservation and Recovery Act (RCRA) exempt wastewater treatment units is regulated, including generator fees;
- adopt the federal hazardous waste regulations through April 30, 1998; and
- align the Oregon Universal Waste Regulations with the federal law.

**Background**

The Department is proposing to assess actual costs for permit processing, permit renewal and corrective action, with a statutorily mandated upper limit of \$150,000 for permit renewal charges. No fees are currently charged for much of the permit-related treatment, storage and disposal (TSD) facility work.

In addition, fee schedules are proposed for processing permit modifications, delistings and declassifications, petitions to list hazardous waste as universal wastes, variances from land disposal treatability requirements, and exemptions from the definition of solid and hazardous waste.

These rules are needed to maintain Oregon's delegated federal RCRA program, to clarify late fee billing procedures, and to align the fee rules with the status of wastewater generators subject to regulations. These rules are also need to make state-only universal waste management rules for certain batteries consistent with federal statutory requirements.

### Authority of the Commission with Respect to the Issue

The Commission has the authority to develop and approve these rules under ORS 466.020, 466.045, 466.160, 466.165, 466.215 and 468.020.

### Summary of Public Input Opportunity

The Department held two public information meetings primarily attended by representatives<sup>1</sup> of TSDs. In addition, all facilities who are known to be impacted by this rule were notified of the meetings, and approximately 400 persons interested in Department hazardous waste rulemaking were also notified. Drafts of the rule were mailed and a Public Hearing was held on May 15, 1998.

### Summary of Significant Public Comment and Changes Proposed in Response

Prior to the close of the comment period, the Department received eight sets of comments. One set, from Safety-Kleen, arrived after the close of the comment period. The main issues brought forth included:

- Scope of applicability of corrective action cost recovery;
- Accountability for rates and reasonableness of costs;
- Regarding contested charges and fees;
- Facility permit charges and fees;
- Fee schedules-annual compliance determination fee;
- Requiring an advance deposit;
- Fee schedules-class 3 permit modifications; and
- Clarification of wastewater treatment units and elementary neutralization unit generator regulations, including fees.

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<sup>1</sup> Richard L. Angstrom, Oregon Concrete & Aggregate Producers Association; David Barrows, Dave Barrows & Associates; Jim Craven, American Electronics Association; Kathleen C. Dotten, Dotten & Associates; John Ledger, Associated Oregon Industries; Kathryn Van Natta, Northwest Pulp & Paper Association; Thomas J. Gallagher, Ball, Janik & Novack; Eric Mendenhall, Safety-Kleen Corporation; Randy Tucker, OSPIRG; Terry Witt, Oregonians for Food and Shelter, Don Haagensen, Cable, Huston, Benedict & Haagensen; Jay Doyle, Evanite Fiber Corporation; and Kenneth Skinner, Tektronix.

The Department's response to these comments is set forth in Attachment D. A brief summary is included below.

**Comment: Scope of Applicability of Corrective Action Cost Recovery**

Commenters were concerned that the proposed corrective action cost recovery rule, as written, exceeded the Department's legal authorities in two ways: the universe of facilities subject to corrective action cost recovery and the cost recoverable activities are both too broad.

In the first instance, the Department has included the appropriate universe of facilities since the Department has authority to require corrective action at any permitted hazardous waste facility and at facilities that are operating under interim status. Under interim status, a permit applicant is regarded under the law as having been issued a permit until final action on the permit application has been taken. Therefore, such facilities would be subject to corrective action and corrective action cost recovery.

In the second instance, commenters do not consider investigation activities to be "corrective action". The federal corrective action process clearly includes investigations as part of corrective action activity and therefore, cost recoverable. The Department, as is done in the Environmental Cleanup Program, proposes not to recover costs for investigatory work if the investigation (i.e., the RCRA Facility Assessment) indicates that no corrective action is needed. After consideration of other comments, the Department has clarified the types of costs recoverable under the corrective action program.

**Comment: Accountability for Rates and Reasonableness of Costs**

Commenters expressed concern about costs, rates and Department accountability. The Department is not proposing to set any "rates" to assess the employee costs attributable to corrective action activities. Instead, the Department will charge actual costs incurred for the time spent by individual employees on each corrective action project. The Department currently charges an indirect rate to cost recovery projects in the Cleanup Program and other programs. The development of this rate is based on generally accepted accounting principles and is reviewed annually and adjusted for current information, as appropriate. The Department proposes to use the same cost accounting methodology to assess direct and indirect costs to corrective action projects.

Commenters were concerned about costs being reasonable. The Department agrees that costs it charges should be reasonable. To clarify this, the Department has added the terms "reasonable" and "actual cost" to the corrective action rules and clarified the regulatory mechanism to contest the charges.

**Comment: Contesting Charges and Fees**

Commenters believed that the proposed rules provided no mechanism to contest fees or charges. In response, the Department strengthened the provision by adopting commenters' suggestion to clearly allow meetings between the Department and affected parties to discuss such issues. In addition, the Department has clarified the complaint process, which includes an appeal process through judicial review, in the staff report. As with the Cleanup program, there are no contested case provisions for disputed charges.

**Comment: Facility Permit Charges and Fees**

One commenter believed that Senate Bill 420, the authority for the Department to assess permit processing costs, was not intended to apply to a permit application that has been on file with the Department for 10 years, when, at the time the application was submitted, there were no charges for processing permit applications. The Department's proposal is to determine a reasonable estimate of the remaining costs to process any permit application on file with the Department and to recover the costs necessary for timely completion of permits.

**Comment: Fee Schedules-Annual Compliance Determination Fee**

One commenter was concerned that the proposed rule leaves closed units with releases at an active facility subject to both the post-closure annual compliance determination fee and cost recovery for corrective action.

The Department agrees and has amended OAR 340-105-113(1) to clearly exclude the post closure annual compliance determination fee from the calculation of fees for the facility for any inactive regulated unit, or units, in post-closure with a release subject to corrective action.

For example, an inactive land disposal unit that is in post closure care to maintain a RCRA cap, liner system, leachate collection and removal system and groundwater monitoring to detect releases from the closed unit remains subject to the annual compliance fee due to the continued need for RCRA inspections and enforcement follow-up. The \$18,750 annual fee is intended to pay for oversight of compliance activities for the closed unit to assure that RCRA requirements are met to prevent and minimize releases to the environment from the closed unit. Such a unit would be subject only to the post-closure annual compliance determination fee.

If a release occurs from an inactive land disposal unit that has a cap, liner, leachate collection and removal system, and groundwater monitoring, then corrective action would be implemented and corrective action cost recovery charges would include the Department's costs of corrective action

compliance oversight activities such as inspections and enforcement follow-up. The facility would not be subject to the post-closure annual compliance determination fee for this regulated unit.

**Comment: Requiring an Advance Deposit**

Commenters asserted that the Department has no authority to require deposits for costs that have not yet been incurred. The Department has authority to require a deposit as a means to ensure reimbursement, but has decided to implement cost recovery without requiring an advance deposit, and has removed all references to deposits from the proposed rules. This issue will be re-evaluated as the regulations are implemented.

**Comment: Fee Schedules-Class 3 Permit Modifications**

Commenters requested different fee categories for Class 3 permit modifications. The Department has evaluated the range of potential Class 3 permit modifications and concurs that the proposed rule should be changed to provide for three fee categories representing low, medium and high workload. Although this ultimately will be defined in program guidance, the Department is currently considering the following categories: (a) Low workload Class 3 modifications consisting of changes to non-land based units, such as changes in operation, capacity or wastes handled in container or tank storage units or containment building units; (b) Medium workload Class 3 modifications consisting of changes to land-based units, such as changes in operation, monitoring, or wastes handled in waste piles, surface impoundments, landfills and land treatment units; (c) High workload Class 3 modifications consisting of major facility changes, such as adding new land-based units (surface impoundments, landfills and land treatment), adding new incineration units, or changing the type of waste incinerated.

The three permit modification categories, low, medium and high, will have corresponding fee levels of \$7,500, \$15,000 and \$31,000, respectively. This fee schedule will be re-evaluated after a period of time to ensure that program costs are being adequately covered.

**Comment: Clarification of Wastewater Treatment Unit and Elementary Neutralization Unit Generator Regulations, Including Fees**

The Department proposes to amend OAR 340-102-065 to clarify that upon generation hazardous wastewater managed in units other than wastewater treatment units or elementary neutralization units is subject to hazardous waste regulations, including generator fees. The federal rules, which the Department has adopted by reference and enforces in lieu in EPA, have always required generators to comply with all hazardous waste regulations, including counting, when wastewaters are managed in units other than wastewater treatment units, elementary neutralization units.

Recently, in 40 CFR 261.5(c), a federal rule adopted by the Department, EPA provided further clarification as to when hazardous wastewater need not be counted in calculating generator status. The Department's regulations are consistent with the federal regulations and is providing this rule clarification to address this. Both the Commenter and the Department recognize that there is no federal definition of the term "immediately" as used in the federal regulation. The Department has, through guidance (see *Requirements for Owners or Operators of Wastewater Treatment Units*, 97-003, November 21, 1997), clarified that "immediately" means the introduction of hazardous wastewater through an engineered conveyance device into a defined unit.

The Department agrees with commenters that the Department's wastewater treatment unit and elementary neutralization rules should be consistent with federal law. Under federal law, "sludge" as well as hazardous wastewater may be managed in wastewater treatment units. The term "sludge" is included in the federal regulations of hazardous wastes that may be generated or accumulated in a wastewater treatment unit. Hazardous sludge may be managed in elementary neutralization units, but only when it is hazardous for the characteristic of corrosivity (see 40 CFR 260.10). The Department has added language to OAR 340-102-065 clarifying that hazardous waste (i.e., sludge) other than hazardous wastewater also may be managed in either a wastewater treatment unit or elementary neutralization unit.

In addition, commenters pointed out that units are exempt from permitting when their discharges are regulated under either Section 402 or Section 307(b) of the Clean Water Act. Current rules only reference Section 402; therefore, the Department agrees with commenters and has added a reference to Section 307(b) in the final rule.

One commenter requested that the Department include a rule providing a 0.00 fee factor for wood treater wastewaters which are recovered and reused in the treating process. This request is based on a new federal hazardous waste rule which has not been promulgated as final. The Department may not prospectively implement less stringent rules. Thus, wastewaters must still be counted and reported in Oregon, even though the new federal rule conditionally exempts them when they are recycled. However, wood treaters are recycling their wastewaters directly, without reclamation (the Department views elemental screening of wood chips from wastewater as reclamation), the Department does not require generator fees be paid on those wastewaters. Therefore, ultimately no specific rule change is needed to satisfy the commenter's request.

### **Conclusions**

A full evaluation of the comments and the Department's responses are included in Attachment D.



Intended Future Actions

The Department intends to implement the proposed rules, if adopted, according to Attachment E, Rule Implementation Plan. In addition, the Department will evaluate how well it is covering its costs under the provisions of the proposed rules and return to the Commission to address deficiencies, if needed.

Department Recommendation

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

Attachments

ATTACHMENT A.1 Proposed Rule Changes OAR Chapter 340 Division

ATTACHMENT A.2 Adoption of EPA Regulations through April 30, 1998

ATTACHMENT B Supporting Documentation

1. Notice of Proposed Rulemaking
2. Cover Memo Including Rulemaking Statements
3. Fiscal and Economic Impact Statement
4. Land Use Evaluation Statement
5. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements

ATTACHMENT C Presiding Officers Report on Public Hearing

ATTACHMENT D Summary, Evaluation and Response to Public Comments Received

ATTACHMENT E Rule Implementation Plan

Reference Documents (available upon request)

Copies of the documents relied upon in the development of this rulemaking proposal were Senate Bill 420; Oregon Revised Statutes; documents pertaining to hazardous waste generators and treatment, storage and disposal facilities' hazardous waste management activities; federal and state hazardous waste regulations; federal statutes; public meeting documents; and written testimony received during the public comment period.

GC/GJC52898

Approved:

Section:

Division:

Report Prepared By: Gary Calaba

Phone: (503) 229-6534

Date Prepared: 5/21/98

**Proposed Rule Amendments**

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

In the Matter of Amending )  
OAR Chapter 340, Divisions ) Proposed Amendments  
100,102, 105, and 113 )

1. Rule 340-100-001 purpose and scope is proposed to be amended as follows:

**Purpose and Scope**

**340-100-001** (1) The Department finds that increasing quantities of hazardous waste are being generated in Oregon which, without adequate safeguards, can create conditions that threaten public health and the environment. It is therefore in the public interest to establish a comprehensive program to provide for the safe management of such waste.

(2) The purpose of the management program contained in OAR Chapter 340, Divisions 100 to 110 and 120 is to control hazardous waste from the time of generation through transportation, storage, treatment and disposal. Toxics use reduction, hazardous waste reduction, hazardous waste minimization, beneficial use, recycling and treatment are given preference to land disposal. To this end, the Department intends to minimize the number of disposal sites and to tightly control their operation.

(3) OAR Chapter 340, Divisions 100 to 106, 108, 109, 111, 113 and 120 incorporated, by reference, hazardous waste management regulations of the federal program, included in 40 CFR Parts 260 to 266, 268, 270, 273 and Subpart A and B of 124, into Oregon Administrative Rules. Therefore, persons must consult these parts of 40 CFR in addition to OAR Chapter 340, Divisions 100 to 106 and 120 to determine all applicable hazardous waste management requirements.

(4) A secondary purpose is to obtain EPA Final Authorization to manage hazardous waste in Oregon in lieu of the federal program.

[**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, 466.105, 466.195 & Ch. 468  
Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91)

2. Rule 340-100-002 adoption of U.S. Environmental Protection Agency hazardous waste and used oil management regulations 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 ~~April 30~~~~June 6, 1998~~<sup>June 6, 1997</sup> 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.<sup>1</sup>

(2) Except as otherwise modified or specified by OAR Chapter 340, Division 111, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 279 promulgated through ~~April 30~~~~June 6, 1998~~<sup>June 6, 1997</sup>, 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

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<sup>1</sup> 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.

3. Rule 340-102-065 hazardous waste generator fees is 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.

(2) A late charge equal to ten percent of the fee due shall be assessed if the fees are not received by the Department by the due date shown on the invoice. An additional late charge of ten percent of the ~~invoice~~unpaid amount shall also be assessed each 30 days that the invoice remains unpaid. After 90 days no further Department late charges shall be assessed; however, such 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 unpaid amount total due (~~original fee plus late charges~~) or \$100, whichever is greater, to recover a portion of the costs for referral or collection.

(3) 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 1996, the base fee is fixed at 90 mills per kilogram (\$90 per metric ton).

(4) 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:

<u>Management Method</u>	<u>Fee Factor</u>
Metals Recovery (For Reuse)	0.50
Solvents Recovery	0.50
Other Recovery	0.50
<u>Hazardous wastewater that is not managed immediately upon generation only in on-site elementary neutralization unit(s) (ENU) or wastewater treatment unit(s) (WWTU).</u>	<u>0.50</u>

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

Elementary Neutralization Unit(s)(on-site) 0.00

(Includes only corrosive characteristic hazardous waste that is managed immediately upon generation only in an on-site elementary neutralization unit(s)).

Permitted Discharge under Clean Water Act Section 402 or 307(b). 0.00

(Includes only hazardous wastewater that is managed immediately upon generation only in an on-site wastewater treatment unit(s).)

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. Unless density information is reported, the Department will use the following conversion factors: 1 metric ton = 1,000 kilograms = 2,205 pounds = 1.10 short tons = 1.31 cubic yards = 264.23 gallons = 4.80 drums (55 gallon).

(5) The maximum annual hazardous waste generation fee on any initial fee invoice shall be limited to \$22,500.

(6) Effective January 1, 1997, in addition to the annual hazardous waste generation fee, each hazardous waste generator shall be subject to an annual hazardous waste activity verification fee, upon billing by the Department, as follows:

- (a) Large Quantity Generator: \$525;
- (b) Small Quantity Generator: \$300;
- (c) Conditionally Exempt Small Quantity Generator: No Fee.

[**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 Stats. Implemented: 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

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

#### **Facility Permit Charges and 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.~~ Any person who is required to have a permit (including new applicants, applicants with permit applications on file as of the effective date of this rule, and permittees with expiring permits) for a hazardous waste management facility, or PCB treatment or PCB storage facility pursuant to 40 CFR Parts 264, 265, 270 and OAR Chapter 340, shall be subject to charges to cover the Department costs of processing the permit. These charges are in addition to any Management Facility Annual Compliance Determination Fee required by OAR 340-105-113, any Corrective Action Cost Recovery charges required by OAR 340-105-XXX, any Permit Modification Fees required by OAR 340-105-113, and any other fees applicable to the facility. The charges to cover the permit processing costs shall be the reasonable Department costs, subject to the limitation in section (10) of this rule, including, but not limited to, the Department costs of providing information and permit assistance to the applicant or permittee; regulatory and legal review; permit investigation and evaluation; processing and issuance or denial; and public involvement pursuant to 40 CFR Part 270 and OAR Chapter 340.

(a) The terms permittee and applicant shall be used to refer to those persons subject to the fees described in section (1).

(2) As used in this rule OAR Chapter 340, Division 105, the following definitions shall apply:

(a) The term Hazardous waste management facility includes:

(A) Hazardous waste storage facility;

(B) Hazardous waste treatment or recycling facility; and

(C) Hazardous waste disposal facility; and

(D) Post-closure care.

(b) ~~The term h~~Hazardous wastes include any residue or hazardous wastes as defined in OAR Chapter 340, Division 101 to 108, 109, 110, 113 and 120, or **40 CFR Part 261** handled under the authority of a management facility permit.

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

(d) Department costs shall mean actual costs chargeable to the processing of any permit, permit renewal, or corrective action including, but not limited to, the charges directly attributable to the facility-specific permit or corrective action activities and any associated indirect costs. Indirect costs shall be composed of general management, support, administrative and overhead costs of the Department and the Waste Management and Cleanup Program that the Department determines to be allocable using generally accepted accounting principles.

(3) [Note: This section is moved to OAR 340-105-xxx, Facility Late Fees and Charges and amended. 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 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. Any 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.]

~~(34) Where more than one hazardous waste management activity takes place at a single facility, all of the applicable category compliance determination fees in 340-105-113(3) will be assessed. Permittees requesting a permit modification not related to corrective action activities shall be assessed fees as listed in OAR 340-105-113(4). Permittees shall also be assessed these fees for agency-initiated, legally required modifications.~~

~~(45) 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. The Department shall provide to any applicant a good faith estimate of the Department costs and time frame for the permit process, based on information available. The Department will not assess charges until the estimate is provided. The estimate will be provided within 60 days of the Department's receipt from the applicant or permittee of a request for authorization to proceed with a permit application, as required under 40 CFR Part 270 and OAR Chapter 340, or, for a new hazardous waste storage facility, when the Department first receives both a Part A and Part B permit application. For any application on file with the Department as of the effective date of this rule, when the Department notifies the applicant of the Department's intent to resume or continue work on the application, the Department will provide a good faith estimate of the remaining projected total Department costs and time frame for the permit process, based on information available.~~

~~(56) Upon the Department accepting an application for filing, the filing fee shall be nonrefundable. Upon request by an applicant, the Department will provide up to one hour of consultation prior to assessing charges. Any applicant may request, in writing, additional consultation with the Department prior to beginning the permit process. The Department will charge the applicant for the additional consultation.~~

~~(67) 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. The Department may begin assessing charges identified in section (1) after the estimate is provided in section (4) for any work associated with the permit process and following the one hour consultation. The permittee or applicant is liable for the Department costs incurred after the estimate is provided.~~

~~(78) 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. During any period in which the Department incurs costs under section (1) of this rule, the Department will provide a monthly bill itemizing the Department costs to date.~~

~~(89) All fees shall be made payable to the Department of Environmental Quality. Upon a determination that the Department costs are projected to exceed the original good faith cost estimate as provided in section (4) of this rule by 20% or by \$20,000, whichever is less, the Department will notify the applicant. Unless waived by the~~

applicant, the Department will provide a revised estimate and a written explanation of the deviation. Department costs associated with providing a revised estimate or an explanation of a deviation from the original estimate will be charged to the applicant or permittee.

(940) Upon completion of permit action, or if permit processing activities cease for any reason, and the Department has not received payments for costs incurred as described in section (1) of this rule, the applicant shall pay the outstanding balance.

(104) Charges to a permittee for processing a hazardous waste permit renewal shall not exceed \$150,000.

(112) All fees and charges 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.]

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

### **Fee Schedules**

~~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.~~Management Facility Annual Compliance Determination Fee: Each permitted or interim status hazardous waste management facility subject to 40 CFR 264, 265, 270 and OAR Chapter 340, with an active operating hazardous waste management unit(s), a hazardous waste management unit(s) undergoing closure (including any required closure certification), or a hazardous waste management unit(s) in post-closure is subject to the annual compliance determination fee(s) set forth in section (3). For a facility that has an inactive unit, or units, in post-closure with a release or releases subject to corrective action, the Department shall not include such units in calculating the annual compliance determination fee. Where a facility has unit(s) which become subject to corrective action cost recovery, the annual compliance determination fee for that year shall be prorated base upon the period prior to implementation of corrective action cost recovery.

~~(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: Where more than one hazardous waste management activity takes place at a single facility, all of the applicable category annual compliance determination fees in 340-105-113(3) will be assessed.~~

<u>Category</u>	<u>Fee</u>
<del>(a) A new permit:</del>	
<del>(A) Storage facility</del>	<del>\$70,000;</del>
<del>(B) Treatment facility</del>	<del>70,000;</del>
<del>(C) Disposal Facility</del>	<del>70,000;</del>
<del>(D) Disposal facility</del>	<del>Post closure 70,000.</del>
<del>(b) Permit Reissuance:</del>	
<del>(A) Storage facility</del>	<del>50,000;</del>
<del>(B) Treatment Facility</del>	<del>50,000;</del>
<del>(C) Disposal facility</del>	<del>50,000;</del>
<del>(D) Disposal facility</del>	<del>Post closure 50,000.</del>
<del>(c) Permit Modification:</del>	
<del>(A) Storage facility</del>	<del>No Fee;</del>
<del>(B) Treatment facility</del>	<del>No Fee;</del>
<del>(C) Disposal facility</del>	<del>No Fee;</del>
<del>(D) Disposal facility</del>	<del>Post closure No Fee.</del>

(3) Annual Compliance Determination Fees:

<u>Category</u>	<u>Fee</u>
(a) Storage --	\$18,750.
(b) Treatment-:	
(A) Single Technology --	\$37,500;
(B) Multiple Technology --	\$75,000.

- (c) Disposal Facility:
  - (A) Single Disposal Unit -- \$75,000.
  - (B) Multiple Disposal Units -- \$150,000.
  - (d) ~~Any~~ Post-Closure Facility -- \$18,750.
- (4) Permit Modification Fee: Upon discussion with the permittee to determine the appropriate permit modification classification, the applicant shall be assessed for any permit modification, excluding modifications related to corrective action, as follows:
  - (a) Each Class 1 Permit Modification:
    - (A) Class 1 Low Workload: \$425.
    - (B) Class 1 Medium Workload: \$1,500.
    - (C) Class 1 High Workloads: \$2,800.
  - (b) Class 2 Permit Modification: The permittee shall submit a separate permit modification request for each unrelated category of Class 2 permit change in 40 CFR 270.42, Appendix 1.
    - (A) Class 2 Permit Modifications with Low Workload: \$5,000.
    - (B) Class 2 Permit Modifications with Medium Workload or Many Changes: \$10,000.
    - (C) Class 2 Permit Modifications with High Workload: \$20,000.
    - (D) Class 2 Permit Modification to be processed as Class 3 pursuant to 40 CFR 270.42(b)(6): \$31,000.
  - (c) Class 3 Permit Modification:
    - (A) Class 3 Permit Modifications with Low Workload: \$7,500.
    - (B) Class 3 Permit Modifications with Medium Workload or Many Changes: \$15,000.
    - (C) Class 3 Permit Modifications with High Workload: \$31,000.
  - (d) If the permittee withdraws any permit modification request, the Department shall refund 50% of the balance of the fee if paid in full, if less than 50% of work to complete processing of the action has been done.
  - (e) Permittees shall also be assessed fees under this section for agency-initiated, legally required modifications.
- (5) Hazardous Waste RCRA Exemption Fee:
  - (a) Each person(s) requesting the following activities shall be assessed a standard fee in the amount of \$30,000:
    - (A) Hazardous waste delisting or declassification pursuant to 40 CFR Part 260 and ORS 466.015.
    - (B) A variance from treatability or from the definition of hazardous waste or solid waste.
    - (C) A petition for universal waste listing.
  - (b) Within 60 days of receipt of a request for a hazardous waste delisting and declassification, variance from treatability or from the definition of hazardous waste or solid waste, or hazardous waste petition for a universal waste listing, the Department may determine that the nature of the request, including the complexity

of the proposed action and the factors required to be met for the request to be processed, indicate that a higher fee would be required. If the Department makes such a determination, the Department shall require payment of a higher fee, but not to exceed an additional \$100,000. The Department shall notify the person requesting the exemption that an additional fee is required. Upon receipt of such a notification, the person may discuss with the Department the amount of the fee and the scope of the Department's regulatory activities associated with investigating and processing the request. The person may withdraw the request or petition and be eligible for a refund of fees paid as described in paragraph (c) of this section.

(c) If the person requesting the exemption withdraws a request for a hazardous waste delisting and declassification, variance from treatability, or from the definition of hazardous waste or solid waste, or hazardous waste petition for universal waste listing, the Department shall refund fees paid depending upon the timing of the withdrawal:

(A) If the request or petition is withdrawn prior to or within 30 days of notification, the Department will estimate the effort to date and refund any excess fee balance.

(B) If the request or petition is withdrawn more than 30 days after notification that an addition fee is required, the Department will refund 50% of the balance of the fee paid, if less than 50% of work to complete the processing of the requested action has been done.

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

[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.]

6. Rule 340-105-xxx corrective action cost recovery is a proposed new rule as follows:

#### **Corrective Action Cost Recovery**

**340-105-xxx (1) Each permittee required by the Department to perform corrective action elements, including but not limited to: obtaining a permit pursuant to hazardous waste requirements; permit changes, revisions, substitutions, equivalency demonstrations or modifications, including agency-initiated modifications for corrective action elements; receiving regulatory oversight; or post-closure corrective action for a release, shall be subject to charges to cover Department costs. Department costs shall commence when the Department has notified the permittee or applicant that investigation of a release or threat of release is necessary and of the Department's intent to recover costs. The charges to cover corrective action costs shall be the reasonable Department costs, which are attributable to or associated with**

corrective action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(2) Prior to beginning to assess charges, the Department shall provide to any permittee or applicant a good faith estimate of Department costs and time frame to complete the corrective action process, based on the information available.

(3) During any period in which the Department incurs costs associated with the facility corrective action, the Department will provide a monthly bill itemizing the Department costs to date.

(4) Upon a determination that the Department costs are projected to exceed the original good faith cost estimate, as provided in section (2) of this rule, by 20% or by \$20,000, whichever is less, the Department will notify the permittee or permit applicant. Unless waived by the party, the Department will provide a revised estimate and a written explanation of the deviation. Department costs associated with providing a revised estimate or an explanation of a deviation from the original estimate will be charged to the permittee or applicant.

(5) If, upon completion of corrective action activities, the Department has not received payment for costs incurred as described in section (1) of this rule, the permittee or applicant shall pay the remaining balance.

7. Rule 340-105-xxx facility fee late charges and collections, except for the portion that is not underlined, is a proposed new rule as follows:

#### **Facility Fee Late Charges and Collections**

~~340-105-xxx (1) 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. For all fees and charges set forth in Chapter 340, Division 105, 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 unpaid amount shall also be assessed each 30 days that the invoice remains unpaid. After 90 days no further Department late charges shall be assessed; however, such 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 unpaid amount total due (original fee plus late charges) or \$100, whichever is greater, to recover a portion of the costs for referral or 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.~~

(2) In the event of a specific question or concern regarding charges or fees covered by Chapter 340, Division 105, the Department will upon request, review and respond to information provided by the permittee or permit applicant and meet with the person(s) to discuss the charges or fees.

(3) For applications on file with the Department at the time this rule becomes effective, the Department will determine on a prorata basis the actual costs remaining to complete processing of the permit application.

8. Rule 340-113-040, standards for off-site collection sites, is proposed to be amended as follows:

**Standards for Off-Site Collection Sites**  
**340-113-040**

(1) Applicability.

(a) In addition to the applicable provisions of 40 CFR 273, Subparts B and C, and OAR 340-113-030, the standards of this section apply to owners and operators of off-site collection sites as defined in OAR 340-113-020(4), accumulating more than 1,000 kilograms of universal waste at any one time.

(b) The requirements of this section do not apply to persons who collect, store or transport universal waste batteries described in Public Law 104-142 Section 3(5)(C), Title II of the law, or used rechargeable consumer products containing rechargeable batteries that are not easily removable.

(2) Notification.

(a) Pesticide collection programs are not subject to notification requirements in 40 CFR 273.32 and 340-113-040(2)(b), but instead must comply with requirements of OAR 340-113-070.

(b) Owners or operators of off-site collection sites accumulating more than 1,000 kilograms of non-pesticide universal waste (batteries, mercury thermostats, and mercury-containing lamps) at any time must:

(A) Follow 40 CFR 273.32 (notification requirements for large quantity handlers) with the following exception:

(i) The notification requirement of 40 CFR 273.32(b)(5) is replaced with (B)(v) below.

(B) Off-site handlers must include at a minimum the following with their notification:

(i) Schedule of collection activity (i.e., daily, monthly, etc.);

(ii) An explanation of how the collection site will meet the applicable requirements for off-site handlers accumulating more than 1,000 kilograms of universal waste;

- (iii) Names and addresses of all off-site collection sites that will manage the universal wastes prior to shipment to a destination facility;
  - (iv) Names and addresses of destination facilities that have agreed to accept the universal wastes collected by the off-site handler;
  - (v) Maximum quantity of universal waste by type that will be accumulated at the collection site;
  - (vi) Any additional information requested by the Department; and,
  - (vii) Certification statement that the information submitted to the Department is correct and the off-site collection site is operating in compliance with the universal waste rule.
- (c) Once the notification information has been submitted to the Department, a letter will be sent to the off-site handler acknowledging the receipt of the completed notification form.
- (3) Accumulation time limits.
- (a) For off-site collection sites accumulating more than 1,000 kilograms of universal waste, the provisions in 40 CFR 273.15(a) and (b) and 273.35(a) and (b) are deleted and replaced with Section (3)(b) of this rule.
  - (b) Off-site collection sites may accumulate universal waste for no more than six months from the date the waste was first shipped to the first off-site collection site, unless the handler has received written approval from the Department extending the accumulation time (Note: Extensions may be granted if the handler can demonstrate that additional time is needed to facilitate proper recovery, treatment or disposal of the waste.)
- (4) Tracking universal waste shipments.
- (a) Off-site collection sites accumulating more than 1,000 kilograms of universal waste, must follow the tracking requirements in 40 CFR 273.39 with the following exception:
    - (A) Off-site collection sites accumulating more than 1,000 kilograms, but not more than 5,000 kilograms of universal waste at any time, are not required to record the name and address of the originating universal waste handler (generator).
    - (b) In addition to the provisions in 40 CFR 273.39 (a) an off-site collection site accumulating more than 1,000 kilograms of universal waste must also record the date the universal waste was received by the initial off-site handler.
- (5) Reporting. Off-site collection sites accumulating more than 1,000 kilograms of universal waste at any time shall report to the Department by March 1 of each year, on forms provided by the Department. At a minimum, the following information shall be submitted for the previous calendar year:
- (a) The DEQ identification number, name and address of the universal waste handler;
  - (b) Total quantity of each type of universal waste received; and,
  - (c) Locations of universal waste handlers and destination facilities waste was shipped to.



Attachment A.1  
Amending Oregon Hazardous Waste Rules  
Proposed Rule Changes to Chapter 340  
EQC Agenda Item D  
June 11, 1998

Stat. Auth.: ORS Ch. 183.325 to 183.335, 466.020, 468.020  
Stat Implemented: ORS Ch. 466.015, 466.075

GC/gjc52998

### **Adoption of EPA Regulations through April 30, 1998**

The Department routinely updates its hazardous waste regulations by adopting changes to the federal hazardous waste rules that are already in effect in Oregon. These changes are needed to maintain authorization of the federal RCRA program and to implement the program in lieu of EPA.

The Department proposes to adopt federal changes to the regulations through April 30, 1998. The changes being proposed are primarily technical clarifications and corrections which generally affect the hazardous waste generator and treatment, storage and disposal facility universe.

#### **The Proposed Changes**

- Hazardous Waste Management Systems; Testing and Monitoring Activities, Amendment III. 62 FR 32452, June 13, 1997. Non-HSWA. Effective upon filing with the Secretary of State.

This rule adds and amends 37 methods to SW-846 and deletes 16 obsolete methods from SW-846. It affects industry, State, local and federal Government; generators, treatment, storage and disposal facilities. EPA continues to refine RCRA analytical methods.

- Hazardous Waste Management Systems; Carbamate Production, Identification and Listing of Hazardous Wastes; Land Disposal Restrictions. 62 FR 32974, June 17, 1997; HSWA. Second Emergency Revision of the Land Disposal Restrictions treatment Standards for Listing Hazardous Waste from Carbamate Production. 62 FR 45568, August 28, 1997; HSWA.

The first EPA rule amends regulations to conform to an appeals court ruling that invalidates EPA listing certain carbamate wastes as hazardous. We adopted the listings (58 specific carbamate compounds to the list of hazardous constituents in Appendix VIII, and six wastes streams, K156, K157, K158, K159, K160, K161) and associated alternate LDR standards. This rulemaking removes 24 U wastes, one K-waste (K160), and three other K-wastes (K156, K157 and K158) only to the extent they apply to certain carbamate chemicals.

The second EPA rule extends for one year the time that alternate carbamate treatment standards are in place. EPA had problems with the measurement of constituent levels in carbamate wastes. This extension is only for the wastes that remained listed as hazardous wastes in the previous rulemaking and is actually the second extension of alternate

standards. Currently, there is a great debate and equally great confusion as to which analytical methods can be used to measure carbamate constituent.

- Land Disposal Restrictions Phase III—Emergency extension of the K088 National Capacity variance, Amendment. 62 FR 37694, July 14, 1997; HSWA.

The EPA rule extends for 3 months the national capacity variance for spent potliners. Thus, K088 wastes did not have to be treated to meet LDR treatment standards until October 8, 1997. However, on April 3, 1998, the LDR for K088 was vacated by a court, although the DEQ still retains the K088 LDR standards.

- Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances. 62 FR 645604, December 5, 1997. HWSA.

This rule finalizes clarifying amendments to the rule authorizing treatment variances from the national LDR treatment standards, adopting EPA's interpretation that a treatment variance may be granted when treatment of any given wastes to the level or by the method specified in the regulations is not appropriate, under either technical or environmental circumstances.

- Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers. 62 FR 64636, December 8, 1997; HSWA.

The amendments:

- Clarify EPA's intent as when recycling units are subject to subpart AA and BB rules, i.e., they are applicable when the facility is a permitted TSDf or is in interim status.
- Clarify that facilities that had permits prior to the promulgation of the rule are subject to subpart AA and BB.
- Clarify that a process vent is not subject to the subpart AA standards provided the owner or operator certifies that all subpart AA-regulated process vents at the facility are equipped with an operating air emission controls in accordance with the Clear Air Act regulation.
- Clarifies that portable equipment is subject to subpart AA and subpart BB.

GC/gjc52198

Attachment B.1  
Amending Oregon Hazardous Waste Rules  
Notice of Proposed Rulemaking  
EQC Agenda Item D  
June 11, 1998

Secretary of State

**NOTICE OF PROPOSED RULEMAKING HEARING**

A Statement of Need and Fiscal Impact accompanies this form.

DEQ - WMCD

Agency and Division

Chapter 340

Administrative Rules Chapter Number

Susan M. Greco

Rules Coordinator

(503) 229-5213

Telephone

811 S.W. 6th Avenue, Portland, OR 97213

Address

May 15, 1998

Hearing Date

1:00p.m.

Time

811 SW Sixth Ave., Portland Room 3A

Location

Kim Cox

Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?

X Yes  No

**RULEMAKING ACTION**

**ADOPT:** 340-105-XXX, Corrective Action Cost Recovery; 340-105-XXX, Facility Fee Late Charges and Collection.

**AMEND:** 340-100-001, 340-100-002, 340-102-065, 340-105-110, 340-105-113, 340-113-040.

Stat. Auth.: Senate Bill 420 (1997), ORS 466.020, 466.045, 466.160, 466.165, 466.215, 468.020.  
Stats. Implemented: ORS Chapter 466.

**RULE SUMMARY**

This proposal, if adopted, would amend and revise OAR Chapter 340 Divisions 100, 102, 105, and 113 to:

- amend and establish rules for hazardous waste treatment, storage and disposal facility charges and fees for the Department's incurred costs for processing hazardous waste management facility permits and permit renewals; implementing corrective action; processing hazardous waste permit modifications, hazardous waste delistings and declassifications; processing petitions for listing hazardous waste as universal waste; requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste;
- amend the Department's process for assessing late charges;

Attachment B.1  
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- clarify that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees;
- update the hazardous waste regulations by adopting changes to the federal hazardous waste rules through April 30, 1998; and
- make the Oregon State universal waste regulations consistent with federal law.

The proposal involves revising and clarifying existing rules, establishing new rules, adopting federal rules, and making existing state rules consistent with federal law.

May 15, 1998

\_\_\_\_\_  
Last Day for Public Comment

\_\_\_\_\_  
Authorized Signer and Date

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

**Memorandum**

**Date:** April 17, 1998

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal and Rulemaking Statements Amending Oregon Hazardous Waste Administrative Rules

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt rule amendments to implement Senate Bill 420, including recovery of cost mechanisms and establishing fee schedules for certain hazardous waste program activities; to amend the process for assessing late charges; to clarify conditions under which hazardous wastewater generation affects generator status and associated generator fees; to adopt by reference changes to federal hazardous waste regulations through April 30, 1998; and to amend state regulation of some universal waste batteries. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal:

- amends and establishes rules for hazardous waste treatment, storage and disposal facility charges and fees for the Department's incurred costs for processing hazardous waste management facility permits and permit renewals; implementing corrective action; processing hazardous waste permit modifications, hazardous waste delistings and declassifications; processing petitions for listing hazardous waste as universal waste; requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste;
- amends the Department's process for assessing late charges;
- clarifies that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees;
- updates the hazardous waste regulations by adopting changes to the federal hazardous waste rules through April 30, 1998; and

- makes the Oregon State universal waste regulations consistent with federal law.

The Department has the statutory authority to address these issues under ORS 466.020, 466.045, 466.160, 466.165, 466.215 and 468.020.

### **What's in this Package?**

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

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

### **Hearing Process Details**

The Department is conducting a public hearing at which comments will be accepted either orally or in writing. The hearing will be held as follows:

- Date:** May 15, 1998
- Time:** 1:00 p.m.
- Place:** Department of Environmental Quality  
Room 3A  
811 S.W. 6<sup>th</sup> Ave.  
Portland, OR 97204  
(503) 229-5630

### **Deadline for submittal of Written Comments:**

Kim Cox will be the Presiding Officer at the hearing. The comment period will close at 5:00 p.m. on Friday **May 15, 1998**. Written comments can be presented at the hearing or to the

Attachment B.2  
Amending Oregon Hazardous Waste Rules  
Cover Memo Including Rulemaking Statements  
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Department any time prior to the close of the comment period. Comments may be mailed to: Department of Environmental Quality, Attn: Kim Cox, 811 S.W. 6th Avenue, Portland, Oregon, 97204; FAX (503) 229-6977; Internet address: [cox.kim@deq.state.or.us](mailto:cox.kim@deq.state.or.us)

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

### **What Happens After the Public Comment Period Closes**

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

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is **June 11 or 12, 1998**, in Medford, Oregon. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should contact Kim Cox and request that your name be placed on the mailing list.

### **Background on Development of the Rulemaking Proposal**



### **Why is there a need for the rule?**

Currently, costs incurred for overseeing certain hazardous waste regulatory activities are being borne by the Department. Oregon Revised Statutes, Chapter 466 (Senate Bill 420), allows the Department to assess these costs to the regulated community. Specifically, the Department is proposing to assess the Department's actual costs for permit processing, permit renewal and corrective action, with a statutorily mandated upper limit of \$150,000 for permit renewal charges. Fee schedules are proposed for processing permit modifications, delistings and declassifications, petitions to list hazardous waste as universal wastes, variances from land disposal treatability requirements, and exemptions from the definition of solid and hazardous waste.

This rulemaking also adopts by reference federal regulations through April 30, 1998; modifies the Department's process for assessing late charges; and clarifies that hazardous wastewater that is managed outside of RCRA-exempt management units is subject to hazardous waste generator fees, which is already the case. Respectively, these rules are needed to maintain the delegation of the federal RCRA program by the state and to retain the Department's position as the primary implementer of the RCRA program, to clarify late fee billing procedures, and to make the fee rules consistent with the status of wastewater generators subject to regulations. These rules also make state-only universal waste management rules for certain batteries consistent with federal statutory requirements.

### **How was the rule developed?**

The Department held two Public Information Meetings which primarily were attended by individuals involved in the discussions with the agency during the passage of SB 420. In addition, all facilities who are known to be impacted by this rule were notified of the meetings, and persons (approximately 400) interested in Department hazardous waste rulemaking were notified, too. Various persons made recommendations to the Department on the proposed regulations, particularly on the proposed charges for permit processing, permit renewal, and permit modifications. There was not significant discussion about the fee clarification for hazardous wastewaters managed outside of exempt units, or the proposal to align the Department's universal waste battery rule with federal requirements.

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality office at 811 S.W. 6th Avenue, Portland, Oregon. Documents relied upon were Senate Bill 420; Oregon Revised Statutes; documents pertaining to hazardous waste generators and treatment, storage and disposal facilities' hazardous

waste management activities; federal and state hazardous waste regulations; federal statutes; and public meeting documents. Please contact Kim Cox for times when the documents are available for review.

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

The new charges and fees will affect approximately twenty-three facilities. Three have applications for permits currently on file with the Department; thirteen are undergoing closure or corrective action, and seven have operating units or are in post-closure care. In the near future, the Department expects to receive two updated facility permit applications and a number of requests for permit modifications. In the next biennium, the Department cannot predict whether any delisting and declassification applications, petitions for listing hazardous waste as universal wastes, or requests for exemptions from the definition of solid or hazardous waste. One request for a variance from land disposal treatability requirements may be submitted.

The proposal to amend the Department's current process for assessing late charges is primarily administrative and should not substantially affect the regulated community.

The Department's proposal to clarify that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees addresses 174 known hazardous waste wastewater treatment systems in operation in Oregon. Hazardous wastewater managed outside of wastewater treatment or elementary neutralization units is subject to all generator regulations, including fees. So, this is not a new requirement. Due to some changes to the federal regulations, the Department is simply clarifying that under some hazardous wastewater accumulation or storage scenarios, the hazardous waste regulations, including fees, still apply.

The Department routinely updates its hazardous waste regulations by adopting changes to the federal hazardous waste rules currently in effect in Oregon. This is no different. The Department proposes to adopt federal hazardous waste regulations through April 30, 1998. The federal regulatory changes are primarily technical clarifications and corrections which generally affect the hazardous waste generator and treatment, storage and disposal facility universe. The regulatory changes include:

- new and revised methods and deletion of obsolete methods to the SW-846 hazardous waste testing protocol;

- clarification of the hazardous waste land disposal restriction listing of carbamate pesticide wastes from manufacturing;
- clarification and technical amendments to the organic air emission standards for tanks, surface impoundments and containers; and
- clarification of standards for hazardous waste land disposal restriction treatment variances.

In addition, the Department proposes to amend a federal regulation that was previously adopted with changes by the Department. The proposed amendment is due to a federal statutory change that makes certain Department Universal Waste regulatory requirements for collecting and managing used rechargeable batteries more stringent than is allowed by federal law. The Department believes that adopting the standards for managing the batteries covered by the federal law is required to make the Department eligible to receive EPA authorization to implement the federal Universal Waste program in Oregon.

The Federal Statute<sup>\*</sup> prohibits states from being more stringent than the federal universal waste management requirements<sup>†</sup> for the collection, storage or transportation of certain universal waste used "rechargeable recyclable" batteries. Currently, the Department's universal waste requirements for these batteries are more stringent than federal requirements for persons who collect from off-site and accumulate them in quantities greater than 1,000 kilograms at any one time. The Department proposes to align its universal waste requirements for the batteries by stating in the applicability section of the rule that the Department's rule does not apply to the batteries specified under the federal statute. This action will effectively delete the Department's current, additional and more stringent requirements for "off-site collection sites" that manage batteries covered by the federal statute, and replace those requirements with federal universal waste management regulations. The state-only requirements proposed to be deleted include written notification of universal waste battery management activity, annual reporting of volumes of batteries collected, and shorter limits on the time that batteries may be accumulated. However, the Department wants to make it clear that it is retaining its more stringent requirements for off-site collection sites managing any other universal waste, as defined in Oregon's regulations.

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\* PL 104-142 became effective May 13, 1996. The Department adopted the federal universal waste rule and state universal waste rule in July 1996.

† The universal waste management requirements are streamlined hazardous waste regulations designed to (1) ease the regulatory burden on retail stores and establishments or individuals that wish to collect or generate universal wastes; and (2) reduce the quantity of universal wastes going to municipal solid waste landfills or combustors. Federal universal wastes are certain rechargeable batteries, pesticides and thermostats. The Department added fluorescent tubes to the list of Oregon universal wastes in July 1996.

### **How will the rule be implemented?**

The implementation of the charges and fee rules will only affect a few facilities. However, there will be considerable impact on the Department due to major process changes. The Department is already developing new time sheets and training staff in their use, developing mechanisms to assess Department costs to the regulated community and to process invoices. The Department also will develop fact sheets for internal use, describing the changes in administrative procedures due to implementing this rule. Factsheets for the regulated community will describe the rule and the regulated community's responsibilities in meeting the requirements.

Three facilities submitted permit applications in the 1980's when the Department did not assess charges. When these rules become effective in June 1998, the Department will begin charging these facilities the Department's costs for processing their permits. The Department proposes to determine on a prorata basis the amount of charges that remain to complete processing the three permit applications. There has been considerable discussion with the facilities about the legality of charging permit processing costs when these rules did not exist at the time those permit applications were filed with the Department. There are no statutes or regulations precluding the applicability of these rules to those facilities.

The schedule is designed to include the adoption of these regulations at the June EQC meeting so that FY 1998 billing can occur in August.

### **Are there time constraints?**

The Department invoices annually, in July, and in order to invoice affected parties in a timely manner, the Department must adopt the regulations at the June EQC meeting.

### **Contact for More Information**

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact Kim Cox, DEQ, Waste Management and Cleanup Division, 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97201, phone (503) 229-5913, FAX (503) 229-6977, e-mail address: [cox.kim@deq.state.or.us](mailto:cox.kim@deq.state.or.us).

Attachment B.2  
Amending Oregon Hazardous Waste Rules  
Cover Memo Including Rulemaking Statements  
EQC Agenda Item D  
June 11, 1998

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*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

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 five parts of the Department's Hazardous Waste Rules:

- Amend and establish rules for hazardous waste treatment, storage and disposal facility charges and fees for the Department's incurred costs for processing hazardous waste management facility permits and permit renewals; implementing corrective action; processing hazardous waste permit modifications, hazardous waste delistings and declassifications; processing petitions for listing hazardous waste as universal waste; requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste.
- Amend the Department's process for assessing late charges.
- Clarify that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees.
- Update the hazardous waste regulations by adopting changes to the federal hazardous waste rules through April 30, 1998.
- Make the Oregon State Universal Waste regulations consistent with federal law.

The fiscal and Economic Impact for each of these is covered below:

1. Amend and establish rules for hazardous waste treatment, storage and disposal facility charges and fees for the Department's incurred costs for processing hazardous waste management facility permits and permit renewals; implementing corrective action; processing hazardous waste permit modifications, hazardous waste delistings and declassifications; processing petitions for listing hazardous waste as universal waste; requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste.

### **General Public**

There is no direct fiscal or economic impact on the general public from amending and establishing rules for charging Department incurred costs and fees for overseeing certain hazardous waste management activities.

### **Small Businesses**

The Department believes that the proposed charges and fees will not affect small businesses because the charges and fees are for activities generally undertaken by larger businesses that are either active commercial hazardous waste management facilities, or facilities that are closing management units.

### **Large Businesses**

There are three commercial, active hazardous waste management facilities, and 19 other regulated but inactive, closing hazardous waste treatment, storage, or disposal facilities. All of the facilities are moderately large businesses. Most of the facilities that are closing management units will be transitioning to the Department's Voluntary Cleanup program; thus, they will not be subject to the new charges or fees.

Under the proposed rules, in addition to the compliance determination fee, some of the facilities will see new charges or fees. For the coming biennium, the Department estimates that four facilities will require hazardous waste permit modifications, costing approximately \$51,675; and one facility will require a permit renewal, costing approximately \$20,000. The Department does not anticipate incurring costs for processing new permits or implementing corrective action; nor does the Department expect to receive any petitions for delistings and declassification, exemptions from the definition of hazardous waste or solid wastes, or listing hazardous waste as universal wastes in the next biennium. One facility may submit a request for a variance from treatability standards, although this is not certain.

### **Local Governments**

At this time, no local government is subject to these new charges or fees.

### **State Agencies**

At this time, no state agency is subject to these new charges or 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. Amend the Department's process for assessing late charges.**

**General Public**

There is no direct fiscal and economic impact on the general public from amending the Department's process for assessing late charges.

**Small Businesses**

No additional economic and fiscal impact should be experienced from amending the Department's process for assessing late charges.

**Large Businesses**

No additional economic and fiscal impact should be experienced from amending the Department's process for assessing late charges.

**Local Governments**

No additional economic and fiscal impact should be experienced from amending the Department's process for assessing late charges.

**State Agencies**

No additional economic and fiscal impact should be experienced from amending the Department's process for assessing late charges.

**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. Clarify that hazardous wastewater managed outside of a RCRA-exempt wastewater treatment unit is subject to generator fees.**



### **General Public**

There is no direct fiscal and economic impact on the general public from clarifying that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees.

### **Small Businesses**

No additional economic and fiscal impact should be experienced from clarifying that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees because this has always been the case.

### **Large Businesses**

No additional economic and fiscal impact should be experienced from clarifying that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees because this has always been the case.

### **Local Governments**

There is no direct fiscal and economic impact on local governments from clarifying that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees.

### **State Agencies**

There is no direct fiscal and economic impact on state agencies from clarifying that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator 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.

**4. Update the hazardous waste regulations by adopting changes to the federal hazardous waste rules through May 1, 1998.**

### **General Public**

There is no direct fiscal and economic impact on the general public from adopting changes 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**

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

### **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.

### **5. Make the Oregon State Universal Waste regulations consistent with federal law.**

#### **General Public**

There is no direct fiscal and economic impact on the general public from adopting federal standards that are consistent with federal law for managing certain universal waste batteries.

#### **Small Businesses**

No additional fiscal or economic impact is anticipated from adopting federal requirements for managing certain universal waste batteries consistent with federal law.

#### **Large Businesses**

No additional fiscal or economic impact is anticipated from adopting federal requirements for managing certain universal waste batteries consistent with federal law.

**Local Governments**

No additional fiscal or economic impact is anticipated from adopting federal requirements for managing certain universal waste batteries consistent with federal law.

**State Agencies**

No additional fiscal or economic impact is anticipated from adopting federal requirements for managing certain universal waste batteries consistent with federal law.

**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.**

A. Amend and establish rules for hazardous waste treatment, storage and disposal facility charges and fees for the Department's incurred costs for processing hazardous waste management facility permits and permit renewals; implementing corrective action; processing hazardous waste permit modifications, hazardous waste delistings and declassifications; processing petitions for listing hazardous waste as universal waste; requests for variances from land disposal treatability requirements; and exemptions from the definition of solid and hazardous waste.

The purpose of amending and establishing these rules is to implement the framework of Oregon Revised Statute 466 which allows the Department's to charge incurred costs and fees for certain hazardous waste management oversight activities.

B. Amend the Department's process for assessing late charges.

The purpose for amending the Department's current process for assessing late charges is to make it more equitable.

C. Clarify that hazardous wastewater managed outside of a RCRA-exempt wastewater treatment units is subject to generator fees.

The purpose for clarifying that hazardous wastewater managed outside of a RCRA-exempt wastewater treatment unit or elementary neutralization unit is subject to generator fees is to compel compliance.

D. Update the hazardous waste regulations by adopting changes to the federal hazardous waste rules through April 30, 1998.

The purpose of amending and adopting 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.

E. Make the Oregon State universal waste regulations for managing used rechargeable batteries consistent with federal law.

The purpose of changing the state-only more stringent rules to the federal universal waste rules for managing certain used batteries is to gain authorization from EPA to implement the Universal Waste Rule in Oregon.

**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 as 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 charging Department incurred costs and fees and therefore have no effect on land use goal compliance or plan compatibility procedures. Similarly, amendments to incorporate changes to federal regulations affecting hazardous waste generators and treatment, storage and disposal facilities will be incorporated into permit criteria, but do not involve land use concerns. Under current land use procedures, a Land Use Compatibility Statement is required of local government before a hazardous waste permit is issued.

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

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

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:

- allowing the Department to assess incurred costs and fees for processing hazardous waste management facility permits and permit renewals; for implementing corrective action; for processing hazardous waste permit modifications, hazardous waste delistings and declassifications, universal waste petitions; land disposal treatability variances, and exemptions from the definition of solid and hazardous waste;
- to the Department's process for assessing late charges; and
- clarifying that hazardous wastewater managed outside of RCRA-exempt wastewater treatment units is subject to generator fees.

The proposed changes to federal rules are federal amendments.

Making the Oregon State Universal Waste regulations for managing used rechargeable batteries consistent with federal law is changing state-only more stringent rules to federal requirements.

**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?**

Yes. The 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.

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

Yes. Some of the proposed changes to current federal and state-only rules clarify existing, confusing language, and some changes may be less prescriptive and onerous than the requirements 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, all affected parties must comply with the same requirements.

**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?**

No.

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

Yes.

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

Yes.

Attachment C  
Amending Oregon Hazardous Waste rules  
Presiding Officers Report on Public Hearing  
Agenda Item D  
June 11, 1998

State of Oregon  
Department of Environmental Quality

Memorandum

Date: May 17, 1998

To: Environmental Quality Commission

From: Kim Cox  
Waste Management and Cleanup Division  
Hazardous Waste Policy and Program Development Section

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: May 15, 1998, beginning at 1:00 p.m.

Hearing Location: DEQ Headquarters  
811 SW Sixth Ave. Room 3A  
Portland, OR 97204

Title of Proposal: Rulemaking Proposal and Rulemaking Statements -  
Amending Oregon Hazardous Waste Administrative  
Rules

Rulemaking Proposal and Rulemaking Statements -  
Toxics Use Reduction and Hazardous Waste Reduction  
Rule Revisions and Amendments

The rulemaking hearing on the above titled proposals was convened at 1:10 p.m. 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. One person was in attendance and signed up to give testimony.

Summary of Oral Testimony

Oral testimony was submitted Mr. Jerry Ritter of Weyerhaeuser Co., Springfield on the proposed Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments. Mr. Ritter requested that the DEQ: 1) clarify, in the proposed rules, how to report chemical use of toxic substances incidentally produced during a process; 2) clarify OAR 340-135-050(3)(c)(C), the requirement for facilities to describe their rationale for selecting, or not selecting, reduction options to implement; and 3) make minor word changes to OAR 340-135-070.

Written Testimony

No written testimony was given.

There was no further testimony and the hearing was closed at 1:40 p.m.

Attachment C  
Amending Oregon Hazardous Waste Rules  
Presiding Officers Report on Public Hearing  
EQC Agenda Item D  
June 11, 1998

Additional written comments were received on the proposed Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments from the following:

1. Mr. Jim Craven, American Electronics Association  
5285 SW Meadows Road  
Lake Oswego, OR 97035  
2/17/98, 3/6/98, 5/14/98
2. Mr. Tom Badrick  
OECO Corporation  
TomB@Oeco.Com  
4/20/98
3. Ms. Laurie J. Patterson  
OKI Semiconductor Manufacturing  
11155 SW Leveton Dr.  
Tualatin, OR 97062  
3/2/98

The Department's response to comments submitted by these interested parties are included in Attachment D of the staff report for Agenda Item E.

Additional written comments were received on the proposed Oregon Hazardous Waste Administrative Rule amendments.

1. Mr. R. Dennis Hayword, Executive Director  
Western Wood Preservers Institute  
7017 NE Highway 99, Suite 108  
Vancouver, WA 98665  
5/8/98
2. Mr. Jay M. Doyle  
Evanite Fiber Corporation  
1115 SE Crystal Lake Drive  
PO Box E  
Corvallis, OR 97339-0598  
5/12/98
3. Mr. James H. Denham  
Wah Chang  
NE Old Salem Road  
PO Box 460  
Albany, OR 97321-0460  
5/15/98
4. Mr. Eric Mendenhall  
Safety-Kleen Corp  
550 Shelly St.  
Springfield, OR 97477  
5/15/98
5. Ms. Kathleen Curtis Dotten  
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6. Mr. John Ledger  
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Tektronix  
PO Box 500  
Beaverton, OR 97077-0001  
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8. Mr. Norm Wietting  
Chemical Waste Management of the Northwest, Inc.  
17629 Cedar Springs Lane  
Arlington, OR 97812  
5/15/98
9. J. Mark Morford  
Stoel Rives LLP  
900 SW Fifth Ave., Suite 2300  
Portland, OR 97204-1268  
5/15/98

Attachment C  
Amending Oregon Hazardous Waste Rules  
Presiding Officers Report on Public Hearing  
EQC Agenda Item D  
June 11, 1998

The Department's response to comments submitted by these interested parties are included in Attachment D of the staff report for Agenda Item D.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: May 29, 1998

To: Environmental Quality Commission  
From: Anne R. Price, Waste Management and Cleanup Division  
Subject: Summary, Evaluation and Response to Public Comments Received

At the May 15, 1998 Public Hearing, the Department received no oral comments on the Department's proposal to amend Oregon Hazardous Waste Administrative Rules to assess the Department costs for processing hazardous wastes permits and implementing corrective action; to set fees for processing permit modifications and exemptions from hazardous waste regulations; to amend the process for assessing late charges; to clarify the rules for hazardous wastewater managed outside of hazardous wastewater treatment units and elementary neutralization units; to adopt federal rules; and to amend state-only universal waste rules making them consistent with federal law. Prior to the close of the comment period, the Department received eight sets of comments. One set, from Safety-Kleen, arrived after the close of the comment period.

All of the public comments and the Department's responses are presented below.

**Request for Re-Proposal and Additional Public Comment**

**Comment:**

- Due to concerns raised through other comments, the proposed rules should be withdrawn and re-proposed with an additional public comment period.

**Commenters:** Oregon Metals Industry Council, Tektronix, Stoel Rives LLP Attorneys.

**Department Response:** The Department believes it has sufficiently addressed the concerns raised by the commenters, including making a number of the suggested revisions. The Department is not proposing to withdraw the rules.

### **Scope of Applicability of Corrective Action Cost Recovery**

#### **Comments:**

- The Department should be required to inform an affected party of its intent to assess corrective action charges.
- Corrective action implementation does not include initial investigation activities; such as RCRA Facility Assessment (RFA); therefore, cost recovery should not be allowed for these activities.
- The scope of corrective action cost recovery is limited to only RCRA permitted treatment or storage facilities.
- The Department uses vague language regarding who is subject to corrective action cost recovery.

**Commenters:** Wah Chang, Oregon Metals Industry Council, Associated Oregon Industries, Tektronix, Stoel Rives LLP Attorneys.

**Department Response:** The Department agrees that the notice to the affected person should include notice of the Department's intent to begin assessing charges and has added such wording to Corrective Action Cost Recovery, OAR 340-105-xxx(1).

The Department interprets implementation of corrective action as beginning with the RCRA Facility Assessment (RFA). See 55 Federal Register 30798, July 27, 1990. However the Department understands the commenters' concern that charges may accrue when no remedial action is required. Therefore, the Department will recover RFA costs only once a release or threat of release has been determined to exist, which is consistent with the procedure in the Department's Environmental Cleanup Program. In addition to recovering costs associated with the oversight of RFA and RCRA Facility Investigation (RFI), the Department intends to assess charges for Department costs associated with implementing other corrective action requirements, including but not limited to: evaluating corrective action elements; investigations and corrective measures studies; corrective measures selection, including any corrective action-related public involvement process; implementation, monitoring, and inspecting; permit revision changes; changes under equivalency demonstration and processing the related permit modifications; assistance requested by the permittee, and any other Department costs for consultation, legal advice and review relevant to corrective action obligations, including the Department's legal costs to obtain corrective action. The Department believes that these specific corrective action elements are included under the general categories now set forth in Corrective Action Cost Recovery, OAR 340-105-xxx(1). These general categories were adapted from comments made during the comment period.

The Department's proposed rules require facilities to pay for corrective action cost recovery. ORS 466.045 provides authority for the Department to recover costs associated with

implementing corrective action according to ORS 466.105. While ORS 466.105 refers to duties of permittees, the Department does not agree that corrective action cost recovery should be limited to only facilities with hazardous waste treatment or storage permits. Facilities that do not have permits, but have submitted a Part A permit application and are operating pursuant to interim status requirements in 40 CFR Part 265, are also subject to corrective action cost recovery because they are in effect operating under a permit by rule. Under interim status a permit applicant is treated as having been issued a permit until final action on the permit application has taken place. See 42 USC 6925(e). Therefore, such facilities would be subject to corrective action cost recovery.

Overall, the Department has clarified and tightened the language in Corrective Action Cost Recovery, OAR 340-105-xxx(1) regarding the terms used for the party subject to corrective action cost recovery.

### **Accountability for Rates and Reasonableness of Costs**

#### **Comments:**

- Do not arbitrarily establish rates to assess time and overhead expenses.
- Identify the accounting system by which the Department intends to calculate and bill its expenses for corrective action, including the dollar value and labor rates.
- Identify some standard by which the Department can be measured and held accountable, with respect to cost control.

**Commenters:** Tektronix, Associated Oregon Industries.

#### **Comments:**

- The proposed rule does not have a “meaningful standard” for determining what costs are and are not recoverable.
- The Department should look at authorities in ORS 465.200(23), the definition of remedial action costs, to see what is reasonable.

**Commenters:** Wah Chang, Oregon Metals Industry Council, Tektronix, Associated Oregon Industries, Steel Rives LLP Attorneys.

#### **Comments:**

- The Department should not include the following in its assessment of costs:
  - Staff education due to turnover or reassignment.
  - Discretionary Department time.
  - Costs associated with enforcement.

**Commenter:** Safety-Kleen.

**Department Response:** The Department will charge actual costs, including direct labor and indirect costs associated with the cost recoverable activity. The Department is not proposing to develop “rates” to assess the direct employee costs attributable to corrective action activities. Instead, the Department will charge actual compensation costs incurred for the time spent by individual employees on each corrective action project. State employee compensation rates are governed by schedules set by the Department of Administrative Services. The Department will use a rate to assess the indirect costs incurred to maintain the cost recoverable programs. The Department currently uses rates to charge indirect costs to cost recovery projects in the cleanup program. The development of the cleanup rate is based on generally accepted accounting principles and is reviewed annually and adjusted for current information, as appropriate. The Department proposes to use the same cost accounting methodology to assess direct and indirect costs to corrective action projects. However, the Department believes it is inappropriate to set forth an accounting system in rule.

The Department agrees that costs it charges should be reasonable. The Department believes the types of cost recoverable activities set forth in the proposed rule, Corrective Action Cost Recovery, OAR 340-105-xxx(1), are reasonable, including “. . . costs which are attributable to or associated with corrective action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.” Cost measurement and accountability will also be afforded through monthly billing statements.

However, some commenters requested that Corrective Action Cost Recovery, OAR 340-105-xxx(1) more closely parallel the Department’s Cleanup Program rules, and even suggested adopting the Department’s Environmental Cleanup Program statutory language to implement the corrective action cost recovery. There are no cleanup rules addressing corrective action cost recovery. There is only statutory authority to collect costs for cleanup work being done or overseen by the Department. The Department has added more general language regarding the types of costs recoverable under the corrective action program in Corrective Action Cost Recovery, OAR 340-105-xxx(1).

### **Regarding Contested Charges and Fees**

**Comments:**

- Persons should be afforded an opportunity to meet with the Department to get information regarding specific charges and to discuss the fees charged.
- Persons should be able to contest the Department’s fee determination.



**Commenters:** Safety-Kleen, Oregon Metals Industry Council, Tektronix, Associated Oregon Industries, Chemical Waste Management of the Northwest, Inc., Stoel Rives LLP Attorneys.

**Department Response:** The Department agrees and believes the rule Facility Fee Late Charges and Collections, OAR 340-105-xxx(2), as proposed, provides due process to persons affected by fees or charges to question the Department regarding those charges or fees. However, the Department agrees to a suggestion by several commenters to add a provision to the rule that clearly allows meetings between the Department and affected parties to discuss such issues. The Department will, upon request, review and respond to information regarding the charges. A meeting with the party may occur. The agency will make a final written determination. Once the agency's final decision is made, the party may appeal this decision through judicial review. As with the cleanup program, there are no contested case provisions for disputed charges.

#### **Facility Permit Charges and Fees**

**Comment:** Senate Bill 420 was not intended to apply to a permit application that has been on file with the Department for 10 years, when, at the time the application was submitted, there were no charges for processing permit applications.

**Commenter:** Safety-Kleen.

**Department Response:** The Department believes that permits on file should be subject to Department processing costs under these rules. The Department understands that facilities with permits on file may believe that requiring processing fees now is inequitable. However, one of the reasons such permits have not been issued to date has been due to limited resources. The Department is committed to determining a reasonable estimate of the actual costs remaining to process any permit application on file with the Department and has included such a provision in Facility Fee Late Charges and Collections, OAR 340-105-xxx(3). The Department believes this is a fair and equitable approach to recovering the costs necessary to facilitate timely completion of these permits.

#### **Fee Schedules-Annual Compliance Determination Fee**

**Comment:** The proposed rule appears to leave closed units with releases at an active facility subject to both the annual compliance determination fee and cost recovery for corrective action.

**Commenter:** Safety-Kleen.

**Department Response:** The Department agrees and will amend the rule language to assure that only the cost recovery charge would be applied to an inactive regulated unit with a release requiring corrective action.

OAR 340-105-113(1) now clearly excludes the post closure annual compliance determination fee from the calculation of fees for the facility for any inactive regulated unit, or units, in post-closure with a release subject to corrective action.

For example, an inactive land disposal unit that is in post closure care to maintain a RCRA cap, liner system, leachate collection and removal system and groundwater monitoring to detect releases from the closed unit remains subject to the annual compliance fee due to the continued need for RCRA inspections and enforcement follow-up. The \$18,750 annual fee is intended to pay for oversight of compliance activities for the closed unit to assure that RCRA requirements are met to prevent and minimize releases to the environment from the closed unit. Such a unit would be subject only to the post closure annual compliance determination fee.

If a release occurs from an inactive land disposal unit that has a cap, liner, leachate collection and removal system, and groundwater monitoring, then corrective action would be implemented and corrective action cost recovery charges would include the Department's costs of compliance oversight activities such as inspections and enforcement follow-up. The facility would not be subject to the post closure annual compliance determination fee for this regulated unit.

### **Requiring an Advance Deposit**

#### **Comments:**

- The Department does not have statutory authority to require deposits for corrective action work.
- The term "reimbursing" in ORS 466.045 clearly contemplates after-the-fact repayment of costs.

**Commenters:** Wah Chang, Oregon Metals Industry Council, Associated Oregon Industry, Tektronix, Stoel Rives LLP Attorneys.

**Department Response:** The Department believes that it has the authority to require a deposit as a means to ensure reimbursement especially because the Department has no other funding source for this work. However, the Department is prepared to initiate implementation of cost recovery without requiring an advance deposit. Therefore, all proposed regulations requiring advance deposits have been removed from the proposed rules. This issue will be re-evaluated as the regulations are implemented.

### **Late Fee Provisions**

#### **Comments:**

- Late charges:
  - Are excessive.
  - May deprive an affected person of meaningful opportunity to question or challenge fees or costs.
  - Should bear some reasonable relationship to the Department's actual damage.
  - Could encourage the Department to drag out contested case hearings for years in order to profit from late fees.

**Commenters:** Wah Chang, Associated Oregon Industries, Stoel Rives LLP Attorneys.

**Department Response:** Currently, the Department assesses late charges for invoices that have not been paid, both for hazardous waste generators and for hazardous waste facility permit fees. In the Department's proposal, the application of late fees is expanded to include unpaid invoices for all hazardous waste program fees and cost recovery. Facility Late Charges and Collections, OAR 340-105-xxx(1).

If the Department does not receive payment by the due date shown on the invoice, a late charge of ten percent of the unpaid amount is added for each 30 days the invoice remains unpaid up to 90 days. After 90 days, no additional Department late charges are added. The Department has clarified this and amended the rules to reflect this policy. After 90 days, unpaid invoices may be referred to the Department of Revenue for collection or collected in Small Claims Court. Invoices referred to the Department of Revenue will have a 20 percent fee added to the invoice to cover the Department of Revenue costs charged to the Department for collection-expenses.

Late fees are intended to encourage payment as well as to cover the increased cost of collection. The Department does not make a profit from late fees. Persons are able to protest their invoice amount or application of late fees. Late fees are not charged while the agency is reviewing an invoice in question. However, if the invoice is ultimately payable by agency determination, then the late fees will apply. These late fees are not excessive given the administrative effort it takes, on the whole, to collect all late fee payments.

The Department believes its late fee policy is reasonable and inspires timely payment. No change to the intent of the rule has been made in the final rule.

### **Department Initiated Permit Modifications**

**Comment:** The Department should not charge the modification fee for agency initiated permit modifications. This is contrary to current rules.

**Commenters:** Wah Chang, Associated Oregon Industries, Tektronix, Chemical Waste Management of the Northwest, Inc.

**Department Response:** The Department agrees with the commenters if the agency initiates a modification that is not legally required and has amended the language in OAR 340-105-110(3) to reflect this as follows: "Permittees requesting a permit modification not related to corrective action activities shall . . . OAR 340-105-113(4). Permittees shall also be assessed these fees for agency-initiated, legally required modifications." Similar language was added to OAR 340-105-113(4).

### **Fee Schedules-Class 3 Permit Modifications**

**Comment:** Like Class 1 and 2 permit modifications, Class 3 modifications should be split into three fee categories based on High (\$31,000), medium (\$15,000 or \$16,000), and low (\$7,500 or \$8,000) workload.

**Commenters:** Evanite Fiber Corporation, Safety-Kleen, Associated Oregon Industries, Chemical Waste Management of the Northwest, Inc.

**Department Response:** The Department has evaluated the range of potential Class 3 permit modifications and concurs that the proposed rule should be changed to provide for three fee categories representing low, medium and high workload. Although this ultimately will be defined in program guidance, the Department is currently considering the following categories: (a) Low workload Class 3 modifications consisting of changes to non-land based units, such as changes in operation, capacity or wastes handled in container or tank storage units or containment building units; (b) Medium workload Class 3 modifications consisting of changes to land-based units, such as changes in operation, monitoring, or wastes handled in waste piles, surface impoundments, landfills and land treatment units; (c) High workload Class 3 modifications consisting of major facility changes, such as adding new land-based units (surface impoundments, landfills and land treatment), adding new incineration units, or changing the type of waste incinerated.

The three permit modification categories, low, medium and high, will have corresponding fee levels of \$7,500, \$15,000 and \$31,000, respectively. This fee schedule will be re-evaluated after a period of time to ensure that program costs are being adequately covered.

**Clarification of Wastewater Treatment Unit and Elementary Neutralization Unit  
Generator Regulations, including Fees**

**Comments:**

- Make rule changes consistent with current federal law.
- Wastes managed in units are not limited to hazardous wastewaters.
- The term “immediately” should conform to that of EPA.
- Provide a fee factor of 0.00 for wood treaters wastewater that is recovered and reused.

**Commenters:** Western Wood Preservers Institute, Associated Oregon Industries, Tektronix, Stoel Rives LLP Attorneys.

**Department Response:** The Department proposes to amend OAR 340-102-065 to clarify that upon generation hazardous wastewater managed in units other than wastewater treatment units or elementary neutralization units is subject to hazardous waste regulations, including generator fees. The federal rules, which the Department has adopted by reference and enforces in lieu in EPA, have always required generators to comply with all hazardous waste regulations, including counting, when wastewaters are managed in units other than wastewater treatment units, elementary neutralization units.

Recently, in 40 CFR 261.5(c), a federal rule adopted by the Department, EPA provided further clarification as to when hazardous wastewater need not be counted in calculating generator status. The Department’s regulations are consistent with the federal regulations and is providing this rule clarification to address this. Both the Commenter and the Department recognize that there is no federal definition of the term “immediately” as used in the federal regulation. The Department has, through guidance (see *Requirements for Owners or Operators of Wastewater Treatment Units*, 97-003, November 21, 1997), clarified that “immediately” means the introduction of hazardous wastewater into a defined unit through an engineered conveyance device.

The Department agrees with commenters that the Department’s wastewater treatment unit and elementary neutralization rules should be consistent with federal law. Under federal law, “sludge” as well as hazardous wastewater may be managed in wastewater treatment units. The term “sludge” is included in the federal regulations of hazardous wastes that may be generated or accumulated in a wastewater treatment unit. Hazardous sludge may be managed in elementary neutralization units, but only when it is hazardous for the characteristic of corrosivity (see 40 CFR 260.10). The Department has added language to OAR 340-102-065 clarifying that hazardous waste (i.e., sludge) other than hazardous wastewater also may be managed in either a wastewater treatment unit or elementary neutralization unit.

In addition, commenters pointed out that units are exempt from permitting when their discharges are regulated under either Section 402 or Section 307(b) of the Clean Water Act. Current rules only reference Section 402. The Department agrees with commenters and has added a reference to Section 307(b) in the final rule.

One commenter requested that the Department include a rule providing a 0.00 fee factor for wood treater wastewaters which are recovered and reused in the treating process. This request is based on a new federal hazardous waste rule which has not been promulgated as final. The Department may not prospectively implement less stringent rules. Thus, wastewaters must still be counted and reported in Oregon, even though the new federal rule conditionally exempts them when they are recycled. However, if wood treaters are recycling their wastewaters directly, without reclamation (the Department views elemental screening of wood chips from wastewater as reclamation), the Department does not require generator fees be paid on those wastewaters. Therefore, ultimately, no specific rule change is needed to satisfy the commenter's request.

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State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

EQC Meeting June 11, 1998, Rulemaking Proposal  
for

Oregon Administrative Rules assessing incurred costs and establishing fee schedules for certain hazardous waste program activities; and adoption by reference of federal hazardous waste regulations through April 30, 1998.

Draft Rule Implementation Plan

**Summary of the Proposed Rule**

Oregon Revised Statutes, Chapter 466 (Senate Bill 420), allows the Department to assess Department costs from regulated persons for:

- processing hazardous waste management facility permits and permit renewals;
- implementing corrective action;
- hazardous waste permit modifications, hazardous waste delistings and declassifications;
- petitions for listing hazardous waste as universal waste;
- requests for variances from land disposal treatability requirements; and
- exemptions from the definition of solid and hazardous waste.

This rulemaking provides the framework for implementing the statute.

These new rules will affect approximately twenty-three facilities. Three have applications for permits currently on file with the Department; thirteen are undergoing closure or corrective action, and seven have operating units or are in post-closure care. In the near future, the Department expects to receive two updated facility permit applications, and a number of requests for permit modifications. The Department does not expect any delisting and declassification applications, petitions for listing hazardous waste as universal wastes, or requests for exemptions from the definition of solid or hazardous waste. One request for a variance from land disposal treatability requirements may be submitted.

The permit processing, permit renewal and corrective action are to be charged the Department's actual incurred costs, with a statutorily mandated upper limit of \$150,000 for permit renewal charges. Fees schedules are established for processing permit modifications, delistings and declassifications, petitions to list hazardous waste as universal wastes, variances from land disposal treatability requirements, and exemptions from the definition of solid and hazardous waste.

This rulemaking also adopts federal regulations by reference through May 1, 1998, modifies the Department's process for assessing late charges, and clarifies that hazardous wastewater that is managed outside of RCRA-exempt management unit is subject to hazardous waste generator fees.

Respectively, these rules are needed to maintain the delegation of the federal RCRA program by the state and to retain DEQ's position as the primary implementers of the RCRA program, to clarify late fee billing procedures, and to make the fee rules consistent with the status of wastewater generators subject to regulations.

### **Proposed Effective Date of the Rules**

Upon filing with the Secretary of State, June 1998.

### **Proposal for Notification of Affected Persons**

To date, the Department has held two Public Information Meetings which were attended by individuals involved in the discussions with the agency during the passage of SB 420. In addition, all facilities who are known to be impacted by this rule were notified of the meetings, and persons (approximately 400) interested in DEQ rulemaking were notified, too. Various persons made recommendations to the Department on the proposed regulations, particularly on the proposed charges for permit processing, permit renewal, and permit modifications.

The Department has notified affected persons throughout the rulemaking process, including mailing the notice of public hearing chance to comment to interested persons and holding a public hearing in May.

After adoption of the rule, a letter will be mailed to the regulated community explaining who the fee rule affects; what it means; and when and how it will be implemented.

### **Proposed Implementing Actions**

We expect to:

- develop a factsheet explaining cost recovery to the regulated community;
- provide guidance to staff on estimating Department costs;
- provide guidance to staff and the regulated community on selecting the appropriate permit modification category;
- provide guidance to staff and the regulated community on the relationship between all fees;
- provide guidance to staff and the regulated community describing the conditions under which fees or cost recovery is triggered; and
- develop internal procedures for asking and answering questions concerning the rule.



### **Proposed Training/Assistance Actions**

The Department will use the Waste Management and Cleanup Division (WMC) cost recovery mechanism as a model when developing the charging mechanism for charging incurred costs, both direct and indirect, for processing hazardous waste permits, permit renewals and implementing corrective action cost recovery. Management Services Division (MSD) has been consulted in the development of fee schedules and on various accounting and billing procedures.

Finally, the Department is already developing new time sheets to account for staff time spent processing permits, permit renewals and corrective action, training staff in their use, and developing mechanisms to assess Department costs to the regulated community and to process invoices.

Attachment E  
Amending Oregon Hazardous Waste Rules  
Rule Implementation Plan  
Agenda Item D  
June 11, 1998

GC/GJC  
2-24-98

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item E  
June 11, 1998 Meeting

**Title:**

Proposed Changes to Toxics Use Reduction and Hazardous Waste Reduction Regulations (OAR Chapter 340 Division 135)

**Summary:**

Senate Bill 146, adopted during the 1997 Legislative session, amended the 1989 Toxics Use Reduction and Hazardous Waste Act (ORS 465.000 through ORS 465.110). Statutory amendments include the elimination of certain Toxics Use Reduction and Hazardous Waste Reduction plan elements, and the inclusion of exemptions for facilities implementing an environmental management system or consumer education program for "less toxic" products. In addition, Senate Bill 146 revised planning and reporting requirements for small quantity generators of hazardous waste (SQGs). It extends the planning period through December 1, 1998, for SQGs who were required to, but did not previously develop reduction plans and exempts SQGs from annual progress reporting.

The bulk of the proposed rule changes to OAR 340 Division 135 align the existing rules with Senate Bill 146 changes. Other proposed rule changes, not resulting from Senate Bill 146, propose to simplify, streamline or update the existing rules.

**Department Recommendation:**

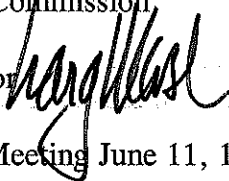
Adopt the proposed rule package as presented in Attachments A and E.

*Sandy Stewart*  
Report Author

*Mary Walsh*  
Division Administrator

Director *[Signature]*

Date: May 18, 1998

To: Environmental Quality Commission  
From: Langdon Marsh, Director   
Subject: Agenda Item E, EQC Meeting June 11, 1998

**Statement of Purpose**

The proposed rule changes are being brought before the Commission for adoption. These rules are necessary to align the existing Toxics Use Reduction and Hazardous Waste Reduction (TURHWR) Regulations (OAR 340-135-000 through OAR 340-135-110) with changes to the Toxics Use Reduction and Hazardous Waste Act (ORS 465.015 and ORS 465.024) adopted in Senate Bill 146. They are also necessary to update outdated references, to consolidate related rules, and to simplify the current process for adopting toxic substances included in OAR 340-135, Appendix 1.

**Background**

In March through June of 1996, the DEQ formed the Waste Reduction and Special Waste Advisory Group to examine and offer recommendations on various aspects of the TURHWR Program. The TURHWR Program implements Oregon's Toxics Use Reduction and Hazardous Waste Reduction Act (Act). As a result of these meetings, the Group suggested a number of "areas of program improvement" which included:

- Eliminating plan elements that do not work or are redundant;
- Examining incentives for the DEQ to encourage the production and marketing of "less toxic" substitute products; and
- Providing exemptions from plan development requirements to exemplary facilities that have: achieved significant verifiable reductions, implemented an environmental management system, received ISO 14001 certification, or implemented a consumer awareness program promoting less toxic alternative products.

These ideas were raised during the 1997 Legislative session, and adopted through the passage of Senate Bill 146 which amends the Act. In addition, Senate Bill 146 revises planning and reporting requirements for small quantity generators of hazardous waste (SQGs)<sup>1</sup>. It extends the planning period through December 1, 1998, for SQGs who were required to, but did not previously develop TURHWR plans and exempts SQGs from annual progress reporting.

Other proposed rule changes, not resulting from Senate Bill 146, were developed through an extensive review of the current rules. The intent of the review was to simplify, streamline and update the existing rules.

<sup>1</sup> SQGs are facilities that generate 220 to 2,200 pounds of hazardous waste in a calendar month.

### **Why is there a need for the rule?**

The proposed rule changes are necessary to align the existing Toxics Use Reduction and Hazardous Waste Reduction Regulations with changes adopted in Senate Bill 146. They are also necessary to update outdated references, to consolidate related rules, and to simplify the current process for adopting toxic substances included in OAR 340-135, Appendix 1.

### **Authority of the Commission with Respect to the Issue**

The Commission has the authority to develop and approve Toxics Use Reduction and Hazardous Waste Reduction Regulations. ORS 465.009, 465.015(7), 465.015(10).

### **Alternatives and Evaluation**

There are no alternatives to adopting proposed rule changes aligning the current rules with Senate Bill 146 changes. Other proposed rule changes could remain unchanged.

### **Summary of Public Input Opportunity**

In early February, a set of draft rules were made available to interested parties (people who have been actively involved with the TURHWR Program over the past three years, including previous advisory group members). Following this, an information meeting was held on February 18, 1998 to discuss and receive comments on the draft rules.

The DEQ received three written comments on the proposed Toxics Use Reduction and Hazardous Waste Reduction rule revisions and amendments prior to the public hearing from the following three parties:

- Mr. Jim Craven, American Electronics Association (2/17/98, 3/6/98, 5/14/98)
- Ms. Laurie J. Patterson, OKI Semiconductor Manufacturing (3/2/98)
- Mr. Tom Badrick, OECO Corporation (4/20/98)

Comments included: discussions of proposed exemptions to planning for instituting an environmental management system (EMS), suggested language changes to the EMS exemptions, revised numbering and citations, and a request to change existing language allowing exemptions to certain hazardous waste generating activities. The proposed rules were revised based on written and oral comments received from the initial notification and the informational meeting. A draft proposal including these comments was distributed to interested parties on April 15, 1998 as part of the rulemaking package.

On May 15, 1998, a public hearing was held to receive additional comments on the proposed rules. Only one person testified and no written comments were received at the hearing.

### **Conclusions**

The comments received by the DEQ primarily involved suggestions on formatting and the DEQ accepted most of the recommendations. A full evaluation of the comments and the Department's responses are included in Attachments D and E.

### **Intended Future Actions**

The DEQ intends to implement the proposed rules, if adopted, according to Attachment G.

### **Department Recommendation**

It is recommended that the Commission accept this report, and adopt the proposed rules.

### **Attachments**

ATTACHMENT A Proposed Rule Changes OAR Chapter 340 Division 135

ATTACHMENT B Supporting Documentation

1. Notice of Proposed Rulemaking
2. Cover Memo Including Rulemaking Statements
3. Fiscal and Economic Impact Statement
4. Land Use Evaluation Statement
5. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements

ATTACHMENT C Presiding Officers Report on Public Hearing

ATTACHMENT D Department's Evaluation of Public Comments

ATTACHMENT E Detailed Changes to Original Rulemaking Proposal (made in response to public comment)

ATTACHMENT F Advisory Committee Membership and Committee Report

1. Waste Reduction and Special Waste Advisory (WRSP) Group Membership
2. Areas of Improvement identified by the WRSP Advisory Group

ATTACHMENT G Rule Implementation Plan

### **Reference Documents (available upon request)**

- Written comments received from:
  - ◊ The American Electronics Association 2/17/98, 3/6/98, 5/14/98

Memo To: Environmental Quality Commission  
Agenda Item E, EQC Meeting Page 4

- ◊ OKI Semiconductor Manufacturing 3/2/98
- ◊ OECO Corporation 4/20/98
- SB 146
- Toxic Chemical Release Inventory Reporting Form R and Instructions, Revised 1996 Version

Approved:

Section:

Division:

Report Prepared By: Sandy Gurkewitz

Phone: (503) 229-5918

Date Prepared: 5/18/98

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ATTACHMENT A  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

PROPOSED REVISIONS TO  
TOXICS USE REDUCTION AND HAZARDOUS WASTE REDUCTION REGULATIONS

**OAR CHAPTER 340 DIVISION 135**

- 000 Purpose**
- 010 General Policies**
- 020 Definitions**
- 030 Applicability**
- 040 Identification and Listing of Toxic Substances and Hazardous Wastes**
- 042 Toxic Substance and Hazardous Waste Exemptions**
- 044 Environmental Management System Exemption**
- 046 Consumer Education Program Exemption**
- 050 Plan Requirements and Notice of Plan Completion**
- ~~060 Performance Goals~~**
- 070 Annual Progress Report Requirements**
- 080 Optional Reporting Requirements**
- 090 Information Access and Review Procedures for Compliance**
- 100 Designation of Trade Secret Information**
- 110 Compliance and Enforcement Procedures**
- ~~Appendix 1 Listing of Toxic Substances and Hazardous Wastes~~**



1  
2  
3 **OAR CHAPTER 340 DIVISION 135**

4  
5 **TOXIC USE REDUCTION AND HAZARDOUS WASTE REDUCTION REGULATIONS**

6  
7  
8 **Purpose**

9 **340-135-000** The rules within this Division establish the minimum requirements for toxics use reduction  
10 and hazardous waste reduction. Other federal, state and local programs may contain additional  
11 requirements. The primary purpose of these rules is to describe the comprehensive planning requirements  
12 for toxic use reduction and hazardous waste reduction, assure measurable performance goals,  
13 and monitor the use and reduction of toxic substances and generation and reduction of hazardous wastes.  
14 The rules are adopted pursuant to the authority of and are to be used in conjunction with ORS 465.003  
15 through 465.037.

16  
17 Stat. Auth.: ORS 465.003 - 465.037

18 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

19  
20 **Definitions**

21 **340-135-020**

22 (1) "Commission" means the Environmental Quality Commission.

23 (2) "Conditionally Exempt Generator" means a hazardous waste generator who generates in one calendar  
24 month less than, or equal to, 2.2 pounds of acute hazardous waste as defined in 40 CFR Part 261 (July 1  
25 1997) and ORS 466.006~~ORS 466.005~~ and OAR Chapter 340, Divisions 100 and 101, or who generates in  
26 one calendar month less than, or equal to, 220 pounds of hazardous waste or does not accumulate at any  
27 time greater than 2,200 pounds of hazardous waste as defined in 40 CFR Part 261 (July 1, 1997) and  
28 ORS 466.006~~ORS 466.005~~ and OAR Chapter 340, Divisions 100 and 101.

29 (3) "Department" means the Department of Environmental Quality.

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

31 (5) "Facility" means all buildings, equipment, structures and other stationary items located on a single site  
32 or on contiguous or adjacent sites and owned or operated by the same person or by any person who  
33 controls, is controlled by or under common control with any person.

34 (6) "Fully Regulated Generator" or "Large Quantity Generator" means as used in these rules a hazardous  
35 waste generator who generates in any calendar month greater than 2.2 pounds of acute hazardous waste, or  
36 accumulates at any time greater than 2.2 pounds of acute hazardous waste, or who generates in any  
37 calendar month greater than or equal to 2,200 pounds of hazardous waste as defined by 40 CFR Part 261  
38 (July 1, 1997), ORS 466.006~~ORS 466.005~~ and OAR Chapter 340, Divisions 100 and 101.

39 (7) "Generator" means a person who, by virtue of ownership, management or control, is responsible for  
40 causing or allowing to be caused the creation of hazardous waste.

41 (8) "Hazardous Waste" has the meaning given that term in ORS 466.006~~ORS 466.005~~ and OAR Chapter  
42 340, Divisions 100 and 101.

43 (9) "Large Quantity Generator" or "Fully Regulated Generator" means as used in these rules a hazardous  
44 waste generator who generates in any calendar month greater than 2.2 pounds of acute hazardous waste, or  
45 accumulates at any time greater than 2.2 pounds of acute hazardous waste, or who generates in any  
46 calendar month greater than or equal to 2,200 pounds of hazardous waste as defined by 40 CFR Part 261  
47 (July 1, 1997) and ORS 466.006 and OAR Chapter 340, Divisions 100 and 101.

1 (109) "Large User" means a facility required to report under Section 313 of Title III of the Superfund  
2 Amendments and Reauthorization Act of 1986 (PL 99-499) as defined in 40 CFR Part 372 Subparts A  
3 and B (July 1, 1997).

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

6 (142) "Public Record" has the meaning given to it in ORS 192.410.

7 (123) "Reclamation" means a process to recover a usable product, or to regenerate a usable material.  
8 Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

9 (134) "Recycled" means used, reused, or reclaimed, and has the same meaning given it in 40 CFR Part  
10 261.2 (July 1, 1997).

11 (154) "Remedial Activities" means the following environmental cleanup activities:

12 (a) "Corrective Action" as defined in ORS 466.706(3);

13 (b) "Release" as defined in ORS 465.200 (21) and ORS 466.706(17);

14 (c) "Remedial Action" as defined in ORS 465.200(15);(22);

15 (d) "Removal" as defined in ORS 465.200(17);(24)

16 (e) "Cleanup" as defined in ORS 466.605(2); and

17 (f) "Spill or Release" as defined in ORS 466.605(12).

18 (156) "Small Quantity Generator" means a generator who generates in any calendar month greater than  
19 220 pounds and less than 2,200 pounds of hazardous waste as defined by 40 CFR Part 261 (July 1, 1997)  
20 and ORS 466.006~~ORS 466.005~~ and OAR Chapter 340, Divisions 100 and 101.

21 (176) "Toxic Substance" or "Toxics" means any substance in a gaseous, liquid or solid state listed  
22 pursuant to Title III Section 313 of the Superfund Amendments and Reauthorization Act of 1986 as defined  
23 in 40 CFR Part 372 Subpart D (July 1, 1997), or any substance added by the Commission under the  
24 authority of ORS 465.009 and OAR 340-135-040. "Toxic Substance" does not include a substance when  
25 used as a pesticide or herbicide in routine commercial agricultural applications, or any substance deleted  
26 by the Commission under the authority of ORS 465.009 and OAR 340-135-040.

27 (187) "Toxics Use" means use or production of a toxic substance.

28 (198) "Toxics Use Reduction" means in-plant changes in production or other processes or operations,  
29 products or raw materials that reduce, avoid or eliminate the use or production of toxic substances without  
30 creating substantial new risks to public health, safety and the environment. Reduction may be  
31 proportionate to increases or decreases in production or other business changes. Reduction means  
32 application of any of the following techniques:

33 (a) Input substitution, by replacing a toxic substance or raw material used in a production or other process  
34 or operation with a nontoxic or less toxic substance;

35 (b) Product reformulation, by substituting for an existing end product, an end product which is nontoxic or  
36 less toxic upon use, release or disposal;

37 (c) Production or other process or operation modernization, by upgrading or replacing existing equipment  
38 and methods with other equipment and methods;

39 (d) Production or other process or operation redesign or modifications;

40 (e) Improved operation and maintenance of production processes or equipment or methods, and  
41 modifications or additions to existing equipment or methods, including techniques such as improved  
42 housekeeping practices, system adjustments, product and process inspections or production or process  
43 changes; or

44 (f) Recycling, reuse or extended use of toxics by using equipment or methods that become an integral part  
45 of the production or other process or operation of concern, including but not limited to filtration and other  
46 methods.

47 (2049) "Toxics User" means a large user, a large quantity generator, or a small quantity generator.

1 (210) "Trade Secret" has the meaning given to it in ORS 192.501.

2 (224) "Treatment" means any method, technique, or process, including neutralization, designed to change  
3 the physical, chemical, or biological character or composition of any hazardous waste so as to:

4 (a) Neutralize such waste;

5 (b) Recover energy or material resources from the waste;

6 (c) Render such waste non-hazardous or less hazardous;

7 (d) Make it safer for transport, storage, or disposal; or

8 (e) Make it amenable for recovery, amenable for storage, or reduce its volume.

9 (232) "Used or Reused" means a material that is:

10 (a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product  
11 (for example, distillation bottoms from one process used as a feedstock in another process). However, a  
12 material will not satisfy this condition if distinct components of the material are recovered as separate end  
13 products (as when metals are recovered from metal-containing secondary materials); or

14 (b) Employed in a particular function or application as an effective substitute for a commercial product (for  
15 example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater  
16 treatment).

17 (243) "Waste Reduction" means:

18 (a) Any recycling or other activity applied after hazardous waste is generated that is consistent with the  
19 general goal of reducing present and future threats to public health, safety and the environment. Reduction  
20 may be proportionate to the increase or decrease in production or other business changes. The recycling or  
21 other activity shall result in:

22 (A) The reduction of total volume or quantity of hazardous waste generated that would otherwise be  
23 treated, stored or disposed; or

24 (B) The reduction of toxicity of hazardous waste that would otherwise be treated, stored or disposed of; or

25 (C) Both the reduction of total volume or quantity and the reduction of toxicity of hazardous waste; and

26 (D) Does not result in:

27 (i) The transfer of hazardous constituents from one environmental medium to another;

28 (ii) Concentrate waste solely for the purposes of reducing volume; and

29 (iii) Use dilution as a means of reducing toxicity.

30 (b) On-site or off-site treatment may be included where it can be shown that such treatment confers a  
31 higher degree of protection of the public health, safety and the environment than other technically and  
32 economically practicable waste reduction alternatives.

33  
34 [Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of  
35 Environmental Quality.]

36  
37 Stat. Auth.: ORS Ch. 192, 465.009, 466.015, 466.020, 466.075, 466.090, 468.020 & Ch. 646

38 Hist.: DEQ 35, 1990, f. & cert. ef. 8-21-90; DEQ 6-1994, f. & cert. ef. 3-22-94

### 42 Applicability

43 340-135-030 (1) OAR 340-135-000 through 340-135-110 apply to persons who are toxics users. A toxics  
44 user is a large user, a large quantity generator, or a small quantity generator as defined in OAR  
45 340-135-020.

46 (2) All ~~toxics users~~ large users, large quantity generators, or small quantity generators are required to  
47 complete reduction plans under OAR 340-135-050.

48 (3) ~~The following toxics users are required to set performance goals under OAR 340-135-060:~~

1 ~~(a) All large users, large quantity generators, or small quantity generators who use any toxic substance in~~  
2 ~~quantities greater than 10,000 pounds in a calendar year;~~

3 ~~(b) All large users, large quantity generators, or small quantity generators who use any toxic substance in~~  
4 ~~quantities greater than 1,000 pounds in a calendar year and that toxic substance equals greater than ten~~  
5 ~~percent of total toxics used in a calendar year;~~

6 ~~(c) All large quantity generators who generate a hazardous waste that represents ten percent or more by~~  
7 ~~weight of the cumulative hazardous wastes generated in a calendar year.~~

8 ~~(4) Toxics users who manufacture as a product any of the specific toxic substance(s) defined in OAR~~  
9 ~~340-135-040 and Appendix 1 to OAR Chapter 340, Division 135 are not required to plan for the reduction~~  
10 ~~in manufacturing the specific toxic substance(s) or to establish performance goals for reduction of the~~  
11 ~~specific toxic substance(s) manufactured as a product.~~

12  
13 ~~[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the~~  
14 ~~Department of Environmental Quality.]~~

15  
16 Stat. Auth.: ORS 465.003 - 465.037

17 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

## 18 19 20 21 **Identification and Listing of Toxic Substances and Hazardous Waste**

22 **340-135-040 (1) Toxic Substances:** The chemicals and chemical categories listed in ~~Appendix 1 of OAR~~  
23 ~~Chapter 340, Division 135~~ **40 CFR Part 372 Subpart D (July 1, 1997)** are hereby incorporated in and  
24 made a part of this section and shall be considered to be toxic substances subject to the requirements of  
25 OAR 340-135-000 through 340-135-110 and ORS 465.003 through 465.037.

26 **(2) Hazardous Waste:** Hazardous waste as described in ~~Appendix 1 of OAR Chapter 340, Division 135~~  
27 ~~OAR 340-100-002, and OAR 340-101-033~~ is hereby incorporated and made a part of this section and is  
28 subject to the requirements of OAR 340-135-000 through 340-135-110 and ORS 465.003 through 465.037,  
29 except hazardous waste as described in subsections (a) and (b) of this section:

30 ~~(a) Hazardous waste that is generated as a result of remedial activities taken in response to environmental~~  
31 ~~contamination as defined in OAR 340-135-020(14);~~

32 ~~(a) (b) Hazardous waste produced by generators that were previously conditionally exempt from hazardous~~  
33 ~~waste regulations, that is the result of one-time generation events:~~

34 ~~(A) This includes, but is not limited to waste from industrial process modifications, storeroom cleanup and~~  
35 ~~disposal of expired chemical inventories, as long as these generation events do not occur more frequently~~  
36 ~~than once every five years;~~

37 ~~(B) In the case where hazardous waste is generated in amounts greater than 220 pounds or acutely~~  
38 ~~hazardous waste is generated in amounts greater than 2.2 pounds per calendar month, in a year following~~  
39 ~~the original request for a one-time exemption, an additional exemption may be granted if the waste is~~  
40 ~~generated under uncontrollable circumstances such as fire or flood;~~

41 ~~(C) To qualify for an exemption to subsection (b) of this section, a generator seeking an exemption must~~  
42 ~~provide written certification, to the Department, that the waste was generated from a one-time event.~~

43 **(3) Identification of Toxic Substances and Hazardous Wastes:**

44 **(a)** The Environmental Quality Commission may add to or delete from the lists of hazardous wastes and  
45 toxic substances identified in sections (1) and (2) of this rule, and listed in ~~Appendix 1 of OAR Chapter~~  
46 ~~340, Division 135.~~ The Commission shall consider, at a minimum, the following conditions when adding  
47 to or deleting from the lists:  
48

- 1 (A) Proportionate volume of toxic substance or hazardous waste unique to Oregon; or  
2 (B) Amount of regional solid waste or hazardous waste off-site disposal or treatment capacity; or  
3 (C) Impact on statewide or regional air quality, surface water quality, groundwater quality, or other  
4 environmental qualities; or  
5 (D) A substance is added to or deleted from **40 CFR, Part 372 Subpart D (July 1, 1997)** or a hazardous  
6 waste is added to or deleted from OAR 340-100-002 and 340-101-033.

7 ~~(b) Any additions or deletions to section (1) or (2) of this rule shall be made by rulemaking at least~~  
8 ~~biennially and shall be so identified in Appendix 1 of OAR Chapter 340, Division 135 as appropriate. Any~~  
9 ~~additions or deletions under this rule shall take effect, for purposes of plan completion and annual progress~~  
10 ~~report completion, in the calendar year following the addition or deletion. Toxics users shall be notified in~~  
11 ~~writing of Any additions or deletions are hereby incorporated in and made a part of this rule.~~

12  
13 **[Publications:** The publication(s) referred to or incorporated by reference in this rule are available from the Department of  
14 Environmental Quality.]

15  
16 **[ED. NOTE:** The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the  
17 Department of Environmental Quality.]

18  
19 Stat. Auth.: ORS Ch. 192, 465.009, 466.015, 466.020, 466.075, 466.090, 468.020 & Ch. 646

20 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90; DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 6-1994, f. & cert. ef. 3-22-94

## 21 22 **Toxic Substance and Hazardous Waste Exemptions**

23 **340-135-042** (1) **Manufacturers of Toxic Substances:** Toxics users who manufacture, as a product, any of  
24 the specific toxic substance(s) defined in OAR 340-135-040 and **40 CFR Part 372 Subpart D (July 1,**  
25 **1997),** are not required to plan for the reduction in manufacturing the specific toxic substance(s).

26 **(2) Hazardous Wastes:** Hazardous waste generators are not required to plan for the reduction of hazardous  
27 wastes listed in subsections (a) and (b) of this section.

28 **(a) Hazardous waste that is generated as a result of remedial activities taken in response to environmental**  
29 **contamination as defined in OAR 340-135-020(15);**

30 **(b) Hazardous waste, produced by a large quantity generator or small quantity generator, that were**  
31 **previously conditionally exempt from hazardous waste regulations, that is the result of one-time generation**  
32 **events;**

33 **(A) This includes, but is not limited to waste from industrial process modifications, storeroom cleanup and**  
34 **disposal of expired chemical inventories, as long as these generation events do not occur more frequently**  
35 **than once every five years;**

36 **(B) In the case where hazardous waste is generated in amounts greater than 220 pounds or acutely**  
37 **hazardous waste is generated in amounts greater than 2.2 pounds per calendar month, in a year following**  
38 **the original request for a one-time exemption, an additional exemption may be granted if the waste is**  
39 **generated under uncontrollable circumstances such as fire or flood;**

40 **(3) To qualify for an exemption to subsection (2)(b) of this rule, a generator seeking an exemption must**  
41 **provide written certification, to the Department, that the waste was generated from a one-time event.**

42  
43 Stat. Auth.: ORS Ch. 192, 465.009, 466.015, 466.020, 466.075, 466.090, 468.020 & Ch. 646

44 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90; DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 6-1994, f. & cert. ef. 3-22-94

## 45 46 **Environmental Management System Exemption**

### 47 **340-135-044**

48 **(1) Toxics Users Implementing an Environmental Management System:** A toxics user who has  
49 **implemented an environmental management system may claim an exemption to the planning requirements**

05/29/9804/07/98

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1 under OAR 340-135-050 and OAR 340-135-070(1) and (2), provided the environmental management  
2 system complies with the intent of ORS 465.006 by:

3 (a) Following a continual cycle of planning, implementing, reviewing and improving actions the facility  
4 takes to meet its environmental obligations; and

5 (b) Documenting an evaluation of reduction opportunities for toxic substances used and hazardous wastes  
6 generated at the facility; and

7 (c) Including a means to implement reduction options identified in subsection (b) above whenever  
8 technically and economically practicable, without shifting risks from one part of a process, environmental  
9 media or product to another; or

10 (d) Incorporating the standards set forth in section (1)(a) through (c) of this rule as part of an  
11 environmental management system that has received independent registration for the ISO 14001 standard.

12 (3) To claim an exemption from the planning requirements under OAR 340-135-050, a facility must  
13 certify, on a form provided by the Department, that the environmental management system meets or  
14 exceeds the standards set forth in section (1) of this rule.

15 (4) To maintain an exemption to the planning requirements under OAR 340-135-050, a toxics user shall  
16 report annually to the Department on the quantities of toxics substances used and hazardous wastes  
17 generated as set forth in OAR 340-135-070(3).

18 (5) The Department may, upon request, review summary documentation of the facility's environmental  
19 management system. Documentation for the environmental management system shall be maintained on-  
20 site.

21 (6) Within five (5) working days of request of by any officer, employee or representative of the  
22 Department, the toxics user shall make summary documentation of the facility's environmental  
23 management system available for review in sufficient detail to demonstrate that the facility complies with  
24 the requirements of section (1) above.

25 (7) If a toxics user cannot demonstrate that his/her environmental management system complies with the  
26 requirements of section (1) above, the toxics user will be subject to the compliance and enforcement  
27 procedures established in OAR 340-135-090 and OAR 340-135-110.

28  
29 Statutory Auth: ORS 465.015 1997

30 Hist.:

### 31 32 33 **Consumer Education Program Exemption**

#### 34 **340-135-046**

35 (1) Large Users Implementing an Consumer Education Program: A large user who has developed and  
36 implemented an education program designed to increase demand for a consumer product manufactured at  
37 the large user's facility, that is nontoxic and/or less toxic than similar products currently being sold, may  
38 apply for an exemption to the planning requirements under OAR 340-135-050.

39 (2) To qualify for an exemption, a large user must have:

40 (a) Implemented all technically and economically feasible toxics use reduction and waste reduction  
41 opportunities; and

42 (b) Determined that further reductions could only be accomplished by producing less product; and

43 (c) Received written approval for the consumer education program from the Department.

44 (3) To receive approval from the Department for an exemption, a large user must provide information that  
45 demonstrates how the products being promoted are less toxic, nontoxic or better for the environment, than  
46 currently manufactured products by:

47 (a) Eliminating the use of toxic substances in their manufacture;

48 (b) Using fewer numbers or lower amounts of toxic substances in their manufacture than equivalent

- 1 products currently available; or  
2 (c) Releasing fewer numbers  
3 (d) or lower amounts of toxic substances during their manufacture or use than equivalent products  
4 currently available.  
5 (4) To maintain an exemption to the planning requirements under OAR 340-135-050, a large user shall  
6 report annually to the Department on the quantities of toxics substances used and hazardous wastes  
7 generated as set forth in OAR 340-135-070(3).  
8 (a) The Department will work with a large user to estimate the amount of toxic substances diverted from  
9 air, water, or land, resulting from the implementation of the consumer education program.  
10 (5) A large user requesting an exemption to planning under OAR 340-135-046 may be required to evaluate  
11 reduction options for toxic substances used and hazardous wastes generated during the manufacture of  
12 other products produced at the facility.  
13 (6) Documentation for the consumer education program shall remain on-site.  
14

15 Stat. Auth.: ORS Ch. 192, 465.009, 466.015, 466.020, 466.075, 466.090, 468.020 & Ch. 646

16 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90; DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 6-1994, f. & cert. ef. 3-22-94

17

18

### 19 **Reduction Plan Requirements and Certification**

20 **340-135-050** (1) Purpose: The purpose of a reduction plan is to reduce the use of toxics, to reduce the  
21 generation of hazardous waste, and to encourage review of processes and procedures and a conscientious  
22 search for reduction methods to implement. A reduction plan shall not be considered public record except  
23 as provided under OAR 340-135-110(1).

24 (2) General Plan Requirements:

25 (a) All large users and large quantity generators in calendar year 1990 shall complete a toxics use  
26 reduction and hazardous waste reduction plan on or before September 1, 1991. All small quantity  
27 generators shall complete a toxics use reduction and hazardous waste reduction plan on or before  
28 September 1, 1992;

29 (b) All persons who become toxics users after December 31, 1990 shall complete a toxics use reduction  
30 and hazardous waste reduction plan on or before September 1 of the year succeeding the calendar year in  
31 which they become a toxics user;

32 (c) A small quantity generator who is subject to the planning requirements of this rule as of September  
33 1997, and who has not previously completed a plan, shall complete a plan and notify the Department of  
34 Environmental Quality of plan completion on or before December 1, 1998, with no penalty for being out  
35 of compliance prior to December 1, 1998. This section is repealed on December 1, 1998.

36 ~~(d)~~ A facility required to complete a reduction plan may include as a preface to the initial plan:

37 (A) An explanation and documentation regarding any toxics use reduction and hazardous waste reduction  
38 efforts completed or in progress prior to the year a plan is required to be completed;

39 (B) An explanation and documentation regarding impediments to toxics use reduction and hazardous waste  
40 reduction specific to the individual facility.

41 ~~(e)~~ The plan shall cover a minimum period of five years and a maximum period of ten years, with annual  
42 updates during the term of the plan. After the term of the plan, a person may choose to prepare a new plan  
43 or continue to conduct annual evaluations on reduction options;

44 ~~(f)~~ ~~For the purposes of establishing performance goals and for the reduction plan in general, the~~ baseline  
45 calendar year for the plan shall be the calendar year preceding the year the initial plan is required to be  
46 completed;

47 ~~(g)~~ The plan shall give priority to implementing toxics use reduction alternatives over hazardous waste

1 reduction alternatives, where technically and economically feasible. Where the generation of a hazardous  
2 waste does not result from the use of toxic substance, reduction plans shall give priority to methods that  
3 reduce and/or eliminate the generation of that hazardous waste, such as those methods listed in OAR  
4 340-135-020(19)20(a) - (f). Where such methods are not technically and economically feasible, waste  
5 reduction methods that apply to hazardous waste after it has been generated shall be used, such as those  
6 methods listed in OAR 340-135-020(24)4;

7 ~~(h)~~ The completed reduction plan shall be retained at the facility.

8 (3) Specific Plan Requirements: At a minimum, the Reduction Plan shall include the requirements  
9 described below:

10 (a) Policy Statement: The plan shall include a written policy articulating upper management and corporate  
11 support for the toxics use reduction and hazardous waste reduction plan and a commitment to implement  
12 plan goals;

13 (b) Scope and objectives: The plan shall include, but is not limited to, an evaluation of technologies,  
14 procedures, and personnel training programs to insure that unnecessary toxic substances are not used and  
15 unnecessary hazardous waste is not generated;

16 ~~(c) Reduction Evaluations Assessments:~~ The plan shall include an internal analysis of toxic substance usage  
17 and hazardous waste generation, with periodic toxics use reduction and hazardous waste reduction  
18 assessments, to review individual processes or facilities and other activities where toxic substances are  
19 used and waste may be generated and identify opportunities to reduce or eliminate toxic substance usage  
20 and waste generation.

21 (A) A toxics user shall evaluate opportunities for the reduction of toxics used and reduction of hazardous  
22 waste generated in the following categories:

23 (i) Any toxic substance used in quantities in excess of 10,000 pounds in a calendar year;

24 (ii) Any toxic substance used in quantities in excess of 1,000 pounds in a calendar year that constitutes ten  
25 percent or more by weight of the total toxic substances used in that calendar year;

26 (iii) For large quantity generators, any hazardous waste representing ten percent or more by weight of the  
27 cumulative hazardous wastes generated in a calendar year.

28 (B) The reduction assessment shall include:

29 (i) Evaluation of data on the types, amount, and hazardous constituents of toxic substances used and  
30 hazardous waste streams generated;

31 (ii) Evaluation of where and why those toxics are used and waste is generated within the production  
32 process or other operations;

33 (iii) Identification and evaluation of potential toxics use reduction and hazardous waste reduction and  
34 recycling techniques applicable to those toxic substances and wastes that would provide a reduction  
35 program for overall toxics use and hazardous waste reduction;

36 (iv) Evaluation of cross media impacts that result in more severe environmental or human exposure to  
37 toxic substances.

38 (C) Each toxics user shall explain the rationale for identifying toxics use and waste reduction opportunities  
39 and address any impediments to toxics use reduction and hazardous waste reduction, including but not  
40 limited to the following:

41 (i) The availability of technically practicable toxics use reduction and hazardous waste reduction methods,  
42 including any anticipated changes in the future;

43 (ii) The economic practicability of available toxics use reduction and hazardous waste reduction methods,  
44 including any anticipated changes in the future. Examples of situations where toxics use reduction or  
45 hazardous waste reduction may not be economically practicable include but are not limited to:

46 (1) For reasons of prioritization, a particular company has chosen to first address other more serious toxics  
47 use reduction or hazardous waste reduction concerns; or



1 (2) Necessary steps to reduce toxics use and hazardous waste are likely to have significant adverse impacts  
2 on product quality; or

3 (3) Legal or contractual obligations interfere with the necessary steps that would lead to toxics use  
4 reduction or hazardous waste reduction, (e.g., existing contracts that require certain chemical usage).

5 ~~(d) Accounting System: To the extent technically and economically feasible, the plan shall identify but is~~  
6 ~~not limited to the following toxics use and hazardous waste generation costs:~~

7 ~~(A) Cost of toxic substances used;~~

8 ~~(B) Cost of hazardous waste disposal;~~

9 ~~(C) Cost of hazardous waste storage;~~

10 ~~(D) Cost of hazardous waste treatment;~~

11 ~~(E) Cost of environmental liability;~~

12 ~~(F) Cost of compliance: These costs are to be incorporated into a toxics use and hazardous waste~~  
13 ~~accounting system.~~

14 (de) Employee Awareness and Training Program: The plan shall include a description of an employee  
15 awareness and training program that involves employees in toxics use reduction and hazardous waste  
16 reduction planning and implementation to the maximum extent feasible;

17 (ef) Institutionalization: The plan shall include a description of an ongoing effort that demonstrates the  
18 reduction plan is incorporated into management practices and procedures;

19 (fg) Feasibility Analysis: For the toxics substances and hazardous wastes described in OAR 340-135-040  
20 and OAR 340-135-050(c) for which a performance goal is set, the plan shall include the following:

21 (A) A description of reduction options considered;

22 (B) An explanation of why options considered were not implemented;

23 (C) A description of reduction options that distinguishes between toxics use reduction options and  
24 hazardous waste reduction options;

25 (D) An analysis of reduction options considered that demonstrates that toxics use reduction options were  
26 given priority wherever technically and economically practicable;

27 (E) Identification of any positive or negative cross media effects on the environment, public health, or  
28 other reduction measures;

29 (F) Any other factors as needed.

30 (gh) Plan Implementation: The plan shall include the following:

31 (A) A description of technically and economically practicable toxics use reduction and hazardous waste  
32 reduction options;

33 (B) A plan for implementation of reduction options that are selected for implementation, with a schedule of  
34 tasks and dates for implementation;

35 (C) Any other factors important for implementation.

36 ~~(i) Performance Goals: The plan shall include the information required under OAR 340-135-060 on~~  
37 ~~performance goals. As part of each reduction plan, a toxics user shall establish specific performance goals~~  
38 ~~for the reduction of toxic substances and the reduction of hazardous waste according to the criteria~~  
39 ~~described in OAR 340-135-060.~~

40 (4) Notice of Plan Completion: Upon completion of a reduction plan, as required under Section 2 of this  
41 rule, each toxics user shall notify the Department of Environmental Quality in writing. The purpose of the  
42 notice is to certify that the toxics user has completed a plan according to the requirements of this rule and  
43 that the plan is available for inspection by the Department.

44 (a) The notice shall be made on a form provided by the Department and shall contain the following  
45 information:

46 (A) Signature of senior manager or business owner;

47 (B) Standard Industrial Classification (SIC) Code;

- 1 (C) Name, physical location and mailing address of toxics user;  
2 (D) DEQEPA hazardous waste identification number, if applicable;  
3 (E) EPA toxic release inventory (TRI) identification number, if applicable;  
4 (F) Time period covered by the plan.

5 (b) The notice may include an optional description of toxics use reduction and hazardous waste reduction  
6 achieved prior to the calendar year a plan is completed. This information may be submitted to the  
7 Department of Environmental Quality as a separate document and shall not be considered public record;

8 (c) Procedures for Submittal: All toxics users shall submit the completed and signed notice of plan  
9 completion to the Department of Environmental Quality. Notices shall be submitted on a form provided by  
10 the Department:

11 (A) Large toxics users and large quantity generators in calendar year 1990, shall submit a notice of plan  
12 completion on or before September 1, 1991;

13 (B) Small quantity generators in calendar year 1991 shall submit a notice of plan completion on or before  
14 September 1, 1992 with the exceptions provided in section (2)(c) of this rule;

15 (C) Any person who becomes a toxics user in any calendar year shall submit a notice of plan completion  
16 on or before September 1 of the succeeding calendar year.

17 Stat. Auth.: ORS 465.003 - 465.037

18 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

20  
21 **Performance Goals**

22 **340-135-060 (1) General Requirements:**

23 ~~(a) As a part of each reduction plan developed, a toxics user shall establish specific performance goals for  
24 the reduction of toxics use and reduction of hazardous waste in the following categories:~~

25 ~~(A) Any toxic substance used in quantities in excess of 10,000 pounds in a calendar year;~~

26 ~~(B) Any toxic substance used in quantities in excess of 1,000 pounds in a calendar year that constitutes ten  
27 percent or more of the total toxic substances used in that calendar year;~~

28 ~~(C) For large quantity generators, any hazardous waste representing ten percent or more by weight of the  
29 cumulative hazardous wastes generated in a calendar year.~~

30 ~~(b) Performance goals for reduction of other toxics use and hazardous waste generation categories may  
31 also be established;~~

32 ~~(e) Performance goals are not required to be established under subsection (1)(a) of this rule where the toxic  
33 substance as defined in OAR 340-135-040 and **Appendix 1** to OAR Chapter 340, Division 135 is a  
34 product manufactured by the toxics user.~~

35 ~~(2) Specific Requirements: Each performance goal shall be expressed in numeric terms. The numeric terms  
36 shall be stated in percent reduction of pounds for at least a two year and five year period, and an optional  
37 ten year period if applicable to the reduction plan. Each toxics user shall explain the rationale for each  
38 performance goal. The rationale for a particular performance goal shall address any impediments to toxics  
39 use reduction and hazardous waste reduction, including but not limited to the following:~~

40 ~~(a) The availability of technically practicable toxics use reduction and hazardous waste reduction methods,  
41 including any anticipated changes in the future;~~

42 ~~(b) The economic practicability of available toxics use reduction and hazardous waste reduction methods,  
43 including any anticipated changes in the future. Examples of situations where toxics use reduction or  
44 hazardous waste reduction may not be economically practicable include but are not limited to:~~

45 ~~(A) For reasons of prioritization, a particular company has chosen to first address other more serious  
46 toxics use reduction or hazardous waste reduction concerns; or~~

47 ~~(B) Necessary steps to reduce toxics use and hazardous waste are likely to have significant adverse impacts~~

1 on product quality; or

2 ~~(C) Legal or contractual obligations interfere with the necessary steps that would lead to toxics use~~  
3 ~~reduction or hazardous waste reduction, (e.g., existing contracts that require certain chemical usage).~~

4 ~~(e) Cross media impacts that result in more severe environmental or human exposure to toxic substances.~~

5 ~~(3) Exceptions: If the establishment of a specific numeric performance goal is not technically and~~  
6 ~~economically practicable, the performance goal shall include a clearly stated list of objectives designed to~~  
7 ~~lead to the establishment of a numeric goal as soon as practicable, and may identify a date by which the~~  
8 ~~numeric goal shall be established.~~

9  
10 ~~[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the~~  
11 ~~Department of Environmental Quality.]~~

12  
13 ~~Stat. Auth.: ORS 465.003—465.037~~

14 ~~Hist.: DEQ 35-1990, f. & cert. of. 8-21-90~~

15  
16  
17 **Annual Progress Report Requirements**

18 **340-135-070** (1) General Requirements: All large toxics users and large quantity generators required to  
19 complete a reduction plan under OAR 340-135-030 and 340-135-050 shall complete annual progress  
20 reports. Annual progress reports shall not be considered public record except as provided under section (3)  
21 of this rule and OAR 340-135-110(1). The annual progress reports shall be retained at the facility and shall  
22 meet the following requirements:

23 (a) Large toxics users and large quantity generators in calendar year 1990 shall complete the first annual  
24 progress report on or before September 1, 1992. Each subsequent annual progress report shall be  
25 completed on or before September 1 of each year;

26 (b) Small quantity generators in calendar year 1991 shall complete the first annual progress report on or  
27 before September 1, 1993. Each subsequent annual progress report shall be completed on or before  
28 September 1 of each year; until September 1, 1997. After September 1, 1997, small quantity generators  
29 will not be required to develop annual progress reports.

30 (c) Any person who becomes a large toxics user or large quantity generator after calendar year 1990 shall  
31 complete an annual progress report on or before September 1 of the year immediately following the year  
32 they are required to complete a reduction plan under OAR 340-135-050 and annually thereafter;

33 (d) If a large toxics user or large quantity generator no longer meets the definition of a large toxics user or  
34 large quantity generator under OAR 340-135-02030 for one calendar year, the Department shall be  
35 notified of this change in status in lieu of the annual progress report normally submitted for the calendar  
36 year following the change in status. Annual progress reports are not required thereafter. If the person  
37 becomes a large toxics user or large quantity generator at any time thereafter the person is again subject to  
38 the requirements of OAR Chapter 340, Division 135.

39 (2) Specific Requirements:

40 (a) Each annual progress report shall contain the following information:

41 (A) Analysis of annual progress made, if any, in toxics use reduction and hazardous waste reduction,  
42 related to each performance goal for toxic substances and hazardous wastes evaluated as required under  
43 OAR 340-135-030, OAR 340-135-050; established under OAR 340-135-060;

44 (B) Any amendments to the toxics use reduction and hazardous waste reduction plan and an explanation of  
45 the need for the amendments, including any adjustment to performance goals;

46 (C) Annual quantities, in pounds, of each toxic substance used and hazardous waste generated related to  
47 the performance goals for each toxic substance and hazardous waste evaluated as required under OAR 340-  
48 135-050; established under OAR 340-135-060; and

05/29/9804/07/98

~~(D) Annual quantities, in pounds, of hazardous waste generated related to the performance goals established under OAR 340-135-060;~~

~~(DE) Narrative summary explaining the data in subsection paragraphs (2)(a)(C) and (D) of this rule.~~

(b) Each annual progress report may contain the following information:

(A) Narrative description about the ~~goals and~~ progress made in reducing the use of toxic substances and generation of hazardous waste;

(B) Narrative description of any impediments to reducing the use of toxic substances and generation of hazardous waste; and

(C) Any other information the toxics user determines to be needed for the evaluation of the reduction plan and annual progress report.

(3) Reporting Requirements:

(a) The following information from the Annual Progress Report shall be reported to the Department no later than September 1, of each calendar year succeeding the year a plan is completed. The information shall be reported on a form provided by the Department and shall be public record:

(A) Name, mailing address and physical location of toxics user;

(B) Standard Industrial Classification Code;

(C) ~~DEQ~~EPA identification number, if applicable;

(D) TRI identification number, if applicable;

(E) Chemical name, CAS number, and annual number of pounds used for each toxic substance evaluated as required under OAR 340-135-030 and OAR 340-135-050;

~~for which a performance goal is required to be established under OAR 340-135-060(1)(a)(A) and (B);~~

(F) Name of hazardous waste, waste code, annual number of pounds generated for each hazardous waste evaluated as required under OAR 340-135-030, OAR 340-135-050; and

~~for which a performance goal is required to be established under OAR 340-135-060(1)(a)(C);~~

(G) Narrative explaining the data in paragraphs (3)(a)(E) and (F) of this rule.

(b) Toxics users may also report a production index, and background information explaining how the production index is calculated, for the facility or for each toxic substance ~~used and hazardous waste generated for which a performance goal is established under OAR 340-135-060.~~ evaluated.

30 Stat. Auth.: ORS 465.003 - 465.037

31 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

### 32 **Optional Reporting Requirements**

33 **340-135-080** (1) Purpose: The information in section (2) of this rule is reported for administrative purposes to improve technical assistance and to evaluate the effectiveness of toxics use reduction and hazardous waste reduction measures as required by ORS 465.012. The information may be reported on a form provided by the Department no later than September 1 of each calendar year succeeding the year in which the reduction plan is completed. The information reported shall be considered public record. (The information may be used in an aggregated manner to show trends and to determine needs for technical assistance, as an example.)

40 (2) Information Reported: Each toxics user may report the following information to the Department in addition to the information reported under the requirements of OAR 340-135-070:

41 ~~(a) Performance goal, and any adjustment to the performance goal, for each toxic substance for which a performance goal is established under OAR 340-135-060(1)(a)(A) and (B);~~

42 ~~(b) Performance goal, and any adjustment to the performance goal, for each hazardous waste for which a performance goal is established under OAR 340-135-060(1)(a)(C);~~

43 ~~(ae) Reduction measures implemented for each toxic substance and each hazardous waste for which a~~

1 ~~performance goal is established under OAR 340-135-060(1)(a)(A), (B), and (C); evaluated under OAR~~  
2 ~~340-135-030 and OAR 340-135-050.~~  
3 ~~(b)~~ Impediments to reduction for each toxics substance and each hazardous waste for which a  
4 ~~performance goal is established under OAR 340-135-060(1)(a)(A), (B), and (C); evaluated under OAR~~  
5 ~~340-135-050.~~  
6 (i) Environmental Cost Accounting: A toxics user may identify and incorporate into the plan and decision  
7 making process, the costs associated with the use of toxic chemicals and the generation of hazardous waste  
8 including management costs, liability, compliance and oversight costs.  
9 (ii) Reduction Goals: As part of each plan, a toxics user may establish specific goals for the reduction of  
10 toxic substances and hazardous waste.

11

12 Stat. Auth.: ORS 465.003 - 465.037

13 Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

14

15

**NOTICE OF PROPOSED RULEMAKING HEARING**

A Statement of Need and Fiscal Impact accompanies this form.

DEQ -WMCD

Agency and Division

Chapter 340

Administrative Rules Chapter Number

Susan M. Greco

Rules Coordinator

(503) 229-5213

Telephone

811 S.W. 6th Avenue, Portland, OR 97213

Address

May 15, 1998

1:00p.m.

811 SW Sixth Ave., Portland Room 3A

Kim Cox

Hearing Date

Time

Location

Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?

X Yes  No

**RULEMAKING ACTION**

**ADOPT:** 340-135-042, 340-135-044, 340-135-046

**AMEND:** 340-135-000, 340-135-020, 340-135-030, 340-135-040, 340-135-050, 340-135-070,  
340-135-080

**REPEAL:** 340-135-060, 340-135 Appendix 1

Stat. Auth.: Senate Bill 146 (1997), ORS 465.009, 466.015, 466.020, 468.020.

Stats. Implemented: ORS 465.003 through 465.034.

**RULE SUMMARY**

This proposal, if adopted, would amend and revise OAR Chapter 340 Division 135 to:

- Align the rules with changes adopted in Senate Bill 146;
- Update outdated references; and
- Simplify, streamline and consolidate the existing rules to facilitate compliance with Toxics Use Reduction and Hazardous Waste Reduction planning requirements.

The proposal involves revisions to existing rules, deletions and additions of new rule language, adoption of new rules defining exemptions for facilities instituting an environmental management system (EMS) or implementing a consumer education program, deleting Appendix 1 (the list of Toxic Substances and Hazardous Wastes) which will be replaced by incorporating toxic substances and hazardous wastes by reference, and minor housekeeping changes.

May 15, 1998

Last Day for Public Comment



Authorized Signer and Date

ATTACHMENT B.2

**State of Oregon  
Department of Environmental Quality**

**Memorandum**

**Date:** April 15, 1998  
**To:** Interested and Affected Public  
**Subject:** Rulemaking Proposal and Rulemaking Statements - Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding Toxics Use Reduction and Hazardous Waste Reduction Regulations (OAR Chapter 340 Division 135). Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would amend and revise OAR Chapter 340 Division 135 to:

- Align the rules with changes adopted in Senate Bill 146;
- Update outdated references; and
- Simplify, streamline and consolidate the existing rules to facilitate compliance with Toxics Use Reduction and Hazardous Waste Reduction planning requirements.

The Department has the statutory authority to address this issue under Senate Bill 146 (1997), 465.009, ORS 466.015, 466.020, 468.020. These rules implement ORS 465.003 through 465.034.

**What's in this Package?**

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

- Attachment A The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
- Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
- Attachment D Toxics Use Reduction and Hazardous Waste Reduction Regulations (OAR Chapter 340 Division 135)

**Hearing Process Details**

The Department is conducting a public hearing at which comments will be accepted either orally or in writing.

Memo To: Interested and Affected Public  
April 15, 1998

The hearing will be held as follows:

**Date:** May 15, 1998  
**Time:** 1:00 p.m.  
**Place:** DEQ Headquarters Room 3A  
811 SW Sixth Avenue  
Portland, OR 97204

**Deadline for submittal of Written Comments:** May 15, 1998, 5 p.m. Postmarks will be accepted.

Kim Cox will be the Presiding Officer at the hearing.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn: Sandy Gurkewitz, 811 S.W. 6th Avenue, Portland, Oregon 97204. Comments may be faxed to Sandy Gurkewitz at (503) 229-6977.

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

### **What Happens After the Public Comment Period Closes**

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

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this



Memo To: Interested and Affected Public  
April 15, 1998

rulemaking proposal is June 11 or 12, 1998. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

### **Background on Development of the Rulemaking Proposal**

In March through June of 1996, the DEQ formed the Waste Reduction and Special Waste Advisory Group to examine and offer recommendations on various aspects of the Toxics Use Reduction and Hazardous Waste Reduction (TURHWR) Program. The TURHWR Program implements Oregon's Toxics Use Reduction and Hazardous Waste Reduction Act (Act). As a result of these meetings, the Group suggested a number of "areas of program improvement" which included:

- Eliminating plan elements that do not work or are redundant;
- Examining incentives for the DEQ to encourage the production and marketing of "less toxic" substitute products; and
- Providing exemptions from plan development requirements to exemplary facilities that have: achieved significant verifiable reductions, implemented an environmental management system, received ISO 14001 certification, or implemented a consumer awareness program promoting less toxic alternative products.

These ideas were raised during the 1997 Legislative session, and adopted through the passage of Senate Bill 146. Senate Bill 146 amends the Act (ORS 465.015 and ORS 465.024). In addition, Senate Bill 146 revises planning and reporting requirements for small quantity generators of hazardous waste (SQGs)\*. It extends the planning period through December 1, 1998, for SQGs who were required to, but did not previously develop TURHWR plans and exempts SQGs from annual progress reporting.

Other proposed rule changes, not resulting from Senate Bill 146, were developed through an extensive review of the current rules. The intent of the review was to simplify, streamline and update the existing rules.

### **Why is there a need for the rule?**

---

\* SQGs are facilities that generated 220 to 2,200 pounds of hazardous waste in a calendar month.

Memo To: Interested and Affected Public  
April 15, 1998

The proposed rule changes are necessary to align the existing Toxics Use Reduction and Hazardous Waste Reduction Regulations (OAR 340-135) with changes adopted in Senate Bill 146. They are also necessary to update outdated references, consolidate related rules, and to simplify the current process for adopting toxic substances included in OAR 340-135 Appendix 1.

**How was the rule developed?**

The rules were developed by DEQ staff. After internal review, the draft rules were made available to interested parties (people who have been actively involved with the TURHWR Program over the past 3 years, including previous advisory committee members). An informational meeting was held on February 18, 1998 to discuss the draft rules. The rules were revised based on comments received from the initial notification and informational meeting.

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Coleen Sandoval at (503) 229-5913 for times when the documents are available for review. They include:

- Oregon's Toxics Use Reduction Program - Areas of Improvement Identified by the Waste Reduction and Special Waste Advisory Group
  
- Written comments received from the American Electronics Association  
2/17/98  
3/6/98
  
- Written comments received from AKI Semiconductor Manufacturing
  
- SB 146

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

The proposed rule changes do not affect the public. They do however, affect large toxics users, and large and small quantity hazardous waste generators by lessening the reporting burden for facilities falling within these categories. Municipalities and other agencies using hazardous substances and/or generating hazardous wastes falling within these categories will be impacted similarly.

**How will the rule be implemented?**

Memo To: Interested and Affected Public  
April 15, 1998

Facilities subject to OAR 340-135-000 through 110 will be notified in writing, by July 15, 1998, of changes to these rules. The availability of guidance documents will be included in this notification. Notification of these rule changes will also be included with the annual hazardous waste generator notification.

To implement changes to OAR 340-135-000 through 110, the DEQ will by July 15, 1998:

- Develop guidance documents for the environmental management system and consumer product exemptions to planning. This information will be distributed upon request.
- Develop and distribute factsheets on changes to the rules.
- Develop new annual progress reporting forms and share with interested parties.
- Distribute annual progress reporting forms.

Training will be provided to DEQ Waste Reduction Assistance Program (WRAP) and Hazardous Waste Program Staff on the adopted rule changes. In addition, WRAP staff will provide assistance to facilities interested in claiming exemptions to planning requirements. The DEQ may conduct informational workshops for facilities subject to OAR 340-135-000 through 110.

**Are there time constraints?**

Yes. The next round of TURHWR plans and annual progress reports are due September 1, 1998. Ample notification of changes to these rules should be provided to allow facilities adequate time to refine their plans or annual progress reports or apply for exemptions to TURHWR planning prior to the due date.

**Contact for More Information**

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact: Sandy Gurkewitz, 811 SW Sixth Ave. Portland, OR 97204, (503) 229-5918.

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*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

ATTACHMENT B.3  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Rulemaking Proposal**

for

Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments  
OAR Chapter 340 Division 135

**Fiscal and Economic Impact Statement**

**Introduction**

The majority of rules proposed in this rule packet are required to align OAR Chapter 340 Division 135 with Senate Bill 146, passed in 1997. These rules would incur few fiscal and economic impacts, most being indirect. There are no apparent impacts to the public and there are no fees attached to the proposed rules. Implementing a portion of the rules will most likely impact the DEQ by requiring additional staff time to run the program. Another portion of the rules consolidates and streamlines the existing rule, which will save the DEQ time during future rule updates. The following summarizes potential fiscal and economic impacts resulting from implementing these rules.

**Potential Impacts**

The proposed rules provide exemptions to toxics use and hazardous waste reduction planning for facilities implementing an environmental management system or implementing a consumer product education program. Both activities are voluntary and most likely would be implemented regardless of the proposed rules. Therefore, it is unlikely that additional costs would be incurred in response to these rules. Facilities, however, might save time and money if they do not have to develop reduction plans separate from their on-going environmental activities. It is believed that primarily large businesses will claim these exemptions. The rules were developed to reward this type of proactive behavior. The DEQ might incur additional costs in implementing the consumer product education exemption. Additional staff time would be required to work with a facility and approve the education program.

Another exemption to planning will be automatically granted to smaller businesses, (small quantity generators of hazardous wastes - facilities generating between 220 and 2,200 pounds of hazardous waste per month). Small quantity generators are no longer required to develop annual progress reports or to submit summary reports to the DEQ. This exemption to the planning rules may save small businesses time and money - if they had previously developed and reported on their annual reduction progress.

The DEQ proposes the deletion of Appendix 1, the list of Toxics Substances and Hazardous

Wastes, to reduce paper work associated with required biennial updating of this list. In place of the list, the DEQ proposes to incorporate new toxic substances and hazardous wastes by reference.

<i>Who is Impacted?</i>	<i>How are they Impacted?</i>
Public	No impact.
Small Businesses	Indirect impact. Lowered reporting burden may result in reduced environmental compliance costs for the approximately 550 small quantity hazardous waste generators in Oregon.
Large Businesses	Indirect impact. For facilities implementing an environmental management system, implementation of these rules may result in reduced environmental planning costs.  For facilities implementing a consumer education program, the net result of implementing these rules will most likely balance costs incurred while developing a consumer education program with savings resulting from reduced planning requirements.
DEQ	Indirect impact. DEQ might incur additional costs in implementing the consumer product education exemption. Additional staff time would be required to work with a facility and approve the education program  Direct impact. DEQ would save staff time and reduce the agency's administrative burden by streamlining the process for adopting new toxic substances.
State Agencies	Same as small and large businesses.

### **Housing Cost Impact Statement**

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

## Assumptions

### 1. Implementing Exemptions to Planning Requirements

- To implement one project
  - 1.0 FTE
  - 12 weeks
  - 20 hours/week
  - \$22/hour

$$(20 \text{ hrs/week}) \times (12 \text{ weeks}) \times (\$22/\text{hr}) = \$5,280$$

- 2 projects/year

### 2. Streamlining the Rules/Reducing Agency's Administrative Burden

- Currently - Update list of toxics substances and hazardous wastes every 2 years
  - 1.0 FTE
  - 3 weeks
  - 40 hours/week
  - \$22/hour

$$(40 \text{ hrs/week}) \times (3 \text{ weeks}) \times (\$22/\text{hr}) = \$2640$$

- Proposed Rule Revisions
  - 1.0 FTE
  - 2 weeks
  - 10 hours/week
  - \$22/hour

$$(10 \text{ hrs/week}) \times (2 \text{ weeks}) \times (\$22/\text{hr}) = \$440$$

## Costs

1. Implementing Exemptions to Planning Requirements - Approximately \$10,600
2. Streamlining the Rules/Reducing Agency's Administrative Burden
  - Currently costs approximately \$2,600
  - Streamlining costs approximately \$440

ATTACHMENT B.4  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments  
OAR Chapter 340 Division 135

Land Use Evaluation Statement

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

The proposed rule revisions and amendments to OAR Chapter 340, Division 135 apply to toxics use and hazardous waste reduction planning, notification and reporting requirements. The revisions are necessary to align the existing rules with statutory changes adopted in Senate Bill 146. They are also necessary to update outdated references, consolidate related rules, and to simplify the current process for adopting toxic substances included in Appendix 1.

**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:**

**b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?  Yes  No (if no, explain):**

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
  - a. resources, objectives or areas identified in the statewide planning goals, or

b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

The proposed rules relate to the DEQ Toxics Use and Hazardous Waste Reduction Program which is not a land use program under OAR 340 Division 18, DEQ's State Agency Coordination Rules. The proposed rules do not pose significant impacts on resources, objectives or areas as identified in the statewide planning goals or present or future land uses identified in acknowledged comprehensive plans.

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

WMCD  
Division

Robert C. [Signature]  
Intergovernmental Coordinator

4/13/98  
Date



ATTACHMENT B.5  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Rulemaking Proposal**  
for  
Toxics Use Reduction and Hazardous Waste Reduction Rule Revision and Amendments  
OAR Chapter 340-Division 135

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

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

Yes. Facilities required to report releases of toxic substances under the federal Superfund Amendments and Reauthorization Act (SARA) Title III, Section 313 are also required to develop reduction plans and to report on progress made in reducing chemical use and hazardous waste generation. Federal SARA Title II Section 313 reporting is one of the entry criteria into the Toxics Use Reduction and Hazardous Waste Reduction Program.

Certain facilities generating hazardous wastes and subject to requirements under the federal Resource, Conservation and Recovery Act (RCRA) are also required to develop reduction plans and to report on reduction progress.

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

Neither. The applicable federal requirements are based on assumed potential human health and environmental risk.

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

The applicable federal requirements do not specifically address issues of concern in Oregon and information reflecting Oregon's concerns were not considered in the federal process that established 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 rule package will improve the ability of the regulated community to comply with the Toxics Use Reduction and Hazardous Waste Reduction Regulations by clarifying and simplifying the existing rules, eliminating outdated requirements and providing regulatory relief for facilities going beyond compliance.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements? No.

6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth? Not applicable.

7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field). No.

8. Would others face increased costs if a more stringent rule is not enacted? No.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements? No.

10. Is demonstrated technology available to comply with the proposed requirement? No.

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.

## ATTACHMENT C

State of Oregon

Department of Environmental Quality

Memorandum

Date: May 17, 1998

To: Environmental Quality Commission

From: Kim Cox  
Waste Management and Cleanup Division  
Hazardous Waste Policy and Program Development Section

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: May 15, 1998, beginning at 1:00 p.m.

Hearing Location: DEQ Headquarters  
811 SW Sixth Ave. Room 3A  
Portland, OR 97204

Title of Proposal: Rulemaking Proposal and Rulemaking Statements -  
Amending Oregon Hazardous Waste Administrative  
Rules

Rulemaking Proposal and Rulemaking Statements -  
Toxics Use Reduction and Hazardous Waste Reduction  
Rule Revisions and Amendments

The rulemaking hearing on the above titled proposals was convened at 1:10 p.m. 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. One person was in attendance and signed up to give testimony.

### Summary of Oral Testimony

Oral testimony was submitted Mr. Jerry Ritter of Weyerhaeuser Co., Springfield on the proposed Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments. Mr. Ritter requested that the DEQ: 1) clarify, in the proposed rules, how to report chemical use of toxic substances incidentally produced during a process; 2) clarify OAR 340-135-050(3)(c)(C), the requirement for facilities to describe their rationale for selecting, or not selecting, reduction options to implement; and 3) make minor word changes to OAR 340-135-070.

### Written Testimony

No written testimony was given.

There was no further testimony and the hearing was closed at 1:40 p.m.

Additional written comments were received on the proposed Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments from the following:

## ATTACHMENT C

1. Mr. Jim Craven, American Electronics Association  
5285 SW Meadows Road  
Lake Oswego, OR 97035  
2/17/98, 3/6/98, 5/14/98
2. Mr. Tom Badrick  
OECO Corporation  
TomB@Oeco.Com  
4/20/98
3. Ms. Laurie J. Patterson  
OKI Semiconductor Manufacturing  
11155 SW Leveton Dr.  
Tualatin, OR 97062  
3/2/98

The Department's response to comments submitted by these interested parties are included in Attachment D of the staff report for Agenda Item E.

Additional written comments were received on the proposed Oregon Hazardous Waste Administrative Rule amendments.

1. Mr. R. Dennis Hayward, Executive Director  
Western Wood Preservers Institute  
7017 NE Highway 99, Suite 108  
Vancouver, WA 98665  
5/8/98
2. Mr. Jay M. Doyle  
Evanite Fiber Corporation  
1115 SE Crystal Lake Drive  
PO Box E  
Corvallis, OR 97339-0598  
5/12/98
3. Mr. James H. Denham  
Wah Chang  
NE Old Salem Road  
PO Box 460  
Albany, OR 97321-0460  
5/15/98
4. Mr. Eric Mendenhall  
Safety-Kleen Corp  
550 Shelly St.  
Springfield, OR 97477  
5/15/98
5. Ms. Kathleen Curtis Dotten  
Oregon Metals Industry Council  
SW Naito Parkway, Suite 400  
Portland, OR 97204-3500  
5/15/98
6. Mr. John Ledger  
Associated Oregon Industries  
1149 Court Street NE  
Salem, OR 97301-4030  
5/15/98
7. Mr. Kenneth J. Skinner  
Tektronix  
PO Box 500  
Beaverton, OR 97077-0001  
5/15/98
8. Mr. Norm Wietting  
Chemical Waste Management of the  
Northwest, Inc.  
17629 Cedar Springs Lane  
Arlington, OR 97812  
5/15/98
9. J. Mark Morford  
Stoel Rives LLP  
900 SW Fifth Ave., Suite 2300  
Portland, OR 97204-1268  
5/15/98

The Department's response to comments submitted by these interested parties are included in Attachment D of the staff report for Agenda Item D.

ATTACHMENT D  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Rulemaking Proposal**

for

Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments  
OAR Chapter 340 Division 135

**Department's Evaluation of Public Comments**

The DEQ received both written and oral comments on the proposed rule revisions and amendments to the Toxics Use Reduction and Hazardous Waste Reduction regulations. They include:

- A. Written comments received from February through May, prior to the public hearing;
- B. Comments received at the February 18, 1998 informational meeting; and
- C. Oral testimony received at the public hearing.

The following summarizes these comments.

**A. Written Comments Received from February through May Prior to the Public Hearing**

The DEQ received written comments on the proposed rule revisions and amendments prior to the public hearing from the following three parties:

- Mr. Jim Craven, American Electronics Association (2/17/98, 3/6/98, 5/14/98)
- Ms. Laurie J. Patterson, OKI Semiconductor Manufacturing (3/2/98)
- Mr. Tom Badrick, OECO Corporation (4/20/98)

Comments included: discussions of proposed exemptions to planning for instituting an environmental management system (EMS), suggested language changes to the EMS exemptions, a request to change existing language allowing exemptions to certain hazardous waste generating activities, and suggested numbering and citation revisions.

***Comments on EMS Exemptions***

Proposed rule language was submitted by OKI Semiconductors Manufacturing and the American Electronics Association in March. Both commentors provided:

- ◇ Language for the definition of an EMS as embodied in OAR 340-135-044(1)(a)-(c); and.
- ◇ Language on the process for the Agency to review a facility's environmental management system documentation.

These comments were incorporated into the revised April 7, 1998 draft of the proposed rules that was mailed to interested parties, as part of the public hearing staff report.

### ***Comments on Changing Existing Language Allowing Exemptions to Certain Hazardous Waste Generating Activities***

In their letter dated 4/20/98, OEEO suggested that the DEQ revise the current rule exempting one-time cleanup wastes from planning requirements (OAR 340-135-042(2)(b)(A)) to allow frequently occurring cleanups (once a year) to qualify for this exemption. The DEQ did not consider these comments in the rule proposal because the recommended rule revision was not consistent with the intent of the exemption as developed by the Hazardous Waste Advisory Committee in 1993. The intent of the original exemption was to allow facilities who were normally conditionally exempt generators (CEG), who because of a one time event became regulated hazardous waste generators, the opportunity to clean up their facilities without needing to meet the planning requirement. If these activities became a yearly occurrence, it was assumed, these facilities were not truly CEGs, and should engage in reduction planning.

### ***Suggested Citation and Numbering Revisions***

Comments were submitted in May, by the American Electronics Association in response to DEQ's Public Notice/Rule Package dated April 15, 1998. These included proposed corrections to incorrect citations, a proposed merger of the general language for plan requirements in OAR 340-135-050 (general plan requirements) with the more detailed language found in OAR 340-135-060, and a way to reorder the merged plan requirement language that better organizes the proposed rule. These comments are incorporated into the draft of the proposed rules found in ATTACHMENT A.

## **B. Comments Received at the February 18, 1998 Informational Meeting**

The following summarizes the comments received at the February informational meeting:

- Merge planning requirements found in OAR 340-135-050 and OAR 340-135-060
- Require a facility to prepare a summary of an EMS for review or verification by DEQ.
- Provide language on the process for reviewing the documentation or summary documentation from an environmental management system or consumer education program exemption.
- Revise/delete language in 340-135-044(c) on cross-media impacts.
- Revise the definition of an environmental management system as used in the rules.

These comments were incorporated into the revised April 7, 1998 draft of the proposed rules that was mailed to interested parties, as part of the public hearing staff report.

### **C. Comments Received at the May 15, 1998 Public Hearing**

Oral testimony was submitted by Mr. Jerry Ritter of Weyerhaeuser Co., Springfield on the proposed Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments. Mr. Ritter requested that the DEQ: 1) clarify, in the proposed rules, how to report chemical use of toxic substances incidentally produced during a process; 2) clarify OAR 340-135-050(3)(c)(C), the requirement for facilities to describe their rationale for selecting, or not selecting, reduction options to implement; and 3) make minor word changes to OAR 340-135-070.

The current rules do not provide guidance on how to report chemical use data on toxic substances produced incidentally as part of a process. However, the DEQ does not believe this information belongs in the rules. To provide clarification on this issue, the DEQ will add language to the Annual Progress Reporting Forms instructions, as well as modify the forms.

The DEQ has revised language in OAR 340-135-050(3)(c)(C), the requirement for facilities to describe their rationale for selecting, or not selecting, reduction options to implement and has made the suggested minor word changes to OAR 340-135-070. These comments are incorporated into the draft of the proposed rules found in ATTACHMENT A.

ATTACHMENT E  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Rulemaking Proposal**

for

Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments  
OAR Chapter 340 Division 135

**Detailed Changes to Original Rulemaking Proposal  
(made in response to public comment)**

Sections 1 through 3 describe changes made to the 4/7/98 draft of the Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments (ATTACHMENT A) distributed to interested parties in the May 15, 1998 public hearing information packet. Changes made to the 4/7/98 proposal are underlined or ~~strikeout~~. Changes made in response to public comments received during the comment period and during the May 15 public hearing are *[italicized and in brackets]* for new language and *[italicized, in brackets and strikeout]* for deletions.

Section 4 describes minor word changes and a missing rule citation the Department found while addressing the public comments described above. This section presents additional proposed revisions and amendments to ATTACHMENT A, not listed in Sections 1 through 3. Changes made by the Department are *[italicized and in brackets]* for new language and *[italicized, in brackets and strikeout]* for deletions.

1. In response to comments received from the American Electronics Association, the DEQ revised its original proposed changes to OAR 340-135-050(3)(c) to include:

- changing the word "assessment" to "evaluation" for consistency with changes in SB 146;
- re-ordering merged text from OAR 340-135-050 and 340-135-060 to make the rule more readable.

2. In response to comments received at the public hearing, the DEQ revised language in OAR 340-135-050(3)(c) to clarify the requirement for facilities to describe their rationale for selecting, or not selecting, reduction options to implement.

**Reduction Plan Requirements and Certification**

**340-135-050** (1) Purpose: The purpose of a reduction plan is to reduce the use of toxics, to reduce the generation of hazardous waste, and to encourage review of processes and procedures and a conscientious search for reduction methods to implement. A reduction plan shall not be considered public record except as provided under OAR 340-135-110(1).

(2) General Plan Requirements:

(a) All large users and large quantity generators in calendar year 1990 shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1991. All small quantity generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1992;



(b) All persons who become toxics users after December 31, 1990 shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1 of the year succeeding the calendar year in which they become a toxics user;

(c) A small quantity generator who is subject to the planning requirements of this rule as of September 1997, and who has not previously completed a plan, shall complete a plan and notify the Department of plan completion on or before December 1, 1998, with no penalty for being out of compliance prior to December 1, 1998. This section is repealed on December 1, 1998.

~~(de)~~ A facility required to complete a reduction plan may include as a preface to the initial plan:

(A) An explanation and documentation regarding any toxics use reduction and hazardous waste reduction efforts completed or in progress prior to the year a plan is required to be completed;

(B) An explanation and documentation regarding impediments to toxics use reduction and hazardous waste reduction specific to the individual facility.

~~(ed)~~ The plan shall cover a minimum period of five years and a maximum period of ten years, with annual updates during the term of the plan. After the term of the plan, a person may choose to prepare a new plan or continue to conduct annual evaluations on reduction options;

~~(fe)~~ For the purposes of establishing performance goals and for the reduction plan in general, ~~t~~The baseline calendar year for the plan shall be the calendar year preceding the year the initial plan is required to be completed;

~~(gf)~~ The plan shall give priority to implementing toxics use reduction alternatives over hazardous waste reduction alternatives, where technically and economically feasible. Where the generation of a hazardous waste does not result from the use of toxic substance, reduction plans shall give priority to methods that reduce and/or eliminate the generation of that hazardous waste, such as those methods listed in OAR 340-135-020(19)20(a) - (f). Where such methods are not technically and economically feasible, waste reduction methods that apply to hazardous waste after it has been generated shall be used, such as those methods listed in OAR 340-135-020(24)4);

~~(hg)~~ The completed reduction plan shall be retained at the facility.

(3) Specific Plan Requirements: At a minimum, the Reduction Plan shall include the requirements described below:

(a) Policy Statement: The plan shall include a written policy articulating upper management and corporate support for the toxics use reduction and hazardous waste reduction plan and a commitment to implement plan goals;

(b) Scope and objectives: The plan shall include, but is not limited to, an evaluation of technologies, procedures, and personnel training programs to insure that unnecessary toxic substances are not used and unnecessary hazardous waste is not generated;

~~(c)Reduction EvaluationsAssessments:~~ The plan shall include an internal analysis of toxic substance usage and hazardous waste generation, with periodic toxics use reduction and hazardous waste reduction ~~[evaluations assessments]~~, to review individual processes or facilities and other activities where toxic substances are used and waste may be generated and identify opportunities to reduce or eliminate toxic substance usage and waste generation.

~~[(B)-(A) As part of each reduction plan developed a A]~~ toxics user shall evaluate opportunities for the reduction of toxics used and reduction of hazardous waste generated in the following categories:

(i) Any toxic substance used in quantities in excess of 10,000 pounds in a calendar year;

(ii) Any toxic substance used in quantities in excess of 1,000 pounds in a calendar year that constitutes ten percent or more by weight of the total toxic substances used in that calendar year;

(iii) For large quantity generators, any hazardous waste representing ten percent or more by weight of the cumulative hazardous wastes generated in a calendar year.

~~[(A)-(B)]~~ The reduction ~~[evaluation-assessment]~~ shall include:

(i) Evaluation of data on the types, amount, and hazardous constituents of toxic substances used and hazardous waste streams generated;

(ii) Evaluation of where and why those toxics are used and waste is generated within the production process or other operations;

(iii) Identification and evaluation of potential toxics use reduction and hazardous waste reduction and recycling techniques applicable to those toxic substances and wastes that would provide a reduction program for overall toxics use and hazardous waste reduction;

~~[(iv) Evaluation of cross media impacts that result in more severe environmental or human exposure to toxic substances.]~~

[(C) Feasibility Analysis: For the toxics substances and hazardous wastes described in OAR 340-135-040 and OAR 340-135-050(c) for which a performance goal is set, the plan shall include the following:

(i) A description of reduction options considered;

(ii) An explanation of why options considered were implemented or not implemented;

(iii) A description of reduction options that distinguishes between toxics use reduction options and hazardous waste reduction options;

(iv) An analysis of reduction options considered that demonstrates that toxics use reduction options were given priority wherever technically and economically practicable;

(v) Identification of any positive or negative cross media effects on the environment, public health, or other reduction measures;

(vi) Any other factors as needed]

[(D)-(E)] Each toxics user shall explain the rationale for *[each]* toxics use and waste reduction opportunity/ies evaluated under subsections (B) and (C) above] and address any impediments to toxics use reduction and hazardous waste reduction, including but not limited to the following:

(i) The availability of technically practicable toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future;

(ii) The economic practicability of available toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future. Examples of situations where toxics use reduction or hazardous waste reduction may not be economically practicable include but are not limited to:

(1) For reasons of prioritization, a particular company has chosen to first address other more serious toxics use reduction or hazardous waste reduction concerns; or

(2) Necessary steps to reduce toxics use and hazardous waste are likely to have significant adverse impacts on product quality; or

(3) Legal or contractual obligations interfere with the necessary steps that would lead to toxics use reduction or hazardous waste reduction, (e.g., existing contracts that require certain chemical usage).

[(iii) Evaluation of cross media impacts that result in more severe environmental or human exposure to toxic substances.]

~~(d) Accounting System: To the extent technically and economically feasible, the plan shall identify but is not limited to the following toxics use and hazardous waste generation costs:~~

~~(A) Cost of toxic substances used;~~

~~(B) Cost of hazardous waste disposal;~~

~~(C) Cost of hazardous waste storage;~~

~~(D) Cost of hazardous waste treatment;~~

~~(E) Cost of environmental liability;~~

~~(F) Cost of compliance: These costs are to be incorporated into a toxics use and hazardous waste accounting system.~~

(de) Employee Awareness and Training Program: The plan shall include a description of an employee awareness and training program that involves employees in toxics use reduction and hazardous waste

reduction planning and implementation to the maximum extent feasible;

(eF) Institutionalization: The plan shall include a description of an ongoing effort that demonstrates the reduction plan is incorporated into management practices and procedures;

~~(fg) Feasibility Analysis: For the toxics substances and hazardous wastes described in OAR 340-135-040 and OAR 340-135-050(c) for which a performance goal is set, the plan shall include the following:~~

~~(A) A description of reduction options considered;~~

~~(B) An explanation of why options considered were not implemented;~~

~~(C) A description of reduction options that distinguishes between toxics use reduction options and hazardous waste reduction options;~~

~~(D) An analysis of reduction options considered that demonstrates that toxics use reduction options were given priority wherever technically and economically practicable;~~

~~(E) Identification of any positive or negative cross-media effects on the environment, public health, or other reduction measures;~~

~~(F) Any other factors as needed].~~

~~(fg)~~ Plan Implementation: The plan shall include the following:

(A) A description of technically and economically practicable toxics use reduction and hazardous waste reduction options;

(B) A plan for implementation of reduction options that are selected for implementation, with a schedule of tasks and dates for implementation;

(C) Any other factors important for implementation.

~~(i) Performance Goals: The plan shall include the information required under OAR 340-135-060 on performance goals. As part of each reduction plan, a toxics user shall establish specific performance goals for the reduction of toxic substances and the reduction of hazardous waste according to the criteria described in OAR 340-135-060.~~

(4) Notice of Plan Completion: Upon completion of a reduction plan, as required under Section 2 of this rule, each toxics user shall notify the Department of Environmental Quality in writing. The purpose of the notice is to certify that the toxics user has completed a plan according to the requirements of this rule and that the plan is available for inspection by the Department.

(a) The notice shall be made on a form provided by the Department and shall contain the following information:

(A) Signature of senior manager or business owner;

(B) Standard Industrial Classification (SIC) Code;

(C) Name, physical location and mailing address of toxics user;

(D) DEQEPA hazardous waste identification number, if applicable;

(E) EPA toxic release inventory (TRI) identification number, if applicable;

(F) Time period covered by the plan.

(b) The notice may include an optional description of toxics use reduction and hazardous waste reduction achieved prior to the calendar year a plan is completed. This information may be submitted to the Department of Environmental Quality as a separate document and shall not be considered public record;

(c) Procedures for Submittal: All toxics users shall submit the completed and signed notice of plan completion to the Department of Environmental Quality. Notices shall be submitted on a form provided by the Department:

(A) Large toxics users and large quantity generators in calendar year 1990, shall submit a notice of plan completion on or before September 1, 1991;

(B) Small quantity generators in calendar year 1991 shall submit a notice of plan completion on or before September 1, 1992 with the exceptions provided in section (2)(c) of this rule;

(C) Any person who becomes a toxics user in any calendar year shall submit a notice of plan completion

on or before September 1 of the succeeding calendar year.

at. Auth.: ORS 465.003 - 465.037  
Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

3. Other changes to proposed Toxics Use and Hazardous Waste Reduction Rules include:

- minor word changes to OAR 340-135-070(1); and
- corrections of rule citations in OAR 340-135-070(3)(a)(E), (3)(a)(F)

**Annual Progress Report Requirements**

**340-135-070** (1) General Requirements: All large toxics users  ~~[or and]~~  large quantity generators required to complete a reduction plan under OAR  ~~[340-135-030 and]~~  340-135-050~~[(c)(B)]~~ shall complete annual progress reports. Annual progress reports shall not be considered public record except as provided under section (3) of this rule and OAR 340-135-110(1). The annual progress reports shall be retained at the facility and shall meet the following requirements:

(a) Large toxics users and large quantity generators in calendar year 1990 shall complete the first annual progress report on or before September 1, 1992. Each subsequent annual progress report shall be completed on or before September 1 of each year;

(b) Small quantity generators in calendar year 1991 shall complete the first annual progress report on or before September 1, 1993. Each subsequent annual progress report shall be completed on or before September 1 of each year; until September 1, 1997. After September 1, 1997, small quantity generators will not be required to develop annual progress reports.

(c) Any person who becomes a large toxics user or large quantity generator after calendar year 1990 shall complete an annual progress report on or before September 1 of the year immediately following the year they are required to complete a reduction plan under OAR 340-135-050 and annually thereafter;

(d) If a large toxics user or large quantity generator no longer meets the definition of a large toxics user or large quantity generator under OAR 340-135-020~~30~~ for one calendar year, the Department shall be notified of this change in status in lieu of the annual progress report normally submitted for the calendar year following the change in status. Annual progress reports are not required thereafter. If the person becomes a large toxics user or large quantity generator at any time thereafter the person is again subject to the requirements of OAR Chapter 340, Division 135.

(2) Specific Requirements:

(a) Each annual progress report shall contain the following information:

(A) Analysis of annual progress made, if any, in toxics use reduction and hazardous waste reduction, related to each performance goal for toxic substances and hazardous wastes evaluated as required under  ~~[OAR 340-135-030];~~  OAR 340-135-050; established under OAR 340-135-060;

(B) Any amendments to the toxics use reduction and hazardous waste reduction plan and an explanation of the need for the amendments;  ~~including any adjustment to performance goals;~~

(C) Annual quantities, in pounds, of each toxic substance used and hazardous waste generated related to the performance goals for each toxic substance and hazardous waste evaluated as required under OAR 340-135-050;  ~~established under OAR 340-135-060; and~~

~~(D) Annual quantities, in pounds, of hazardous waste generated related to the performance goals established under OAR 340-135-060;~~

~~(DE) Narrative summary explaining the data in subsection paragraphs (2)(a)(C) and (D) of this rule.~~

(b) Each annual progress report may contain the following information:

(A) Narrative description about the goals and progress made in reducing the use of toxic substances and

generation of hazardous waste;

(B) Narrative description of any impediments to reducing the use of toxic substances and generation of hazardous waste; and

(C) Any other information the toxics user determines to be needed for the evaluation of the reduction plan and annual progress report.

(3) Reporting Requirements:

(a) The following information from the Annual Progress Report shall be reported to the Department no later than September 1, of each calendar year succeeding the year a plan is completed. The information shall be reported on a form provided by the Department and shall be public record:

(A) Name, mailing address and physical location of toxics user;

(B) Standard Industrial Classification Code;

(C) ~~DEQ/EPA~~ identification number, if applicable;

(D) TRI identification number, if applicable;

(E) Chemical name, CAS number, and annual number of pounds used for each toxic substance evaluated as required under ~~JOAR 340-135-030J~~ and OAR 340-135-050J(3)(c)(B)J;

~~for which a performance goal is required to be established under OAR 340-135-060(1)(a)(A) and (B);~~

(F) Name of hazardous waste, waste code, annual number of pounds generated for each hazardous waste evaluated as required under ~~JOAR 340-135-030J~~, OAR 340-135-050J(3)(c)(B)J; and

~~for which a performance goal is required to be established under OAR 340-135-060(1)(a)(C);~~

(G) Narrative explaining the data in paragraphs (3)(a)(E) and (F) of this rule.

(b) Toxics users may also report a production index, and background information explaining how the production index is calculated, for the facility or for each toxic substance ~~used~~ and hazardous waste generated ~~for which a performance goal is established under OAR 340-135-060~~. evaluated.

Stat. Auth.: ORS 465.003 - 465.037

Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90

4. The Department's additional proposed changes to proposed Toxics Use and Hazardous Waste Reduction Rules include:

- minor word changes to OAR 340-135-042; and
- insertion of a rule citation in OAR 340-135-044(7).

### **Toxic Substance and Hazardous Waste Exemptions**

**340-135-042** (1) **Manufacturers of Toxic Substances:** Toxics users who manufacture, as a product, any of the specific toxic substance(s) defined in OAR 340-135-040 and 40 CFR Part 372 Subpart D (July 1, 1997), are not required to plan for the reduction in manufacturing the specific toxic substance(s).

(2) **Hazardous Wastes:** Hazardous waste generators are not required to plan for the reduction of hazardous wastes listed in subsections (a) and (b) of this section.

(a) Hazardous waste that is generated as a result of remedial activities taken in response to environmental contamination as defined in OAR 340-135-020(15);

(b) Hazardous waste, ~~[that is the result of one-time generation events,]~~ produced by a large quantity generator or small quantity generator, that ~~w[asere]~~ previously conditionally exempt from hazardous waste regulations[.] ~~-[that is the result of one-time generation events]:~~

(A) This includes, but is not limited to waste from industrial process modifications, storeroom cleanup and disposal of expired chemical inventories, as long as these generation events do not occur more frequently than once every five years;

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(B) ~~In the case where~~ If, in a year following the original request for a one-time exemption, hazardous waste is generated in amounts greater than 220 pounds or acutely hazardous waste is generated in amounts greater than 2.2 pounds per calendar month, ~~in a year following the original request for a one-time exemption,~~ an additional exemption may be granted if the waste is generated under uncontrollable circumstances such as fire or flood~~;~~.

(3) To qualify for an exemption to subsection (2)(b) of this rule, a generator seeking an exemption must provide written certification, to the Department, that the waste was generated from a one-time event.

Stat. Auth.: ORS Ch. 192, 465.009, 466.015, 466.020, 466.075, 466.090, 468.020 & Ch. 646  
Hist.: DEQ 35-1990, f. & cert. ef. 8-21-90; DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 6-1994, f. & cert. ef. 3-22-94

## **Environmental Management System Exemption**

### **340-135-044**

(1) Toxics Users Implementing an Environmental Management System: A toxics user who has implemented an environmental management system may claim an exemption to the planning requirements under OAR 340-135-050 and OAR 340-135-070(1) and (2), provided the environmental management system complies with the intent of ORS 465.006 by:

(a) Following a continual cycle of planning, implementing, reviewing and improving actions the facility takes to meet its environmental obligations; and

(b) Documenting an evaluation of reduction opportunities for toxic substances used and hazardous wastes generated at the facility; and

(c) Including a means to implement reduction options identified in subsection (b) above whenever technically and economically practicable, without shifting risks from one part of a process, environmental media or product to another; or

(d) Incorporating the standards set forth in section (1)(a) through (c) of this rule as part of an environmental management system that has received independent registration for the ISO 14001 standard.

(3) To claim an exemption from the planning requirements under OAR 340-135-050, a facility must certify, on a form provided by the Department, that the environmental management system meets or exceeds the standards set forth in section (1) of this rule.

(4) To maintain an exemption to the planning requirements under OAR 340-135-050, a toxics user shall report annually to the Department on the quantities of toxics substances used and hazardous wastes generated as set forth in OAR 340-135-070(3).

(5) The Department may, upon request, review summary documentation of the facility's environmental management system. Documentation for the environmental management system shall be maintained on-site.

(6) Within five (5) working days of request of by any officer, employee or representative of the Department, the toxics user shall make summary documentation of the facility's environmental management system available for review in sufficient detail to demonstrate that the facility complies with the requirements of section (1) above.

(7) If a toxics user cannot demonstrate that his/her environmental management system complies with the requirements of section (1) above, the toxics user will be subject to *the planning requirements under OAR 340-135-050 and to* the compliance and enforcement procedures established in OAR 340-135-090 and OAR 340-135-110.

Statutory Auth: ORS 465.015 1997  
Hist.:

ATTACHMENT F.1  
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# OREGON'S TOXICS USE REDUCTION PROGRAM

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## **AREAS OF IMPROVEMENT IDENTIFIED BY THE WASTE REDUCTION AND SPECIAL WASTE ADVISORY GROUP**

### **INTRODUCTION**

During the months of March through June 1996, the Waste Reduction and Special Waste Advisory Group (Group) met, in four meetings, to review Oregon's Toxics Use and Hazardous Waste Reduction (TUR) Program in order to:

- Determine if the TUR Program meets the needs of the regulated community while protecting the environment;
- Determine if technical assistance provided through the TUR Program encourage the implementation of facility-wide pollution prevention activities;
- Assist the Department in determining how the Program can achieve further environmental protection;
- Provide comment on future funding mechanisms for the TUR Program; and
- Provide comment on who should pay for the TUR Program.

In general, there was much discussion on potential areas of program improvement. Members representing a broad spectrum of views, ranging from primary concern with environmental protection to interest in protecting commerce, engaged in sometimes lively discussions of how to improve the TUR Program. Due to the complexity and magnitude of the issues, as well as the varied interests and backgrounds of the Group, little or no consensus was reached. The following summarizes ideas that emerged from Group meetings.

#### ***1. Scope of Program***

Background: In 1989, the Oregon Legislature, in it's concern over the effects of increasing amounts of toxic chemicals in the environment, took a bold step by prioritizing prevention as the preferred management method for environmental protection. The Toxics Use Reduction and Hazardous Waste Reduction Act (*Oregon Revised Statutes* - ORS 465.004) set a state-wide precedent for reducing environmental contamination through toxics use reduction first, followed by hazardous waste reduction. In addition, the statute specified that reductions when made, should occur "without shifting risks [environmental contamination] from one part of a process, environmental media or product to another." To accomplish this, the statute required hazardous waste generators (large and small) and Toxic Release Inventory (TRI) filers to develop facility-wide reduction plans and report their progress in reducing toxic chemical usage and hazardous waste generation.

Since 1990, the statute has been implemented by the Department of Environmental Quality (DEQ) as the TUR Program. It's focus has been to ensure compliance with the statue and to provide technical assistance to affected parties. Although the DEQ believes that reducing toxics is still a prime environmental concern, and that the program has been successful in implementing the statute, it embarked upon a review of the TUR Program to determine how the agency might continue to

## ATTACHMENT F.2

encourage facility-wide chemical and hazardous waste reductions in light of the current mix of regulatory and industry-led environmental initiatives.

Discussion: At the first meeting, the Advisory Group provided the DEQ with an extensive list of Program issues for further examination. The Group requested that staff summarize and prioritize issues identified by the Group for further discussion. In response, the Department developed a Discussion Paper it presented at the April 3, 1966 meeting. Three main areas regarding the scope of the TUR Program emerged:

- *Can the planning process help facilities further reduce chemical use and hazardous waste generation and enhance other environmental benefits ?*
- *Should the TUR planning requirement be extended to other facilities generating toxic pollutants such as non-point sources or industry sectors not currently covered by the statute?*
- *Should the TUR program include other toxic substances in addition to TRI chemicals and hazardous wastes?*

The Department maintained that the TUR Program was a valuable tool for achieving toxic chemical use reductions and that planning benefits the environment. Most Group members agreed with this premise. A few members, however, did not agree that the TUR Program was a valuable tool and suggested that the Department consider eliminating the facility planning requirements of the Program. They believed the majority of businesses regulated under the TUR Program had developed plans and that TUR planning requirements were redundant to other regulatory, non-regulatory and market influences that motivate businesses to reduce their chemical use.

Discussions centered around setting clear program goals; communicating and working with the regulated community to set and meet program goals; identifying and prioritizing chemicals for reduction based on environmental concern; broadening the program to address other media (air, water and land concerns); and examining ways to encourage voluntary chemical use and hazardous waste reductions and "green" marketing. The following summarizes suggestions made by the Group:

- Broaden the program to include reductions in chemical discharges to air and water as well as solid waste generation.
- Broaden the program to include potential sources of contamination (other than hazardous waste) such as non-point sources, other industrial sources using toxic chemicals, other chemicals that pose greater environmental threats.
- Identify program goals and objectives (or benchmarks) and articulate them to affected industries.
- Examine and evaluate additional chemical lists to determine if prioritizing state-wide use reduction makes sense in terms of chemical toxicity or environmental impact.
- Examine other incentives for the Department to encourage the production and marketing of "less toxic" products.

### **2. Exemptions to Planning Requirements**

Background: Affected Oregon facilities have been developing chemical and hazardous waste reduction plans since 1991. To date, 85% of all reporters have certified that they have developed plans or annual progress reports. From evaluations of annual progress reports, plan reviews, and recent surveys conducted by the Department, nearly all large facilities required to develop plans have implemented some reduction activity, many of which were identified in their plans. Similarly, approximately 45% of small facilities have implemented waste reduction practices. As a trend, the

## ATTACHMENT F.2

number of all facilities subject to TUR planning has decreased each year and there is a movement among various industry groups to incorporate voluntary reduction initiatives requiring environmental management practices more stringent than TUR Planning requirements. In light of this information and comments from various industry groups, the Department began evaluating potential exemptions to TUR planning requirements for facilities that have moved beyond these requirements.

**Discussion:** Much discussion centered around the fact that many large facilities have completed TUR plans, found them useful initially, were implementing them, and have since gone beyond the requirements of the law. It was suggested that the program be adjusted to provide exemptions for facilities that can demonstrate they have done all they could to reduce their chemical use and emissions, for facilities going beyond the law, and for facilities implementing exemplary reduction programs. Likewise, there should be a pathway for facilities to re-enter the "planning universe" if they fail to implement reduction programs or make significant reductions claimed to be beyond their existing plan. Also discussed was the need to exempt, from reporting, certain chemicals listed in the TUR Program Rules Appendix 1, when the use of the listed chemical was not linked to facility emissions or hazardous waste generation (i.e., a facility that repackages for sale a listed chemical or a facility that must report use of a chemical that is inadvertently created in a process and returned to that process). The following list summarizes suggestions discussed by the Group however, no consensus was reached on these points:

- Allow flexibility/provide credit to manufacturers who can verify that their facility goes beyond plan requirements (i.e., allow companies an exemption from planning requirements, who assist consumers in shifting to less toxic products by providing information on product safety and environmental concerns).
- Allow exemplary facilities that have achieved significant verifiable reductions an exemption from TUR plan development and/or lessen the reporting requirement such that these facilities only have to report biennially rather than annually.
- Allow exemptions from TUR plan development to facilities that have implemented (and can demonstrate) activities that go beyond the scope of TUR planning such as: implementation of an environmental management system, ISO 14000 certification, implementation of consumer awareness program promoting less toxic alternative products, federal facilities implementing pollution prevention plans, implementation of industry-wide reduction plan or best management practices.
- Exempt certain chemicals from TUR planning and reporting requirements that do not make sense to track or report, such as chemicals inadvertently produced during a manufacturing process that are later consumed in the same process.

### **3. Recognition Programs**

**Background:** Recognizing exemplary reductions in chemical use and hazardous waste generation is a fundamental element of any voluntary program. The Annual Governor's Award for Toxics Use Reduction is one example. The Department is investigating a number of approaches to encourage increased voluntary reductions including incentive and recognition programs.

**Discussion:** Many Group members recommended developing programs or enhancing the existing program to encourage and recognize companies that have gone beyond TUR planning requirements and have actually achieved reductions. A number of approaches to achieve this were discussed:

- Provide feedback to individual companies on progress they are making in their reduction activities.

## ATTACHMENT F.2

- Develop an annual report or, a report on the top 10 reducers to provide feedback to companies on how they are doing in relation to the rest of the state.
- Credit/recognize chemical use reductions across all media (air, water hazardous waste, solid waste). Coordinate recognition of chemical use reduction through one program.

### **4. Reporting Changes**

Background: The Department believes the agency should collect data on toxics in the environment as a measure of environmental health. Currently, this is being accomplished through the collection of state-only chemical use data on TUR Annual Progress Reports and through federal TRI emissions data. The utility of information collected on both of these reports is limited because both reports only address specific chemicals used and released by targeted manufacturing facilities (the largest facilities in the state). By doing so, these reports exclude many other sources. In addition, neither report collects information on the industrial processes using these chemicals and generating these releases. Due to these reporting limitations, both state-wide chemical use and release data are most likely underestimated.

Discussion: Three themes emerged from Group discussions: the adequacy of chemical use data as a measurement of pollution prevention or reduction activity should be examined; production activity should be factored into reduction measurements; and measuring toxics in the environment is not the only reason to measure chemical use data. The following summarizes suggestions of the Group.

- Examine ways that allow reporting of chemical use and hazardous waste generation data to account for changes in production as well as measure environmental impact.
- The DEQ should incorporate information reported to other programs when evaluating reduction activities (i.e., water, air, solid waste) and examine potential multi-media impacts of agency and facility reduction activities.
- Evaluate utility of chemical use data from Form R or Fire Marshall reports (or other existing databases) instead of collecting use data separately as is done currently under the TUR Program.
- Stop collecting use data and utilize release data or other direct environmental measurement information (only) to evaluate reduction progress.
- Examine/develop a representative measure of toxics in the environment, other than use.
- Continue tracking chemical use as a measure of worker and public safety.

### **5. Plan Elements**

Background: The Toxics Use Reduction and Hazardous Waste Reduction Act specifies a number of elements that must be included in a plan in order for it to be "compliant" with the Oregon Statute. During recent interviews with Oregon facilities, the Department was told that although the TUR planning process was useful in helping them identify reduction options, many of the planning elements were not useful and difficult to follow. Therefore, not all of the required elements were being implemented. In addition, some plan elements were be redundant to planning requirements mandated under other statutory jurisdictions.

Discussion: The Group discussed various plan elements they felt were not helping their chemical use and hazardous waste reduction efforts. They requested that the DEQ:

- Evaluate plan elements to identify those that are not working or are redundant and modify plan requirements accordingly.

## 6. Technical Assistance

Background: The TUR Program has provided on-site technical assistance to TRI reporters and hazardous waste generators since 1991. In addition, the Program has developed numerous guidance documents and factsheets and has participated in many industry workshops and conferences. This element of the Program has been a cornerstone to the Program's success.

Discussion: Many members of the Advisory Group recognized the Program's technical assistance efforts. They supported the Department's continued technical assistance efforts and suggested ways these efforts could be expanded:

- Provide a "one-stop" shopping approach to technical assistance (i.e., provide one contact for a businesses to help walk them through the Agency).
- Provide technical assistance as part of the recognition program - for businesses trying to move beyond the TUR planning requirements or applying for a Governor's Award.
- Continue providing on-site technical assistance upon request and participating in industry forums such as REMCON.

## 7. Funding

Background: The current funding source for the TUR Program is the Hazardous Substance Possession Fee. It was established by the 1989 Legislative Assembly and is administered by the Fire Marshall's Office. Businesses are charged a tiered fee based on a broad list of chemicals. The list of chemicals and facilities paying the fee is larger than those subject to the TUR requirements. Some contend that this funding method is inequitable. In response, the 1995 Legislature asked the Department to examine alternative ways of funding the Program.

Discussion: After brainstorming on TUR programmatic issues, the Group was asked who it believed should pay for the TUR Program. The following ideas were developed through this discussion:

- Evaluate the feasibility of a pollution tax in lieu of corporate income tax (i.e., replace permit fees with pollution tax) to encourage reduction activity and bring forth to the Legislature.
- Examine a user pay program such as is used by the Department's Underground Storage Tank Program.
- Examine a broad-based fee such as Washington State's toxic substance program, which charges a flat \$35 fee for businesses using chemicals requiring an MSDS.

## CONCLUSIONS

The charge of the Waste Reduction and Special Waste Advisory Group was to engage in an open, frank discussion of issues concerning the TUR Program in Oregon and inform DEQ staff on what works and what does not work. To that end, the Group identified seven areas of program improvement for the Department to pursue. Ideas for improving the TUR Program ranged from a suggestion to declare victory and go home (suggesting the original intent and purpose of the 1989 statute had been achieved), to the suggestion of widening the focus of the Program to include other industries (such as agriculture or mining) and non-point pollution sources. There was also discussion of including other chemicals not now covered by the TUR Program. Additional discussion suggested eliminating reporting on chemicals or substances inadvertently created and then consumed in a manufacturing process within a facility, or passed through a facility unchanged.

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No general consensus was achieved on recommended changes to the TUR Program. This was due to the magnitude and complexity of the issues of environmental protection that can be achieved through toxics use reduction and the diversity of members' perspectives.

Although consensus was not reached, the Advisory Group thoroughly examined the existing program and generated a list of possible adjustments and improvements. Discussions held by the Advisory Group will enable DEQ staff to develop much more informed recommendations for improvements to the TUR Program.

ATTACHMENT G  
State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Rulemaking Proposal  
for**

Toxics Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments  
OAR Chapter 340 Division 135

**Rule Implementation Plan**

**Summary of the Proposed Rule:** The changes proposed for the Toxics Use Reduction and Hazardous Waste Reduction rules (OAR 340-135-000 through 110 and Appendix 1) implementing SB 146 include:

1) Modifying current rule language to align rules with SB 146. Proposed changes include rule revisions and new rule language:

- Rule Revisions - Revise existing rules (OAR 340-135) to reflect statutory changes to the Toxics Use Reduction and Hazardous Waste Reduction Act (TURWRA).
    - Delete performance goal language
    - Delete accounting system language
    - Add optional plan language
    - Revise rules to exempt SQGs from progress reporting
    - Add SQG amnesty language
  
  - New Rules - Develop new rules defining exemptions for facilities instituting an environmental management system (EMS) or implementing a consumer education program.
    - Set criteria for EMS exemption - Must meet minimum requirements which include complying with intent of policies set in statute including an evaluation of toxic substances used and hazardous wastes generated as part of the EMS. Allow self certification with the caveat that DEQ may examine EMS documentation. EMS (like the plan) remains confidential. Must report chemical use and hazardous waste data.
  
    - Set criteria for consumer education program exemption - Need pre-approval from DEQ (e.g., share initial marketing strategy, or labeling program, tell how product is less toxic, tell what it will decrease, look for potential X-media transfers). Work with DEQ to estimate amount of toxics diverted from air, land or water by use the of "less toxic" alternative. Information on program remains confidential. Must report how use of product improves or will improve the environment (compared to products currently being used).
- 2) Streamlining and simplifying the existing rules to:
- Incorporate toxic substances and hazardous wastes for which plans and annual progress reports are required by reference. - Delete list of Toxic Substances and Hazardous Wastes (Appendix 1) and references to Appendix 1.

- Simplify rules by grouping all planning exemptions together. - Place manufactured product exemption, hazardous waste and toxic substance exemptions, EMS exemption, and consumer product exemption in rules OAR 340-135-040 through OAR 340-135-060.
- Simplify rules by consolidating all plan requirements in one section. - Incorporate “general plan requirements” with “specific plan requirements” in OAR 340-135-080.

3) Making minor housekeeping changes and reference changes for clarification.

**Proposed Effective Date of the Rule:** July 1, 1998

**Proposal for Notification of Affected Persons:** Facilities subject to the Toxics Use Reduction and Hazardous Waste Reduction Rules will be notified in writing, in July 1998, of changes to these rules. A factsheet summarizing rule changes adopted in during this rulemaking, a copy of the new rules, a list of toxic substances adopted by reference, an annual progress report form, and notice of the availability of guidance documents for claiming an exemption to planning will be included in this mailing.

**Proposed Implementing Actions:** To implement the proposed changes to OAR 340-135-000 through 110 included in this rulemaking, the DEQ will, in July 1998:

- Develop and distribute a new factsheet summarizing rule changes adopted during this rulemaking.
- Develop a new factsheet including the list of toxic substances adopted by reference and changes to 40 CFR 372 that may affect large toxics users. Distribute with factsheet summarizing rule changes.
- Develop guidance documents on the EMS and consumer product exemptions to planning. This information will be distributed to interested parties upon request.
- Draft new Annual Progress Report Forms and share with interested parties.
- Mail forms to facilities required to submit Annual Progress Report Forms.
- Update data entry forms in the Hazardous Waste Information System (HWIMSy) to match changes made to the annual progress report forms.

**Proposed Training/Assistance Actions:** Training on how to implement rule changes adopted in this rulemaking will be provided to DEQ Waste Reduction Assistance Program (WRAP) and Hazardous Waste (HW) Program Staff. Copies of a factsheet summarizing rule changes adopted during this rulemaking, a copy of the new rules, a list of toxic substances adopted by reference, an annual progress report form, and notice of the availability of guidance documents for claiming an exemption to planning will distributed to WRAP and HW Program staff. In addition, WRAP staff will provide assistance to facilities interested in claiming exemptions to planning requirements. The DEQ may conduct informational workshops for facilities subject to OAR 340-135-000 through 110 during August 1998.






## United States Department of the Interior

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Oregon District  
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June 10, 1998

To: Members of the Environmental Quality Commission

From: Dennis D. Lynch, Oregon District Chief, U.S. Geological Survey 

Subject: Testimony to Environmental Quality Commission regarding Agenda Item F, June 11, 1998, Medford, Oregon

Thank you for the opportunity to provide input to the process of evaluating the Total Maximum Daily Load (TMDL) for the Tualatin River.

Before I specifically address the Tualatin River, I want to provide background about the U.S. Geological Survey (USGS) and our involvement with the Tualatin River. The USGS is the earth-science Bureau of the Department of Interior. Part of our mission is to collect and interpret scientific data in order to promote the wise use of our Nation's water resources. We have no regulatory authority, nor do we have responsibility for the management of land or water. Our purpose is to provide unbiased, scientific data and interpretations for use by Federal, State, and local decision-makers.

In 1989, U.S. Representative Les AuCoin requested USGS assistance in sorting out technical water-quality issues in the Tualatin River as they relate to the TMDL provision of the Clean Water Act. In 1990, we began a water-quality study of the Tualatin River, with particular emphasis on the sources of phosphorus and nitrogen in the river, and how these nutrients affect pH and concentrations of algae and dissolved oxygen in the main-stem river. We continue to stay involved with the technical issues in the Tualatin River through a cost-share, cooperative agreement with the Unified Sewerage Agency (USA) of Washington County. Consequently, we have 8 years of scientific research experience in the Tualatin River Basin.

Since 1990, we have published several peer-reviewed reports and articles on the water-quality of the Tualatin River. We have routinely shared these results with stakeholders in the basin. We have worked hard to include everyone when discussing our findings, including Designated Management Agencies (DMAs), Oregon Department of Environmental Quality (ODEQ), the academic community, and the public. Moreover, the USGS actively participated in ODEQ's Tualatin Basin Technical Advisory Committee (TBTAC) and its two subcommittees. I feel the TBTAC process was both credible and thorough. Diverse opinions from many experts were discussed extensively. These

deliberations resulted in two valuable subcommittee reports, the first dealing with computer modeling results of water quality in the Tualatin River, and the second dealing with non-point sources of nutrients in the Tualatin River Basin. Finally, we participated as a technical team member in support of the Tualatin Basin Policy Advisory Committee (TBPAC).

Based on our scientific investigations over an 8-year period, I want to list some of our key observations that may be important during your TMDL deliberation process. Most of our observations relate to "summer-time conditions", which extend from May 1st through October 31st. I have organized my comments into a few general observations, followed by more specific findings that relate to phosphorus and ammonia TMDLs.

### General Observations

\*The Tualatin River has improved significantly over the past decade. Although it is not in compliance with all water-quality standards and goals, significant improvements have been made in reducing concentrations of phosphorus and ammonia in the main-stem river, which is mostly the result of upgrades to USA Waste Water Treatment Plants (WWTPs).

\*These reductions in main-stem nutrient concentrations have resulted in significant improvements in dissolved-oxygen, pH, and algae in the river. The number of days the river is out of compliance, and the severity of violations, have decreased markedly. In short, efforts to date have paid dividends.

### Phosphorus TMDL

\*Removal of over 99 percent of phosphorus released from WWTPs during the summer has significantly decreased the phosphorus concentration in the Tualatin River. These phosphorus reductions have resulted in smaller algal blooms, which in turn have resulted in smaller and less frequent violations of pH and dissolved-oxygen standards.

\*Although point-source reductions of phosphorus have been large, the Tualatin River and most of its tributaries have not met the preliminary summertime TMDL criteria for phosphorus. Large natural supplies of highly mobile phosphorus exist in the upper 500 feet of valley-fill sediments throughout the Tualatin River Basin. Consequently, the ground water that feeds the main-stem river and its tributaries is naturally enriched with phosphorus. These geologic sources of phosphorus, that eventually make their way to the Tualatin River, will make meeting current TMDL criteria extremely difficult.

\*Ground-water phosphorus concentrations generally range from 0.1 to 3.0 mg/L, which is considerably higher than the current TMDL criteria set for tributaries in the Tualatin Basin. This USGS finding of high ground-water concentrations of phosphorus was corroborated by an independent study at Portland State University and Oregon Graduate Institute.

\*It should be noted that phosphorus concentrations in tributaries to the Tualatin River have decreased in some cases. Most of these decreases can be attributed to improved management practices on agricultural and urban lands. Therefore, improvements are possible in many situations, and they can be beneficial to the river's water quality.

\*However, it should also be noted that most of the summertime phosphorus reductions in tributaries have been relatively small, and several tributaries show no discernible improvements at all. We believe this slow progress reflects the large natural supply of phosphorus to the river system. This large natural supply of phosphorus should be strongly considered when setting realistic TMDLs in the Tualatin River Basin.

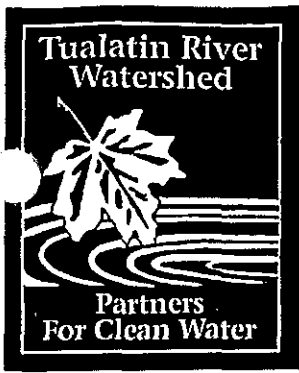
### Ammonia TMDL

\*Natural sources of ammonia to the Tualatin River are mostly of little concern. Generally, the ammonia loads that have caused dissolved-oxygen problems in the past have come from WWTPs.

\*USGS, together with USA and ODEQ, developed and used a computer model of the Tualatin River to calculate "safe" loads of ammonia from the existing WWTPs under a variety of river conditions. These "safe" ammonia loads are protective of fish and the dissolved oxygen upon which they depend.

\*Model results will be part of the scientific foundation for a probable recommendation for adjustments to the existing ammonia TMDLs for the USA WWTPs.

I want to thank you for the opportunity to address this Commission on a very important issue. We feel very strongly that the TMDL process should have its foundation in science. It has been a positive experience working with ODEQ and all the DMAs as we strive to bring a scientific basis to TMDL decisions in the Tualatin Basin. I will continue to make the USGS available to State and local agencies during the upcoming months of scientific deliberations.



*Designated Management Agencies*

*Unified Sewerage Agency*

*Oregon State Department of Agriculture*

*Oregon State Department of Forestry*

*Washington County*

*Clackamas County*

*Multnomah County*

*City of Portland Bureau of Environmental Services*

*City of Lake Oswego*

*City of West Linn*

**TESTIMONY  
BEFORE THE  
ENVIRONMENTAL QUALITY COMMISSION**

**June 11, 1998**

**Agenda Item F: Amendment to the Tualatin Basin Total Maximum Daily Load Compliance Order**

I am John Jackson of the Unified Sewerage Agency located in Washington County. Today, I am also representing the Designated Management Agencies (DMAs) for water quality in the Tualatin River watershed. They include USA, the Cities of Lake Oswego, Portland, West Linn, and the 12 cities of the Unified Sewerage Agency. Included are the Counties of Washington, Clackamas, and Multnomah. The group also includes Oregon Department of Forestry and Oregon Department of Agriculture.

It is our intent to provide you with more context to the discussion about the on-going water quality control efforts in the Tualatin basin to help you in your decision today. We are also here to lend support to the DEQ recommendation to approve the updated Tualatin Basin DMA Implementation and Compliance Order.

We would like you to take from this presentation the following messages:

- 1) The DMAs are committed to continued water quality improvements.
- 2) We are committed to improvements in overall stream health not simply reductions in phosphorus loads.
- 3) There is a need for continued coordination of strategies between DEQ and the DMAs.
- 4) Data show water quality is improving in the main river and in the rural and urban tributaries.
- 5) We need to take stock in what we have learned thus far. We are all interested in being smarter today and tomorrow through the continued use of adaptive management.
- 6) We support the Department's efforts to update the current Tualatin River basin plan.
- 7) We all want to make informed decisions to maximize Surface Water Management (SWM) program resources. The public is expecting that we wisely invest limited resources.

We would like to give you some examples of "on-going activities" as mentioned in the staff report.

SLIDE NAME	ACCOMPANYING DESCRIPTION
Watershed map	This slide shows the Tualatin Basin boundaries and generalized land use boundaries between urban, agriculture and forestry uses.
Listing of Partners	There are many "Partners for Clean Water" working collaboratively in the Tualatin Watershed to protect and improve water quality & streams.
Watershed Sign	These signs represent just one of many of partnership projects. The DMA's have installed over 800 of these signs at creek crossings and model farms.

	URBAN SLIDES
Street Cleaner	The urban DMA's sweep curbed streets on average every one to two months. Nearly 14,000 cubic yards (4200 tons) of "street dirt" is removed annually. It is estimated that this corresponds to over 29,000 pounds of total phosphorus annually prevented from reaching streams.
Catch Basin Cleaning	Nearly 15,000 catch basins were cleaned of dirt and debris in 1997, resulting in over 2500 cubic yards (750 tons) of material kept out of streams. It is estimated this corresponds to over 5200 pounds of total phosphorus.
Erosion Control	Erosion control measures are required for all new development activities.
Water Quality Pond	This and the next slide show 2 typical onsite water quality facilities, required to treat stormwater runoff from new development. Nearly 90% of the approx. 10,000 acres of new development that has occurred since 1990 have on-site facilities. Over 920 of these facilities have been constructed.
Water Quality Swale	" "
Buffer on Rock Cr. @ Evergreen Road	Additionally, 25 foot or larger buffers are required next to streams and wetlands on all new development sites. This buffer includes the floodplain.
Wetland Enhancement	The DMA's participate in and help fund numerous wetland and stream enhancement projects to improve the water quality and habitat functions. This project is located near the Tualatin River in West Linn.
Stream Enhancement - 3 slide sequence	These 3 slides show a stream enhancement project on Fanno Creek in Beaverton, before, during and after construction by volunteers, youth crews and USA staff. USA alone participated in about one linear mile of stream enhancements in 1997 to improve stream health. Many other DMA's also worked on similar projects.
Stenciling	Public awareness about nonpoint source pollution is key in the progress we have made in water quality. This shows just one of many public awareness activities. Over 4000 catch basins have been stenciled with the message DUMP NO WASTE DRAINS TO STREAM since 1993. Surveys of basin residents in 1994 and 1997 show that 65% of residents now know that water entering storm drains goes directly to streams vs. 42% in 1994. Similar significant increases in understanding of individual impacts to water quality from yard care, pet waste management, etc. have also occurred in that time.
Ditch Maintenance	The Counties minimize transport of pollutants by maintaining grass in roadside ditches and limiting herbicide use. Approx. 1100 miles of roadways with ditches are included in this program.
Culvert Monitoring	This shows a regular monitoring location on an urban stream. The DMAs all perform monitoring weekly to monthly at the 10 sites required under the TMDL, plus 69 additional sites. All of these data are used to evaluate and adjust our programs to best meet water quality objectives.

<b>AGRICULTURE SLIDES</b>	
No Till Project Sign	Nutrient management practices such as this have been installed or applied on over 20,000 acres within the basin.
Fertilizer Test Signs	This represents a study of reduced fertilizer rates. Recorded reductions in imported phosphorus applications were over 10.5 tons in one year with no reduction in crop production. Adoption of lower fertilizer rates by additional farmers not in the study group may result in annual reductions of 150 – 800 tons of applied Phosphorus in the basin.
Covered Manure Facility	Waste management practices include construction of roofed structures for managing over 77,000 tons of manure from 1991-97.
Field Grass Cover	Erosion control practices such as this have been applied on over 17,000 acres. It is estimated that over 8600 tons of sediment were prevented from being carried to streams.

<b>FORESTRY SLIDES</b>	
Forest Land owner mtg	ODF regulates forest operations within the watershed through the Oregon Forest Practices Act. A key element is working with landowners and operators before activities begin. In 1997 foresters reviewed notifications for 873 forest operations, conducted 225 onsite inspections, and issued 15 citations in the Tualatin Basin.
Tree Replanting	Reforestation is required within 2 years. The statewide compliance rate is 98% based on acres checked.
Buffer	Protected Riparian Management Areas are required along streams. This shows a stream buffer, with a recent clear-cut in the background.
Forest Road Erosion Control	Landowners are required to maintain their forest roads to prevent erosion, whether they are in active use or not. This shows road damage repair and erosion control measures in the Forest Grove watershed after the 1996 flood.
Sampling	Research and monitoring efforts in the Tualatin basin have shown little or no phosphorus response from intensive forest management activities. Phosphorus levels in the forested uplands appear to be more related to the deep soil which groundwater flows through.

Water quality is improving in the watershed. Reductions in phosphorus and ammonia have occurred. Overall water quality is improving too. DEQ's Oregon Water Quality Index shows an example of these improvements.

Oregon Water Quality Index	As you can see, there is an improving trend in overall water quality of Fanno Creek.
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Our programs are focusing on all aspects of water quality and stream health. We believe the public wants us to deal with all the issues of water quality improvements at the same time, not one at a time. Thus, the broader focus of our programs.

We have made good progress. But, there are still challenges. New water quality problems are being identified by the Department's 303d water quality limited stream listings. Our programs are already dealing with these using the same techniques and activities we have just shown you with the slides.

Development vs. phosphorus in Fanno Cr.	<p>We also need to understand what this graph means. Further discussions need to take place to answer:</p> <ul style="list-style-type: none"> <li>• What is the effect of development on phosphorus in this stream?</li> <li>• Is groundwater having an effect on our ability to meet the TMDLs for the river and tributaries? Groundwater phosphorus concentrations are being found that are 15 to 50 times higher than the current TMDLs. These same concentrations are 50-175 times higher than what was thought to be background concentrations in 1988.</li> <li>• Are there similarities between this graph and that which Forestry found where there is no correlation between logging activities and phosphorus in streams cited to be above the TMDL?</li> </ul>
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The DMAs and DEQ should not be focusing all our efforts on debating processes and planning strategies. We still need answers to determine where we all need to go from here to achieve full support of the designated beneficial uses of the water in our basin. With limited resources, we all need to spend our efforts on realizing water quality improvements for the sake of the environment and meeting regulatory requirements.

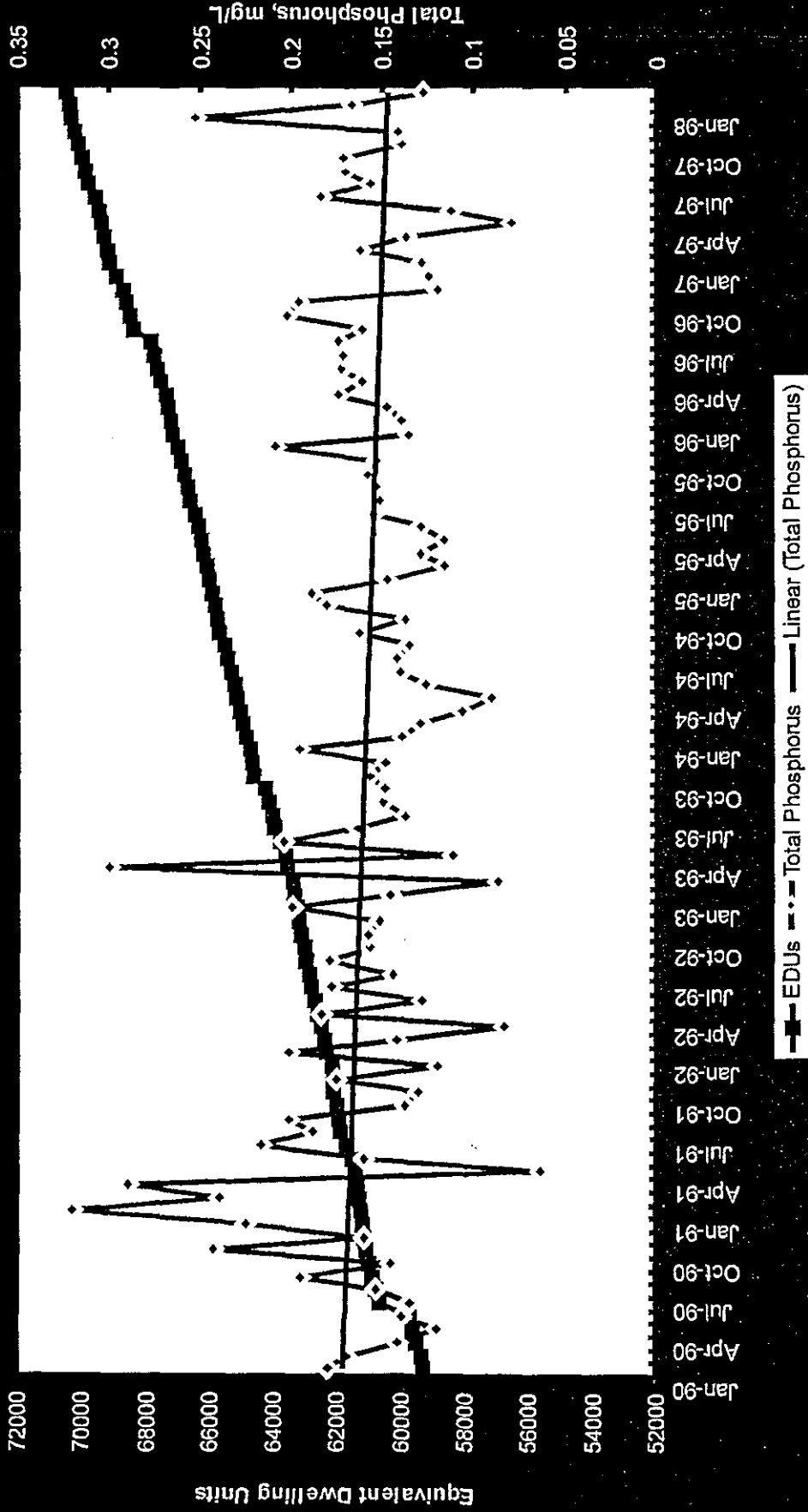
The DEQ staff recommendation before you today allows all of us to be smarter today and tomorrow to insure the public that we are spending their SWM dollars wisely. It provides the mechanisms to answer the remaining questions. We all know we can produce healthier streams and the desired water quality results. But, decisions need to be based on good data and analysis to insure success. We must also rely on the gatherings of scientists to help us interpret the data and suggest future actions. The Tualatin Basin Technical and Policy Advisory Committees' recommendations should be carefully considered as we move into the future on this topic. The Designated Management Agencies must also be allowed the flexibility to conduct their SWM programs for the broader water quality and quantity goals supported by the public.

The bottom-line in all this? The Tualatin River and its tributaries will let us all know ultimately how well we have done. We believe the DEQ recommendation continues the correct course of action today that will allow all of us to celebrate success tomorrow. We all want and are prepared to actively participate in the discussions to continue the water quality improvements. We are prepared to reexamine those programs as may be indicated through program updates now underway. We have good data. We have the administrative programs to deliver realistic and effective strategies on the ground.





### Cumulative Equivalent Dwelling Units (EDUs) and Total Phosphorus in the Fanno Creek Subbasin



AGENDA ITEM F

AMENDMENT TO PROPOSED COMPLIANCE ORDER  
June 11-12, 1998

- 5) By the end of February, 1999, the DMAs will provide DEQ a draft report describing how their existing programs for present and future development assures compliance with . . . .

APPEND TO PAR. 6: . . . . The report will include the following.

- 6.1 Distribution of allocations among individual sources or categories of sources.
  - 6.2 Specification of the critical weather event(s) or condition(s) for which management practices or controls are designed and for which daily pollutant load (or wasteload) allocations are not to be exceeded.
  - 6.3 Specification of the management practices or controls for each source or category of source that are designed to achieve the allocations for each source.
  - 6.4 Implementation schedule for each source or category of source that shall include measurable performance objectives and will assure achievement of the allocations for each source no later than June 30, 2001 or alternative date established by the Commission.
- 7) Notwithstanding any other requirements, in the interim period until more definitive implementation strategies and schedules are developed from revised water quality management plans and adopted by the Commission, the following schedule for interim compliance shall be incorporated by reference in NPDES Stormwater Discharge Permits applicable in the Tualatin River basin.
- 7.1 After June 30, 1999, annual discharges of total phosphorus (TP) and organic plus ammonia nitrogen (TKN) to waters of the Tualatin River basin shall not exceed 75 percent of those pollutant loadings estimated and submitted as existing (1995) loadings in Stormwater Permit applications (e.g., in Tables B-3 and B-4 in Joint Part 2 Application for NPDES Municipal Separate Storm Sewer Discharge Permit, EPA Reference No. ORS109014, issued July 26, 1995).
  - 7.2 After June 30, 2000, annual discharges of total phosphorus (TP) and organic plus ammonia nitrogen (TKN) to waters of the Tualatin River basin shall not exceed 50 percent of those pollutant loadings estimated and submitted as existing (1995) loadings in the applicable NPDES Stormwater Permit applications
  - 7.3 After June 30, 2001, discharges of total phosphorus (TP) and organic plus ammonia nitrogen (TKN) to waters of the Tualatin River basin shall not exceed the applicable allocations of pollutant loadings in TMDLs established for the basin.

TABLE B-3  
 ANNUAL POLLUTANT LOADS FROM USA SUBBASINS

SUBBASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)											
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn
Gales Creek	Vacant Light Residential	210	2,413	5,980	15,318	189	84	19	11.5	0.0	0.5	0.3	3.1
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Industrial	79	905	2,243	5,744	71	31	7	4.3	0.0	0.2	0.1	1.2
	Light Residential	11,882	56,108	98,354	27,724	396	858	191	26.4	0.2	13.1	30.8	119.8
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	2,343	11,130	27,825	22,845	264	293	64	14.6	0.1	3.1	38.1	28.5
	Industrial	1,298	5,626	11,974	9,377	58	144	32	5.8	0.0	2.3	1.5	10.4
	Traffic Corridor	2,011	7,943	11,965	8,647	43	161	25	18.1	0.2	3.9	4.1	3.0
	Agricultural	949	10,841	27,103	13,552	407	813	108	54.2	0.0	0.7	0.4	4.1
	Parks and Open Space	87	1,005	2,492	6,382	79	35	8	4.8	0.0	0.2	0.1	1.3
Subtotal		18,859	95,972	187,935	109,589	1,506	2,420	455	139.8	0.5	24.0	75.4	171.4
Gaston	Vacant Light Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Light Residential	7,711	36,415	63,833	17,993	257	557	124	17.1	0.1	8.5	20.0	77.8
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	595	2,824	7,060	5,797	67	74	16	3.7	0.0	0.8	9.7	7.2
	Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Agricultural	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Parks and Open Space	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
Subtotal		8,306	39,239	70,893	23,790	324	631	141	20.9	0.1	9.3	29.6	85.0
Banks	Vacant Light Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Light Residential	2,439	11,519	20,192	5,692	81	176	39	5.4	0.0	2.7	6.3	24.6
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	5,036	23,921	59,802	49,101	567	629	138	31.5	0.2	6.6	81.8	61.3
	Industrial	1,770	7,672	16,328	12,787	79	197	43	7.9	0.0	3.1	2.0	14.1
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Agricultural	306	3,497	8,743	4,372	131	262	35	17.5	0.0	0.2	0.1	1.3
	Parks and Open Space	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
Subtotal		9,560	46,709	105,314	72,589	866	1,268	257	62.7	0.3	12.6	90.3	101.5
North Plains	Vacant Light Residential	140	1,609	3,987	10,212	126	56	13	7.7	0.0	0.3	0.2	2.1
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
	Vacant Industrial	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
	Light Residential	12,669	59,824	104,868	29,560	422	915	204	28.2	0.2	13.9	32.8	127.7
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	4,896	23,256	58,141	47,737	551	612	135	30.6	0.2	6.4	79.6	59.6
	Industrial	2,557	11,082	23,584	18,470	114	284	63	11.4	0.1	4.5	3.0	20.4
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Agricultural	184	2,098	5,246	2,623	79	157	21	10.5	0.0	0.1	0.1	0.8
	Parks and Open Space	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
Subtotal		20,472	98,171	196,573	110,516	1,315	2,035	437	89.7	0.4	25.4	115.6	211.0
Dairy Creek	Vacant Light Residential	52	603	1,495	3,829	47	21	5	2.9	0.0	0.1	0.1	0.8
	Vacant Heavy Residential	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
	Vacant Commercial	87	1,005	2,492	6,382	79	35	8	4.8	0.0	0.2	0.1	1.3
	Vacant Industrial	52	603	1,495	3,829	47	21	5	2.9	0.0	0.1	0.1	0.8
	Light Residential	5,665	26,754	46,897	13,219	189	409	91	12.6	0.1	6.2	14.7	57.1
	Heavy Residential	157	743	1,303	367	5	11	3	0.3	0.0	0.2	0.4	1.6
	Commercial	12,590	59,802	149,505	122,752	1,416	1,574	346	78.7	0.4	16.5	204.6	153.3
	Industrial	5,351	23,186	49,345	38,644	238	595	131	23.8	0.1	9.4	6.2	42.7
	Traffic Corridor	7,082	27,973	42,137	30,452	152	567	89	63.7	0.7	13.8	14.5	10.6
	Agricultural	490	5,596	13,989	6,994	210	420	56	28.0	0.0	0.3	0.2	2.1
	Parks and Open Space	26	302	748	1,915	24	10	2	1.4	0.0	0.1	0.0	0.4
Subtotal		31,571	146,769	309,904	229,661	2,423	3,669	737	220.1	1.3	47.1	240.9	270.9

TABLE B-3  
ANNUAL POLLUTANT LOADS FROM USA SUBBASINS

SUBBASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)												
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn	
Council Creek	Vacant Light Residential	1,058	12,166	30,150	77,227	952	423	95	58.2	0.0	2.6	1.6	15.9	
	Vacant Heavy Residential	52	603	1,495	3,829	47	21	5	2.9	0.0	0.1	0.1	0.8	
	Vacant Commercial	184	2,111	5,233	13,403	165	73	17	10.1	0.0	0.5	0.3	2.8	
	Vacant Industrial	157	1,810	4,485	11,488	142	63	14	8.7	0.0	0.4	0.2	2.4	
	Light Residential	39,658	187,275	328,282	92,536	1,322	2,864	639	88.1	0.7	43.6	102.7	399.9	
	Heavy Residential	3,777	17,836	31,265	8,813	126	273	61	8.4	0.1	4.2	9.8	38.1	
	Commercial	23,851	113,292	283,229	232,546	2,683	2,981	656	149.1	0.8	31.3	387.6	290.4	
	Industrial	3,541	15,344	32,655	25,573	157	393	87	15.7	0.1	6.2	4.1	28.2	
	Traffic Corridor	7,694	30,391	45,778	33,084	165	616	96	69.2	0.7	15.0	15.8	11.5	
	Agricultural	2,632	30,076	75,190	37,595	1,128	2,256	301	150.4	0.0	1.9	1.1	11.3	
	Parks and Open Space	201	2,313	5,731	14,679	181	80	18	11.1	0.0	0.5	0.3	3.0	
	Subtotal		82,805	413,216	843,494	550,774	7,069	10,044	1,988	571.8	2.3	106.3	523.5	804.2
	McKay Creek	Vacant Light Residential	962	11,060	27,409	70,206	866	385	87	52.9	0.0	2.4	1.4	14.4
		Vacant Heavy Residential	35	402	997	2,553	31	14	3	1.9	0.0	0.1	0.1	0.5
Vacant Commercial		297	3,419	8,472	21,700	268	119	27	16.3	0.0	0.7	0.4	4.5	
Vacant Industrial		219	2,514	6,229	15,956	197	87	20	12.0	0.0	0.5	0.3	3.3	
Light Residential		47,920	226,291	396,674	111,814	1,597	3,461	772	106.5	0.8	52.7	124.1	483.2	
Heavy Residential		551	2,601	4,559	1,285	18	40	9	1.2	0.0	0.6	1.4	5.6	
Commercial		18,605	88,374	220,936	181,400	2,093	2,326	512	116.3	0.6	24.4	302.3	226.5	
Industrial		2,164	9,377	19,956	15,628	96	240	53	9.6	0.1	3.8	2.5	17.3	
Traffic Corridor		1,836	7,252	10,924	7,895	39	147	23	16.5	0.2	3.6	3.8	2.8	
Agricultural		1,989	22,732	56,830	28,415	852	1,705	227	113.7	0.0	1.4	0.9	8.5	
Parks and Open Space		35	402	997	2,553	31	14	3	1.9	0.0	0.1	0.1	0.5	
Subtotal			74,613	374,423	753,983	459,405	6,090	8,538	1,735	448.9	1.7	90.4	437.3	767.0
Waible Gulch		Vacant Light Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
		Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	35	402	997	2,553	31	14	3	1.9	0.0	0.1	0.1	0.5	
	Vacant Industrial	114	1,307	3,239	8,297	102	45	10	6.3	0.0	0.3	0.2	1.7	
	Light Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Commercial	4,372	20,765	51,912	42,622	492	546	120	27.3	0.1	5.7	71.0	53.2	
	Industrial	157	682	1,451	1,137	7	17	4	0.7	0.0	0.3	0.2	1.3	
	Traffic Corridor	1,836	7,252	10,924	7,895	39	147	23	16.5	0.2	3.6	3.8	2.8	
	Agricultural	2,234	25,530	63,824	31,912	957	1,915	255	127.6	0.0	1.6	1.0	9.6	
	Parks and Open Space	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3	
	Subtotal		8,765	56,139	132,846	95,692	1,645	2,692	417	181.3	0.3	11.6	76.2	69.3
	Middle Tualatin River	Vacant Light Residential	691	7,943	19,685	50,421	622	276	62	38.0	0.0	1.7	1.0	10.4
		Vacant Heavy Residential	52	603	1,495	3,829	47	21	5	2.9	0.0	0.1	0.1	0.8
Vacant Commercial		1,268	14,579	36,130	92,545	1,141	507	114	69.7	0.0	3.2	1.9	19.0	
Vacant Industrial		201	2,313	5,731	14,679	181	80	18	11.1	0.0	0.5	0.3	3.0	
Light Residential		62,241	293,918	515,221	145,230	2,075	4,495	1,003	138.3	1.0	68.5	161.1	627.6	
Heavy Residential		8,420	39,759	69,695	19,646	281	608	136	18.7	0.1	9.3	21.8	84.9	
Commercial		41,931	199,174	497,936	408,831	4,717	5,241	1,153	262.1	1.4	55.0	681.4	510.5	
Industrial		7,357	31,881	67,850	53,136	327	817	180	32.7	0.2	12.9	8.5	58.7	
Traffic Corridor		13,027	51,457	77,511	56,016	280	1,042	163	117.2	1.2	25.4	26.7	19.5	
Agricultural		949	10,841	27,103	13,552	407	813	108	54.2	0.0	0.7	0.4	4.1	
Parks and Open Space		17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3	
Subtotal			136,155	652,669	1,318,855	859,161	10,093	13,909	2,943	745.9	4.0	177.3	903.3	1,338.8
Rock Creek North		Vacant Light Residential	2,798	32,174	79,736	204,236	2,518	1,119	252	153.9	0.0	7.0	4.2	42.0
		Vacant Heavy Residential	166	1,910	4,734	12,127	150	66	15	9.1	0.0	0.4	0.2	2.5
	Vacant Commercial	2,046	23,527	58,307	149,348	1,841	818	184	112.5	0.0	5.1	3.1	30.7	
	Vacant Industrial	1,032	11,864	29,403	75,312	929	413	93	56.7	0.0	2.6	1.5	15.5	
	Light Residential	174,843	825,645	1,447,307	407,966	5,828	12,628	2,817	388.5	2.9	192.3	452.6	1,763.0	
	Heavy Residential	26,518	125,222	219,506	61,874	884	1,915	427	58.9	0.4	29.2	68.7	267.4	
	Commercial	87,815	417,120	1,042,799	856,193	9,879	10,977	2,415	548.8	3.0	115.3	1,427.0	1,069.1	
	Industrial	10,741	46,543	99,054	77,572	477	1,193	263	47.7	0.3	18.9	12.4	85.7	
	Traffic Corridor	9,093	35,916	54,102	39,099	195	727	114	81.8	0.9	17.7	18.6	13.6	
	Agricultural	6,671	76,239	190,597	95,299	2,859	5,718	762	381.2	0.0	4.8	2.9	28.6	
	Parks and Open Space	420	4,826	11,960	30,635	378	168	38	23.1	0.0	1.0	0.6	6.3	
	Subtotal		322,140	1,600,988	3,237,507	2,009,662	25,938	35,743	7,379	1,862.4	7.4	394.3	1,991.9	3,324.4

TABLE B-3  
ANNUAL POLLUTANT LOADS FROM USA SUBBASINS

SUBBASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)												
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn	
Dawson Creek	Vacant Light Residential	778	8,948	22,177	56,803	700	311	70	42.8	0.0	1.9	1.2	11.7	
	Vacant Heavy Residential	52	603	1,495	3,829	47	21	5	2.9	0.0	0.1	0.1	0.8	
	Vacant Commercial	568	6,535	16,196	41,486	511	227	51	31.3	0.0	1.4	0.9	8.5	
	Vacant Industrial	446	5,128	12,708	32,550	401	178	40	24.5	0.0	1.1	0.7	6.7	
	Light Residential	22,111	104,413	183,030	51,592	737	1,597	356	49.1	0.4	24.3	57.2	223.0	
	Heavy Residential	4,092	19,322	33,870	9,547	136	296	66	9.1	0.1	4.5	10.6	41.3	
	Commercial	13,639	64,786	161,964	132,981	1,534	1,705	375	85.2	0.5	17.9	221.6	166.1	
	Industrial	7,239	31,370	66,762	52,283	322	804	177	32.2	0.2	12.7	8.4	57.8	
	Traffic Corridor	874	3,453	5,202	3,759	19	70	11	7.9	0.1	1.7	1.8	1.3	
	Agricultural	2,662	30,426	76,064	38,032	1,141	2,282	304	152.1	0.0	1.9	1.1	11.4	
	Parks and Open Space	96	1,106	2,741	7,021	87	38	9	5.3	0.0	0.2	0.1	1.4	
	Subtotal		52,559	276,091	582,209	429,885	5,636	7,530	1,464	442.4	1.2	67.9	303.7	529.9
	Beaverton Creek	Vacant Light Residential	1,845	21,215	52,576	134,668	1,660	738	166	101.5	0.0	4.6	2.8	27.7
Vacant Heavy Residential		402	4,625	11,462	29,359	362	161	36	22.1	0.0	1.0	0.6	6.0	
Vacant Commercial		638	7,340	18,190	46,591	574	255	57	35.1	0.0	1.6	1.0	9.6	
Vacant Industrial		629	7,239	17,941	45,953	567	252	57	34.6	0.0	1.6	0.9	9.4	
Light Residential		183,419	866,147	1,518,305	427,979	6,114	13,247	2,955	407.6	3.1	201.8	474.9	1,849.5	
Heavy Residential		39,737	187,647	328,934	92,720	1,325	2,870	640	88.3	0.7	43.7	102.9	400.7	
Commercial		83,513	396,687	991,718	814,253	9,395	10,439	2,297	522.0	2.8	109.6	1,357.1	1,016.8	
Industrial		25,691	111,329	236,931	185,548	1,142	2,855	628	114.2	0.6	45.1	29.7	205.0	
Traffic Corridor		11,628	45,931	69,188	50,001	250	930	145	104.7	1.1	22.7	23.8	17.4	
Agricultural		1,102	12,590	31,475	15,737	472	944	126	62.9	0.0	0.8	0.5	4.7	
Parks and Open Space		664	7,641	18,937	48,506	598	266	60	36.5	0.0	1.7	1.0	10.0	
Subtotal			349,270	1,668,392	3,295,656	1,891,316	22,459	32,957	7,167	1,529.5	8.3	434.1	1,995.1	3,556.7
Bronson Creek		Vacant Light Residential	752	8,647	21,429	54,889	677	301	68	41.4	0.0	1.9	1.1	11.3
	Vacant Heavy Residential	44	503	1,246	3,191	39	17	4	2.4	0.0	0.1	0.1	0.7	
	Vacant Commercial	437	5,027	12,459	31,912	393	175	39	24.0	0.0	1.1	0.7	6.6	
	Vacant Industrial	96	1,106	2,741	7,021	87	38	9	5.3	0.0	0.2	0.1	1.4	
	Light Residential	27,619	130,424	228,625	64,445	921	1,995	445	61.4	0.5	30.4	71.5	278.5	
	Heavy Residential	11,488	54,250	95,098	26,806	383	830	185	25.5	0.2	12.6	29.7	115.8	
	Commercial	16,017	76,082	190,204	156,167	1,802	2,002	440	100.1	0.5	21.0	260.3	195.0	
	Industrial	2,203	9,547	20,319	15,912	98	245	54	9.8	0.1	3.9	2.5	17.6	
	Traffic Corridor	962	3,799	5,722	4,135	21	77	12	8.7	0.1	1.9	2.0	1.4	
	Agricultural	2,326	26,579	66,447	33,223	997	1,993	266	132.9	0.0	1.7	1.0	10.0	
	Parks and Open Space	140	1,609	3,987	10,212	126	56	13	7.7	0.0	0.3	0.2	2.1	
	Subtotal		62,084	317,572	648,276	407,913	5,543	7,729	1,534	419.1	1.3	75.1	369.2	640.4
	Willow Creek	Vacant Light Residential	1,032	11,864	29,403	75,312	929	413	93	56.7	0.0	2.6	1.5	15.5
Vacant Heavy Residential		131	1,508	3,738	9,574	118	52	12	7.2	0.0	0.3	0.2	2.0	
Vacant Commercial		184	2,111	5,233	13,403	165	73	17	10.1	0.0	0.5	0.3	2.8	
Vacant Industrial		210	2,413	5,980	15,318	189	84	19	11.5	0.0	0.5	0.3	3.1	
Light Residential		70,661	333,677	584,915	164,875	2,355	5,103	1,138	157.0	1.2	77.7	182.9	712.5	
Heavy Residential		21,639	102,184	179,122	50,491	721	1,563	349	48.1	0.4	23.8	56.0	218.2	
Commercial		27,663	131,399	328,496	269,713	3,112	3,458	761	172.9	0.9	36.3	449.5	336.8	
Industrial		2,754	11,934	25,398	19,890	122	306	67	12.2	0.1	4.8	3.2	22.0	
Traffic Corridor		2,798	11,051	16,647	12,030	60	224	35	25.2	0.3	5.5	5.7	4.2	
Agricultural		1,377	15,737	39,344	19,672	590	1,180	157	78.7	0.0	1.0	0.6	5.9	
Parks and Open Space		533	6,133	15,200	38,933	480	213	48	29.3	0.0	1.3	0.8	8.0	
Subtotal			128,981	630,012	1,233,476	689,211	8,842	12,670	2,696	609.0	2.8	154.3	701.1	1,330.9
Cedar Mill Creek		Vacant Light Residential	839	9,652	23,921	61,271	755	336	76	46.2	0.0	2.1	1.3	12.6
	Vacant Heavy Residential	26	302	748	1,915	24	10	2	1.4	0.0	0.1	0.0	0.4	
	Vacant Commercial	79	905	2,243	5,744	71	31	7	4.3	0.0	0.2	0.1	1.2	
	Vacant Industrial	577	6,636	16,446	42,124	519	231	52	31.7	0.0	1.4	0.9	8.7	
	Light Residential	46,504	219,602	384,950	108,509	1,550	3,359	749	103.3	0.8	51.2	120.4	468.9	
	Heavy Residential	10,937	51,649	90,538	25,521	365	790	176	24.3	0.2	12.0	28.3	110.3	
	Commercial	17,906	85,052	212,630	174,580	2,014	2,238	492	111.9	0.6	23.5	291.0	218.0	
	Industrial	3,777	16,367	34,832	27,278	168	420	92	16.8	0.1	6.6	4.4	30.1	
	Traffic Corridor	962	3,799	5,722	4,135	21	77	12	8.7	0.1	1.9	2.0	1.4	
	Agricultural	214	2,448	6,120	3,060	92	184	24	12.2	0.0	0.2	0.1	0.9	
	Parks and Open Space	323	3,720	9,219	23,615	291	129	29	17.8	0.0	0.8	0.5	4.9	
	Subtotal		82,145	400,132	787,368	477,752	5,870	7,805	1,713	378.7	1.7	100.0	448.9	857.4

TABLE B-3  
ANNUAL POLLUTANT LOADS FROM USA SUBBASINS

SUBBASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)											
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn
Johnson Cr. North	Vacant Light Residential	568	6,535	16,196	41,486	511	227	51	31.3	0.0	1.4	0.9	8.5
	Vacant Heavy Residential	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
	Vacant Commercial	70	804	1,993	5,106	63	28	6	3.8	0.0	0.2	0.1	1.0
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Light Residential	64,051	302,464	530,202	149,453	2,135	4,626	1,032	142.3	1.1	70.5	165.8	645.8
	Heavy Residential	2,675	12,634	22,146	6,243	89	193	43	5.9	0.0	2.9	6.9	27.0
	Commercial	6,924	32,891	82,228	67,513	779	866	190	43.3	0.2	9.1	112.5	84.3
	Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Traffic Corridor	1,661	6,562	9,884	7,143	36	133	21	15.0	0.2	3.2	3.4	2.5
	Agricultural	1,255	14,339	35,846	17,923	538	1,075	143	71.7	0.0	0.9	0.5	5.4
	Parks and Open Space	157	1,810	4,485	11,488	142	63	14	8.7	0.0	0.4	0.2	2.4
	Subtotal	77,380	378,240	703,479	307,631	4,308	7,218	1,503	322.9	1.5	88.7	290.4	777.2
	Johnson Cr. South	Vacant Light Residential	1,346	15,484	38,373	98,289	1,212	539	121	74.1	0.0	3.4	2.0
Vacant Heavy Residential		114	1,307	3,239	8,297	102	45	10	6.3	0.0	0.3	0.2	1.7
Vacant Commercial		70	804	1,993	5,106	63	28	6	3.8	0.0	0.2	0.1	1.0
Vacant Industrial		44	503	1,246	3,191	39	17	4	2.4	0.0	0.1	0.1	0.7
Light Residential		56,969	269,022	471,580	132,929	1,899	4,114	918	126.6	0.9	62.7	147.5	574.4
Heavy Residential		7,318	34,557	60,576	17,075	244	529	118	16.3	0.1	8.0	18.9	73.8
Commercial		10,352	49,171	122,927	100,929	1,165	1,294	285	64.7	0.3	13.6	168.2	126.0
Industrial		393	1,705	3,628	2,841	17	44	10	1.7	0.0	0.7	0.5	3.1
Traffic Corridor		874	3,453	5,202	3,759	19	70	11	7.9	0.1	1.7	1.8	1.3
Agricultural		122	1,399	3,497	1,749	52	105	14	7.0	0.0	0.1	0.1	0.5
Parks and Open Space		857	9,853	24,419	62,547	771	343	77	47.1	0.0	2.1	1.3	12.9
Subtotal		78,460	387,258	736,681	436,713	5,584	7,128	1,574	357.9	1.5	92.9	340.6	815.7
Hall Creek		Vacant Light Residential	455	5,228	12,957	33,188	409	182	41	25.0	0.0	1.1	0.7
	Vacant Heavy Residential	61	704	1,744	4,468	55	24	6	3.4	0.0	0.2	0.1	0.9
	Vacant Commercial	105	1,207	2,990	7,659	94	42	9	5.8	0.0	0.3	0.2	1.6
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Light Residential	76,405	360,802	632,464	178,279	2,547	5,518	1,231	169.8	1.3	84.0	197.8	770.4
	Heavy Residential	22,111	104,413	183,030	51,592	737	1,597	356	49.1	0.4	24.3	57.2	223.0
	Commercial	24,620	116,946	292,366	240,048	2,770	3,078	677	153.9	0.8	32.3	400.1	299.8
	Industrial	315	1,364	2,903	2,273	14	35	8	1.4	0.0	0.6	0.4	2.5
	Traffic Corridor	9,530	37,643	56,703	40,978	205	762	119	85.8	0.9	18.6	19.5	14.3
	Agricultural	214	2,448	6,120	3,060	92	184	24	12.2	0.0	0.2	0.1	0.9
	Parks and Open Space	175	2,011	4,984	12,765	157	70	16	9.6	0.0	0.4	0.3	2.6
	Subtotal	133,991	632,766	1,196,261	574,310	7,080	11,492	2,487	516.0	3.4	162.0	676.3	1,322.8
	Fanno Creek	Vacant Light Residential	1,967	22,623	56,064	143,604	1,770	787	177	108.2	0.0	4.9	3.0
Vacant Heavy Residential		96	1,106	2,741	7,021	87	38	9	5.3	0.0	0.2	0.1	1.4
Vacant Commercial		717	8,245	20,432	52,336	645	287	65	39.4	0.0	1.8	1.1	10.8
Vacant Industrial		577	6,636	16,446	42,124	519	231	52	31.7	0.0	1.4	0.9	8.7
Light Residential		211,589	999,172	1,751,490	493,708	7,053	15,281	3,409	470.2	3.5	232.7	547.8	2,133.5
Heavy Residential		42,334	199,909	350,428	98,778	1,411	3,057	682	94.1	0.7	46.6	109.6	426.9
Commercial		111,141	527,920	1,319,800	1,083,625	12,503	13,893	3,056	694.6	3.8	145.9	1,806.0	1,353.1
Industrial		12,433	53,874	114,656	89,791	553	1,381	304	55.3	0.3	21.8	14.4	99.2
Traffic Corridor		15,388	60,781	91,557	66,167	331	1,231	192	138.5	1.5	30.0	31.5	23.1
Agricultural		490	5,596	13,989	6,994	210	420	56	28.0	0.0	0.3	0.2	2.1
Parks and Open Space		603	6,938	17,193	44,038	543	241	54	33.2	0.0	1.5	0.9	9.0
Subtotal		397,334	1,892,798	3,754,795	2,128,186	25,625	36,848	8,056	1,698.5	9.7	487.3	2,515.5	4,097.3
Ash Creek		Vacant Light Residential	490	5,630	13,954	35,741	441	196	44	26.9	0.0	1.2	0.7
	Vacant Heavy Residential	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
	Vacant Commercial	96	1,106	2,741	7,021	87	38	9	5.3	0.0	0.2	0.1	1.4
	Vacant Industrial	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
	Light Residential	68,300	322,529	565,375	159,367	2,277	4,933	1,100	151.8	1.1	75.1	176.8	688.7
	Heavy Residential	7,475	35,300	61,879	17,442	249	540	120	16.6	0.1	8.2	19.4	75.4
	Commercial	19,724	93,690	234,225	192,311	2,219	2,466	542	123.3	0.7	25.9	320.5	240.1
	Industrial	236	1,023	2,177	1,705	10	26	6	1.0	0.0	0.4	0.3	1.9
	Traffic Corridor	1,661	6,562	9,884	7,143	36	133	21	15.0	0.2	3.2	3.4	2.5
	Agricultural	31	350	874	437	13	26	3	1.7	0.0	0.0	0.0	0.1
	Parks and Open Space	114	1,307	3,239	8,297	102	45	10	6.3	0.0	0.3	0.2	1.7
	Subtotal	98,153	467,799	895,095	431,380	5,457	8,414	1,859	349.3	2.1	114.7	521.5	1,019.6

TABLE B-3  
ANNUAL POLLUTANT LOADS FROM USA SUBBASINS

SUBBASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)												
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn	
Summer Creek	Vacant Light Residential	2,527	29,057	72,012	184,451	2,274	1,011	227	139.0	0.0	6.3	3.8	37.9	
	Vacant Heavy Residential	323	3,720	9,219	23,615	291	129	29	17.8	0.0	0.8	0.5	4.9	
	Vacant Commercial	140	1,609	3,987	10,212	126	56	13	7.7	0.0	0.3	0.2	2.1	
	Vacant Industrial	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3	
	Light Residential	65,232	308,038	539,972	152,207	2,174	4,711	1,051	145.0	1.1	71.8	168.9	657.8	
	Heavy Residential	22,347	105,528	184,984	52,143	745	1,614	360	49.7	0.4	24.6	57.9	225.3	
	Commercial	14,269	67,776	169,439	139,119	1,605	1,784	392	89.2	0.5	18.7	231.9	173.7	
	Industrial	1,652	7,161	15,239	11,934	73	184	40	7.3	0.0	2.9	1.9	13.2	
	Traffic Corridor	1,399	5,526	8,323	6,015	30	112	17	12.6	0.1	2.7	2.9	2.1	
	Agricultural	704	8,044	20,109	10,054	302	603	80	40.2	0.0	0.5	0.3	3.0	
	Parks and Open Space	656	7,541	18,688	47,868	590	262	59	36.1	0.0	1.6	1.0	9.8	
	Subtotal		109,266	544,199	1,042,472	638,895	8,227	10,473	2,271	545.4	2.1	130.4	469.2	1,130.1
	Red Rock Creek	Vacant Light Residential	26	302	748	1,915	24	10	2	1.4	0.0	0.1	0.0	0.4
Vacant Heavy Residential		0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
Vacant Commercial		289	3,318	8,223	21,062	260	115	26	15.9	0.0	0.7	0.4	4.3	
Vacant Industrial		87	1,005	2,492	6,382	79	35	8	4.8	0.0	0.2	0.1	1.3	
Light Residential		6,767	31,956	56,016	15,790	226	489	109	15.0	0.1	7.4	17.5	68.2	
Heavy Residential		551	2,601	4,559	1,285	18	40	9	1.2	0.0	0.6	1.4	5.6	
Commercial		17,241	81,896	204,739	168,102	1,940	2,155	474	107.8	0.6	22.6	280.2	209.9	
Industrial		3,305	14,321	30,478	23,868	147	367	81	14.7	0.1	5.8	3.8	26.4	
Traffic Corridor		4,634	18,303	27,571	19,925	100	371	58	41.7	0.4	9.0	9.5	7.0	
Agricultural		61	699	1,749	874	26	52	7	3.5	0.0	0.0	0.0	0.3	
Parks and Open Space		0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
Subtotal			32,961	154,401	336,575	259,204	2,818	3,635	774	206.0	1.2	46.6	313.1	323.3
Ball Creek		Vacant Light Residential	26	302	748	1,915	24	10	2	1.4	0.0	0.1	0.0	0.4
	Vacant Heavy Residential	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1	
	Vacant Commercial	227	2,614	6,479	16,594	205	91	20	12.5	0.0	0.6	0.3	3.4	
	Vacant Industrial	61	704	1,744	4,468	55	24	6	3.4	0.0	0.2	0.1	0.9	
	Light Residential	5,429	25,639	44,943	12,669	181	392	87	12.1	0.1	6.0	14.1	54.7	
	Heavy Residential	2,125	10,033	17,587	4,957	71	153	34	4.7	0.0	2.3	5.5	21.4	
	Commercial	8,813	41,861	104,654	85,926	991	1,102	242	55.1	0.3	11.6	143.2	107.3	
	Industrial	2,518	10,911	23,221	18,185	112	280	62	11.2	0.1	4.4	2.9	20.1	
	Traffic Corridor	2,973	11,742	17,687	12,782	64	238	37	26.8	0.3	5.8	6.1	4.5	
	Agricultural	31	350	874	437	13	26	3	1.7	0.0	0.0	0.0	0.1	
	Parks and Open Space	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Subtotal		22,212	104,256	218,186	158,572	1,723	2,320	495	129.4	0.8	30.9	172.3	213.0
	Lower Tualatin River	Vacant Light Residential	3,681	42,329	104,903	268,699	3,313	1,472	331	202.4	0.0	9.2	5.5	55.2
Vacant Heavy Residential		262	3,016	7,475	19,147	236	105	24	14.4	0.0	0.7	0.4	3.9	
Vacant Commercial		1,137	13,071	32,393	82,971	1,023	455	102	62.5	0.0	2.8	1.7	17.0	
Vacant Industrial		638	7,340	18,190	46,591	574	255	57	35.1	0.0	1.6	1.0	9.6	
Light Residential		141,715	669,211	1,173,088	330,669	4,724	10,235	2,283	314.9	2.4	155.9	366.9	1,429.0	
Heavy Residential		36,826	173,898	304,833	85,926	1,228	2,660	593	81.8	0.6	40.5	95.3	371.3	
Commercial		70,748	336,055	840,137	689,796	7,959	8,844	1,946	442.2	2.4	92.9	1,149.7	861.4	
Industrial		10,308	44,668	95,063	74,447	458	1,145	252	45.8	0.3	18.1	11.9	82.2	
Traffic Corridor		17,049	67,343	101,441	73,310	367	1,364	213	153.4	1.6	33.2	35.0	25.6	
Agricultural		4,498	51,409	128,522	64,261	1,928	3,856	514	257.0	0.0	3.2	1.9	19.3	
Parks and Open Space		1,198	13,775	34,137	87,439	1,078	479	108	65.9	0.0	3.0	1.8	18.0	
Subtotal			288,060	1,422,115	2,840,181	1,823,256	22,887	30,869	6,424	1,675.6	7.2	361.1	1,671.0	2,892.5
Butternut Creek		Vacant Light Residential	813	9,351	23,173	59,356	732	325	73	44.7	0.0	2.0	1.2	12.2
	Vacant Heavy Residential	87	1,005	2,492	6,382	79	35	8	4.8	0.0	0.2	0.1	1.3	
	Vacant Commercial	87	1,005	2,492	6,382	79	35	8	4.8	0.0	0.2	0.1	1.3	
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Light Residential	79,395	374,922	657,216	185,255	2,647	5,734	1,279	176.4	1.3	87.3	205.5	800.6	
	Heavy Residential	7,397	34,928	61,227	17,259	247	534	119	16.4	0.1	8.1	19.1	74.6	
	Commercial	8,288	39,370	98,424	80,812	932	1,036	228	51.8	0.3	10.9	134.7	100.9	
	Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Traffic Corridor	2,186	8,634	13,005	9,399	47	175	27	19.7	0.2	4.3	4.5	3.3	
	Agricultural	367	4,197	10,492	5,246	157	315	42	21.0	0.0	0.3	0.2	1.6	
	Parks and Open Space	219	2,514	6,229	15,956	197	87	20	12.0	0.0	0.5	0.3	3.3	
	Subtotal		98,840	475,925	874,750	386,047	5,116	8,277	1,804	351.7	1.9	113.9	365.8	999.0

TABLE B-3  
ANNUAL POLLUTANT LOADS FROM USA SUBBASINS

SUBBASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)											
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn
Chicken Creek	Vacant Light Residential	35	402	997	2,553	31	14	3	1.9	0.0	0.1	0.1	0.5
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Light Residential	1,495	7,060	12,376	3,488	50	108	24	3.3	0.0	1.6	3.9	15.1
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Agricultural	612	6,994	17,486	8,743	262	525	70	35.0	0.0	0.4	0.3	2.6
	Parks and Open Space	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
	Subtotal		2,160	14,658	31,357	16,061	359	654	99	41.2	0.0	2.2	4.2
Cedar Creek	Vacant Light Residential	1,023	11,764	29,154	74,674	921	409	92	56.3	0.0	2.6	1.5	15.3
	Vacant Heavy Residential	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
	Vacant Commercial	210	2,413	5,980	15,318	189	84	19	11.5	0.0	0.5	0.3	3.1
	Vacant Industrial	44	503	1,246	3,191	39	17	4	2.4	0.0	0.1	0.1	0.7
	Light Residential	21,482	101,441	177,820	50,124	716	1,551	346	47.7	0.4	23.6	55.6	216.6
	Heavy Residential	1,495	7,060	12,376	3,488	50	108	24	3.3	0.0	1.6	3.9	15.1
	Commercial	13,149	62,460	156,150	128,207	1,479	1,644	362	82.2	0.4	17.3	213.7	160.1
	Industrial	1,456	6,308	13,425	10,513	65	162	36	6.5	0.0	2.6	1.7	11.6
	Traffic Corridor	1,749	6,907	10,404	7,519	38	140	22	15.7	0.2	3.4	3.6	2.6
	Agricultural	1,193	13,639	34,098	17,049	511	1,023	136	68.2	0.0	0.9	0.5	5.1
	Parks and Open Space	254	2,916	7,226	18,509	228	101	23	13.9	0.0	0.6	0.4	3.8
	Subtotal		42,071	215,611	448,376	329,869	4,252	5,247	1,065	308.8	1.0	53.2	281.3
Rock Creek South	Vacant Light Residential	726	8,345	20,682	52,974	653	290	65	39.9	0.0	1.8	1.1	10.9
	Vacant Heavy Residential	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
	Vacant Commercial	96	1,106	2,741	7,021	87	38	9	5.3	0.0	0.2	0.1	1.4
	Vacant Industrial	393	4,525	11,213	28,721	354	157	35	21.6	0.0	1.0	0.6	5.9
	Light Residential	7,161	33,814	59,273	16,708	239	517	115	15.9	0.1	7.9	18.5	72.2
	Heavy Residential	79	372	651	184	3	6	1	0.2	0.0	0.1	0.2	0.8
	Commercial	5,700	27,077	67,693	55,579	641	713	157	35.6	0.2	7.5	92.6	69.4
	Industrial	3,029	13,128	27,938	21,879	135	337	74	13.5	0.1	5.3	3.5	24.2
	Traffic Corridor	962	3,799	5,722	4,135	21	77	12	8.7	0.1	1.9	2.0	1.4
	Agricultural	887	10,142	25,355	12,677	380	761	101	50.7	0.0	0.6	0.4	3.8
	Parks and Open Space	140	1,609	3,987	10,212	126	56	13	7.7	0.0	0.3	0.2	2.1
	Subtotal		19,182	104,015	225,504	210,728	2,646	2,955	584	199.6	0.5	26.7	119.3
Hedges Creek	Vacant Light Residential	341	3,921	9,718	24,891	307	136	31	18.8	0.0	0.9	0.5	5.1
	Vacant Heavy Residential	9	101	249	638	8	3	1	0.5	0.0	0.0	0.0	0.1
	Vacant Commercial	472	5,429	13,455	34,465	425	189	42	26.0	0.0	1.2	0.7	7.1
	Vacant Industrial	1,040	11,965	29,652	75,950	936	416	94	57.2	0.0	2.6	1.6	15.6
	Light Residential	14,242	67,256	117,895	33,232	475	1,029	229	31.6	0.2	15.7	36.9	143.6
	Heavy Residential	1,023	4,831	8,468	2,387	34	74	16	2.3	0.0	1.1	2.6	10.3
	Commercial	19,899	94,521	236,301	194,016	2,239	2,487	547	124.4	0.7	26.1	323.4	242.3
	Industrial	15,816	68,536	145,859	114,227	703	1,757	387	70.3	0.4	27.8	18.3	126.2
	Traffic Corridor	1,399	5,526	8,323	6,015	30	112	17	12.6	0.1	2.7	2.9	2.1
	Agricultural	1,683	19,235	48,087	24,043	721	1,443	192	96.2	0.0	1.2	0.7	7.2
	Parks and Open Space	114	1,307	3,239	8,297	102	45	10	6.3	0.0	0.3	0.2	1.7
	Subtotal		56,038	282,626	621,247	518,163	5,980	7,692	1,567	446.0	1.4	79.5	387.7
Seely Ditch	Vacant Light Residential	192	2,212	5,482	14,041	173	77	17	10.6	0.0	0.5	0.3	2.9
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Industrial	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
	Light Residential	1,416	6,688	11,724	3,305	47	102	23	3.1	0.0	1.6	3.7	14.3
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	35	166	415	341	4	4	1	0.2	0.0	0.0	0.6	0.4
	Industrial	39	170	363	284	2	4	1	0.2	0.0	0.1	0.0	0.3
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Agricultural	153	1,749	4,372	2,186	66	131	17	8.7	0.0	0.1	0.1	0.7
	Parks and Open Space	114	1,307	3,239	8,297	102	45	10	6.3	0.0	0.3	0.2	1.7
	Subtotal		1,967	12,494	26,093	29,731	410	372	71	30.1	0.0	2.6	4.8



TABLE B-4  
ANNUAL POLLUTANT LOADS FROM USA MAJOR BASINS

BASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)											
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn
Gales Creek	Vacant Light Residential	210	2,413	5,980	15,318	189	84	19	11.5	0.0	0.5	0.3	3.1
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Industrial	79	905	2,243	5,744	71	31	7	4.3	0.0	0.2	0.1	1.2
	Light Residential	11,882	56,108	98,354	27,724	396	858	191	26.4	0.2	13.1	30.8	119.8
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	2,343	11,130	27,825	22,845	264	293	64	14.6	0.1	3.1	38.1	28.5
	Industrial	1,298	5,626	11,974	9,377	58	144	32	5.8	0.0	2.3	1.5	10.4
	Traffic Corridor	2,011	7,943	11,965	8,647	43	161	25	18.1	0.2	3.9	4.1	3.0
	Agricultural	949	10,841	27,103	13,552	407	813	108	54.2	0.0	0.7	0.4	4.1
	Parks and Open Space	87	1,005	2,492	6,382	79	35	8	4.8	0.0	0.2	0.1	1.3
Subtotal		18,859	95,972	187,935	109,589	1,506	2,420	455	139.8	0.5	24.0	75.4	171.4
Upper Tualatin River	Vacant Light Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Light Residential	7,711	36,415	63,833	17,993	257	557	124	17.1	0.1	8.5	20.0	77.8
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Commercial	595	2,824	7,060	5,797	67	74	16	3.7	0.0	0.8	9.7	7.2
	Industrial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Agricultural	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Parks and Open Space	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
Subtotal		8,306	39,239	70,893	23,790	324	631	141	20.9	0.1	9.3	29.6	85.0
Dairy Creek	Vacant Light Residential	2,212	25,438	63,041	161,474	1,991	885	199	121.7	0.0	5.5	3.3	33.2
	Vacant Heavy Residential	105	1,207	2,990	7,659	94	42	9	5.8	0.0	0.3	0.2	1.6
	Vacant Commercial	621	7,139	17,691	45,315	559	248	56	34.1	0.0	1.6	0.9	9.3
	Vacant Industrial	551	6,334	15,698	40,209	496	220	50	30.3	0.0	1.4	0.8	8.3
	Light Residential	108,352	511,662	896,914	252,821	3,612	7,825	1,746	240.8	1.8	119.2	280.5	1,092.5
	Heavy Residential	4,485	21,180	37,127	10,465	150	324	72	10.0	0.1	4.9	11.6	45.2
	Commercial	69,349	329,410	823,525	676,157	7,802	8,669	1,907	433.4	2.3	91.0	1,126.9	844.3
	Industrial	15,541	67,343	143,320	112,238	691	1,727	380	69.1	0.4	27.3	18.0	124.0
	Traffic Corridor	18,448	72,869	109,764	79,325	397	1,476	231	166.0	1.8	36.0	37.8	27.7
	Agricultural	7,834	89,528	223,821	111,910	3,357	6,715	895	447.6	0.0	5.6	3.4	33.6
	Parks and Open Space	289	3,318	8,223	21,062	260	115	26	15.9	0.0	0.7	0.4	4.3
Subtotal		227,786	1,135,427	2,342,114	1,518,637	19,407	28,246	5,571	1,574.7	6.4	293.4	1,483.9	2,224.0
Middle Tualatin River	Vacant Light Residential	691	7,943	19,685	50,421	622	276	62	38.0	0.0	1.7	1.0	10.4
	Vacant Heavy Residential	52	603	1,495	3,829	47	21	5	2.9	0.0	0.1	0.1	0.8
	Vacant Commercial	1,268	14,579	36,130	92,545	1,141	507	114	69.7	0.0	3.2	1.9	19.0
	Vacant Industrial	201	2,313	5,731	14,679	181	80	18	11.1	0.0	0.5	0.3	3.0
	Light Residential	62,241	293,918	515,221	145,230	2,075	4,495	1,003	138.3	1.0	68.5	161.1	627.6
	Heavy Residential	8,420	39,759	69,695	19,646	281	608	136	18.7	0.1	9.3	21.8	84.9
	Commercial	41,931	199,174	497,936	408,831	4,717	5,241	1,153	262.1	1.4	55.0	681.4	510.5
	Industrial	7,357	31,881	67,850	53,136	327	817	180	32.7	0.2	12.9	8.5	58.7
	Traffic Corridor	13,027	51,457	77,511	56,016	280	1,042	163	117.2	1.2	25.4	26.7	19.5
	Agricultural	949	10,841	27,103	13,552	407	813	108	54.2	0.0	0.7	0.4	4.1
	Parks and Open Space	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3
Subtotal		136,155	652,669	1,318,855	859,161	10,093	13,909	2,943	745.9	4.0	177.3	903.3	1,338.8
Rock Creek	Vacant Light Residential	10,413	119,748	296,768	760,143	9,372	4,165	937	572.7	0.0	26.0	15.6	156.2
	Vacant Heavy Residential	1,014	11,663	28,904	74,036	913	406	91	55.8	0.0	2.5	1.5	15.2
	Vacant Commercial	4,197	48,261	119,604	306,355	3,777	1,679	378	230.8	0.0	10.5	6.3	62.9
	Vacant Industrial	3,034	34,889	86,464	221,469	2,730	1,214	273	166.9	0.0	7.6	4.6	45.5
	Light Residential	722,583	3,412,196	5,981,379	1,686,026	24,086	52,187	11,642	1,605.7	12.0	794.8	1,870.7	7,286.0
	Heavy Residential	146,515	691,877	1,212,820	341,869	4,884	10,582	2,361	325.6	2.4	161.2	379.3	1,477.4
	Commercial	288,449	1,370,133	3,425,333	2,812,378	32,451	36,056	7,932	1,802.8	9.7	378.6	4,687.3	3,511.9
	Industrial	53,114	230,159	489,827	383,599	2,361	5,902	1,298	236.1	1.3	93.2	61.4	423.7
	Traffic Corridor	38,382	151,608	228,372	165,042	825	3,071	480	345.4	3.6	74.8	78.7	57.6
	Agricultural	15,943	182,204	455,510	227,755	6,833	13,665	1,822	911.0	0.0	11.4	6.8	68.3
	Parks and Open Space	3,366	38,710	95,933	245,722	3,029	1,346	303	185.1	0.0	8.4	5.0	50.5
Subtotal		1,287,009	6,291,450	12,420,913	7,224,393	91,260	130,271	27,517	6,438.0	29.2	1,569.1	7,117.2	13,155.3

TABLE B-4  
ANNUAL POLLUTANT LOADS FROM USA MAJOR BASINS

BASIN	LAND USE	POLLUTANT LOADS (POUNDS PER YEAR)												
		BOD5	COD	TSS	TDS	NO3	TKN	Tot P	Ortho-P	Cd	Cu	Pb	Zn	
Fanno Creek	Vacant Light Residential	5,036	57,914	143,525	367,626	4,532	2,014	453	277.0	0.0	12.6	7.6	75.5	
	Vacant Heavy Residential	446	5,128	12,708	32,550	401	178	40	24.5	0.0	1.1	0.7	6.7	
	Vacant Commercial	1,469	16,891	41,861	107,224	1,322	588	132	80.8	0.0	3.7	2.2	22.0	
	Vacant Industrial	752	8,647	21,429	54,889	677	301	68	41.4	0.0	1.9	1.1	11.3	
	Light Residential	357,318	1,687,333	2,957,796	833,741	11,911	25,806	5,757	794.0	6.0	393.0	925.1	3,603.0	
	Heavy Residential	74,831	353,370	619,437	174,606	2,494	5,404	1,206	166.3	1.2	82.3	193.7	754.5	
	Commercial	171,188	813,143	2,032,857	1,669,082	19,259	21,398	4,708	1,069.9	5.8	224.7	2,781.8	2,084.2	
	Industrial	20,144	87,290	185,771	145,484	895	2,238	492	89.5	0.5	35.4	23.3	160.7	
	Traffic Corridor	26,054	102,914	155,022	112,033	560	2,084	326	234.5	2.5	50.8	53.4	39.1	
	Agricultural	1,316	15,038	37,595	18,797	564	1,128	150	75.2	0.0	0.9	0.6	5.6	
	Parks and Open Space	1,373	15,785	39,121	100,204	1,235	549	124	75.5	0.0	3.4	2.1	20.6	
	Subtotal		659,926	3,163,453	6,247,123	3,616,236	43,851	61,690	13,455	2,928.6	15.9	809.8	3,991.5	6,783.3
	Lower Tualatin River	Vacant Light Residential	6,618	76,112	188,626	483,147	5,957	2,647	596	364.0	0.0	16.5	9.9	99.3
		Vacant Heavy Residential	385	4,424	10,964	28,083	346	154	35	21.2	0.0	1.0	0.6	5.8
Vacant Commercial		2,002	23,025	57,061	146,157	1,802	801	180	110.1	0.0	5.0	3.0	30.0	
Vacant Industrial		2,116	24,332	60,300	154,454	1,904	846	190	116.4	0.0	5.3	3.2	31.7	
Light Residential		265,490	1,253,702	2,197,667	619,477	8,850	19,174	4,277	590.0	4.4	292.0	687.3	2,677.0	
Heavy Residential		46,819	221,089	387,555	109,244	1,561	3,381	754	104.0	0.8	51.5	121.2	472.1	
Commercial		117,786	559,482	1,398,705	1,148,411	13,251	14,723	3,239	736.2	4.0	154.6	1,914.0	1,434.0	
Industrial		30,609	132,640	282,285	221,067	1,360	3,401	748	136.0	0.7	53.7	35.4	244.2	
Traffic Corridor		23,344	92,208	138,896	100,378	502	1,868	292	210.1	2.2	45.5	47.9	35.0	
Agricultural		9,241	105,615	264,039	132,019	3,961	7,921	1,056	528.1	0.0	6.6	4.0	39.6	
Parks and Open Space		1,941	22,321	55,317	141,689	1,747	776	175	106.8	0.0	4.9	2.9	29.1	
Subtotal			506,351	2,514,950	5,041,415	3,284,124	41,240	55,693	11,543	3,022.8	12.1	636.6	2,829.3	5,097.9
Seeley Ditch		Vacant Light Residential	192	2,212	5,482	14,041	173	77	17	10.6	0.0	0.5	0.3	2.9
		Vacant Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0
	Vacant Commercial	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Vacant Industrial	17	201	498	1,276	16	7	2	1.0	0.0	0.0	0.0	0.3	
	Light Residential	1,416	6,688	11,724	3,305	47	102	23	3.1	0.0	1.6	3.7	14.3	
	Heavy Residential	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Commercial	35	166	415	341	4	4	1	0.2	0.0	0.0	0.6	0.4	
	Industrial	39	170	363	284	2	4	1	0.2	0.0	0.1	0.0	0.3	
	Traffic Corridor	0	0	0	0	0	0	0	0.0	0.0	0.0	0.0	0.0	
	Agricultural	153	1,749	4,372	2,186	66	131	17	8.7	0.0	0.1	0.1	0.7	
	Parks and Open Space	114	1,307	3,239	8,297	102	45	10	6.3	0.0	0.3	0.2	1.7	
	Subtotal		1,967	12,494	26,093	29,731	410	372	71	30.1	0.0	2.6	4.8	20.5
	TOTAL	Vacant Light Residential	25,372	291,780	723,107	1,852,170	22,835	10,149	2,283	1,395.5	0.0	63.4	38.1	380.6
		Vacant Heavy Residential	2,002	23,025	57,061	146,157	1,802	801	180	110.1	0.0	5.0	3.0	30.0
Vacant Commercial		9,556	109,895	272,349	697,595	8,600	3,822	860	525.6	0.0	23.9	14.3	143.3	
Vacant Industrial		6,750	77,620	192,363	492,721	6,075	2,700	607	371.2	0.0	16.9	10.1	101.2	
Light Residential		1,536,993	7,258,023	12,722,888	3,586,317	51,233	111,005	24,763	3,415.5	25.6	1,690.7	3,979.1	15,498.0	
Heavy Residential		281,070	1,327,275	2,326,635	655,830	9,369	20,299	4,528	624.6	4.7	309.2	727.7	2,834.1	
Commercial		691,676	3,285,462	8,213,655	6,743,843	77,814	86,460	19,021	4,323.0	23.3	907.8	11,239.7	8,421.2	
Industrial		128,102	555,111	1,181,389	925,184	5,693	14,234	3,131	569.3	3.1	224.9	148.0	1,022.0	
Traffic Corridor		121,265	478,998	721,529	521,441	2,607	9,701	1,516	1,091.4	11.5	236.5	248.6	181.9	
Agricultural		36,384	415,817	1,039,543	519,771	15,593	31,186	4,158	2,079.1	0.0	26.0	15.6	155.9	
Parks and Open Space		7,187	82,648	204,822	524,632	6,468	2,875	647	395.3	0.0	18.0	10.8	107.8	
TOTAL			2,846,358	13,905,654	27,655,342	16,665,662	208,090	293,232	61,696	14,900.6	68.3	3,522.2	16,435.0	28,876.1

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Testimony for Oregon Environmental Quality Commission  
June 11, 1998  
Medford, OR

Dr. Wesley M. Jarrell, Professor  
Environmental Science and Engineering  
Oregon Graduate Institute of Science and Technology  
P.O. Box 91000  
Portland, OR 97291-1000

Personal background:

Born in Forest Grove, grew up on a farm there, now live there.

BA in Biological Sciences at Stanford University

MS, Ph.D. in Soil Science at Oregon State University

Worked on Western Oregon subclover pastures, P, Mo and S nutrition, from  
Astoria to the mouth of the Elk River south of Bandon

12 years on faculty at UC Riverside, working in irrigated, dryland agriculture and natural  
ecosystems, nutrient and water cycling.

Arrived at OGI 10 years ago, to get back to Oregon, started working on water quality and  
the interaction between land management and health of aquatic ecosystems

Over 80 peer-reviewed journal articles in addition to book chapters.

I was chair of the nonpoint source subcommittee of the Tualatin Basin Technical  
Advisory Committee, which authored the technical report. I have also chaired the  
technical advisory committees for the Washington County Soil and Water Conservation  
District and the Tualatin Watershed Senate Bill 1010 committee. I am currently chair of  
the Technical Assistance Committee of the Tualatin River Watershed Council.

Settlers first drained the soils and farmed the Tualatin Valley because it was incredibly  
fertile. They had no sources of fertilizer; they had to rely on the natural fertility of the  
soil. Soil test records from OSU illustrate the high P in Washington County soils, even  
by Willamette Valley standards. Dr. Mary Abrams and I published a peer-reviewed  
paper on these soils and their potential for inputs of P into the Tualatin streams.

To assure that our research methods and interpretation are the best available, five years  
ago I joined a National Committee that focuses on phosphorus management in  
agriculture. It is an outgrowth of a southeastern US regional coordinating committee of  
USDA, but now has members from around the US. At the annual meetings we share  
information on methods, new policies, our own findings, and become familiar with local  
issues. At my invitation, last August over 30 phosphorus experts from around the US  
met at the Greenwood Inn in Beaverton for the Committee's annual meeting. I led a tour  
of the Tualatin (see Field Trip guide), emphasizing the P cycle and the role of high  
natural levels of P in soils and groundwater of the valley. The committee asked important  
questions about our methods and interpretation, and were impressed and more than  
satisfied with our explanations.

The report dated February 27, 1998, from the Subcommittee on TMDL Implementation of the Tualatin Basin Policy Advisory Committee, needs to be examined carefully. While there are many detailed technical points that should be clarified, I will address only three primary concerns.

1. The report states that "Beyond the concentrations found in natural rainwater, elevated levels of phosphorus or any other substance in the land environment are the result of human populations and human activities." (Page 2, last sentence in first complete paragraph). I asked one of the National Phosphorus committee members, Val Smith at University of Kansas, to review the report along with our technical report, and he keyed in on this phrase (in addition to several others). He submitted a well-referenced letter highlighting some of the published work that has **clearly demonstrated linkages between natural geology, in-stream P concentrations and resulting eutrophication.**

Phosphorus is an essential element for plant and algal growth. Rainwater never supplies enough P to come close to satisfying plant needs. The P in natural systems comes from slow breakdown of naturally-occurring minerals. When the minerals are high in P and break down rapidly, P accumulates in the soil. That's what appears to have happened in the Tualatin soils and groundwaters.

2. A fundamental concern is the **continual equating of all of water quality with in-stream P concentrations.** Our technical report never implied that water quality in the Tualatin River Watershed could not be improved; in fact we list pages of best management practices for urban, agricultural, and forestry that are being and should continue to be implemented. The Tualatin River Watershed Council just spent 18 months writing a Watershed Action Plan that highlights dozens of methods for improving watershed health, including water quality. Some recommendations include P control, most don't. Sediment, temperature, dissolved oxygen, pH, ammonia, exotic organisms, hydrology – these all affect water quality and aquatic health. While sometimes associated with P, they are often independent or only loosely linked. Considering limiting resources, efforts must be placed where they will do the most good for the environment.

3. The discussion on soils disregards a fundamental principle of soil science: **in most cases, only a fraction of the total P in soils can actually be taken up by plants and algae.** No soil fertility test analyses total P; they all try to measure the fraction that is actually available to plants. This fraction of the total P that is actually soluble and available to plants or algae can range from less than 1% of the total P to over 25% of the total P. The hill soils are high in total P, but very low in plant-available P; on my MS project we fertilized these types of soils for pasture growth. The natural valley bottom soils are moderately high in total P but a much larger fraction of that is available for plants. Plants and algae only really care about the available P; the rest is invisible to them.

I expect that the EQC will continue to incorporate the best available science into their decisions. In terms of water quality, we have one of the most-studied watersheds in the US. Great use has been made of teams of dedicated experts in sorting out issues like natural sources and anthropogenic effects. Great advances have been made in improving land management and water quality, and must be continued. Ignoring the conclusions of good science will result in costly mistakes, some very difficult to reverse. I am happy to discuss any of this in detail with you.

X-Sender: valsmith@falcon.cc.ukans.edu (Unverified)  
X-Mailer: QUALCOMM Windows Eudora Light Version 3.0.2 (32)  
Date: Tue, 09 Jun 1998 08:34:15 -0500  
To: wjarrell@ese.ogi.edu  
From: "Val H. Smith" <valsmith@falcon.cc.ukans.edu>  
Subject: background P loading  
Cc: valsmith@falcon.cc.ukans.edu

Dear Wes:

Thanks for your letter, and for sending copies of the Tualatin River report and the memorandum from the Subcommittee on TMDL Implementation. I agree in principle with the conceptual framework for total loading to the Tualatin River that was presented by the subcommittee in their Figure 1. A comprehensive examination of loading to the river must indeed include the sources listed in this figure, and a truly objective assessment of the relative importance of natural versus anthropogenic P sources must involve a quantitative comparison of the loading rates that are contributed by each of these sources, both on an annual and on a seasonal basis.

However, I am in very strong disagreement with the assertion by the subcommittee that "beyond the concentrations found in natural rainwater, elevated levels of phosphorus or any other substance in the land environment are the result of human populations and human activities" (page 2). I believe this assertion to be incorrect.

The concentrations of substances in streamflow are strongly influenced by the lithology and hydrology of the landscape, whether or not the landscape has been influenced by humans. For example, in his textbook of limnology (which is considered the most comprehensive of all available texts), Wetzel (1983) presents data on the ionic contents of waters from all over the world. Major geographical differences visible in his tables largely reflect underlying geology, and not human activity. I urge the subcommittee and those evaluating the subcommittee's memorandum to examine the references that I have provided below. These citations clearly document strong differences in nutrient export that result both from geographical and from anthropogenic causes. Of special interest here are the compilation by Reckhow et al. (1980) and the article by Omernik et al. (1991), in which regional variation in nutrient loading to lakes and its practical implications is directly discussed.

In my recent review of eutrophication of inland and coastal waters (Smith 1998), I noted that:

"It also must be recognized both by the public and by managers that the new trophic state to which a water body can be improved will always be

restricted by historical and geological constraints. For example, many lakes and reservoirs are naturally mesotrophic or eutrophic because they are imbedded in a nutrient-rich landscape, and they cannot be transformed into pristine, crystal-clear systems despite the best management efforts (Anderson 1995). These limitations to eutrophication management are evident from the presence of distinct ecoregions in the natural landscape (Omernik et al. 1991)."

I hope that this information is helpful to the Environmental Quality Commission.

Best regards,

Val

#### References:

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Reckhow, K.H., M.T. Beaulac, and J.T. Simpson. 1980. Modeling phosphorus loading and lake response under uncertainty: A manual and compilation of export coefficients. U.S. EPA 440/5-80-011.

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Smith, V.H. 1998 (in press). Cultural eutrophication of inland, estuarine, and coastal marine waters. In *Successes, limitations, and frontiers in ecosystem science*. Springer-Verlag.

Wetzel, R.G. 1983. Limnology. Saunders.

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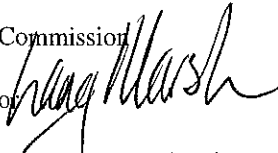
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To: Environmental Quality Commission  
From: Langdon Marsh, Director   
Subject: Agenda Item F Extension of the Tualatin River Basin TMDL Compliance Order EQC meeting June 11, 1998

**Statement of Purpose:**

The Environmental Quality Commission (EQC) is requested to revise the Tualatin Sub-basin Nonpoint Source Management Implementation / Compliance Order (EQC Order) (Attachment A). A revised order will allow a time period for updates and modification to the Tualatin Basin TMDLs and basin plans and provide an enforceable mechanism for assuring continued compliance with the TMDL while the revisions and updates to current plans are being developed. The extension and compliance order serve several purposes including:

1. Assure continued implementation of the existing pollution control efforts related to the Total Maximum Daily Loads (TMDLs),
2. Provide the time needed to refine the existing watershed approach in the Tualatin Basin to implement the Tualatin Basin Advisory Committee (TBPAC) recommendations,
3. Provide the time needed to complete the updates to the existing TMDLs with the associated Waste Load Allocations (WLAs) and Load Allocations (LA) for phosphate and ammonia and the development of additional TMDLs for parameters listed on the current DRAFT §303(d)(1) list in the Tualatin Basin (Temperature, Bacteria, pH, and Dissolved Oxygen).
4. Provide an enforceable mechanism for compliance required by federal and State law.

The title of the EQC Order will be changed to reflect that it covers actions taken to address pollution from both point sources, such as urban runoff, and nonpoint sources. The revised order will cover a period not to exceed 24 months. The end result will be a new implementation program. The DMAs will continue to implement the current implement program through the compliance period.

The EQC will be required to take some specific actions within the 24 month period. Within 14 months the EQC will be requested to take actions which will define the watershed strategy for the Tualatin basin and could change the implementation mechanism for the Basin. Within 9 months the update to the TMDLs and review of existing plans will be completed.

A compliance order is needed to provide an enforceable implementation mechanism as required by federal law, administrative rule and the basin approach established by the TMDLs.

1. Federal Law (40 CFR § 122.4) prohibits issuing any permit for actions that could influence parameters within a waterbody listed on the States §303(d)(1) list unless a TMDL is completed, a reserve allocation exists, and that a implementation can be assured.
2. State administrative rules (OAR 340-41-026(c)) applicable to all basins states that no new or increased discharged load shall be granted if the stream is classified as being water quality limited unless a TMDL is completed, a reserve allocation available, and a compliance plan in place under which enforcement action can be taken.
3. Basin specific rules developed to implement the Tualatin Basin TMDLS (OAR 340-41-470) state that no actions may occur which would influence phosphate or ammonia without the approval of the EQC.

The Designated Management Agencies believe a compliance order provides the approval of the EQC required in OAR §340-41-470, and complies with both the state requirements for all basins and the federal requirements.

**Background:**

On April 4, 1998 the Department requested an extension of the existing EQC order until July 1999. The associated report (Attachment B) describes the budget problems that lead to the requested extension. The EQC elected to extend the current compliance order until their next meeting on June 11, 1998. The Department was directed to develop a schedule of activities conducted by the Department or DMAs that would occur within an updated or extended compliance order.

<p style="text-align: center;"><u>TBPAC Recommendations include:</u></p> <p>DMA compliance is defined as implementing a water quality management plan designed to meet load allocations and achieving that implementation under an established schedule. This recommendation is based on the following assumptions:</p> <ul style="list-style-type: none"><li>the load allocations are achievable</li><li>load allocations meet water quality standards</li><li>the plan is designed to meet water quality standards</li><li>The load allocations are the translations between water quality standards and design of BMPs</li><li>DEQ will assure all of the assumptions listed above</li></ul>
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The revised order includes tasks that cover the broad guidance presented by the TBPAC (Attachment C). The TBPAC recommendations reflect in part the recommendations of the Tualatin Basin Technical Advisory Committee (TBTAC) (Attachment D). The revised order will also refer to the ongoing activities extended from the previous compliance order. The DMAs have documented in letters to the EQC their support for the extension and continued implementation of ongoing activities identified revised order (attachment E).

The revised order is derived from a schedule of events illustrated in the attached figure. These activities include the Unified Sewerage Agencies (USA) update of their Surface Water Management (SWM) Plan, the scheduled review of the Senate Bill 1010 plan, the completion of the Department of Forestry's review of best management practices, and the time for the National Marine Fisheries Service (NMFS) to decide the status of the Upper Willamette River steelhead salmon and spring chinook. The compliance schedule integrates these activities into the updates of basin management plans. The revised order will not require submittal of actions that the Department does not have direct authority over or do not directly influence the TMDLs. These actions include the development of the USA SWM plan, the SB1010, and the review of ODF management practices. The schedule does integrate these activities into the basin approach for TMDLs

The schedule is divided into five (5) related sections:

1. hire staff and train staff,
2. develop waste water waste load allocations,
3. update existing and develop new TMDLs and allocations,
4. update existing basin strategy, and
5. continued implementation of ongoing activities.

These categories are discussed below and include activities conducted by both the DEQ and the DMAs to update and comply with the TMDLs.

1. **Hire Staff and train staff:** The Department and USA have completed interviews, selected a candidate, and made an offer for the Tualatin Position. The DEQ provided a draft Contract and work plan to USA, USA has reviewed the contract, and DEQ is reviewing the proposed modifications. The workplan and funding will have to be reviewed in the future. Once staff is hired the schedule will be reviewed and a detailed workplan developed.

2. **Waste Water Allocations:** As part of the watershed efforts, the USA permits have all been put on the same schedule. The USA and DEQ are starting the process for renewing these permits. The permits will need to incorporate updates to the ammonia and phosphorus TMDL, temperature management plans, and mixing zone issues. The schedule assures the public process for the permits and TMDLs occur coincidentally. The permit issues should be identified prior to the NMFS listing decision and provide assurance that the conditions in the permit meet any concerns of the fisheries agencies based on the listing decision.
3. **Development / refinement of TMDLs:** This sections describes the actions and time frame for updating the TMDLs and development of additional TMDLs for parameters included on the §303(d)(1) list. The development of the TMDLs is linked to activities in the update to the basin strategy. This linkage is made to implement the recommendations of the TBPAC. The TBPAC recommended that the TMDLs provide guidance to the DMAs for developing management plans and assurance of achievement of water quality standards. Strategies for making this linkage are critically important to the DMAs development of management plans. Several concepts on how to do this where presented at the April 3, 1998 EQC meeting by Dr. J.D. Smith. The schedule allows the DMAs develop and evaluate various strategies. Additionally, the update to TMDLs will required the development of bacteria management plans as required by OAR 340-41-485(e)(D) and temperature management plans for as required by OAR 340-41-485(b)(A). The temperature management plans are linked to both the basin strategy and the NPDES permits.
4. **Update Basin Strategy:** As the result of the TMDLs a watershed strategy exists for the Tualatin Basin. This strategy is reflected in existing permits, and active DMA group that provides for agency interactions, coordinated monitoring, and annual reports. The basin strategy does need to be updated to reflect expanded pollution parameters, changes in state and Federal guidance for TMDLs, and updates to plans develop as part of the existing TMDLS.

The updated strategy will include review and modification to the municipal stormwater permits as they are related to TMDLs. Existing state standards also require the development of bacteria and temperature management plans. The Department and the DMAs will review and evaluate alternative strategies the issuance and scheduling of both stormwater and general permit in the basin.

The Department will provide specific guidance for implementing stormwater related TMDLs in urban basins. The Department had been working with the City of Portland and the USA to evaluate the Fanno Creek sub-basin plans. This review would assure that these plans conformed to the existing guidance for TMDLs developed by the Department. The intent of this review was to develop specific guidance for implementing TMDLs in urbanized basins. This guidance would then allow the urban DMAs to provide the DEQ which subbasin plans that meet the requirements for TMDLs. Completion of this review is linked to update of the stormwater permits, the USA SWM plan, completion of the TMDLs, and the development of linkages between BMP implementation and load allocations.

The TBPAC recommended the use of surrogate measures for TMDL parameters where appropriate. Some of the DMAs suggested that suspended solids (sediment) be used as a surrogate stormwater control parameter for the existing basin phosphorus stormwater control requirements. The evaluation of TSS as a surrogate allows a review of existing stormwater management practices, review of changes to title three substantial compliance resource protection as proposed by METRO which includes the Tualatin Basin, and the demonstration of equivalent level of control. This evaluation is linked to the completion of the phosphorus TMLD and inclusion of sub-basin plans.

The schedule for the SB 1010 plan revisions is linked to updates of the Tualatin TMDL. Evaluation of existing plans agricultural and urban management plans are linked in the schedule. These plans are also linked in the schedule to updates of the NPDES permits for the USA wastewater plants and the NMFS listing decisions.

The Oregon Department of Forestry and DEQ have recently signed a Memorandum of Understanding which establishes the processes by which the Oregon Forest Practices Act will be the mechanism for TMDL compliance on forest lands in Oregon. An advisory committee appointed by the Oregon Board of Forestry is currently reviewing the Oregon Forest Practices Act as related to the "Oregon Plan for Salmon and Watersheds and agreement between the State of Oregon and the NMFS. This committee is scheduled to make recommendations to the Board of Forestry in the fall of 1998. The Board of Forestry will decide by June of 1999 on what rules changes, if any, to make. This review, and the updates to the TMDLs and basin plan will form the basis for determining if basin specific implementation requirements are needed in the Tualatin Basin.

The conclusion of the various evaluation efforts are linked in the schedule. Following the program reviews the DMAs will be required to determine where updates to the existing plans are needed and then submit updated strategic plans for implementing the TMDL requirements.

5. **Ongoing Activities** The DMAs will continue to implement the ongoing activities described in the January 1997 compliance order. These tasks included monitoring, public awareness / education, site specific problem control, implementation of BMPs, and riparian management, and annual reports.

**Alternatives and Evaluation:**

The development of the schedule was in response to an EQC directive. There were two options, to develop a schedule or not. The Department elected to follow the EQC directive.

**Summary of Public Input:**

The EQC elected to have the Department develop a schedule following the Department's presentation, presentation by members of the TBPAC, and citizens regarding the proposed extension of the compliance schedule. The Department communicated with members of the TBPAC and the DMAs on the proposed schedule. The Department attended a DMA meeting to review the schedule and anticipated requirements of the updated Order. No hearings were held.

**Recommendation:**

The Department recommends the EQC approve the updated Compliance Order.

The extended compliance order provides the DMAs the required assurance of compliance with state administrative rules and federal rules. The compliance order allows for a timely and integrated update of the basin strategy to respond to updates of existing TMDLs, expansion of the TMDLs in response to §303(d)(1) listings, and in response to potential listing under the Endangered Species Act.

**Attachments:**

- Attachment A: Tualatin Sub-basin Nonpoint Source Management Order for DMAs (January 1997).
- Attachment B: Agenda Item F, 4/3/1998
- Attachment C: TBPAC report (available on request)
- Attachment D: TBTAC Report (available on request)
- Attachment E: DMA letters of support
- Attachment F: Revised Tualatin Basin DMA Implementation and Compliance Order dated June 11-12, 1998

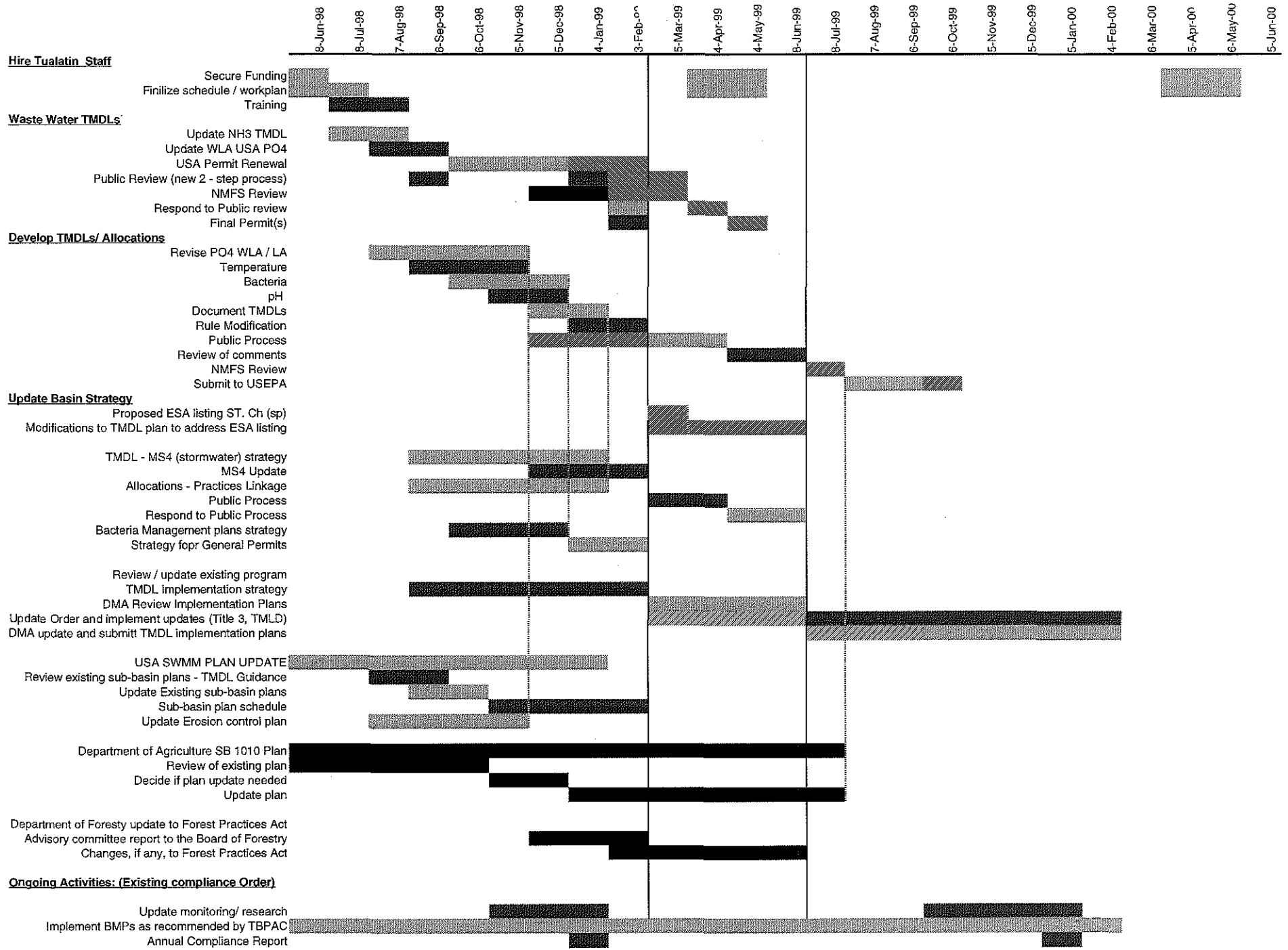
**Approved:**

Section Robert Baumgartner  
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Agenda Item E  
January 9-10, 1997

EQC Meeting

Tualatin Sub-basin Nonpoint Source Management  
Implementation/Compliance Schedule and Order  
for Designated Management Agencies (DMAs)

Designated Management Agencies:

Unified Sewerage Agency of Washington County (representing  
participating cities)

Clackamas County & River Grove	Multnomah County
Washington County	City of Portland
City of Lake Oswego	City of West Linn
Oregon Department of Agriculture	Oregon Department of Forestry

Purpose:

Because of chronic violations of water quality standards for dissolved oxygen and pH, Total Maximum Daily Loads (TMDL), Waste Load Allocations and Load Allocations for nutrients in the Tualatin River were established in 1988 as required under 40 CFR 130.7. Oregon Administrative Rules (OAR 340-41-470) were amended "In order to improve the water quality within the Tualatin River subbasin to meet the existing water quality standard for dissolved oxygen, and the 15 ug/l chlorophyll a action level..." The rule revisions established compliance concentrations at several points along the main stem of the river and at the mouths of major tributaries. The same rule required development of plans to control nonpoint source (NPS) pollution from urban runoff, agricultural, and forest lands to help achieve the compliance concentrations by the compliance date of June 30, 1993. While considerable progress in the implementation of those plans has been made, full compliance with the phosphorus TMDL will not be achieved by that date. The purpose of the following compliance schedule is to help insure continued implementation of ongoing efforts to achieve the goal: "improve the water quality within the Tualatin River subbasin."

The compliance schedule lists tasks and responsibilities of the various Designated Management Agencies (DMAs) in controlling nonpoint source water pollution in the Tualatin River Watershed between the dates of June 30, 1993 and December 31, 1995. The intent is to improve water quality and achieve all applicable standards and limits through the implementation of a comprehensive, watershed-wide program. Another goal is to promote continuation of the communication that has evolved among jurisdictions involved in pollution control in the watershed. All of the management agencies and the Department will continue to work cooperatively to implement these NPS control efforts.

It is intended that, to the extent possible, neighborhood groups, friends groups, interest groups, and other citizen groups be involved in the implementation of this schedule. This is particularly important in the areas of monitoring, public awareness and education, and review of rules, ordinances, and reports/data analysis. All plans, inventories, products, and performance requested in the compliance schedule are subject to Department approval.

TASKS FOR ALL DMAS

<u>DATE</u>	<u>TASK</u>
	#1 MONITORING
Ongoing	a) Continue existing monitoring programs and plans; submit data to DEQ quarterly.
January of each year	b) DEQ and DMAs review & evaluate existing monitoring data, Identify gaps and needs. Include monitoring by DMAs and evaluation/verification of models. Set minimum monitoring and reporting requirements through December 1995.
April of each year	c) Develop, in cooperation with DEQ, a single, coordinated, watershed-wide monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, mechanisms of reporting results to DEQ, quality assurance mechanisms. Sites should include the mouth of each of the tributaries and each of the specified points along the mainstem of the Tualatin River listed in OAR 340-41-470. Also re-evaluate and modify monitoring plans as needed within 90 days of any revisions to load allocations.
5/94-12/95	d) Implement the revised monitoring plan.



#2 PUBLIC AWARENESS/EDUCATION

- ongoing a) Continue ongoing public involvement and education programs.
- 12/31/93 b) Revise and submit to DEQ a detailed public awareness plan. The plan should reflect a coordinated, basin-wide effort that includes specific activities of all DMAs to be implemented by 12/95.
- 1/94-12/95 c) Implement the public awareness plan according to the agreed upon schedule.

#3 SITE SPECIFIC PROBLEMS

- 07/30/93 a) A number of inventories have been conducted in the Tualatin watershed using aerial evaluation, streamwalk, or other techniques. Insure that written documentation has been submitted to DEQ. Include such items as streambank erosion sites, pipes of unknown origin discharging to stream, removal of vegetation, illegal dump sites, animal waste entering stream, failing septic systems, etc. Identify location and nature of problem and rank all problems identified.
- 09/30/93 b) DMAs and DEQ coordinate on a watershed-wide basis and identify all areas of the basin that have not yet been inventoried. DMAs and DEQ cooperate to determine whether there is a need for other kinds of inventories such as accurate inventories and pollution potential assessment for specific kinds of operations (e.g. in-ground nurseries or lawn chemical application). Establish a schedule which will lead to completion of needed inventories and prioritization of all stream segments by 12/95.
- 06/30/94 c) Visit all high ranking sites identified in 3a above and correct the identified problem, or establish a firm schedule that will either result in correction of the problem by 12/95, or identify the problem as part of a long term comprehensive watershed restoration program by 12/95.

It is recognized that additional ordinances and procedures may be needed dependant upon the nature of the problems identified and the actions necessary for their correction. (See task #6.)

06/30/95

e) In coordination with DEQ, develop recommended course of action and schedules for other priority sites identified in 3a and 3b above. Submit to DEQ a schedule which identifies and ranks all problems and identifies dates by which corrective actions will take place.

#4 IMPLEMENTATION OF MANAGEMENT PRACTICES  
(Best Management Practices/Systems)

Ongoing

a) Continue efforts to insure widespread adoption and implementation of management measures and improved management of riparian areas. Include such management measures as:

Measures for Agriculture

erosion and sediment control  
facility wastewater & runoff management  
nutrient & pesticide management  
wetland/riparian protection  
irrigation water management

Measures for Forestry

streamside management areas  
road construction/maintenance management  
timber harvest practices  
revegetation of disturbed areas  
wetland/riparian protection

Measures for Urban Areas

new development management  
erosion and sediment control  
road and street runoff systems  
lawn/landscape chemical management  
wetland/riparian protection  
On-site disposal systems

Examples of appropriate practices that should be in place are included in (but are not limited to) the following documents:

Forest Practices Rules and  
Implementation Guidelines  
SCS Technical Guidance Manual  
Surface Water Quality Facilities  
Technical Guidance Handbook  
EPA Coastal Nonpoint Pollution Control  
Program Guidance

January of  
each year

b) As part of annual reporting (Task 7 below) report on progress toward getting area-wide adoption of management practices and riparian area management. To the extent possible, estimate percent coverage. For example: Out of total number of units harvested during the year, how many received on-site inspection and of those, what percent were not implementing all needed practices?

#5 RIPARIAN AREA MANAGEMENT

06/30/94

a) Because of their filtering, shading, and buffering functions, healthy riparian areas are important components of water quality protection. Based on existing watershed inventories (task 3 above), identify and prioritize opportunities for enhancement and restoration of riparian areas. Develop management or restoration strategies for high priority riparian areas. Establish a schedule and begin implementation of efforts in priority areas. (This task should be completed in cooperation with landowners, local government, neighborhood groups, fish and wildlife interests, friends groups, etc.)

06/30/95

b) Inventory, prioritize, and establish target schedules for the management of riparian areas in the rest of the watershed.

#6 RULES, ORDINANCES and GUIDANCE

Ongoing

a) Continue erosion control programs, plans, and enforcement activities.

09/30/93

b) Complete current efforts to review erosion control programs for development activities. Make recommendations on any necessary revisions to relevant DEQ rules or local ordinances. Report recommendations to DEQ. Make recommendations on needed changes to Erosion Control Plans Technical Guidance Handbook. Revise guidance as necessary.

12/31/93

c) Investigate authorities/needs for local control of erosion and runoff from non-development activities throughout the watershed. Make recommendations on any necessary revisions to DEQ rules and/or local ordinances related to erosion, exemptions from on-site stormwater treatment, road maintenance, buffer requirements, or other relevant requirements. Report recommendations to DEQ.

05/01/94

d) Initiate a formal process to adopt new or refine existing ordinances as necessary according to findings of 4(b) and 4(c).

#7 ANNUAL REPORTING

January of  
each year

a) Submit to DEQ a status report on implementation activities. Specifically address public awareness/education (task 2), resolution of site specific problems (task 3), implementation of management practices (task 4), revision of rules, ordinances and guidance (task 6); and any other responsibilities identified under Tasks for Individual Agencies below.

#8 TUALATIN RIVER STATUS REPORT

April of  
each year

Cooperate with DEQ in the production of an annual status report for the Tualatin River Watershed. The report will incorporate items from the DMA annual reports (task 7(a) above) and will cover the compliance status of the river and it's tributaries, and the accomplishments of the DMAs during the preceding year.

ADDITIONAL TASKS FOR INDIVIDUAL AGENCIES

Unified Sewerage Agency of Washington County (representing participating cities)

<u>DATE</u>	<u>TASK</u>
	#9 JACKSON BOTTOM WETLAND
09/01/93	a) Submit, for DEQ approval, a comprehensive Waste Water Reuse Implementation Plan for all USA's existing and proposed future reuse projects, as required by OAR 340-55 (including the Jackson Bottom Wetland and new lands acquired on the west side of Hwy 219 or other lands acquired for disposal of effluent from the Hillsboro West STP).
10/30/93	b) In consultation with DEQ, review all available data related to pollution, including phosphorus, entering the Tualatin River from or through the Jackson Bottom wetland. Include both surface water and groundwater characterization and potential for contamination of surface water or groundwater from irrigation and leakage from the large effluent retention pond (and other ponds) in Jackson Bottom. Provide all data, data analysis, and interpretation to the Department. Determine any additional data needs and produce a plan and schedule, acceptable to the Department, to gather such information.
01/01/94	c) Achieve agronomic irrigation rates, and begin operating in compliance with the DEQ approved wastewater reuse implementation plan for Jackson Bottom (9a above) consistent with OAR Chapter 340, Division 55 and NPDES permits.
12/31/94	d) Submit to DEQ any additional data and data analysis produced as a result of 9(b) above and a report, which reflects public review and comment, that interprets the collected data.
03/31/95	e) Submit a plan, acceptable to the Department, to reduce or control pollution entering the Tualatin River from or through the Jackson Bottom wetland, under USA management, as identified in 9(b) and 9(d) above.

#10 EXEMPTIONS FROM ON-SITE STORMWATER TREATMENT

08/31/93

a) In cooperation with DEQ and participating cities, develop a mechanism of tracking and reporting, on a quarterly basis, all development that is granted exemption from the on-site stormwater treatment requirements. The report should identify each development that is granted exemption, identify the reason for the exemption, demonstrate that a program is in place to provide equivalent and timely off-site treatment. Quarterly reports due in October, January, April, July.

02/28/94

b) In coordination with DEQ and using data produced by the first quarterly report (10a. above), assess the current situation with regard to exemptions from on-site treatment, in-lieu fee collection, and provisions for off-site treatment. Make recommendations for any necessary changes to state or local regulations to provide improved assurance that newly generated urban runoff receives adequate treatment. Begin a formal process to adopt any needed changes.

Oregon Department of Agriculture

<u>DATE</u>	<u>TASK</u>
	#11 CAFO

Ongoing

a) Perform follow-up inspections and respond to complaints on permitted CAFOs and, as needed, develop enforceable schedules that will result in compliance with permit conditions. As part of annual report to DEQ (task 7 above) identify all permitted CAFOs and their compliance status, identify all actions taken or to be taken.

12/31/94

b) Develop and begin implementation of a program to reduce pollution originating from animal operations that are not permitted under the existing CAFO program. Report status in annual report; include estimate of number of operations in the basin and percentage of those that need improved practices.

#12 NURSERIES

Ongoing

a) Perform follow-up inspections and respond to complaints on containerized nurseries, during irrigation season, to determine compliance with container nursery requirements. As part of annual report to DEQ (task 7 above), identify all container nurseries in the basin and their compliance status.

#13 ASSURANCE OF IMPLEMENTATION

12/31/94

a) Coordinate with local agencies (for example SWCDs, irrigation districts, municipalities, etc.) and DEQ to develop mechanisms to insure necessary practices are applied. Implement program through enabling legislation or other state or local authorities.

Clackamas County  
Multnomah County  
Washington County  
Oregon Department of Agriculture  
Oregon Department of Forestry

DATE

TASK

#14 COUNTY ROAD DITCHES

01/01/94

Working cooperatively with DEQ, ODF, and ODA, counties develop and begin implementation of a program to, on a priority basis, maintain county roadside ditches in such a way to minimize transport of sediment, nutrients, and other pollutants to waters of the state. Include provisions to establish and maintain vegetative cover on non-road surface county road right-of-way between road ditches and adjoining land uses. Where possible, convert ditches to vegetated swales and direct road ditch discharges into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) prior to entering waters of the state. Submit an acceptable report to DEQ identifying the program elements.

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TUALATIN RIVER BASIN STATUS REPORT - 1993

In 1988, the Environmental Quality Commission (EQC) promulgated rules to limit discharges of nutrients to the Tualatin River in accordance with Section 303 of the Clean Water Act and 40 CFR, part 130.7. This action amended Oregon Administrative Rules (OAR) 340-41-470 by establishing in-stream criteria for both total phosphorus and ammonia-nitrogen at various locations on the main stem of the Tualatin River and at the mouths of certain tributaries. The in-stream criteria were set at levels necessary to meet water quality standards for dissolved oxygen, pH, and the action level for nuisance algae. Waste load allocations (WLAs) were assigned to point sources and load allocations (LAs) were assigned to nonpoint sources as necessary to achieve the in-stream criteria.

Attainment of the ammonia-nitrogen criteria is primarily a point source issue requiring upgrading of the sewage treatment facilities operated by Unified Sewerage Agency of Washington County (USA). The Department anticipates that the ammonia-nitrogen criteria will be achieved in 1994.

Meeting the total phosphorus criteria will require reductions by both point and nonpoint sources. Substantial progress towards reducing phosphorus levels has been realized particularly by the point source dischargers. Further discussion on water quality improvements occurs later in this report.

This report is required by Task #8 of the Tualatin Sub-basin Nonpoint Source Management Implementation/Compliance Schedule and Order for Designated Management Agencies (hereinafter referred to as Order) which was established by the EQC on July 21, 1994. The primary intent of the Order is to improve water quality and to achieve all applicable water quality standards and limits. A second goal is to promote communication among the jurisdictions in the basin. A third major consideration is to encourage and promote the involvement of interest groups of all kinds in the implementation of the Order.

The Order requires specific tasks and responsibilities of a number of governmental entities. The Designated Management Agencies (DMAs) include USA, Clackamas County, Multnomah County, Washington County, City of Portland, City of Lake Oswego, City of West Linn, the Oregon Department of Agriculture, and the Oregon Department of Forestry.

The specific tasks of the Order include: monitoring (task # 1); public awareness/education (task # 2); site specific problems (task # 3); implementation of management practices (task # 4); riparian area management (task # 5); rules, ordinances and guidance (task # 6); annual reporting (task # 7); status report of the basin (task # 8); the Jackson bottom wetland (task # 9); exemptions from on-



# 11); container nurseries (task # 12); assurance of implementation (task # 13); and county road ditches (task # 14).

The DMAs in conjunction with the Department of Environmental Quality are required to meet the tasks according to a time schedule in the Order terminating on December 31, 1995.

Since the Order refers exclusively to Nonpoint sources, this report will also confine itself to nonpoint source issues and the requirements or tasks required in the Order.

#### MONITORING:

Monitoring of the Tualatin River and its tributaries is an ongoing project of the DMAs and DEQ. The monitoring locations and the nature of the data collected are being reviewed by the DMAs and DEQ. Monitoring includes ambient studies to assess changes in the overall water quality of the Tualatin River and time and site specific studies to determine the effectiveness of specific water quality control projects and management practices designed and installed to mitigate water quality problems. Arrangements are being made to make all of the data being collected in the Tualatin basin available to the DMAs and DEQ through the Environmental Protection Agency data base, STORET. The basic monitoring plan will be reviewed annually and possibly revised, if necessary, to reflect new information and to accommodate changing circumstances.

#### DATA REVIEW:

Mike Wiltsey with the DEQ Northwest Region has reviewed key water quality parameters from data gathered by USA and the Oregon Department of Agriculture in the main stem Tualatin River and the lower reaches of Burriss and Christensen creeks. This review is not inclusive but is meant to highlight water quality relative to the TMDLs, water quality standards/criteria, and Best Management Practices (BMPs).

The WQHydro software package by WQHydro Consulting, Portland, Oregon, was used for performing the review.

In very general terms the overall water quality in Tualatin River at the lower reaches does seem to be improving. Using total phosphorus data collected by USA, step trend tests using the Seasonal Wilcoxon-Mann Whitney test were calculated for four main stem Tualatin River sites. The before/after time periods (May through October) used in the step trend test were 1987 to 1990 and 1991 to 1993, respectively. Where more than one monthly sample was collected, data were parsed to one measurement by selecting the value closest to the middle of

REQUEST FOR EQC ACTION
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Meeting Date: 4/3/1998  
 Agenda Item: F  
 Division: NWR  
 Section: WQ

**SUBJECT:** Extension of the Tualatin Sub-basin Nonpoint Source Management Implementation / Compliance Schedule and Order.

**PURPOSE:** The purpose is to provide a third extension of the Tualatin Sub-basin Nonpoint Source Management Implementation / Compliance Schedule and Order. The proposed extension is for 15 months until July 1999.

**ACTION REQUESTED:**

- |                                                               |                  |
|---------------------------------------------------------------|------------------|
| <input type="checkbox"/> Work Session Discussion              |                  |
| <input type="checkbox"/> General Program Background           |                  |
| <input type="checkbox"/> Potential Strategy, Policy, or Rules |                  |
| <input type="checkbox"/> Agenda Item __ for Current Meeting   |                  |
| <input type="checkbox"/> Other: (specify)                     |                  |
| <br>                                                          |                  |
| <input type="checkbox"/> Authorize Rulemaking Hearing         |                  |
| <input type="checkbox"/> Adopt Rules                          |                  |
| Proposed Rules                                                | Attachment _____ |
| Rulemaking Statements                                         | Attachment _____ |
| Fiscal and Economic Impact Statement                          | Attachment _____ |
| Public Notice                                                 | Attachment _____ |
| <br>                                                          |                  |
| <input type="checkbox"/> Issue a Contested Case Order         |                  |
| <input type="checkbox"/> Approve a Stipulated Order           |                  |
| <input type="checkbox"/> Enter an Order                       |                  |
| <br>                                                          |                  |
| Proposed Order                                                | Attachment _____ |
| <input type="checkbox"/> Approve Department Recommendation    |                  |
| <input type="checkbox"/> Variance Request                     | Attachment _____ |
| <input type="checkbox"/> Exception to Rule                    | Attachment _____ |
| <input type="checkbox"/> Informational Report                 | Attachment _____ |
| <input type="checkbox"/> Other: (specify)                     | Attachment _____ |

**DESCRIPTION OF REQUESTED ACTION:**

Meeting Date: April 4, 1998

Agenda Item: F

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The EQC compliance order for the completion of nonpoint source management plans in the Tualatin Basin was adopted on July 23, 1993 to ensure continued implementation of ongoing pollution control efforts designed to achieve the phosphorus total maximum daily load (TMDL) in the Tualatin Basin. The original order had an expiration date of December 31, 1995. On November 17 1995, the EQC extended the compliance schedule for 15 months. On January 10, 1997 the EQC provided a second extension until May 1, 1998 to allow for a thorough review of the existing data and information for the Tualatin basin. This review is nearing completion. Due to budget cuts the Department is unable to complete this review. Consequently, the Department requests a third extension until July 1999.

**AUTHORITY/NEED FOR ACTION:**

- Required by Statute: \_\_\_\_\_ Attachment \_\_\_\_\_  
                                   Enactment Date: \_\_\_\_\_
- Statutory Authority: ORS 468B.020, 035, and 048 Attachment \_\_\_\_\_
- Pursuant to Rule: OAR 340-41-470(9) Attachment \_\_\_\_\_
- Pursuant to Federal Law/Rule: 40 CFR 130.6 and 130.7 Attachment \_\_\_\_\_
- Other: \_\_\_\_\_ Attachment \_\_\_\_\_

Time Constraints: (explain)

The current Tualatin Sub-basin Nonpoint Source management Implementation / Compliance Schedule and Order terminates May 1, 1998. Despite the pollution control efforts several segments and tributaries will exceed existing phosphorus TMDL criteria or exceed one or more water quality standards. Continued refinement of the TMDL and the corresponding implementation plan is required to achieve the existing TMDLs. Additionally, the TMDL efforts need to be modified and the implementation efforts modified to meet current state guidance.

The extension is needed to provide adequate time for the Department to obtain funding for staff, familiarize new staff with data and issues related to the Tualatin, refine the TMDL, and develop an updated compliance schedule and strategy.

**DEVELOPMENTAL BACKGROUND:**

- Advisory Committee Report/Recommendation Attachment \_\_\_\_\_
- Hearing Officer's Report/Recommendations Attachment \_\_\_\_\_
- Response to Testimony/Comments Attachment \_\_\_\_\_
- Prior EQC Agenda Items: (list) Attachment \_\_\_\_\_
- Other Related Reports/Rules/Statutes: Attachment \_\_\_\_\_

Meeting Date: April 4, 1998

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\_\_\_\_\_ Supplemental Background Information

Attachment \_\_\_\_\_

**REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:**

The regulated community believes the extension is necessary to prevent them from being out of compliance with the Order. The DMAs support extension of the Order.

**PROGRAM CONSIDERATIONS:**

The Department elected to not use available resources to complete the update of the Tualatin TMDL. The proposed extension is needed for the Department to obtain funding through receipts authority in order to complete this work. The Department has committed substantial time working with both technical and policy advisory committees. The proposed extension is also needed in order to implement the recommendations for updating the TMDLs and implementation strategies recommended by the advisory committees. Development and updates of the TMDLs is necessary to improve water quality in the basin and to work towards removing waterbodies from the §303(d) list. Changes to the current waste load allocations are to assure water quality standards continue to be achieved in the mainstem Tualatin.

**ALTERNATIVES CONSIDERED BY THE DEPARTMENT:**

1. Not to grant the extension.
2. Grant the proposed extension.
3. Develop and implement a new order.

**DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:**

The Department recommends option 2. The extension allows the Department time needed to update the TMDLs and develop new implementation strategies.

**CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:**

Meeting Date: April 4, 1998

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The decision to pursue receipts authority funding for further work updating the Tualatin TMDL and compliance plan is consistent with the Departments strategic plan.

**ISSUES FOR COMMISSION TO RESOLVE:**

1. Whether or not to grant the proposed extension.

**INTENDED FOLLOWUP ACTIONS:**

The Department will work with DMAs and other affected parties in the Basin to develop TMDLs and implementation schedules that implement the PAC recommendations. If the recommendations of the policy advisory committee are followed the process for review and updates to the TMDLs and implementation plans will be reviewed and updated in a coordinated manner in conjunction with permit renewals.

Approved:

Section: Robert Baumgartner

Division: Paul Mullane

Director: \_\_\_\_\_

Report Prepared By: Robert Baumgartner

Phone: 229-5323

Date Prepared: 3/3/98

(Author:Typist) RPB:RPB

(File Name/Number)

(Date Typed) 3/20/98

State of Oregon  
Department of Environmental Quality

Memorandum

Date: 4/2/98

**To:** Environmental Quality Commission  
**From:** Langdon Marsh, Director  
**Subject:** Agenda Item F, EQC Meeting April 4, 1998

**Statement of Purpose**

Request that the Commission extend the Tualatin Sub-basin Nonpoint Source Order (EQC Order) until July 1999.

**Background**

The EQC compliance order for the Tualatin Basin was adopted on July 23, 1993 to insure continue implementation of ongoing pollution control efforts designed to achieve the phosphorus TMDL in the Tualatin Basin. The original order has an expiration date of December 31, 1995. On November 17 1995, the EQC extended the compliance schedule for 15 months. On January 10, 1997 the EQC provided a second extension until May 1, 1998 to allow for a thorough review of the existing data and information for the Tualatin basin.

The Department has completed work with a technical advisory committee to assess water quality in the Tualatin Basin. A policy advisory committee was convened to provide recommendations for updating the Total Maximum Daily Loads (TMDLs) and implementation strategies. The policy committee has completed their tasks and their recommendations are currently in draft. The review is nearing completion. However, as a result of budget cuts the Department was unable to fulfill the commitments for updating the TMDLs and developing implementation strategies and agreements. The recommendations of the technical advisory committee are complete and policy advisory committees are nearly complete. However, implementation of many of the recommendations will be controversial. For example, the specific actions taken to update the TMDL, develop a basin approach to TMDLs, and refining implementation strategies will likely be controversial.

The proposed extension provides the time needed to accomplish several tasks. The Department will need adequate time to obtain funding for staff, to familiarize staff with the issues and information available for the Tualatin Basin, to update existing TMDLs, and to develop new TMDLs for parameters recently added to the §303(d) list.

Although the principle issue is whether to grant an extension of the compliance date there are several issues that are indirectly related to this action. These issues include how we phase subsequent phases of TMDLs and funding strategies for working on complex TMDLs.

The Tualatin TMDL developed in 1987 was envisioned as the first phase of a phased TMDL. It was expected that subsequent phases would be defined as more information became available and as experience was gained through implementation efforts. The EQC Order(s) have served to identify the expectations for implementation by the designated management agencies (DMAs) for defined time periods. It is unlikely that we can reasonably estimate the date for which all of the instream standards will be met in the Tualatin and its tributaries. It is likely the Department will need to review and update water quality management plans and TMDLs in the future. It is possible to identify activities that will occur over the next several years. As the compliance schedule is modified alternative strategies for insuring continued implementation of nonpoint source and urban runoff pollution controls will likely be evaluated by DEQ and the DMAs. For example, subsequent phasing of the TMDLs may be directly linked to permit cycles under the recommendations for a basin approach.

The Department has not been able to allocate staff to complete the TMDL review efforts in the Tualatin Basin for at least 18 months. Previous staff commitments in the Tualatin were re-assigned from the municipal permits, however the position was vacated and it was not filled due to budget constraints. The Department is proposing to use receipts authority to develop funding to complete the TMDL review and maintain a DEQ presence within the basin. Discussions are underway with the Unified Sewerage Agency but funds have not been secured at this time. These funds are essential for the Department to fulfill any commitment under a new compliance order or to finish the TMDL review.

The TMDL efforts in the Tualatin basin have resulted in significant improvement in water quality in the mainstem of the Tualatin River and several of the tributaries as measured by the Department's Oregon Water Quality Index (OWQI). The past acute dissolved oxygen standards violations and chronic ammonia toxicity violations in the mainstem have been virtually eliminated. The phosphorus concentrations have been dramatically reduced, and the peak algal growth levels have been reduced in the mainstem Tualatin. However, the TMDL objectives of 70 ug/l total phosphorus and achievement of the Chlorophyll action level of 15 ug/l have not been achieved.

Although the discharges from the wastewater treatment plants are meeting their wasteload allocations continued efforts are needed for pollution in control for the mainstem Tualatin. The expanded water quality monitoring in the Tualatin basin by the DMAs have identified water quality standards violations for dissolved oxygen, temperature, and bacteria in many of the tributaries to the Tualatin. Future pollution control efforts will need to focus more and more on nonpoint sources and urban runoff.

<i>Monitoring Site</i>	<i>Magnitude</i> <sup>1</sup>	<i>S.L.</i> <sup>2</sup>
<u>Tualatin R. at HWY 210 (Scholls)</u>	+34	99
<u>Tualatin R. at Boones Ferry Rd.</u>	+26	99
<u>Tualatin R. at Elsner Rd.</u>	+18	99
Elk Ck. at Hayhurst Rd. (Drain)	+12 <sup>3</sup>	95
South Umpqua R. at Melrose Rd.	+10	99
Umatilla R. at Yoakum	+10	80
<u>Tualatin R. at Rood Rd.</u>	+9	95
<u>Yamhill R. at Dayton</u>	+9	90
<u>Fanno Ck. at Bonita Rd.</u>	+7	95
Willamette R. at HWY 34 (Corvallis)	+7	95
Mary's R. at HWY 99W (Corvallis)	+6	95
North Fork John Day R. at Kimberly	+5	95
Willamette R. at Hawthorne Br.	+5	95
<u>Beaverton Ck. at Cornelius Pass Rd. (Orengo)</u>	+5	90
Willamette R. at HWY 20 (Albany)	+3	95
Clackamas R. at High Rocks	+3	80
John Day R. at Service Creek	+3	80
McKenzie R. at Coburg Rd.	+3	80
Malheur R. at HWY 20 (Vale)	+1	95

River sites monitored by DEQ showing significant improvement in water quality for the period 1986-1995

Notes: 1 - Magnitude of increase in general water quality represented by change in OWQI value during WY 1986-1995.

2 - Significance Level of Seasonal-Kendall trend analysis results.

3 - Stream site was not monitored over the full ten water year period.

The Tualatin Technical Advisory Committee (TAC) has completed a technical review of available scientific data for the Tualatin Basin. The recommendations of the (TAC) were used by the PAC to develop recommendations (DRAFT) to the Department for updating the Tualatin Basin TMDLs. These committees provide specific recommendations for refinements to the current ammonia and phosphorus TMDLs. The recommendations also include implementing a basin approach for TMDLs. In the recommended approach permits and water quality management plans, including agricultural management plans, are reviewed in a coordinated manner at least every five years, and in conjunction with permit cycles. The PAC recommended that the DMAs principle responsibility in the TMDL is to achieve load allocations that are developed to meet TMDL criteria which are established to meet water quality standard. To be effective the PAC observed that the load allocations need to be achievable, meet water quality standards, and provide a translation between the design of BMPs and achievement of standards. The water quality management plans can then be designed to meet the load allocations and water quality standards. The DMAs compliance with the TMDL would be determined by compliance with the water quality management plans.

The advisory committees provide both scientific and practical recommendations for refining and implementing the TMDLs for the Tualatin Basin. However, substantial work would need to be done by the Department to update the

TMDL criteria and allocations as recommended and establish the regulatory process to implement the recommendations. Extension of compliance schedule provides the time needed by the Department to complete the process for updating the Tualatin TMDL and to implement the recommendations of the advisory committees.

#### Authority of the Commission with Respect to the Issue

The ORS 468B.020 ORS 468B.035, and ORS 468B.048 provide authority for implementation of the Clean Water Act and the setting of water quality standards. ORS 183.310 to 183.550 provide authority to adopt, modify or repeal rules for the administration of water quality standards.

The Commission adopted administrative rules (OAR 340-41-470(9)) that established total maximum daily loads and implementation plans. The rule stated (OAR 340-41-470(9)(a)) that no activities should be allowed and no wastewater discharged to the Tualatin River or its tributaries without specific authorization of the Commission that cause the monthly median phosphorous to exceed identified concentrations. The monthly median phosphorus levels are not currently attained. The Order is seen as the implementation mechanism for Commission approval of pollution control strategies.

#### Alternatives and Evaluation

There are three alternatives that were considered;

- 1) Do not modify the compliance order. The DMAs do not support this alternative believing it would place them out of compliance and create the potential for litigation. No other mechanism currently exists for implementing the non point source or urban stormwater components of the TMDL. It is likely that the DMAs will continue with implementation even without the order.
- 2) Modify the compliance Order by specifying a new compliance date. This alternative would alleviate the DMAs concern and likely be the most simple solution. The DMAs have provided letters supporting this option and identifying their continued commitment to implementing existing strategies.
- 3) Amend or update the compliance order to include a schedule of activities that will occur. This alternative will also alleviate the DMAs concern. The amended order would identify current and futures activities for the period of the extension. The principle advantage is that the schedule of activities would be identified for the duration of the compliance period. This option is consistent with the advice of the Policy Advisory Committee to continue implementation while continuing to refine technical understanding within the basin.

Option two is recommended.

#### Summary of Public Input Opportunity

The DMAs have met routinely to discuss water quality related activities taking place in the Basin. The meetings are open to the public.

The Department has completed work with a Policy Advisory Committee for the Tualatin Review. The Policy Advisory Committee has provided several recommendations, currently in draft form, for the implementation of the TMDLs for the Tualatin.

No specific public comment was taken on the proposed extension.

#### Conclusions



Considerable progress has been made by the DMA in reducing pollution loads to the Tualatin Basin. The Department and the DMAs will continue to implement identified pollution control strategies.

Substantial modification to the current TMDLs is needed to implement the recommendations of the Policy Advisory Committee (DRAFT). The Department generally supports the recommendations of the PAC, but recognizes that substantial work remains to both convert the recommendations into specific allocations and into compliance schedules.

An extension will allow DEQ to pursue obtaining resources to hire staff using receipts authority, update TMDLs, and develop compliance schedules.

**Intended Future Actions**

The Department will work with DMAs and other affected parties in the basin to develop TMDLs and implementation schedules that implement the PAC recommendations.

**Department Recommendation**

It is recommended that the Commission accept this report and grant the proposed extension.

**Attachments**

Agenda Item E, January 10, 1997. Extension of the Tualatin Sub-basin Management Implementation / Compliance Schedule and Order (EQC Order), and the Compliance Schedule and Order.

**Reference Documents (available upon request)**

- DMAs letters of Recommendation
- Tualatin TAC report
- Tualatin PAC report DRAFT
- Memorandum Report, Tualatin PAC subcommittee, DRAFT
- Agenda Item E, Extension of Tualatin Order
- Tualatin Sub-Basin Nonpoint Source Management Implementation/Compliance Schedule and Order

Approved:

Section:

Robert Baumgartner

Division:

Neil Muldane

Report Prepared By: Robert Baumgartner

Phone: 229-5323

Date Prepared: 3/20/98

## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item E  
January 10, 1997, Meeting

**Title:**

Extension of the Tualatin Sub-basin Nonpoint Source Management Implementation/Compliance Schedule and Order (EQC Order)

**Summary:**

The EQC Order was adopted on July 23, 1993, to insure continued implementation of ongoing nonpoint source pollution control efforts to achieve compliance with the Tualatin Basin phosphorus TMDLs. The original expiration date of the EQC Order was December 31, 1995. On November 17, 1995, the Commission extended the compliance schedule in the EQC Order for fifteen months to allow for a broad review of the Tualatin TMDLs.

Over the past year accomplishments have been made in a number of areas, including the near completion of a waterbody assessment by the Department cooperatively with the Tualatin Basin Technical Advisory Committee (TBTAC). In spite of the accomplishments to date, the Tualatin TMDL review project will not be completed on schedule due to current budget shortfalls.

To help finish the TMDL review the Department will soon form a Tualatin Basin Policy Advisory Committee (TBPAC). The TBPAC will assess the information provided by the TBTAC and make recommendations to the Department on the refinement of the Tualatin Basin TMDL implementation strategies and schedules. The Tualatin Basin Designated Management Agencies are aware of the limited resources at DEQ and have agreed to pool resources to hire a consultant to conduct logistics, facilitate and expedite the policy committee. By this action, we project the TMDL review will be completed by May 1, 1998.

The Tualatin Basin DMAs want assurance that future actions required of them by the TMDL are based on the Department's assessment of scientific and policy input from advisory committees. The extension of the EQC Order will provide enough time for the Department to complete a thorough review of the scientific information with the limited staff resources now available to work on the project. Future implementation strategies and compliance schedules will be based on review of the science. The extension will also prevent the DMAs and the Department from being out of compliance with the Order.

**Department Recommendation:**

The Department recommends that the Commission grant a second extension to the compliance schedule in the EQC Order until May 1, 1998.

  
Report Author

  
Division Administrator

Director

State of Oregon  
Department of Environmental Quality

Memorandum

Date: December 3, 1996

To: Environmental Quality Commission  
From: Langdon Marsh, Director  
Subject: Agenda Item E, January 10, EQC Meeting

Statement of Purpose

Request that the Commission grant an additional extension of the Tualatin Sub-basin Nonpoint Source Order (EQC Order) to allow for completion of review of the Tualatin Basin Total Maximum Daily Loads (TMDLs) implementation strategies and schedules.

The EQC Order was adopted on July 23, 1993, to insure continued implementation of ongoing nonpoint source pollution control efforts to achieve compliance with the Tualatin Basin phosphorus TMDLs. The original expiration date of the EQC Order was December 31, 1995.

On November 17, 1995, the Commission extended the compliance schedule in the EQC Order for fifteen months to allow for a broad review of the Tualatin Basin TMDLs. Over the past year accomplishments have been made in a number of areas, including the near completion of a waterbody assessment that describes the current understanding of water quality in the basin. The assessment has been developed through a review of existing information with the Tualatin Basin Technical Advisory Committee (TBTAC).

In spite of the accomplishments to date, the Tualatin TMDL review project will not be completed on schedule due to current budget shortfalls in the Department's water program. Because of these shortfalls, the Department has had to reassign staff resources originally committed to TMDLs to program areas which are funded. This shift of staff to funded projects will be continued at least through the end of the biennium.

To help finish the TMDL review the Department will form a Tualatin Basin Policy Advisory Committee (TBPAC). The TBPAC will assess the information provided by the TBTAC and make recommendations to the Department on refinement of the Tualatin Basin TMDL implementation strategies and schedules. The Tualatin Basin Designated Management Agencies (DMAs) are aware of the limited resources within the Department's water program for TMDLs, and have agreed to pool resources to hire a consultant to facilitate and expedite the policy committee. By this action, we project the TMDL review will be completed by May 1, 1998.

The Tualatin Basin DMAs want assurance that future actions required of them by the TMDL are based on the Department's assessment of scientific and policy input from advisory committees.

Memo To: Environmental Quality Commission  
Agenda Item E, January 10, EQC Meeting Page 2

The extension of the EQC Order will provide enough time for the Department's limited staff resources to complete a thorough review of scientific information and to work with the TBPAC to identify implementation strategies that will be based on review of the science. The extension will also prevent the DMAs and the Department from being out of compliance with the EQC Order.

Background

In 1988, the EQC promulgated rules to limit discharges of ammonia and total phosphorus to the Tualatin River in accordance with Section 303 of the Clean Water Act and 40 CFR, part 130.7. This action amended Oregon Administrative Rules (OAR) 340-41-470 by establishing target concentrations for both total phosphorus and ammonia-nitrogen at various locations on the main stem of the Tualatin River and at the mouths of certain tributaries.

The EQC Order for the DMAs was adopted on July 23, 1993. The EQC requires specific tasks and responsibilities of a number of government entities. The DMAs include Unified Sewerage Agency, Clackamas County, Multnomah County, Washington County, City of Portland, City of Lake Oswego, City of West Linn, the Oregon Department of Agriculture, and the Oregon Department of Forestry.

The compliance schedule in the Order lists tasks and responsibilities of the DMAs in controlling nonpoint source water pollution in the Tualatin River Watershed. The original intent of the Order was to improve water quality and to achieve all applicable water quality standards by December 31, 1995. A second goal is to promote ongoing communication among the jurisdictions in the basin. A third major consideration is to encourage and promote the involvement of interest groups of all kinds in the implementation of the Order.

Efforts by the DMAs in accordance with the EQC Order and the TMDL have resulted in significant improvement in the general health of the Tualatin River. The river routinely violated the instream dissolved oxygen standard prior to the TMDL water quality improvement strategies being implemented. The ammonia TMDL has been achieved and the river now meets the dissolved oxygen standard most of the time. There has been a substantial reduction in instream total phosphorus which has resulted in lower algal growth in the river, although the TMDL goal has not been achieved. Available data suggest the TMDL algal growth goal may not be achievable.

The Department believes that a complete review of the data generated by the TMDL process will better enable us to refine our implementation strategies for achieving compliance.

Authority of the Commission with Respect to the Issue

Memo To: Environmental Quality Commission  
Agenda Item E, January 10, EQC Meeting Page 3

The 1988 rules promulgated by the EQC amended Oregon Administrative Rules (OAR) 340-41-470 by establishing instream criteria (TMDLs) for both total phosphorus and ammonia-nitrogen at various locations on the main stem of the Tualatin River and at the mouths of certain tributaries.

Establishment of TMDLs is in accordance with Section 303 of the Clean Water Act and 40 CFR, part 130.7 and OAR 340-41-026(4)(d). ORS 468B.020, ORS 468B.035, and ORS 468B.048 provide authority for implementation of the Clean Water Act and the setting of water quality standards. ORS 183.310 to 183.550 provide authority to adopt, modify or repeal rules for the administration of water quality standards.

Alternatives and Evaluation

There are two options:

- 1) Do not extend the deadline
- 2) Extend the deadline

The TMDL review is now close to fifty percent complete. A second extension of the existing Tualatin Basin EQC Order will provide time for the completion of the review. Absent the extension, the Department would need to make decisions on the future course of TMDL implementation without input from a policy committee or finish the review with the DMAs and the Department out of compliance with the EQC Order.

Summary of Public Input Opportunity

The DMAs meet routinely to discuss water quality activities taking place in the Tualatin Basin. The meetings are open to public participation.

The TBTAC is close to completing a waterbody assessment of the Tualatin Basin. The committee includes DMAs, university professors, private consultants and environmental group representatives. The meetings are open to the public.

The TBPAC will be made up of stakeholders in the Tualatin Basin. The DMAs met to develop a proposed list of committee members. The Department will contact representative stakeholders to request that they serve on the committee. The purpose of the TBPAC is to review technical information and recommendations from the TBTAC and use this information to recommend effective water quality regulations updates for the Tualatin River basin.

### Conclusions

- Considerable progress has been made by the DMAs in reducing nonpoint source pollution in the Tualatin River Watershed. The DMAs and the Department will continue implementing the tasks and responsibilities outlined in the EQC Order.
- The Department is conducting a scientific review of the Tualatin Basin TMDL with input from the DMAs and advisory committees.
- A thorough TMDL review will not be completed by the time the EQC Order expires. The DMAs want to assure future actions are based on the Department's assessment of scientific information and review of the TMDL.
- An extension of the existing EQC Order will allow for a comprehensive review of scientific information, preparation of a waterbody assessment and a policy review for the Tualatin Basin TMDL.

### Intended Future Actions

The Department intends to work with the DMAs and other affected parties in the basin to complete the scientific review of the Tualatin TMDLs. The Department will report back to the Commission on the results of the review prior to May 1, 1998.

### Department Recommendation

The Department recommends that the Commission grant a second extension to the compliance schedule in the EQC Order until May 1, 1998.

### Attachments

- A. Tualatin Sub-basin Nonpoint Source Management Implementation/Compliance Schedule and Order
- B. Department of Environmental Quality 1994 Tualatin River Basin Status Report
- C. Oregon Administrative Rules 340-41-470
- D. Agenda Item F, July 23, 1993, EQC Meeting - Report on the Tualatin River Watershed Nonpoint Source Management Implementation/Compliance Schedule and Order.

Memo To: Environmental Quality Commission  
Agenda Item E, January 10, EQC Meeting Page 5

Approved:

Section:

Robert P. Baumgardner

Division:

Tom Beaphare

Report Prepared By: Michael R. Wiltsey

Phone: 229-5325

Date Prepared: December 3, 1996

MRW:mrw

E:\WINWORD\EQC\EQC19.DOC

December 3, 1996

Tualatin Sub-basin Nonpoint Source Management  
Implementation/Compliance Schedule and Order  
for Designated Management Agencies (DMAs)

Designated Management Agencies:

Unified Sewerage Agency of Washington County (representing  
participating cities)

Clackamas County & River Grove

Washington County

City of Lake Oswego

Oregon Department of Agriculture

Multnomah County

City of Portland

City of West Linn

Oregon Department of Forestry

Purpose:

Because of chronic violations of water quality standards for dissolved oxygen and pH, Total Maximum Daily Loads (TMDL), Waste Load Allocations and Load Allocations for nutrients in the Tualatin River were established in 1988 as required under 40 CFR 130.7. Oregon Administrative Rules (OAR 340-41-470) were amended "In order to improve the water quality within the Tualatin River subbasin to meet the existing water quality standard for dissolved oxygen, and the 15 ug/l chlorophyll a action level..." The rule revisions established compliance concentrations at several points along the main stem of the river and at the mouths of major tributaries. The same rule required development of plans to control nonpoint source (NPS) pollution from urban runoff, agricultural, and forest lands to help achieve the compliance concentrations by the compliance date of June 30, 1993. While considerable progress in the implementation of those plans has been made, full compliance with the phosphorus TMDL will not be achieved by that date. The purpose of the following compliance schedule is to help insure continued implementation of ongoing efforts to achieve the goal: "improve the water quality within the Tualatin River subbasin."

The compliance schedule lists tasks and responsibilities of the various Designated Management Agencies (DMAs) in controlling nonpoint source water pollution in the Tualatin River Watershed between the dates of June 30, 1993 and December 31, 1995. The intent is to improve water quality and achieve all applicable standards and limits through the implementation of a comprehensive, watershed-wide program. Another goal is to promote continuation of the communication that has evolved among jurisdictions involved in pollution control in the watershed. All of the management agencies and the Department will continue



It is intended that, to the extent possible, neighborhood groups, friends groups, interest groups, and other citizen groups be involved in the implementation of this schedule. This is particularly important in the areas of monitoring, public awareness and education, and review of rules, ordinances, and reports/data analysis. All plans, inventories, products, and performance requested in the compliance schedule are subject to Department approval.

TASKS FOR ALL DMAs

<u>DATE</u>	<u>TASK</u>
	#1 MONITORING
Ongoing	a) Continue existing monitoring programs and plans; submit data to DEQ quarterly.
January of each year	b) DEQ and DMAs review & evaluate existing monitoring data, Identify gaps and needs. Include monitoring by DMAs and evaluation/verification of models. Set minimum monitoring and reporting requirements through December 1995.
April of each year	c) Develop, in cooperation with DEQ, a single, coordinated, watershed-wide monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, mechanisms of reporting results to DEQ, quality assurance mechanisms. Sites should include the mouth of each of the tributaries and each of the specified points along the mainstem of the Tualatin River listed in OAR 340-41-470. Also re-evaluate and modify monitoring plans as needed within 90 days of any revisions to load allocations.
5/94-12/95	d) Implement the revised monitoring plan.

#2 PUBLIC AWARENESS/EDUCATION

- ongoing a) Continue ongoing public involvement and education programs.
- 12/31/93 b) Revise and submit to DEQ a detailed public awareness plan. The plan should reflect a coordinated, basin-wide effort that includes specific activities of all DMAs to be implemented by 12/95.
- 1/94-12/95 c) Implement the public awareness plan according to the agreed upon schedule.

#3 SITE SPECIFIC PROBLEMS

- 07/30/93 a) A number of inventories have been conducted in the Tualatin watershed using aerial evaluation, streamwalk, or other techniques. Insure that written documentation has been submitted to DEQ. Include such items as streambank erosion sites, pipes of unknown origin discharging to stream, removal of vegetation, illegal dump sites, animal waste entering stream, failing septic systems, etc. Identify location and nature of problem and rank all problems identified.
- 09/30/93 b) DMAs and DEQ coordinate on a watershed-wide basis and identify all areas of the basin that have not yet been inventoried. DMAs and DEQ cooperate to determine whether there is a need for other kinds of inventories such as accurate inventories and pollution potential assessment for specific kinds of operations (a.g. in-ground nurseries or lawn chemical application). Establish a schedule which will lead to completion of needed inventories and prioritization of all stream segments by 12/95.
- 06/30/94 c) Visit all high ranking sites identified in 1a above and correct the identified problem, or establish a firm schedule that will either result in correction of the problem by 12/95, or identify the problem as part of a long term comprehensive watershed restoration program by 12/95.

It is recognized that additional ordinances and procedures may be needed dependant upon the nature of the problems identified and the actions necessary for their correction. (See task #6.)

06/30/95

e) In coordination with DEQ, develop recommended course of action and schedules for other priority sites identified in 3a and 3b above. Submit to DEQ a schedule which identifies and ranks all problems and identifies dates by which corrective actions will take place.

#4 IMPLEMENTATION OF MANAGEMENT PRACTICES  
(Best Management Practices/Systems)

Ongoing

a) Continue efforts to insure widespread adoption and implementation of management measures and improved management of riparian areas. Include such management measures as:

Measures for Agriculture

erosion and sediment control  
facility wastewater & runoff management  
nutrient & pesticide management  
wetland/riparian protection  
irrigation water management

Measures for Forestry

streamside management areas  
road construction/maintenance management  
timber harvest practices  
revegetation of disturbed areas  
wetland/riparian protection

Measures for Urban Areas

new development management  
erosion and sediment control  
road and street runoff systems  
lawn/landscape chemical management  
wetland/riparian protection  
On-site disposal systems

Examples of appropriate practices that should be in place are included in (but are not limited to) the following documents:

Forest Practices Rules and  
Implementation Guidelines  
SCS Technical Guidance Manual  
Surface Water Quality Facilities  
Technical Guidance Handbook  
EPA Coastal Nonpoint Pollution Control  
Program Guidance

January of  
each year

b) As part of annual reporting (Task 7 below) report on progress toward getting area-wide adoption of management practices and riparian area management. To the extent possible, estimate percent coverage. For example: Out of total number of units harvested during the year, how many received on-site inspection and of those, what percent were not implementing all needed practices?

#5 RIPARIAN AREA MANAGEMENT

06/30/94

a) Because of their filtering, shading, and buffering functions, healthy riparian areas are important components of water quality protection. Based on existing watershed inventories (task 3 above), identify and prioritize opportunities for enhancement and restoration of riparian areas. Develop management or restoration strategies for high priority riparian areas. Establish a schedule and begin implementation of efforts in priority areas. (This task should be completed in cooperation with landowners, local government, neighborhood groups, fish and wildlife interests, friends groups, etc.)

06/30/95

b) Inventory, prioritize, and establish target schedules for the management of riparian areas in the rest of the watershed.

#6 RULES, ORDINANCES and GUIDANCE

Ongoing

a) Continue erosion control programs, plans, and enforcement activities.

09/30/93

b) Complete current efforts to review erosion control programs for development activities. Make recommendations on any necessary revisions to relevant DEQ rules or local ordinances. Report recommendations to DEQ. Make recommendations on needed changes to Erosion Control Plans Technical Guidance Handbook. Revise guidance as necessary.

12/31/93

c) Investigate authorities/needs for local control of erosion and runoff from non-development activities throughout the watershed. Make recommendations on any necessary revisions to DEQ rules and/or local ordinances related to erosion, exemptions from on-site stormwater treatment, road maintenance, buffer requirements, or other relevant requirements. Report recommendations to DEQ.

05/01/94

d) Initiate a formal process to adopt new or refine existing ordinances as necessary according to findings of 4(b) and 4(c).

#7 ANNUAL REPORTING

January of  
each year

a) Submit to DEQ a status report on implementation activities. Specifically address public awareness/education (task 2), resolution of site specific problems (task 3), implementation of management practices (task 4), revision of rules, ordinances and guidance (task 6); and any other responsibilities identified under Tasks for Individual Agencies below.

#8 TUALATIN RIVER STATUS REPORT

April of  
each year

Cooperate with DEQ in the production of an annual status report for the Tualatin River Watershed. The report will incorporate items from the DMA annual reports (task 7(a) above) and will cover the compliance status of the river and its tributaries, and the accomplishments of the DMAs during the preceding year.

ADDITIONAL TASKS FOR INDIVIDUAL AGENCIES

Unified Sewerage Agency of Washington County (representing participating cities)

<u>DATE</u>	<u>TASK</u>
	#9 JACKSON BOTTOM WETLAND
09/01/93	a) Submit, for DEQ approval, a comprehensive Waste Water Reuse Implementation Plan for all USA's existing and proposed future reuse projects, as required by OAR 340-55 (including the Jackson Bottom Wetland and new lands acquired on the west side of Hwy 219 or other lands acquired for disposal of effluent from the Hillsboro West STP).
10/30/93	b) In consultation with DEQ, review all available data related to pollution, including phosphorus, entering the Tualatin River from or through the Jackson Bottom wetland. Include both surface water and groundwater characterization and potential for contamination of surface water or groundwater from irrigation and leakage from the large effluent retention pond (and other ponds) in Jackson Bottom. Provide all data, data analysis, and interpretation to the Department. Determine any additional data needs and produce a plan and schedule, acceptable to the Department, to gather such information.
01/01/94	c) Achieve agronomic irrigation rates, and begin operating in compliance with the DEQ approved wastewater reuse implementation plan for Jackson Bottom (9a above) consistent with OAR Chapter 340, Division 55 and NPOES permits.
12/31/94	d) Submit to DEQ any additional data and data analysis produced as a result of 9(b) above and a report, which reflects public review and comment, that interprets the collected data.
03/31/95	e) Submit a plan, acceptable to the Department, to reduce or control pollution entering the Tualatin River from or through the Jackson Bottom wetland, under USA management, as identified in 9(b) and 9(d) above.

#10 EXEMPTIONS FROM ON-SITE STORMWATER TREATMENT

08/31/93

a) In cooperation with DEQ and participating cities, develop a mechanism of tracking and reporting, on a quarterly basis, all development that is granted exemption from the on-site stormwater treatment requirements. The report should identify each development that is granted exemption, identify the reason for the exemption, demonstrate that a program is in place to provide equivalent and timely off-site treatment. Quarterly reports due in October, January, April, July.

02/28/94

b) In coordination with DEQ and using data produced by the first quarterly report (10a. above), assess the current situation with regard to exemptions from on-site treatment, in-lieu fee collection, and provisions for off-site treatment. Make recommendations for any necessary changes to state or local regulations to provide improved assurance that newly generated urban runoff receives adequate treatment. Begin a formal process to adopt any needed changes.

Oregon Department of Agriculture

<u>DATE</u>	<u>TASK</u>
	#11 CAFO
Ongoing	a) Perform follow-up inspections and respond to complaints on permitted CAFOs and, as needed, develop enforceable schedules that will result in compliance with permit conditions. As part of annual report to DEQ (task 7 above) identify all permitted CAFOs and their compliance status, identify all actions taken or to be taken.
12/31/94	b) Develop and begin implementation of a program to reduce pollution originating from animal operations that are not permitted under the existing CAFO program. Report status in annual report; include estimate of number of operations in the basin and percentage of those that need improved practices.

#12 NURSERIES

Ongoing

a) Perform follow-up inspections and respond to complaints on containerized nurseries, during irrigation season, to determine compliance with container nursery requirements. As part of annual report to DEQ (task 7 above), identify all container nurseries in the basin and their compliance status.

#13 ASSURANCE OF IMPLEMENTATION

12/31/94

a) Coordinate with local agencies (for example SWCDs, irrigation districts, municipalities, etc.) and DEQ to develop mechanisms to insure necessary practices are applied. Implement program through enabling legislation or other state or local authorities.

Clackamas County  
Multnomah County  
Washington County  
Oregon Department of Agriculture  
Oregon Department of Forestry

DATE

TASK

#14 COUNTY ROAD DITCHES

01/01/94

Working cooperatively with DEQ, ODF, and ODA, counties develop and begin implementation of a program to, on a priority basis, maintain county roadside ditches in such a way to minimize transport of sediment, nutrients, and other pollutants to waters of the state. Include provisions to establish and maintain vegetative cover on non-road surface county road right-of-way between road ditches and adjoining land uses. Where possible, convert ditches to vegetated swales and direct road ditch discharges into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) prior to entering waters of the state. Submit an acceptable report to DEQ identifying the program elements.



Attachment C  
Available on request

Tualatin Basin Policy Advisory Committee Recommendations

To  
DEQ

January 1998

Attachment D  
Available on request

Tualatin Basin Technical Advisory Committee Recommendations.



*Designated Management Agencies*

*Unified Sewerage Agency*

*Oregon State Department of Agriculture*

*Oregon State Department of Forestry*

*Washington County*

*Clackamas County*

*Multnomah County*

*City of Portland Bureau of Environmental Services*

*City of Lake Oswego*

*City of West Linn*

ATTACHMENT<sup>H</sup> E  
for Agenda Item F

February 18, 1998

Bob Baumgartner  
DEQ Northwest Region  
2020 SW 4<sup>th</sup> Avenue  
Portland, OR 97201

Dear Bob:

SUBJECT: Extension of Tualatin Basin Non-Point Source Compliance Schedule

Attached is the Tualatin Basin Designated Management Agencies' letter to the Oregon Environmental Quality Commission requesting an extension or amendment of the current Compliance Schedule. Attached to the main letter are individual supporting letters from each DMA. My understanding is that you will attach this packet to the DEQ staff report to EQC requesting the extension or amended Compliance Schedule.

If you need further information or assistance, please call me at 648-8730.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Faha". The signature is written in a cursive style with a long, sweeping underline.

Lori Faha, P.E.  
Chair, Tualatin Basin DMA Committee



February 20, 1998

Chair, Environmental Quality Commission  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

*Designated Management Agencies*

*Unified Sewerage Agency*

*Oregon State Department of Agriculture*

*Oregon State Department of Forestry*

*Washington County*

*Clackamas County*

*Multnomah County*

*City of Portland Bureau of Environmental Services*

*City of Lake Oswego*

*City of West Linn*

**SUBJECT:** Extension of Tualatin Basin Non-point Source Compliance Schedule

On May 1, 1998, the "Tualatin Sub-basin Nonpoint Source Management Implementation/Compliance Schedule and Order" will expire. This letter is written to encourage the EQC to approve an extension or amendment to this Compliance Schedule. The current deadline was ordered on January 10, 1997 to allow for a Tualatin Basin Technical Advisory Committee (TBTAC) and Policy Advisory Committee (TBPAC) process to review and recommend refinements to the existing Tualatin Basin Total Maximum Daily Loads (TMDLs). Although this process took somewhat longer than expected, due to the complexity of the problem and a loss of critical DEQ personnel, the TBTAC/TBPAC process is now complete.

If DEQ and the EQC accept the policy recommendations, a number of actions must now take place to put them into effect. During the time necessary for completion of these actions, the Designated Management Agencies (DMAs) will continue to implement their ongoing programs that are reducing nonpoint source pollution in the basin. An extension or amendment of the Compliance Schedule will allow these necessary actions and programs to occur while preventing the DMAs and DEQ from being out of compliance.

We believe there are several critical recommendations of the TBPAC that must be addressed by DEQ in order to meet water quality goals and provide for achievable Load Allocations for the DMAs. These recommendations are:

- The Load Allocation (LA) for background total phosphorus should be increased to account for high background (groundwater) concentrations.
- The LAs for DMAs should be established above background to allow for some human influence.
- DMA compliance is defined as implementing a water quality management plan designed to meet load allocations, and achieving that implementation under an established schedule.
- DEQ will assure that LAs are achievable, that the LAs will meet water quality standards, and water quality management plans are designed to meet LAs.

These recommendations are based on the data-supported conclusion that the current TMDL criteria for the Tualatin River tributaries are set too low, and cannot be achieved through DMA actions. It is crucial, therefore, that DEQ staff be given the necessary time to do the analysis necessary to revise the TMDL to be achievable and support water quality standards.

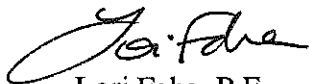
The DMAs have been implementing a large array of water quality enhancement activities since 1988 under the TMDL program. We are committed to continued implementation and refinement of our programs to achieve maximum practicable pollutant removal and water quality enhancement. The attached letters provide more detail about individual DMA commitments. Our Annual Reports submitted to DEQ in January also provide extensive detail on the variety of activities we have underway. We are committed to continuing these activities, as well as to working with DEQ staff to develop any new or amended program elements that may be necessary to help the Tualatin River and tributaries ultimately achieve water quality standards.

In summary, we support an extension of the "Tualatin Sub-basin Nonpoint Source Management Implementation/Compliance Schedule and Order" for the time period necessary for DEQ staff to do the following:

- Hire a permanent Tualatin Basin Coordinator to perform necessary technical and regulatory work related to all DEQ water quality permits and TMDLs in the basin.
- Develop revised TMDL criteria, Load Allocations and Waste Load Allocations. Coordinate this activity with the DMAs to ensure that various data collection efforts, models and studies are integrated into the analysis. The WLAs and LAs must be revised in a manner that provides an effective translation between water quality standards and appropriate land management activities. (Current total phosphorus LAs, expressed in units of lbs. per day, have been inadequate for providing guidance to the DMAs in the selection and design of the most effective management practices.)
- Prepare a new recommended Compliance Schedule for EQC consideration that includes timeframes for DEQ and DMA reviews of existing water quality management plans to determine any additional needs or revisions and allows for appropriate implementation schedules.

Much has been achieved in the Tualatin Basin to date through the collective activities of the DMAs and DEQ. We submit this letter to encourage the EQC to allow us to continue our water quality enhancement activities and to allow the development of an achievable TMDL program designed to meet water quality standards.

Sincerely,



Lori Faha, P.E.

Chair, Tualatin Basin Designated Management Agencies Committee

Cc: Bob Baumgartner, DEQ; Tualatin Basin DMAs

# MEMO



**Oregon**  
Department  
of Agriculture

**To:** Chair, Environmental Quality Commission  
**From:** Marc Peters, ODA representative for the Tualatin Basin Designated Management Agency Workgroup  
**Subject:** Continued implementation of the Tualatin River Subbasin Agricultural Water Quality Management Area Plan  
**Date:** February 16, 1998

In passing Senate Bill 1010, the 1993 Oregon Legislature gave the Oregon Department of Agriculture the lead role for working with the agricultural community to address nonpoint source water pollution. As a result, the department is authorized to develop and carry out a water quality management plan for any agricultural or rural lands area where a water quality management plan is required by state or federal law (e.g., TMDL basins, Groundwater Management Areas, Coastal Zone Management Area).

In April 1996, the Oregon Department of Agriculture adopted the Oregon Administrative Rules to implement the Tualatin River Subbasin Agricultural Water Quality Management Area Plan. The plan contains measures deemed necessary by the department to achieve water quality standards, with the intention of leading the plan up front with voluntary incentives, while retaining a clear regulatory backstop to gain compliance where necessary. The plan is being implemented through the joint efforts of the department and our *Local Management Agency* - the Washington County Soil & Water Conservation District (WCSWCD).

The WCSWCD has also developed a guide for creating voluntary water quality farm/ranch plans which correlates with the Tualatin River Subbasin Agricultural Water Quality Management Area Plan. The district has been working with the local Natural Resources Conservation Service field office staff on developing individual water quality farm/ranch plans for cooperators in their area, and to date, 20 plans have been developed and are being implemented.

A brief evaluation of the department's water quality program in the Tualatin River Basin is described below:

- Changes in land use practices and reductions in pollutant loadings are being tracked as implementation efforts continue to move forward.
- Annual reviews of both the Dairy-McKay Hydrologic Unit Area Plan and the overall water quality program are being conducted and used to adjust the focus of program implementation.
- Instream improvements in nutrient concentrations and dissolved oxygen continue to be measured in several predominantly small agricultural tributary watersheds.
- As demonstrated in other nonpoint source pollution control projects throughout the country, changes in ambient water quality in the Tualatin River as a result of NPS implementation efforts are expected to take a number of years to be observed.
- Ongoing findings from agricultural, USGS, OSU, OGI, DEQ and other basin studies will be used to refine the implementation program as appropriate.

John A. Kitzhaber  
Governor



Mailing address:  
635 Capitol Street NE  
Salem, OR 97310-0110  
Location address:  
3420 Cherry Ave NE

Environmental Quality Commission  
Page 2  
February 17, 1998

Throughout the years there has been a significant amount of energy and resources dedicated to the implementation of nonpoint source pollution control activities in the rural lands of the Tualatin River Basin. The Department of Agriculture and the Washington County Soil and Water Conservation District have been working very closely with Oregon State University Extension Service and the USDA Natural Resources Conservation Service to coordinate water quality education and implementation activities. In conjunction with this interagency support network, partnerships between private landowners and cooperating agencies continues to be aggressively pursued as implementation efforts move forward with a commitment to improving water quality in the Tualatin River Basin.

## OREGON DEPARTMENT OF FORESTRY

### KEY MEASURES FOR ENSURING WATER QUALITY STANDARDS ARE MET, AND DEQ COMPLIANCE CRITERIA MAINTAINED, ON FOREST LAND WITHIN THE TUALATIN RIVER BASIN

The Environmental Quality Commission's "Tualatin River Watershed Nonpoint Source Management Implementation/Compliance Schedule and Order" has a current compliance expiration date of May 1, 1998. The Oregon Department of Forestry will continue the following "Key Measures" to ensure water quality standards are met within the Tualatin River Basin after this date:

#### Key Measures for Oregon Department of Forestry

- Continued implementation of the *Oregon Forest Practices Act*, which is recognized as providing the Best Management Practices for commercial forest activities on forest land within the Basin.
- Continue to monitor specific forest operations and activities, on a priority basis. Participate on an as-needed basis with overall effectiveness monitoring of *Oregon Forest Practices Act* statutes and rules.
- Continue to provide assistance and advice to small forest landowners regarding the development of forest management plans and activities that promote sound stewardship of the land.
- Continued participation on the Designated Management Agency (DMA) Group, which meets monthly to coordinate and discuss water quality issues within the Basin.
- Continued participation on the Tualatin Basin Public Awareness Committee (TB-PAC), a subcommittee of the DMA Group, which promotes public awareness of water quality issues within the Basin.
- Continued participation at Tualatin River Watershed Council meetings, as well as Technical Advisory Committee meetings, where water quality issues are reviewed, discussed and associated action plans developed.
- Continued involvement and assistance with providing tours, presentations, publications and other educational opportunities within the Basin.

DLJ  
2/5/98





## UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY

February 20, 1998

Chair, Environmental Quality Commission  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

**SUBJECT: USA's Continuing Commitment to Nonpoint Source Activities**

This is written in support of the Tualatin Basin Designated Management Agency letter requesting EQC's consideration of an extension or amendment to the current "Tualatin Sub-basin Nonpoint Source Management Implementation/Compliance Schedule and Order".

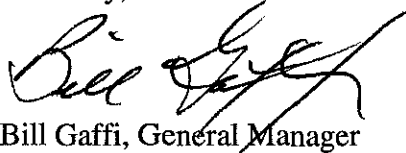
The Unified Sewerage Agency and the 12 cities within our jurisdiction have implemented a large number of programs, ordinances, and projects since 1988 under the TMDL program. We are committed to continuing to implement these best management practices and committed to ongoing efforts to assess needs and develop additional or amended practices to better serve water quality enhancement goals. Our annual report to DEQ, "Nonpoint Source Program for Total Maximum Daily Load Requirements, January 1998" details our TMDL nonpoint source activities, and a related report, "Stormwater Annual Report" (USA, Washington County, and ODOT, August 1997), provides additional information. A brief summary of the key program elements that we continue to implement follows.

- New development controls including: requirements for onsite stormwater treatment facilities, construction site erosion control, and vegetated buffers along streams and wetlands. (Approximately 90% of about 12,000 acres of new development in urban Washington County since 1990 is served by onsite treatment facilities, as required by USA and the cities.) We will also be reviewing these requirements to consider larger buffers and more effective controls to reduce stormwater peaks and velocities due to impervious surfaces.
- Maintenance practices that prevent soil, debris, and urban pollutants from entering streams, including regular street cleaning, fall leaf pickup, catch basin and storm drain cleaning. We will also be reviewing new street sweeping equipment and cleaning frequencies for improved effectiveness.
- Public awareness activities including storm drain stenciling, River Rangers presentations to school children, development and distribution of various brochures, door hangers, bill inserts, and advertisements on such topics as streamside care and enhancement, native plants, proper household hazardous waste and yard debris disposal, and many other activities.

- Watershed planning to develop strategies for each major urban Tualatin River tributary that assess water quality and flooding problems and develop prioritized, technically appropriate, and public and agency stakeholder supported solutions. Plans have been completed for Butternut, Hedges, Upper Rock, Bronson, Willow, and Fanno Creek, and planning is underway for Beaverton Creek.
- Design and construction of water quality and stream enhancement projects including stream bank bioengineering, tree planting, wetland construction, and reconnection of streams to their floodplains.
- Providing grants and technical expertise to neighborhoods, schools, stream groups and others for stream and wetland enhancement projects.
- Instream, stormwater and best management practice monitoring, plus collection of other stream health data including macro-invertebrates and fish community information. Trends and management practice effectiveness are regularly assessed.

Our commitment is to continue these activities, and our request of the Commission is that the Compliance Schedule be continued, allowing DEQ staff time to perform the necessary TMDL revisions as recommended by the Tualatin Basin Policy Advisory Committee.

Sincerely,



Bill Gaffi, General Manager



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**ENGINEERING DEPARTMENT**

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February 20, 1998

Chair, Environmental Quality Commission  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

**SUBJECT:** Extension of Tualatin Sub-basin Non-point Source Management  
Implementation/Compliance Schedule and Order.

The City of Lake Oswego would like affirm, to the Environmental Quality Commission (EQC), it's commitment to implementing current water quality enhancement activities and to initiating new activities needed to satisfy the TMDL program designed to meet water quality standards required by federal and state law.

These activities are included in the City's "Tualatin Basin 1997 Annual Status Report" submitted to DEQ in February 1998 and in the City's "Stormwater Annual Report" submitted to the DEQ in August 1997.

Sincerely,

Andrew Harris



# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 400, Portland, Oregon 97204-1972

(503) 823-7740, FAX (503) 823-6995

Dean Marriott, Director

February 16, 1998

Environmental Quality Commission  
811 SW 6th Ave.  
Portland, OR 97204

Subject: Extension of Tualatin Basin Non-point Source TMDL Compliance  
Schedule

Dear Commissioners:

The City of Portland, Bureau of Environmental Services (BES) is submitting this letter in support of the Department of Environmental Quality's recommendation to extend or amend the compliance schedule and deadline for the Tualatin Basin Non-point Source TMDL.

Like other Designated Management Agencies, BES is committed to the continued implementation of measures to improve water quality in the Tualatin River Basin. These measures include joint DMA activities and those identified in BES' recently developed Fanno Creek Resource Management Plan. BES will also continue its water quality monitoring program in the Portland tributaries of the Tualatin River. In addition, BES will continue to participate on the Tualatin Basin DMAs and TB-PAC, and support the efforts of the Tualatin Basin Watershed Council and other community groups committed to improving water quality in the Tualatin River.

The continued efforts and activities of the Department, the Tualatin Basin DMAs and the public have resulted in significant water quality improvements in the Tualatin Basin. An extension of the compliance schedule will allow for the continuation of these efforts and for concluding the TMDL review process.

Sincerely,

Amin Wahab  
Regulatory Planning and Evaluation

c: Baumgartner, DEQ  
DMAs

ATTACHMENT E



Engineering

City Engineering Program

# Memo

**To:** Lori Faha, USA  
**From:** Sami Ayoub, Program Manager  
**CC:** Dave Monson, Department Director  
**Date:** February 12, 1998  
**Re:** TMDL activities

The City of West Linn will pledge its commitment to continue implementing the following TMDL activities:

1. Refine the city municipal code and the community development code to improve the management of storm water quantitatively and qualitatively.
2. Enforce the implementation of Erosion and Sedimentation Control Plans through a permit process and active field inspections.
3. Continue to maintain city owned storm drainage facilities to maintain a good performance curve.
4. Communicate to staff members as well as the general public the importance of proper disposal of harmful substance, through public meetings, news letters, stenciling program, etc.
5. Obtain voluntary samples of storm water from various locations in the city for laboratory testing and analysis.

Other measures may become feasible to implement contingent on budget approval in June, 1998.

Thanks



# CLACKAMAS COUNTY

## Department of Utilities

J. MICHAEL READ  
DIRECTOR

February 17, 1998

Chair, Environmental Quality Commission  
811 SW 6<sup>th</sup> Avenue  
Portland OR 97204

Re: Key Measures for Compliance Schedule for Surface Water Management Agency of Clackamas County

The Surface Water Management Agency of Clackamas County is a Service District created to address the TMDL issues in the Lower Tualatin River, located in unincorporated portions of Clackamas County. The District has been implementing the Compliance Schedule which expires May 1, 1998 and plans to continue implementing programs to address compliance with water quality regulations. Specific key measures we would like to bring to your attention include:

- Continued identification and construction of small projects to improve drainage ways and stabilize drainage systems.
- Continued work on maintenance of existing systems.
- Continued response to complaints regarding water quality and drainage issues.
- Continued participation with the Designated Management Agency (DMA) Committee, which meets monthly to coordinate and discuss water quality issues within the Basin.
- Continued participation on the Tualatin Basin Public Awareness Committee (TB-PAC), a subcommittee of the DMA committee, which promotes public awareness of water quality issues within the Basin.
- Continued public education efforts above those performed through the TB-PAC, including individual mailings, distributing information and a working with a citizen's committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Michael Read".

J. Michael Read  
Director

ATTACHMENT E



## MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
 TRANSPORTATION AND LAND USE PLANNING DIVISION  
 1620 SE 190TH AVENUE  
 PORTLAND, OREGON 97233  
 (503) 248-6050

BOARD OF COUNTY COMMISSIONERS  
 BEVERLY STEIN • CHAIR OF THE BOARD  
 DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
 GARY HANSEN • DISTRICT 2 COMMISSIONER  
 TANYA COLLIER • DISTRICT 3 COMMISSIONER  
 SHARRON KELLEY • DISTRICT 4 COMMISSIONER

February 16, 1998

Chair, Oregon Environmental Quality Commission  
 811 SW Sixth Avenue  
 Portland, OR 97204

**RE: Key Measures Ensuring DEQ Compliance Criteria, Tualatin Basin Nonpoint Source Program**

The Tualatin Basin Nonpoint Source Management Compliance Schedule and Order for TMDLs expires on May 1, 1998. In support of the Designated Management Agencies' letter to you dated February 1998, Multnomah County submits this list of key commitments to be continued and enhanced in the event the Compliance Schedule is extended or amended. Please note Multnomah County's portion of the Tualatin Basin generally meets the .07 mg/l standard for phosphorus except where background levels are higher.

Key Measures for Multnomah County/ Tualatin Basin Program

- Continue to implement site-specific Best Management Practices (BMPs) from Prioritized List of sites for Water Quality Management purposes.
- Continue to sample streams in Multnomah County portion of the Tualatin Basin during compliance periods of May through October and report laboratory findings to EPA STORET system.
- Continue to submit Annual Reports on status of Nonpoint Source Management Program, including 1) Annual Compliance Report on all activities, 2) Annual Water Quality Monitoring Report, and 3) Tualatin Basin Public Awareness Committee report.
- Continue to participate in and financially support Public Awareness and Public Education activities specific to the Tualatin Basin Water Quality Programs.
- Continue to require and enforce County Grading and Erosion Control ordinances specific to the Tualatin Basin for any new development and land disturbing activities.
- Implement Riparian Area Management through the Multnomah County Rural Area Management Plan requirements for the West Hills Rural Area, which include strict buffer requirements and other State Goal 5 Planning activities.
- Continue innovative Roadside Vegetation Management Programs to lessen the use of pesticides and allow for low-growing vegetation for water quality purposes.

LARRY F. NICHOLAS, P.E., Director  
 Department of Environmental Services


*Donna G. Hempstead*

Donna G. Hempstead, J.D.  
 Consultant/Tualatin Basin Program Manager

## WASHINGTON COUNTY

*Inter-Department correspondence*

Date: February 18, 1998

TO: Lori Faha, Water Resource Program Manager, USA  
FROM: Greg Clemmons, Operations Engineer, LUT Operations   
SUBJECT: TMDL COMPLIANCE SCHEDULE

The Department of Land Use and Transportation of Washington County remains committed to the goals of the Tualatin Basin Total Maximum Daily Loads (TMDLs) compliance schedule that is currently under consideration for extension by the Environmental Quality Commission (EQC). Since 1988, we have revised our maintenance practices to reflect an increased awareness of the water quality issues in the Basin. These efforts include:

- Revised road grading practices
- Vegetation maintenance that emphasizes mechanical treatment and minimizes herbicide treatment
- Roadside ditch maintenance practices that minimize disturbance and encourage grass lined ditches and the use of biobags to catch sediments
- An aggressive embankment stabilization effort as situations arise
- The purchase of hydroseeding equipment for our own projects
- Increasing the sizes of replaced culverts to minimize downstream erosion

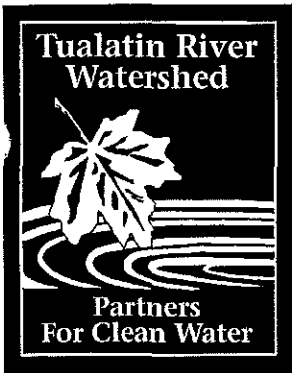
We are committed to continuing our efforts, which are aimed at reducing the load allocations to acceptable levels and we will work with other local agencies to raise the public's awareness of the water quality problems of the Tualatin River. Proposed modifications to our current practices will be examined and implemented if feasible. Hopefully, the compliance schedule can be extended or modified so that these efforts, along with the recommendations of the Tualatin Basin Technical Advisory Committee (TBTAC) and the Policy Advisory Committee (TBPAC), can be assessed and acted on.

GC:da

c: Mike Maloney  
Steve Edmison  
Clint Giberson  
Don Herinckx  
Keith Lewis  
Don Millet  
Randy Robinson  
John Rosenberger  
Dave Schultz  
c/file

j: greg@tmdl





*Tualatin River Watershed  
Partners for Clean Water*

*Unified Sewerage Agency*

*Oregon State Department  
of Agriculture*

*Oregon State Department  
of Forestry*

*Washington County Soil and  
Water Conservation District*

*Washington County*

*Clackamas County*

*Multnomah County*

*City of Portland Bureau of  
Environmental Services*

*City of Lake Oswego*

*City of West Linn*

*City of Beaverton*

*City of Sherwood*

*City of Tigard*

*City of Tualatin*

*City of Forest Grove*

*City of Hillsboro*

*City of Cornelius*

*City of Durham*

*City of King City*

*City of North Plains*

*City of Banks*

*City of Gaston*

February 16, 1998

Lori Faha, Coordinator  
Designated Management Agency Group  
Unified Sewerage Agency  
155 N. First Avenue, Suite 270  
Hillsboro OR 97124

Re: Tualatin Basin Public Awareness Committee 1998 Action Plan

Dear Lori,

The Tualatin Basin Public Awareness Committee (TB-PAC) has completed its Action Plan for 1998, which will continue our efforts to inform the public about nonpoint source pollution in the Tualatin Basin. The plan is based on the results of the recently completed public awareness benchmark poll, which confirmed the success of our ongoing projects. We are committed to continuing our public awareness activities and adding new ones to help all residents of the basin learn how their daily activities can help or harm water quality.

This year, the TB-PAC member agencies will launch a media campaign to publicize our projects. For example, we have posted more than 800 watershed signs throughout the basin, and will publicize their purpose. We will continue our movie theater advertisements, which have been viewed by more than 800,000 moviegoers in the Tualatin Valley. Our brochures and publications will continue to be distributed in local libraries and garden supply centers.

Our new projects will include placing Spanish water quality messages in local Hispanic publications, promoting storm drain stenciling, and maximizing the Tualatin River Rangers and other water quality curricula for schools. We are also developing a water quality kiosk to be permanently displayed at the new Nature Park Interpretive Center in Beaverton, and working to increase the opportunities for proper disposal of household hazardous waste and yard debris.

We look forward to continuing on behalf of the Designated Management Agencies to accomplish the public awareness objectives of the Tualatin Sub-basin Nonpoint Source Management Implementation and Compliance Schedule.

Sincerely,

  
Sheri Wantland  
TB-PAC Coordinator

**Tualatin Basin DMA Implementation and Compliance Order**  
**June 11-12, 1998**

Designated Management Agencies:

The Unified Sewerage Agency of Washington County, representing participating cities  
Clackamas County and River Grove  
Washington County  
Multnomah County  
City of Lake Oswego  
City of West Linn  
City of Portland  
Oregon Department of Agriculture  
Oregon Department of Forestry.

Purpose:

This order has three purposes.

- 1) The order assures continued implementation of plans developed under the Tualatin Basin TMDL and the ongoing activities contained in the Tualatin Sub-basin Nonpoint Source Management Implementation / Compliance Schedule and Order for Designated Management Agencies adopted by the EQC as Attachment A to Agenda Item E on January 9-10, 1997 .
- 2) The order defines the specific reporting requirements which provide the enforceable mechanism for assuring implementation of the TMDLs during the period covered by the compliance order. The compliance period allows implementation of the schedule of activities identified in Agenda Item E of the June 11-12, 1998 EQC meeting. These activities are being conducted either by the DMAs or in cooperation with the DEQ to update the basin TMDLs and basin plans. The compliance order will be in effect until the completion of the activities in the schedule which will result in a updated basin plan and implementation strategy, but will not extend beyond the end of May, 2000.
- 3) The compliance order represents the EQC policy for appropriate actions to continue implementation of pollution control efforts while the TMDLs and implementation strategies are being updated.

DMA Tasks

The first four (4) DMA tasks are ongoing tasks required by previous orders. Tasks 5 and 6 are new tasks.

1. The DMAs will continue existing monitoring program in the basin. The data will be submitted to DEQ annually for upload into STORET data base. The DMAs will review data annually and submit a data analysis report in January of each year. The DMAs will submit a coordinated monitoring strategy to DEQ by the end of April of each year.
2. The DMAs will continue with existing Public Awareness / Education programs. A public awareness report will be submitted to DEQ by the end of January each year,
3. The DMAs will provide an annual report to DEQ. The annual report will describe
  - 3.1. implementation of management practices
  - 3.2. resolution of site specific problems
  - 3.3. revision of rules and ordinances
  - 3.4. evaluation of ongoing activities taken by the DMA to implement the TMDLs

4. The DMAs will continue the existing programs for compliance with the Tualatin TMDL. These tasks include:
  - 4.1. the continued implementation of best management practices to insure widespread adoption and implementation of management measures,
  - 4.2. the continuing inventories to identify pollution problems and the development of site specific solutions,
  - 4.3. the inventory, prioritization and development of schedules for the protection, enhancement or restoration of riparian areas
  - 4.4. continue erosion control programs, plans, and enforcement activities , review of the erosion control program for new development, investigation of the need for control of erosion and runoff from no-development activities throughout the basin, and review of need to adopt or refine existing ordinances,
  - 4.5. continue implementation of program that on a priority basis maintains roadside ditches in such a way to minimize transportation of sediment, nutrients, and other pollutants to waters of the state

Tasks 5 and 6 are included in the scheduled TMDL and basin plan update:

5) By the end of February, 1999 the DMAs will provide DEQ a draft report describing how their existing programs for future development assures compliance with TMDLs, how their current programs for pollution control compares to the TMDLs and appropriate allocations. The Draft report will describe any actions necessary to update their program to implement bacteria management plans, temperature management plans, and changes to achieve substantial compliance with METRO Goal 6, title 3 model ordinances as appropriate. This report will describe any modifications or updates to the existing plans that will be implemented prior to the final reports described in task 6.

6) By the end of June, 1999 the DMAs will each provide a report to the DEQ that evaluates their existing programs, describes how the program will comply with existing allocations and water quality standards. The report will describe what actions are needed to update existing programs to comply with the TMDLs and a schedule of activities that will be taken to update existing programs as needed.

Carol Whipple, Chair  
Oregon Environmental Quality Commission  
811 SW Sixth Ave.  
Portland, OR 97204-1390

June 8, 1998

Re: Southwest Community Center Project 1200-C Permit #109608

Dear Chair Whipple:

Thank you for listening to our concerns regarding the Southwest Community Center (SWCC) project and the significant pollution problems which have occurred during excavation and construction as they relate to Vermont Creek. We are heartened that the Environmental Quality Commission (EQC) appreciates and encourages citizen activism in these difficult situations. Thank you for directing the Department of Environmental Quality (DEQ) to prepare a summary report of the Department's review of the Southwest Community Center issue as it moved toward the enforcement stage.

As Mr. Mullane's letter states, our group "continues to have concerns regarding how the City and its contractor address stormwater problems at the site." Additionally, we are disturbed that measures to protect or restore Vermont Creek, such as mitigation and stream flow monitoring, have been neglected by both the City of Portland and the State during the entire process, including the recent DEQ enforcement action.

We are concerned about Portland Parks' attitude. We recently were outraged by the statement (Multnomah Village Post June 1998) by David Judd, Assistant Parks Superintendent, who says "I am troubled by conversation that attempts to add to our requirements. Those not satisfied should address the issue by legal means, not by bitching at bureaucrats and technocrats." This indicates an absence of concern for the requirements of the Clean Water Act and the City's NPDES permit with which the City is obligated to comply. We consistently have only asked that the Act and permit be followed with the goal that Vermont Creek be protected from environmental degradation.

Parks' attitude also is shown when they equate the installation of erosion control measures with meeting actual in-stream performance standards. I.e., the City would like us to think activity is more important than results. Had DEQ's earlier noncompliance notices recommended performance monitoring, perhaps Parks would not be able to claim activity equals success. For example, as recently as February 6, 1998, 23 days after the last event DEQ fined the City for, the City recorded an increase in turbidity from 16 NTU above the site to 60 NTU directly downstream from the site. An increase of 375%, yet Parks proclaims the problem has been addressed and the April 17, 1998 report you requested says DEQ believes the "limited discharge" is "within the limits of the current stormwater permit." We have seen equally dirty water discharges many weeks after the events for which DEQ fined the City.

Another example of Parks' attitude about activity and performance is the selection and careless placement of coarse wood chip bags near surface stormwater drains which do not prevent the site's ubiquitous colloidal silt from either going around or through them. Even rudimentary soil tests would have identified colloidal silt as an issue and, if taken, such evidence was ignored.

Therefore, we would like the EQC to direct the DEQ to take the following actions to remedy the situation:

1. Require the City to fully comply with the NPDES permit conditions as required in Section A. Standard Conditions, No. 1 Duty to Comply, including:

- a) Maintenance of the project's Erosion Sediment Control (ESC) plan;
- b) Timely inspection(s) of the entire site and all installed ESC measures after rainfall and otherwise on a weekly basis as required in Schedule B;
- c) Maintenance of an inspection log which is to be kept on-site as required in Schedule B. Written Records. Note: the NPDES-required site monitoring log was not available on-site as recently as June 3, 1998; and
- d) Wheel washing (permit also requires prevention of deposits of sediment on public streets (Schedule A-g-e)).

2. Require the City of Portland to mitigate as required in the NPDES Storm Water Permit, Section A. Standard Conditions, No. 3, Duty to Mitigate. This should include, but not be limited to, the following:

- a) Development of a mitigation plan which is to be approved and implemented by October 1, 1998.
- b) The process to create the mitigation plan should include invited participation by the affected Neighborhood Associations (Maplewood, Hayhurst and Multnomah), ODFW, US FWS, WRD, DEQ, BES, Tualatin Riverkeepers, and West Multnomah Soil and Water Conservation District.
- c) The mitigation plan should address maintenance of ground water flows to the daylight headwater, maintenance of natural summer and interstorm base flows, prior silt loadings, habitat losses/degradation, streambed down-cutting, on-going monitoring, and impacts on aquatic life.
- d) The mitigation plan should ensure that the SWCC facility does not compromise future water quality, quantity, purity, peak flows, or adversely affect temperatures of Vermont Creek. For example:
  - i) Current plans lack oil entrapment devices in line with future parking lot and driveway runoff;
  - ii) The design is likely to lead to inadequate ground water recharge;
  - iii) The role the current deep sediment detention ponds may play for ground water recharge and maintenance of base flows, and buffering capacity;
  - iv) The facility should be built with environmentally friendly materials that will not shed heavy metal ions into creek-bound water;
  - v) No floor drains should connect to the stormwater handling system;
  - vi) Additional on-site natural storm water filtering should be considered;
  - vii) The storm water handling plans should ensure that the creek's water temperature is maintained at environmentally healthy levels; and
  - viii) Peak discharge flows to the creek from the large amount of impervious surfaces, once the pond is full, should not exceed natural conditions.

3. Require the City to perform stream flow and temperature monitoring for the duration of construction and the first three years of its operation, and report the results plus quantities of storm and ground waters removed from the site to DEQ, BES, ODFW and WRD. Require the city to perform immediately up and down stream (north and south forks of Vermont Creek) independently-certified water quality tests on days which reach one half inch rainfall and samples be taken within 60 minutes of peak rainfall intensity on those days. Absent monitoring there will be no data on which to base findings of no effect, additional mitigation requirements and mitigation measures' effectiveness. Monitoring under the wrong conditions is of no value too.

4. Request the WRD to rescind its license to remove waters from the site that otherwise would flow into the north fork of Vermont Creek via surface or ground water flows during the period May 1 through October 31. This is consistent with maintaining the State's in-stream water rights which DEQ is responsible for protecting. WRD's license allows removal of 200 gallons per minute all summer which seriously threatens ground water recharge and base flows in Vermont Creek because pumping occurs from ponds which are significantly deeper than the documented water table and intrude into the old natural stream bed before it was culverted under the site. The north fork of Vermont Creek is a small perennial urban creek whose waters entirely depend on ground water flows which pass under the project site and through the pumped ponds. One does not have to be a rocket scientist to figure out there is no basis for allowing summer removals. WRD's allowing summer removals was not based on flow measurement data (because none exists that far upstream) or a site inspection, and we believe the ground water - base flow issue was inadequately addressed by the agencies. Lastly, Vermont Creek is a tributary of Fanno Creek and part of the Tualatin River Basin which is Water Quality Limited per EPA standards.

5. We would like the opportunity to comment on the City's 5/26/98 letter certifying compliance with their NPDES permit before DEQ staff responds and any draft Mutual Agreement and Order (MOA) that DEQ may enter into with the City relating to Southwest Community Center discharges, actions, schedules or mitigation plans. We have many hours of observations of what happens at the site by several people and want to contribute to the solution of this problem. Opportunity to comment on the drafts should be extended to the affected Neighborhood Associations (Maplewood, Hayhurst and Multnomah), ODFW, US FWS, WRD, DEQ, BES, Tualatin Riverkeepers, and West Multnomah Soil and Water Conservation District. It would be useful to arrange a public meeting with all these people for DEQ staff to explain their reasoning behind any draft MOA and to receive preliminary comment.

Finally, some words regarding the DEQ. The DEQ should provide adequate monitoring and enforcement through appropriate staffing levels. It is clear from the ESA listing for the Willamette Basin that past policy and practice of having one DEQ inspector to cover up to 500 sites within the most populous region of Oregon does not work, especially when the City's requirements are relatively lax and construction is booming - not to mention the City's conflict of interest between enforcement and its own project developments. The recent EPA Inspector General's report should come as no surprise under these circumstances.

We want to know the schedule for filling the empty inspector's position and for hiring additional people to meet the level of need for inspections and enforcement in the rapidly-growing Portland metro area. Does the DEQ's budget proposal for the coming legislature request these needed additional positions? If adequate staffing is not going to be provided, will DEQ contract with private firms to monitor sites or provide citizens with the level of training and supervision to provide this service to DEQ - and have the field data they collect actually count for something instead of having 'limited use' in the DEQ's formal enforcement process? Or, will continued, further and illegal deterioration of the metro area environment be allowed via inaction, too little, too late??? We would like to be in a position to support DEQ's request for inspector positions in the coming legislature.

Lastly, we are truly disappointed with the level of the fine assessed by DEQ in the enforcement action. The \$4500 assessment for three days' pollution is so low that it often will be cheaper to break the law and pay a fine than to obey it. The initial fine is crucial because it takes so long to process that even large projects will be done before higher fines can be assessed or corrective measures fully implemented. Also, citizen legal action is held back until the fine and any appeals are settled. In practice, the initial assessment should never be less than the cost of doing it right in the first place or it has no deterrent effect. Clearly, the penalty calculation methodology must be improved! We note with irony Boise Cascade's recent \$4800 fine for *filing a late report* after an accidental discharge. We would be happy to suggest some additional factors which should be considered in the calculation if the EQC orders the methodology to be revamped and wish to be notified if that occurs. We also urge the EQC to order the entire process be completed in a more timely manner, so it has a chance to make a difference while construction is on-going.

We sincerely hope that you will continue to help us in our efforts to keep pollution out of Vermont Creek and strongly motivate our local governments to practice good environmental stewardship and implementation of their projects in full compliance with all laws.

Sincerely,

Martie Succi  
Chair, Multnomah Neighborhood Assn.  
Lisa King  
Chairperson, Maylurst Neighborhood Assn.

CC: Commissioner Melinda S. Eden  
Commissioner Linda McMahan  
Commissioner Mark Reeve  
Commissioner Tony Van Vliet  
Langdon Marsh, Director  
Neil Mullane  
Portland City Council

Mary L. Taylor, Maplewood Chair

RE: LL-275

To: Jan Betz  
Deputy City Attorney

From: Steve Hazzard  
Coll. Sys. Maint., BES

Re: Pumping totals for SW Community Center

1/9 12:55-16:00 @ 60gpm=11100  
1/13 13:30-20:15 @ 60gpm=24,300  
1/14 7:15-17:05 @ 60gpm=35,400  
1/15 7:45-17:45 @ 60gpm=36,000  
1/16 8:00-15:00 @ 60gpm=25,200  
1/16 15:00-17:30 @ 200 gpm=30,000  
1/17 9:30-14:00 @ 200gpm=54,000  
1/18 10:30-15:45 @ 200gpm=63,000  
1/19 7:45-13:00 @ 200gpm=63,000  
1/20 8:30-14:30 @ 60gpm=21,600  
1/21 13:30-16:00 @ 200gpm=30,000  
1/23 8:00-16:50 @ 200gpm=106,000  
1/24 8:00-12:00 @ 200gpm=48,000  
1/25 8:00-11:00 @ 200gpm=36,000  
1/26 7:45-13:00 @ 200gpm=63,000  
1/26 13:00-16:00 @ 60gpm=10,800  
1/27 8:00-11:00 @ 200gpm=36,000

Total 879,400 gallons

1998  
8661



# SWCC POLLUTES AGAIN

For Immediate Release  
For more information contact:  
Don Bain 503/246-1132

6/10/98

The Southwest Community Center (SWCC) construction site again sprang leaks of dirty water that polluted the north fork of Vermont Creek after rains the night before. A combination of light rains, ceased work on Hales' Mountains, wildly growing grass on some of the dirt piles, and work primarily on the building itself have been largely responsible for infrequent discharges in recent weeks. However, recent site work and moderate rains led to today's discharges of sediment-laden waters to Vermont Creek.

Recent work has included digging up the old storm sewer across SW Vermont St. from the new SWCC foundation. This resulted in a deep trench across the street. Runoff traveling down Vermont's north and south curbs dumped water into the refilled trench through the night. By morning, the fill was saturated and very dirty water left the trench, went down the street to two storm drains and on to Vermont Creek. Even though wood chip bags were placed near the drains, dirty waters went under, over and around the poorly-placed bags - a common feature of the contractor's 'erosion control system.' The colloidal silt emitted by disturbed soils in the area also goes right through the bags - another reason prior control actions to date have been ineffective for dirty surface runoff leaving the site.

The rains and heavy equipment along SW 45th near the ponds and site entrance also were responsible for dirty runoff that made its way to the north fork of Vermont Creek. It has been so long since the site entrance was graveled and so many dirt-laden vehicles have passed through it that the former gravel is now 90% covered by dirt, which quickly becomes mud that is tracked out onto the street. Even though there is a wheel wash setup, it does no good to wash wheels that then travel over dirt or mud before they get to the street.

Compounding today's discharge problems was contractor efforts to clean the dirty street with a water truck. After Tuesday night's rains and morning construction activity which muddied the road and saturated surrounding soils, a water truck was sent down SW 45th to spray it clean, adding more dirty water runoff from the street to that coming from the site entrance and work area adjacent to the ponds. This easily could have

been prevented if the site entrance was properly graveled, the heavy equipment was cleaned prior to leaving the driveway and metal plates were put on the ground where the equipment was to be used. Even though several such plates were seen laying about unused in the vicinity, none were used for this purpose.

Recent days have also witnessed tractors moving earth about to reshape Hales Mountains. Previous heavy erosion and runoff from these piles were a large source of dirty waters which required many alterations of the site's erosion and sediment control plan to bring under control. This eventually resulted in additional silt fences, rock check dams, an eastern detention pond, and bulk water handling on the site and pumping it to the sanitary sewer. However, recent dozing has filled in the eastern detention pond, eliminated one rock check dam and replaced a third with a dirt one. With much exposed soil on the site and rains for days forecast by the National Weather Service, the SWCC contractor left the site Tuesday without covering any of the freshly exposed dirt with straw. Rains started Tuesday evening and went through Wednesday morning.

In response to the Department of Environmental Quality's (DEQ) Enforcement Order levying a \$4500 fine, Parks send a letter 6//98 asserting that they comply with their National Pollutant Discharge Elimination System (NPDES) permit (#1200-C, file no. 109608). Site and control measure conditions observed and photographed Tuesday and today, plus the discharges, plainly show the site does not comply with the NPDES permit and continues to be a source of pollution of Vermont Creek.

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item G  
June 11&12, 1998 Meeting

**Title:**

Update on the Southwest Community Center at Gabriel Park

**Summary:**

The Environmental Quality Commission received Public Forum testimony at the April EQC meeting in McMinnville regarding violations of the national pollutant discharge elimination system (NPDES) stormwater permit (#109608) issued to the City of Portland, Parks Bureau, for construction activities at the Southwest Community Center in Gabriel Park. The Commission requested that Department staff prepare a report, to be sent to the Commission in mid April, describing situation and the actions taken by the Department to follow up to the complaints and address the concerns voiced by the public at this site. This report was prepared (April 17, 1998) and sent to the Commission. Attachment A contains this report without the enclosures.

In summary, the Department received several complaints regarding stormwater runoff conditions at the Southwest Community Center construction site in the winter of 1997/1998. These complaints were investigated and several notices of noncompliances (NONs) were sent to the City of Portland. The city responded to these notices and worked with the Department's inspector to correct sediment control practices at the site over the course of several months. Based on the violation documented by the stormwater inspector this case was referred to the Department's Enforcement Section for consideration of formal enforcement actions including the issuing of a Notice of Permit Violation (NPV) and the assessment of a Civil Penalty (CP). The Enforcement Section evaluated the violations documented and based on the Department's civil penalty process and penalty matrices established in OAR 340-12 recommended that the Director issue a NPV and assess a \$4,500 civil penalty against the city for these violations. The Director issued the NPV and assessed the penalty on May 18, 1998 (Attachment B).

The City submitted on May 26, 1998 a response to the Notice of Permit Violation and payment for the civil penalty has also been received.

**Department Recommendation:**

The Department will continue to evaluate the city's compliance with with the stormwater permit issued. At the current time the regions stormwater inspector has resigned and the position is being recruited.

*Neil Mullane*  
Report Author

*Neil Mullane*  
Division Administrator

Director *Gregory Wash*



# Oregon

John A. Kitzhaber, M.D., Governor

ATTACHMENT A

## Department of Environmental Quality

Northwest Region  
2020 SW Fourth Avenue  
Suite 400  
Portland, OR 97201-4987  
(503) 229-5263 Voice  
TTY (503) 229-5471

April 17, 1998

Carol Whipple, Chair  
Oregon Environmental Quality Commission  
21755 Highway 138 West  
Elkton, OR 97436

RE: Southwest Community Center Project  
1200-C Permit # 109608

Dear Chair Whipple:

The Environmental Quality Commission (EQC) asked the Department to prepare a report describing the efforts being conducted under the stormwater program at the Southwest Community Center (SWCC) construction site on the northwest corner of Gabriel Park. The City of Portland, Bureau of Parks and Recreation is in the process of constructing a community center at this location. The city is under a General 1200-C Stormwater permit (#109608) to cover stormwater discharges from the construction site. This report contains general background on the national stormwater permit program, reviews status of the SWCC site permit, reviews site stormwater issues, identifies the status of the Department's enforcement actions, identifies the issues raised by the neighborhood groups and the Department's response, and finally identifies what the Department recommends for the future at this site.

### **Background on the General 1200C Stormwater Permit**

The Clean Water Act (CWA) prohibits the discharge of wastewater from point sources into the waters of the nation unless specifically allowed under a National Pollutant Discharge Elimination System (NPDES) permit. On October 1, 1992, EPA established a national stormwater program to permit discharges of stormwater. The regulations guiding this program can be found in 40 Code of Federal Regulations (CFR) 122.26. Under this program, construction activities disturbing over 5 acres are required to obtain a NPDES Stormwater permit. The Department has developed a general permit describing the specific requirements for anyone conducting grading activities at a construction sites. The permittee is required to develop and submit to the Department an Erosion and Sediment Control Plan (ESCP) describing in detail the erosion control practices to be used during the construction phase of the project. Plans are submitted to the Department for review and approval. The permit and specifically the ESCP prohibit the discharge of significant amounts of sediment to surface waters. The ESCP therefore describes the management practices which will be used to prevent significant amounts of sediment discharge.

The Department attempts to inspect these facilities periodically to determine if they are in compliance with the ESCP. However, compliance issues are most often initiated in response to complaints. The stormwater program has very limited resources and most of the effort is directed towards assigning permits and reviewing ESCPs. Site visits during plan review are not a usual part of the program.

### **General 1200C Stormwater Permit for the Southwest Community Center Permit**

The City of Portland, Bureau of Parks and Recreation submitted to the Department a 1200C Stormwater Permit application for the SWCC project on May 6, 1997. The Department reviewed and assigned the permit for construction grading on August 27, 1997. A copy of this permit is contained in Attachment A. The project began in September 1997 opening approximately 3.5 acres.

### **Compliance Problems at SWCC**

The Department first became involved with compliance issue at the SWCC site when citizens groups drew our attention to erosion problems. We inspected the site on December 8, 1997. We issued our first Notice of Noncompliance (NON) (Attachment B) on December 16, 1997. The NON identified violations of ORS 468, which prohibits the placing of wastes where they may enter state waters.

The Department provided Parks and Recreation with specific recommendations on how to address the situation. These recommendations included:

- Enlarge the northwest settling pond to make as large as possible;
- Route all of the stormwater runoff from the site into this pond;
- Don't pump water from the enlarged pond into storm drains unless it's absolutely necessary;
- If pumping is needed use a floating pump so that only the top layer of water is being discharged;
- Keep all water being diverted to the pond as clean as possible by employing rock check dams, filter fabric, silt fencing, etc. at key drainage areas; and
- Make sure there is someone onsite dealing with erosion control, when it is raining.

On the same day that the NON was submitted, December 16, 1997, the Department again inspected the site and noted substantial turbidity being discharged to the creek. Following this inspection, a second NON was sent on December 22, 1997, (Attachment C). This NON required immediate action to:

- Put geotextile fabric and Rock on the fill area access road;
- Cover the fill area with an appropriate erosion control cover such as jute netting or compost;
- Eliminate this fill area immediately;

- Find another area to dispose of fill or truck additional fill offsite;
- Significantly increase the onsite detention pond volume by expanding the existing pond or building a new pond;
- Cover all remaining exposed areas onsite with straw mulch; and
- Pump water from the small east pond into the west pond.

On December 18, 1997, the Department met with the City of Portland, site contractor, and environmental consultants to develop an effective erosion control plan.

During the course of the Department's first visits to the site, it was noted that the city was discharging excavation trench water to the stormwater drain which ran to Vermont Creek. On February 9, 1998, the Department issued a third NON to Parks and Recreation for this unpermitted discharge.

A replacement NON was sent on March 16, 1998, to correct an error in the NONs issued on December 16 and 22, 1997, (Attachment E).

The general protocol over the course of the site visits would be for the Department to identify areas of concern and make recommendations to the city and/or its contractor to address them. The Department would later examine whether these recommendations were followed and whether the changes addressed the erosion concerns. The Department collected instream water quality samples on December 16, 1997, January 5, 1998, and January 14 1998. In an effort to address the discharge to Vermont Creek, the City began pumping wastewater from the stormwater collection ponds to the sanitary system by late January 1998.

In general, the site moved from a very significant pollution discharge concern to one where today, although still having some limited discharge, the Department believes is within the limits of the current stormwater permit. The practices they have put onsite have effectively addressed the issues observed in the NONs.

The Department in preparation of this report asked the City of Portland to provide any information they may have on the actions they took at this site. Included in Attachment F is a summary of the work conducted by the City of Portland.

### **Enforcement Process**

The Department's enforcement process has several steps. The issuing of an NON is considered the first step in the enforcement process. It is usually issued when an inspector identifies noncompliance at a permitted source. It is consider an informal enforcement action wherein the Department is attempting to obtain compliance with the permit. The next step in the enforcement process is for the inspector to refer violations to the Enforcement Section for consideration of a formal enforcement action, which may include the issuance of a Notice of Permit Violation (NPV) and/or the Assessment of a Civil Penalty. This can occur after the first NON or after later NONs if there are specific

environmental statute violations. In general, if the violation are all permit related the permittee may receive up to three NONs before the inspector would refer the source to the Enforcement Section for issuance of a NPV. The NPV would usually contain stipulated penalties to be assessed if violations continued. The Department may at that time also enter into a Mutual Agreement and Order (MAO) wherein specific compliance actions and schedules are established for the permittee to come into compliance with the permit.

The Department has issued three NONs to the City of Portland for water quality violations at the SWCC site and the inspector has referred the site to the Enforcement Section for consideration of formal enforcement action. At the current time, the Department is making a determination of the assessment of civil penalty.

### **Southwest Neighborhood Groups Concerns/Issues.**

The Department has had several contacts with Southwest Neighborhood groups over the course of our activity at the SWCC site. The groups have and continues to have concerns regarding how the city and its contractor are addressing stormwater problems at the site. The Department met with the group on February 26, 1998, to heard their concerns and to discuss our actions. The major items discussed included:

- 1.) Data collected by the neighborhood group and how it could be used by DEQ.

The neighborhood group has gather water quality data and has taken numerous pictures during the course of the past several months at the SWCC construction site. The group wanted to know if the Department could use this information in the enforcement action. We explained to the group that the Department, almost exclusively uses information collected by itself, other public agencies and/or the permittee. We do not, as a practice, use information collected by citizen groups as the basic information to document violations. It has been the Department's experience that information supplied by private citizens for enforcement actions is often subject to sever scrutiny in the legal process with questions directed towards its scientific soundness thus limiting its usefulness.

Consequently, we indicated to the group that we would not be using their information to document specific water quality and permit violations for the enforcement action. We did however indicate that if the case moved to a civil penalty and the city appealed the enforcement action, we would be interested in using the pictures taken by the group during this part of the process to illustrate the types of discharges seen at the site. The city has an opportunity to requested an informal meeting to discuss their case once the formal enforcement action is taken. We explained to the group that this type of information has been useful in the past during the informal discussions. I felt, we had an understanding that we would ask for the information if we needed it at that time. The group apparently was waiting for us to call and ask for this information.

We did attempt to get just the water quality data collected by the group but had some difficulty obtaining this information.

## 2.) Limited Water Withdrawal License Application.

The City of Portland in an effort to resolve their stormwater discharge problem arranged to have the stormwater retention basin wastewater discharged to the sanitary sewer instead of the storm sewer. It was the discharge of the turbid stormwater to the storm sewer that was discharging to Vermont Creek. However, in order to divert water that normally enters the Vermont Creek system, the city needed to obtain a Limited License from the Oregon Water Resources Department (WRD). The neighborhood group was interested in the Department commenting on the City of Portland's application for a limited license to withdraw water from the Tualatin Basin. The stated concern was that the instream water right issued for the Tualatin River during the total maximum daily load (TMDL) program would be adversely impacted.

We explained to the group that the Department had an instream water right for the TMDL established in the Tualatin Basin and that no water rights could be granted in the basin that would affect this water right. We committed to contact WRD to be assured that this would be the case when they reviewed the limited license for the City of Portland. The State holds a senior right (Instream Water Right) to any water rights granted in the basin after the date of the Department's right. As far as western water law is concerned, the limited license issued to the city is junior to the state's instream right and it can not injure this senior right. The neighborhood group felt our commitment was to write a letter to WRD and explain our concerns. The Department has a very good working relationship with WRD and we were comfortable with a phone conversation on the issue. The call was made and we are still comfortable with our position.

## 3.) Flow Monitoring

The neighborhood group is very interested in tracking flow in Vermont Creek. The group asked the Department to establish a water flow gauge in the creek to show how water flow was being effected by the SWCC project and more specifically the City of Portland's limited water right license. The Department did not commit to establishing a flow gauge at this site.

Flow information is a key element in both water quality as well as water quantity decisions. WRD is the state agency responsible for establishing and maintaining water flow gauges around the state. The Department uses the data collect by the joint WRD-U.S.Geological Survey in making many of our calculations of potential water quality impact. In recent years, the ability of the state to maintain flow gauges at critical and vital locations around the state has been significantly reduced. Budget reductions at WRD have resulted in the removal of long term gauging stations from the state data base and this affects the Department's ability to accurately determine pollution loads . The Department has attempted to assist WRD in reviving some flow gauges or establishing



others when grant funds are available for these efforts. In the specific case of Vermont Creek, the Department does not have the resources available to establish a flow gauge to track flows into Vermont Creek.

If the Department had funding available for flow gauge stations, there are significant flow questions needing answers in many areas in the Northwest Region to address critical pollution control problems in support of the Oregon Plan and the development of TMDLs. A flow gauge in Vermont Creek would not rank high against these priorities.

#### 4.) Potential impacts from a former Gas Stations near the SWCC site.

The neighborhood group was concerned that there may be a pollution problem if gas ever leaked from an old gas station (removed some thirty to forty years ago) which occupied the corner across the street from the SWCC construction site. Their specific concern related to the construction of a new storm water drainage pipeline through the intersection of Vermont Street and 45<sup>th</sup>. This pipeline construction would not cut through the old gas station site, it is up the apparent hydraulic gradient from that site. The concern was that this storm sewer pipe had the potential to leak in the future thus inducing water into the hydraulic system which could potentially cause any gas which may be present to move towards the creek.

The Department committed to following up on this by asking the City of Portland what precautions they were taking during the pipeline construction. We were informed by the city that they had previously talk to the neighborhood group and assured them that they would sample the soils in the trench as they worked in the area to determine if there was contamination in the area.

It needs to be pointed out that the current storm sewer pipe cuts through the same area but slightly east of the proposed new alignment. This older pipe is being replaced with a new pipe. Consequently, the risk of storm sewer leakage exists under the current situation. Although the pipe line is being moved because of the SWCC construction, it is not a new risk because of the construction.

#### 5.) Proactive Involvement in Stormwater

The neighborhood group encouraged the Department to be proactive in preventing erosion. We discussed our interest in seeing that developers and in this case the City of Portland take every care when constructing facilities to prevent possible erosion. We discussed our attempts to reach others working in the construction area to describe the practices they need to use. In fact, I believe we talked about how one developer may resolve part of their recent stormwater violation penalty action by putting on a seminar to do just this.

We also discussed the practical aspects of the Department's ability to have a proactive program with one inspector for the six county area. The inspector's primary activity is reviewing permit applications, assigning permits, and responding to complaints. The group apparently still wants the Department to commit to some additional proactive steps. With the meager amount of the stormwater program resources, this is not likely in the near future. In short, our one stormwater inspector has just resigned and it will be several weeks, if not months, before a new inspector is hired. It may be very difficult to hire an individual who demonstrates the dedication and perseverance showed by our current inspector.

We have many pressing obligations for our only stormwater inspector. These commitments include support for the Oregon Salmon Plan. In meeting these obligations, we have what we believe to be as balanced and proactive of a program as can reasonably be expected. Because of our limited resources, if we spend substantial effort on one project, we then do not provide any effort on several other projects. For example, the time we have spent working on SWCC stormwater actions has, since February, resulted in the Department canceling three planned excursions to provide technical assistance to Coastal Communities and inspections along coastal salmon streams.

### **Summary**

The City of Portland, Bureau of Parks and Recreation has a 1200C Stormwater Permit for the discharge of stormwater during construction at the Southwest Community Center site located in the northwest corner of Gabriel Park. Parks and Recreation started construction in late fall and the site was significantly impacted by fall and winter rains. Department inspectors have observed significant water quality violations at the SWCC site. Most of the more deleterious turbid discharges came prior to late December 1997, when major portions of the large stockpile areas were not being controlled, and when very turbid foundation dewatering wastes were being pumped and eventually discharged into Vermont Creek. Notices of Noncompliance were sent regarding these violations. The inspector referred the violations to the Enforcement Section for review and consideration of further enforcement actions. Civil penalty action is currently being considered.

Significant erosion control efforts have occurred since late December 1997. Dewatering wastes are now pumped into the sanitary system. This unusual strategy was undertaken in an effort to do whatever was needed to keep turbid waters out of Vermont Creek.

Recent inspections by the Department staff indicated that the site was in excellent condition with respect to erosion and sediment control at the time of the inspection. The whole stormwater system onsite is now hydraulically connected to the sanitary system, the onsite storm drain being completely sealed off. The contractor has taken additional preventative measures by allowing the active foundation trenches to be used as stormwater runoff detention ponds during heavy sustained rain events.

**Recommendation**

The Department will proceed with the issuance of the formal enforcement action for the earlier violation and continue to periodically monitor the site based on the availability of an inspector and regional priorities.

Sincerely,



Neil Mullane  
Administrator

CC: Commissioner Melinda S. Eden  
Commissioner Linda McMahan  
Commissioner Mark Reeve  
Commissioner Tony Van Vliet  
Landon Marsh, Director, DEQ  
Joe Higgins, Southwest Neighborhood Group  
Don Bain, Southwest Neighborhood Group  
Robert Baumgartner, Water Quality Program Manager, NWR, DEQ

Enclosures:

Attachment A 1200C General NPDES Stormwater Permit  
Attachment B Notice of Noncompliance, December 16, 1997  
Attachment C Notice of Noncompliance, December 22, 1997  
Attachment D Notice of Noncompliance, February 9, 1998  
Attachment E Revised Notice of Noncompliance, March 16, 1998  
Attachment F City of Portland, Parks and Recreation, Summary of Erosion Control Actions, 4/98.

May 18, 1998

CERTIFIED MAIL P 494 534 445

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 DEPARTMENT OF  
 ENVIRONMENTAL  
 QUALITY
 

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City of Portland,  
 Parks and Recreation Department  
 c/o Jeffrey Rogers, City Attorney  
 1220 SW Fifth, Room 315  
 Portland, OR 97204

Re: **Notice of Assessment of  
 Civil Penalty**  
 No. WQ/SW-NWR-98-013A and  
**Notice of Permit Violation**  
 No. WQ/SW-NWR-98-013B  
 Multnomah County

On December 8 and 16, 1997, and January 5 and 14, 1998, Paul Keiran, a Department Storm Water Inspector, inspected the Portland Parks and Recreation Department (the City's) Southwest Community Center Project construction site at Gabriel Park. During these inspections, Mr. Keiran documented violations of the City's National Pollutant Discharge Elimination System (NPDES), Storm Water Discharge Permit No. 1200-C (Permit) and Oregon water quality law. While the Department appreciates efforts the City undertook after these inspections to comply with the terms of the Permit and to correct and prevent violations, the enclosed Notice of Permit Violation (NPV) and Notice of Assessment of Civil Penalty (NACP) are being issued to address the above referenced violations.

The enclosed NPV requires the City to address specific deficiencies in its Erosion Control Plan and the implementation of the plan that have resulted in violations of the terms and conditions of its Permit, and respond in writing to the Department within 5 days of receipt of the NPV. The enclosed NACP assesses a civil penalty for storm water discharges that caused violation of state water quality standards.

**Notice of Assessment of Civil Penalty**  
**No. WQ/SW-NWR-99-013A**

During his inspections on December 16, January 5, and January 14, Mr. Keiran observed highly turbid storm water discharge from the City's storm water treatment pond to Vermont Creek, a tributary of Fanno Creek. Mr. Keiran collected samples from Vermont Creek downstream from the discharge point for the construction site's storm water treatment pond. Analysis of the samples by the Department laboratory measured the turbidity in Vermont Creek at 157 nephelometric turbidity units (NTUs) on December 16, 162 NTUs on January 5,



811 SW Sixth Avenue  
 Portland, OR 97204-1390  
 (503) 229-5696  
 TDD (503) 229-6993  
 DEQ-1



and 189 NTUs on January 14. Turbidity of this magnitude is sufficient to cause salmonids to avoid the area of turbidity, reduce their feeding and growth, and abandon redds and emigrate. The City's storm water discharges violated state water quality standard prohibiting the creation of instream conditions that are deleterious to fish and other aquatic life.

Because the City violated the state water quality law, it is liable for a civil penalty assessment. In the enclosed NACP, I have assessed civil penalties of \$1,500 for each day of documented violation for a total civil penalty of \$4,500. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule (OAR) 340-12-045. The Department's findings and civil penalty determinations are attached to the Notice as Exhibit 1.

Appeal procedures are outlined in the NACP. If the City fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against it. If the City wishes to discuss this matter, or if the City believes there are mitigating factors that the Department might not have considered in assessing the civil penalty, it may request an informal discussion by attaching a request to the appeal. A request to discuss this matter with the Department will not waive any right to a contested case hearing.

I look forward to the City's continued cooperation in complying with Oregon's environmental laws. However, if any additional violations occur, additional civil penalties may be assessed.

**Notice of Permit Violation No. WQ/SW-NWR-98-013B**

During the December 16, 1997, and January 5 and 14, 1998 inspections, the Department documented violation of Schedule A, Condition 9 of the City's 1200-C Storm Water Permit, which requires the City to prevent significant quantities of sediment from leaving the site. Specifically, the City discharged turbid water that was not settled or filtered prior to entering surface water. At the time Mr. Keiran conducted his inspection. The City's storm water treatment pond was full to capacity. Additional flow of storm water caused the pond to overflow and not allow adequate settling of suspended solids.

The enclosed NPV requires Portland Parks and Recreation to submit one of the following to the Department **within five (5) working days after receipt of the NPV:**

1. A written response acceptable to the Department certifying that your facility is complying with all terms of the Permit. The certification shall include a sufficient description of the compliance information to enable the Department to determine that compliance has been achieved; or
2. A written proposal, acceptable to the Department, to bring the facility into compliance with the Permit. An acceptable proposal shall include at least the following:
  - a) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

CITY OF PORTLAND

Case No. WQ/SW-NWR-98-013A and -13B

Page 3

- b) A description of the interim steps that will be taken to reduce the impact of the Permit violation until your facility is in compliance with the Permit;
- c) A statement that you have reviewed all other conditions and limitations of the Permit and no other violations of the Permit were discovered. See Oregon Administrative Rule (OAR) 340-12-040.

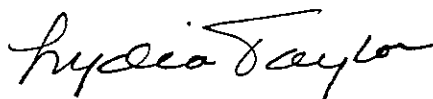
In order for your schedule to be approved by the Department, it must contain at least the following items and compliance deadlines:

- (1) Within 10 days of submitting your NPV response, provide updated procedures for prompt maintenance and repair or restoration of all erosion and sediment controls used at the construction site.
- (2) Within 10 days of submitting your NPV response, provide a plan that proposes post-construction erosion and sediment controls, including post-construction maintenance of those controls;
- (3) Within 20 days of submitting your NPV response, submit to the Department upgraded plans describing the methods that you will use to stabilize disturbed soils throughout the construction site, divert off-site flows from exposed areas within the construction site, and preserve existing vegetation;
- (4) Within 30 days of submitting your NPV response, meet all requirements of the Permit.

If you fail to appropriately respond to the NPV within five days of receipt of the NPV, you will be subject to a civil penalty for the violations cited in Section III of the NPV. A copy of our enforcement procedures and civil penalty rules is enclosed. All submittals required by this NPV should be sent to Jeff Bachman of the Department's Enforcement Section at 2020 S.W. Fourth Avenue, Portland, Oregon 97204.

Copies of referenced rules are enclosed. If you have any questions about these actions, please contact Mr. Bachman at the Department's Enforcement Section in Portland at 229-5950.

Sincerely,



Langdon Marsh  
Director

CITY OF PORTLAND

Case No. WQ/SW-NWR-98-013A and -13B

Page 4

Enclosures

cc: Northwest Region, Portland Office, DEQ  
Water Quality Division, DEQ  
Department of Justice  
Environmental Protection Agency  
Environmental Quality Commission  
Multnomah County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF PORTLAND,  
PARKS AND RECREATION  
DEPARTMENT,  
Respondent

NOTICE OF ASSESSMENT  
OF CIVIL PENALTY  
WQ/SW-NWR-98-013A  
MULTNOMAH COUNTY

I. AUTHORITY

This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent, City of Portland, Parks and Recreation Department, a municipal corporation, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. VIOLATIONS

On and before December 16, 1997, and January 5 and 14, 1998, Respondent violated ORS 468B.025(1)(b) by discharging wastes that caused a violation of a water quality standard violation established by the Environmental Quality Commission. Specifically, Respondent, on the aforementioned dates, discharged waste in the form of sediment and suspended solids from a storm water detention pond at Respondent's Southwest Community Center construction site in Portland to Vermont Creek. The discharges created conditions deleterious to fish or other aquatic life, in violation of the water quality standard set for in OAR 340-41-445(2)(I). This is a Class II violation pursuant to OAR 340-12-055(2)(f).

III. ASSESSMENT OF CIVIL PENALTIES

The Department imposes a civil penalty of \$4,500 for the violation in Section II, above. The findings and determination of Respondent's civil penalty pursuant to OAR 340-12-045 are attached and incorporated as Exhibit No. 1.

IV. OPPORTUNITY FOR CONTESTED CASE HEARING

Respondent has the right to have a formal contested case hearing before the Environmental Quality Commission (Commission) or its hearings officer regarding the matters set out above, at which



1 time Respondent may be represented by an attorney and subpoena and cross-examine witnesses. **The**  
2 **request for hearing must be made in writing, must be received by the Department's Rules**  
3 **Coordinator within twenty (20) days from the date of service of this Notice, and must be**  
4 **accompanied by a written "Answer" to the charges contained in this Notice.**

5 In the written Answer, Respondent shall admit or deny each allegation of fact contained in this  
6 Notice, and shall affirmatively allege any and all affirmative claims or defenses to the assessment of this  
7 civil penalty that Respondent may have and the reasoning in support thereof. Except for good cause  
8 shown:

- 9 1. Factual matters not controverted shall be presumed admitted;
- 10 2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or  
11 defense;
- 12 3. New matters alleged in the Answer shall be presumed to be denied unless admitted in  
13 subsequent pleading or stipulation by the Department or Commission.

14 Send the request for hearing and Answer to: **DEQ Rules Coordinator, Office of the**  
15 **Director, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a request for  
16 hearing and an Answer, Respondent will be notified of the date, time and place of the hearing.

17 Failure to file a timely request for hearing and Answer may result in the entry of a Default  
18 Order for the relief sought in this Notice.

19 Failure to appear at a scheduled hearing or meet a required deadline may result in a dismissal of  
20 the request for hearing and also an entry of a Default Order.

21 The Department's case file at the time this Notice was issued may serve as the record for  
22 purposes of entering the Default Order.


#### 23 V. OPPORTUNITY FOR INFORMAL DISCUSSION

24 In addition to filing a request for a contested case hearing, Respondent may also request an  
25 informal discussion with the Department by attaching a written request to the hearing request and  
26 Answer.

VI. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of \$4,500 should be made payable to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

5/18/98  
Date

  
Langdon Marsh, Director

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENTS' CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

- VIOLATION:** Causing a violation of a state water quality standard in violation of Oregon Revised Statute 468B.025(1)(b).
- CLASSIFICATION:** The violation is a Class II violation pursuant to OAR 340-12-055(2)(f).
- MAGNITUDE:** The magnitude of the violation is moderate. OAR 340-12-045(1)(a)(ii) provides that in the absence of a selected magnitude, the magnitude shall be moderate.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:  $BP + [(1 \times BP) (P + H + O + R + C)] + EB$ .
- "BP" is the base penalty, which is \$1,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).
- "P" is Respondent's prior significant action(s) and receives a value of 5, pursuant to OAR 340-12-045(1)(c)(A)(vi). Respondent's prior significant actions, Case Nos. WQMW-NWR-90-89, WQMW-NWR-94-253, WQMW-NWR-94-305, and WQMW-NWR-95-181, consist of four Class I equivalent violations.
- "H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of -2 as Respondent took all feasible steps to correct violations.
- "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 because Respondent is being assessed a separate penalty for each occurrence of the violation.
- "R" is the cause of the violation and receives a value of 2 as Respondent's actions were negligent. Respondent did not take reasonable care to avoid the foreseeable risk of committing the violation when it failed to design or implement adequate erosion controls.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 because the violation could not be corrected once it had occurred.
- "EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as there is insufficient information upon which to base a finding of other than 0.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(.1 \times \text{BP}) (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(.1 \times \$1,000) (5 + (-2) + 0 + 2 + 0)] + 0 \\ &= \$1,000 + [(\$100 \times 5)] + 0 \\ &= \$1,000 + \$500 + 0 \\ &= \$1,500 \end{aligned}$$

The Department documented three separate occurrences of the violation, on December 16, 1997, and January 5 and 14, 1998. Respondent's total penalty is therefore \$4,500.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
CITY OF PORTLAND, ) NOTICE OF PERMIT  
PARKS AND RECREATION DEPT., ) VIOLATION  
Respondent. ) No. WQ/SW-NWR-98-13B  
MULTNOMAH COUNTY

I. AUTHORITY

This Notice of Permit Violation (Notice) is issued to Respondent, City of Portland, Parks and Recreation Department, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. PERMIT

On August 27, 1997, the Department issued National Pollutant Discharge Elimination System Storm Water Discharge Permit No. 1200-C, File No. 109608 (Permit) to Respondent. The Permit authorized Respondent to construct water pollution control facilities and to discharge to public waters adequately treated storm water from Respondent's construction site in Gabriel Park, Portland, in conformance with the terms and conditions of the Permit. The Permit expires on December 12, 2000. The Permit was in effect at all material times.

III. PERMIT VIOLATIONS

On or about December 8, 1997, and continuing at least until December 22, 1997, Respondent violated Schedule A, Condition 9, of the Permit. Specifically, Respondent failed to implement, maintain, and operate the erosion and sediment control measures approved by the Department in Respondent's Erosion and Sediment Control Plan for the construction site. This is a Class I violation pursuant to OAR 340-12-055(1)(d).

IV. REQUIREMENTS UNDER THIS NOTICE

A penalty will be imposed for the violation(s) specified in Section III of this Notice unless the Respondent submits one of the following to the Department within five working days after receipt of this Notice:

1           1.       A written response, signed by either a principal executive officer or appropriate  
2 elected official, from the Respondent certifying that the permitted facility is complying with all  
3 terms and conditions of the Permit. The certification shall include a sufficient description of the  
4 information on which the Respondent is certifying compliance so as to enable the Department to  
5 determine that compliance has been achieved; OR

6           2.       A written proposal to bring the facility into compliance with the Permit which shall  
7 include at least the following:

8               a.       A detailed plan and time schedule for achieving compliance in the shortest  
9 practicable time; and

10              b.       A description of the interim steps that will be taken to reduce the impact of  
11 the Permit violation(s) until the permitted facility is in compliance with the Permit; and

12              c.       A statement that the Respondent has reviewed all other conditions and  
13 limitations of the Permit and no other violations of the Permit were discovered.

14           V. CONSEQUENCES OF ADDITIONAL VIOLATIONS OR FAILURE TO RESPOND

15           If the Respondent fails to meet the requirements of Section IV of this Notice, or if the  
16 violation(s) cited in Section III continue, or if a Permit violation again occurs within 36 months of  
17 Respondent's receipt of this Notice, the Department may assess a civil penalty against  
18 Respondent. In the event that a civil penalty is imposed upon Respondent, it will be assessed by a  
19 subsequent written notice pursuant to OAR Chapter 340, Division 12. Respondent will be given  
20 an opportunity for a contested case hearing to contest the allegations and penalty assessed in that  
21 Notice, pursuant to ORS 468.135, ORS Chapter 183, and OAR Chapter 340, Division 11.  
22 Respondent is not entitled to a contested case hearing at this time.

23  
24  
25 5/18/92  
Date

*Lydia Taylor*  
Langdon Marsh, Director

May 18, 1998

CERTIFIED MAIL P 494 534 445

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

City of Portland,  
Parks and Recreation Department  
c/o Jeffrey Rogers, City Attorney  
1220 SW Fifth, Room 315  
Portland, OR 97204

Re: **Notice of Assessment of  
Civil Penalty**  
No. WQ/SW-NWR-98-013A and  
**Notice of Permit Violation**  
No. WQ/SW-NWR-98-013B  
Multnomah County

On December 8 and 16, 1997, and January 5 and 14, 1998, Paul Keiran, a Department Storm Water Inspector, inspected the Portland Parks and Recreation Department (the City's) Southwest Community Center Project construction site at Gabriel Park. During these inspections, Mr. Keiran documented violations of the City's National Pollutant Discharge Elimination System (NPDES), Storm Water Discharge Permit No. 1200-C (Permit) and Oregon water quality law. While the Department appreciates efforts the City undertook after these inspections to comply with the terms of the Permit and to correct and prevent violations, the enclosed Notice of Permit Violation (NPV) and Notice of Assessment of Civil Penalty (NACP) are being issued to address the above referenced violations.

The enclosed NPV requires the City to address specific deficiencies in its Erosion Control Plan and the implementation of the plan that have resulted in violations of the terms and conditions of its Permit, and respond in writing to the Department within 5 days of receipt of the NPV. The enclosed NACP assesses a civil penalty for storm water discharges that caused violation of state water quality standards.

**Notice of Assessment of Civil Penalty**  
**No. WQ/SW-NWR-99-013A**

During his inspections on December 16, January 5, and January 14, Mr. Keiran observed highly turbid storm water discharge from the City's storm water treatment pond to Vermont Creek, a tributary of Fanno Creek. Mr. Keiran collected samples from Vermont Creek downstream from the discharge point for the construction site's storm water treatment pond. Analysis of the samples by the Department laboratory measured the turbidity in Vermont Creek at 157 nephelometric turbidity units (NTUs) on December 16, 162 NTUs on January 5,



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
TDD (503) 229-6993  
DEQ-1



and 189 NTUs on January 14. Turbidity of this magnitude is sufficient to cause salmonids to avoid the area of turbidity, reduce their feeding and growth, and abandon redds and emigrate. The City's storm water discharges violated state water quality standard prohibiting the creation of instream conditions that are deleterious to fish and other aquatic life.

Because the City violated the state water quality law, it is liable for a civil penalty assessment. In the enclosed NACP, I have assessed civil penalties of \$1,500 for each day of documented violation for a total civil penalty of \$4,500. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule (OAR) 340-12-045. The Department's findings and civil penalty determinations are attached to the Notice as Exhibit 1.

Appeal procedures are outlined in the NACP. If the City fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against it. If the City wishes to discuss this matter, or if the City believes there are mitigating factors that the Department might not have considered in assessing the civil penalty, it may request an informal discussion by attaching a request to the appeal. A request to discuss this matter with the Department will not waive any right to a contested case hearing.

I look forward to the City's continued cooperation in complying with Oregon's environmental laws. However, if any additional violations occur, additional civil penalties may be assessed.

**Notice of Permit Violation No. WQ/SW-NWR-98-013B**

During the December 16, 1997, and January 5 and 14, 1998 inspections, the Department documented violation of Schedule A, Condition 9 of the City's 1200-C Storm Water Permit, which requires the City to prevent significant quantities of sediment from leaving the site. Specifically, the City discharged turbid water that was not settled or filtered prior to entering surface water. At the time Mr. Keiran conducted his inspection. The City's storm water treatment pond was full to capacity. Additional flow of storm water caused the pond to overflow and not allow adequate settling of suspended solids.

The enclosed NPV requires Portland Parks and Recreation to submit one of the following to the Department **within five (5) working days after receipt of the NPV:**

1. A written response acceptable to the Department certifying that your facility is complying with all terms of the Permit. The certification shall include a sufficient description of the compliance information to enable the Department to determine that compliance has been achieved; or
2. A written proposal, acceptable to the Department, to bring the facility into compliance with the Permit. An acceptable proposal shall include at least the following:
  - a) A detailed plan and time schedule for achieving compliance in the shortest practicable time;



CITY OF PORTLAND

Case No. WQ/SW-NWR-98-013A and -13B

Page 3

- b) A description of the interim steps that will be taken to reduce the impact of the Permit violation until your facility is in compliance with the Permit;
- c) A statement that you have reviewed all other conditions and limitations of the Permit and no other violations of the Permit were discovered. See Oregon Administrative Rule (OAR) 340-12-040.

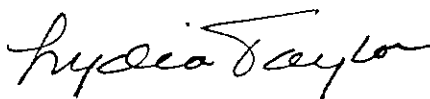
In order for your schedule to be approved by the Department, it must contain at least the following items and compliance deadlines:

- (1) Within 10 days of submitting your NPV response, provide updated procedures for prompt maintenance and repair or restoration of all erosion and sediment controls used at the construction site.
- (2) Within 10 days of submitting your NPV response, provide a plan that proposes post-construction erosion and sediment controls, including post-construction maintenance of those controls;
- (3) Within 20 days of submitting your NPV response, submit to the Department upgraded plans describing the methods that you will use to stabilize disturbed soils throughout the construction site, divert off-site flows from exposed areas within the construction site, and preserve existing vegetation;
- (4) Within 30 days of submitting your NPV response, meet all requirements of the Permit.

If you fail to appropriately respond to the NPV within five days of receipt of the NPV, you will be subject to a civil penalty for the violations cited in Section III of the NPV. A copy of our enforcement procedures and civil penalty rules is enclosed. All submittals required by this NPV should be sent to Jeff Bachman of the Department's Enforcement Section at 2020 S.W. Fourth Avenue, Portland, Oregon 97204.

Copies of referenced rules are enclosed. If you have any questions about these actions, please contact Mr. Bachman at the Department's Enforcement Section in Portland at 229-5950.

Sincerely,



Langdon Marsh  
Director

CITY OF PORTLAND

Case No. WQ/SW-NWR-98-013A and -13B

Page 4

Enclosures

cc: Northwest Region, Portland Office, DEQ  
Water Quality Division, DEQ  
Department of Justice  
Environmental Protection Agency  
Environmental Quality Commission  
Multnomah County District Attorney

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: )  
4 CITY OF PORTLAND, )  
5 PARKS AND RECREATION )  
6 DEPARTMENT, )  
Respondent )

NOTICE OF ASSESSMENT  
OF CIVIL PENALTY  
WQ/SW-NWR-98-013A  
MULTNOMAH COUNTY

7 I. AUTHORITY

8 This Notice of Assessment of Civil Penalty (Notice) is issued to Respondent, City of Portland,  
9 Parks and Recreation Department, a municipal corporation, by the Department of Environmental  
10 Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS  
11 Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

12 II. VIOLATIONS

13 On and before December 16, 1997, and January 5 and 14, 1998, Respondent violated ORS  
14 468B.025(1)(b) by discharging wastes that caused a violation of a water quality standard violation  
15 established by the Environmental Quality Commission. Specifically, Respondent, on the  
16 aforementioned dates, discharged waste in the form of sediment and suspended solids from a storm  
17 water detention pond at Respondent's Southwest Community Center construction site in Portland to  
18 Vermont Creek. The discharges created conditions deleterious to fish or other aquatic life, in violation  
19 of the water quality standard set for in OAR 340-41-445(2)(f). This is a Class II violation pursuant to  
20 OAR 340-12-055(2)(f).

21 III. ASSESSMENT OF CIVIL PENALTIES

22 The Department imposes a civil penalty of \$4,500 for the violation in Section II, above.  
23 The findings and determination of Respondent's civil penalty pursuant to OAR 340-12-045 are  
24 attached and incorporated as Exhibit No. 1.

25 IV. OPPORTUNITY FOR CONTESTED CASE HEARING

26 Respondent has the right to have a formal contested case hearing before the Environmental  
27 Quality Commission (Commission) or its hearings officer regarding the matters set out above, at which

1 time Respondent may be represented by an attorney and subpoena and cross-examine witnesses. **The**  
2 **request for hearing must be made in writing, must be received by the Department's Rules**  
3 **Coordinator within twenty (20) days from the date of service of this Notice, and must be**  
4 **accompanied by a written "Answer" to the charges contained in this Notice.**

5 In the written Answer, Respondent shall admit or deny each allegation of fact contained in this  
6 Notice, and shall affirmatively allege any and all affirmative claims or defenses to the assessment of this  
7 civil penalty that Respondent may have and the reasoning in support thereof. Except for good cause  
8 shown:

- 9 1. Factual matters not controverted shall be presumed admitted;
- 10 2. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or  
11 defense;
- 12 3. New matters alleged in the Answer shall be presumed to be denied unless admitted in  
13 subsequent pleading or stipulation by the Department or Commission.

14 Send the request for hearing and Answer to: **DEQ Rules Coordinator, Office of the**  
15 **Director, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a request for  
16 hearing and an Answer, Respondent will be notified of the date, time and place of the hearing.

17 Failure to file a timely request for hearing and Answer may result in the entry of a Default  
18 Order for the relief sought in this Notice.

19 Failure to appear at a scheduled hearing or meet a required deadline may result in a dismissal of  
20 the request for hearing and also an entry of a Default Order.

21 The Department's case file at the time this Notice was issued may serve as the record for  
22 purposes of entering the Default Order.


#### 23 V. OPPORTUNITY FOR INFORMAL DISCUSSION

24 In addition to filing a request for a contested case hearing, Respondent may also request an  
25 informal discussion with the Department by attaching a written request to the hearing request and  
26 Answer.

VI. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of \$4,500 should be made payable to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

5/18/98  
Date

  
Langdon Marsh, Director

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENTS' CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

- VIOLATION:** Causing a violation of a state water quality standard in violation of Oregon Revised Statute 468B.025(1)(b).
- CLASSIFICATION:** The violation is a Class II violation pursuant to OAR 340-12-055(2)(f).
- MAGNITUDE:** The magnitude of the violation is moderate. OAR 340-12-045(1)(a)(ii) provides that in the absence of a selected magnitude, the magnitude shall be moderate.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:  $BP + [(.1 \times BP) (P + H + O + R + C)] + EB$ .
- "BP" is the base penalty, which is \$1,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).
- "P" is Respondent's prior significant action(s) and receives a value of 5, pursuant to OAR 340-12-045(1)(c)(A)(vi). Respondent's prior significant actions, Case Nos. WQMW-NWR-90-89, WQMW-NWR-94-253, WQMW-NWR-94-305, and WQMW-NWR-95-181, consist of four Class I equivalent violations.
- "H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of -2 as Respondent took all feasible steps to correct violations.
- "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 because Respondent is being assessed a separate penalty for each occurrence of the violation.
- "R" is the cause of the violation and receives a value of 2 as Respondent's actions were negligent. Respondent did not take reasonable care to avoid the foreseeable risk of committing the violation when it failed to design or implement adequate erosion controls.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 because the violation could not be corrected once it had occurred.
- "EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as there is insufficient information upon which to base a finding of other than 0.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(.1 \times \text{BP}) (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(.1 \times \$1,000) (5 + (-2) + 0 + 2 + 0)] + 0 \\ &= \$1,000 + [(\$100 \times 5)] + 0 \\ &= \$1,000 + \$500 + 0 \\ &= \$1,500 \end{aligned}$$

The Department documented three separate occurrences of the violation, on December 16, 1997, and January 5 and 14, 1998. Respondent's total penalty is therefore \$4,500.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
CITY OF PORTLAND, ) NOTICE OF PERMIT  
PARKS AND RECREATION DEPT., ) VIOLATION  
Respondent. ) No. WQ/SW-NWR-98-13B  
MULTNOMAH COUNTY

I. AUTHORITY

This Notice of Permit Violation (Notice) is issued to Respondent, City of Portland, Parks and Recreation Department, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. PERMIT

On August 27, 1997, the Department issued National Pollutant Discharge Elimination System Storm Water Discharge Permit No. 1200-C, File No. 109608 (Permit) to Respondent. The Permit authorized Respondent to construct water pollution control facilities and to discharge to public waters adequately treated storm water from Respondent's construction site in Gabriel Park, Portland, in conformance with the terms and conditions of the Permit. The Permit expires on December 12, 2000. The Permit was in effect at all material times.

III. PERMIT VIOLATIONS

On or about December 8, 1997, and continuing at least until December 22, 1997, Respondent violated Schedule A, Condition 9, of the Permit. Specifically, Respondent failed to implement, maintain, and operate the erosion and sediment control measures approved by the Department in Respondent's Erosion and Sediment Control Plan for the construction site. This is a Class I violation pursuant to OAR 340-12-055(1)(d).

IV. REQUIREMENTS UNDER THIS NOTICE

A penalty will be imposed for the violation(s) specified in Section III of this Notice unless the Respondent submits one of the following to the Department within five working days after receipt of this Notice:



1           1.       A written response, signed by either a principal executive officer or appropriate  
2 elected official, from the Respondent certifying that the permitted facility is complying with all  
3 terms and conditions of the Permit. The certification shall include a sufficient description of the  
4 information on which the Respondent is certifying compliance so as to enable the Department to  
5 determine that compliance has been achieved; OR

6           2.       A written proposal to bring the facility into compliance with the Permit which shall  
7 include at least the following:

8               a.       A detailed plan and time schedule for achieving compliance in the shortest  
9 practicable time; and

10              b.       A description of the interim steps that will be taken to reduce the impact of  
11 the Permit violation(s) until the permitted facility is in compliance with the Permit; and

12              c.       A statement that the Respondent has reviewed all other conditions and  
13 limitations of the Permit and no other violations of the Permit were discovered.

14           V. CONSEQUENCES OF ADDITIONAL VIOLATIONS OR FAILURE TO RESPOND

15           If the Respondent fails to meet the requirements of Section IV of this Notice, or if the  
16 violation(s) cited in Section III continue, or if a Permit violation again occurs within 36 months of  
17 Respondent's receipt of this Notice, the Department may assess a civil penalty against  
18 Respondent. In the event that a civil penalty is imposed upon Respondent, it will be assessed by a  
19 subsequent written notice pursuant to OAR Chapter 340, Division 12. Respondent will be given  
20 an opportunity for a contested case hearing to contest the allegations and penalty assessed in that  
21 Notice, pursuant to ORS 468.135, ORS Chapter 183, and OAR Chapter 340, Division 11.  
22 Respondent is not entitled to a contested case hearing at this time.

23  
24  
25 5/18/98  
Date

Lydia Taylor  
Langdon Marsh, Director

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item H  
June 11, 1998, Meeting

**Title:**

Approval of Lane Regional Air Pollution Authority regulations and amendment of the Clean Air Act State Implementation Plan

**Summary:**

Lane Regional Air Pollution Authority (LRAPA) requests, through the Department, that the Commission approve LRAPA regulations and adopt them as part of the State of Oregon Clean Air Act State Implementation Plan under OAR 340-020-0047. LRAPA regulations included in this package cover Incinerator Rules, Enforcement Procedures, and requirements for Stationary Sources. ORS 468A.135 requires that LRAPA regulations be at least as stringent as state regulations and authorizes their approval by the Environmental Quality Commission. Approval by the Commission does not necessarily represent agreement with LRAPA regulations.

**Department Recommendation:**

The Department recommends the Commission approve the LRAPA regulations and adopt them as part of the State Implementation Plan under OAR 340-020-0047

*Dewe Northey*  
Report Author

*Gregory A. Drew*  
Division Administrator

Director *Gregory A. Drew*

State of Oregon  
Department of Environmental Quality Memorandum

---

**Date:** May 28, 1998  
**To:** Environmental Quality Commission  
**From:** Langdon Marsh  
**Subject:** Agenda Item H, Approval of amended Lane Regional Air Pollution Authority (LRAPA) regulations & amendment of the Clean Air Act State Implementation Plan: EQC Meeting of June 11, 1998

**Background**

This package contains regulations requiring two separate actions by the Commission. The first is approval of air quality rules adopted by Lane Regional Air Pollution Authority (LRAPA), and the second is adoption of these rules as a revision to the State Implementation Plan (SIP) so they can be forwarded to EPA for approval:

1. ORS 468A.135 authorizes regional air pollution authorities to exercise, within their jurisdictions, the functions relating to air pollution control that otherwise are vested in the Commission and the Department. ORS 468A.135(2) prohibits any regional air pollution control authority from adopting any rule or standard that is less strict than any rule or standard adopted by the Commission. The statute gives the Commission an oversight role by requiring a regional authority to submit the standards to the Commission for approval before they may be enforced.

The statute does not express any standard of review for such approval, but it is apparent that the Commission's role is limited to determining whether there is a stringency problem. In this case, LRAPA adopted regulations that are similar to rules previously adopted by the Commission, and staff finds these rules to be as stringent as state requirements.

2. OAR 340-020-0047(2) requires that SIP revisions be made pursuant to the Commission's rulemaking procedures and any other requirements contained in the SIP, after which the Department submits them to EPA for approval. This is not a substantive matter. At this point, the Commission need only adopt a rule incorporating the substantive rules into the SIP.

Memo To: Environmental Quality Commission

**Agenda Item H, Approval of** amended Lane Regional Air Pollution Authority (LRAPA) regulations & amendment of the Clean Air Act State Implementation Plan: EQC Meeting of June 11, 1998

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The regulations addressed in this package are revisions pertaining to LRAPA's General Incinerator Rules (Titles 12, 30, and 33), Enforcement Procedures (Title 15), and Stationary Source Rules (Title 34). At LRAPA's request, these regulations are presented for approval by the Environmental Quality Commission (EQC) and adoption into the SIP under Oregon Administrative Rule (OAR) 340-020-0047.

LRAPA provided public notice for these regulations pursuant to its own process. LRAPA's Board of Directors authorized public hearings to be held, and the Department authorized LRAPA staff to act concurrently as the EQC's Hearing Officers for the amendment of OAR 340-020-0047 on these occasions. Public notices and informational materials were mailed to the persons who had asked to be notified of rulemaking actions pursuant to LRAPA's procedures.

Public hearings were held as follows:

<u>Issue</u>	<u>Public Notice SOS Bulletin</u>	<u>Public Hearing/ LRAPA Adoption</u>	<u>Hearing Officer</u>
General Incinerator Rules	February 1, 1994	March 8, 1994	Don Arkell
Enforcement Procedures	February 1, 1994	March 8, 1994	Don Arkell
Enforcement Procedures	May 1, 1995	June 13, 1995	Don Arkell
Stationary Source Rules	August 1, 1997	September 9, 1997	John Ruscigno

Comments received are summarized in the Hearing Officers' memoranda of March 8, 1994, June 13, 1995 and September 9, 1997. LRAPA staff evaluated the comments received and recommended modifications to the proposed regulations as summarized in the staff reports of the individual rule packages attached.

The Department's Air Quality staff also evaluated LRAPA's regulations and concluded they comply with ORS 468A.135 in that they are at least as stringent as air quality rules adopted by the EQC.

Following adoption, LRAPA forwarded these regulations to the Department for inclusion into the SIP, but this process was delayed because the Incinerator rules and Enforcement rules incorporated features of the state rules (adopted by the EQC) that EPA had since found to be unacceptable. These underlying issues now appear to be resolved, allowing revision of the SIP to proceed.

The following sections summarize the issues this proposed approval/rulemaking action is intended to address, the authority to address the issues, the action taken by the LRAPA Board of Directors, and a recommendation for Commission action.

Memo To: Environmental Quality Commission

**Agenda Item H, Approval of amended Lane Regional Air Pollution Authority (LRAPA) regulations & amendment of the Clean Air Act State Implementation Plan: EQC Meeting of June 11, 1998**

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**Issue this Proposed Rulemaking Action is Intended to Address**

This approval/rulemaking action is intended to complete the procedural requirements necessary for the enforcement of these rule modifications and to bring LRAPA's portion of the SIP up to date with its own rules and with the State's portion of the SIP.

Commission approval of LRAPA regulations demonstrates the Commission's agreement with the LRAPA Board that the regulations meet the provisions of ORS 468A.135 which requires that a regional authority's regulations must be at least as stringent as state regulations.

**Relationship to Federal and Adjacent State Rules**

Regarding the issue of EQC approval, LRAPA regulations must be at least as stringent as state rules. This requirement is similar to the state's obligation under the Clean Air Act to be no less stringent than federal rules. DEQ staff reviewed LRAPA's regulations and found them to meet the stringency requirement.

Regarding SIP adoption, all state and local air quality agencies exercising authority delegated from EPA to implement Title 1 of the Clean Air Act must include measures that support this purpose into a State Implementation Plan or SIP. Revision of a state plan is subject to federal review and approval, and the SIP is a primary enforcement mechanism through which EPA oversees air programs. Procedures for SIP modification vary from state to state. In Oregon, the SIP is revised by the amendment of OAR 340-020-0047.

**Authority to Address the Issue**

ORS 468A.135 authorizes the Commission to approve standards and rules of regional authorities. ORS 468 and 468A authorize the Commission to amend the SIP in OAR 340-020-0047.

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

LRAPA and its Board are subject to the requirements of ORS Chapters 183 and 192 regarding rulemaking procedures and public meetings. LRAPA has its own rulemaking process which parallels the Department's. It uses advisory committees in rule development, holds public hearings in front of its board, and adopts rules. The attached regulations are products of this process.

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

Memo To: Environmental Quality Commission

**Agenda Item H, Approval of** amended Lane Regional Air Pollution Authority (LRAPA) regulations & amendment of the Clean Air Act State Implementation Plan: EQC Meeting of June 11, 1998

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**General Incinerator Rules:** New Title 30 regulations replace LRAPA's outdated refuse-burning equipment rules in Section 33-020. The regulations are consistent with rules previously adopted by the Environmental Quality Commission. These rules better address modern incineration equipment designed for specific kinds of waste materials rather than the general waste categories of earlier rules. Affected facilities must operate within specified parameters of temperature and residence time, monitor those parameters, and demonstrate proof of compliance with those parameters through testing and periodic reporting.

**Enforcement Procedures (of 3-8-94):** Revisions to LRAPA's enforcement and civil penalty rules follow statutory amendments and changes made by the EQC to state rules. Modifications also add provisions to accommodate implementation of the Title V permit program:

- Addition of a new enforcement category—"Notice of Permit Violation".
- Removal of the "Notice of Intent to Impose a Civil Penalty" enforcement category except for violations of an Air Contaminant Discharge Permit.
- Creation of a new \$2,500 civil penalty matrix for open burning violations.
- Addition of a new \$100,000 civil penalty for reckless or intentional endangerment of public health or extensive environmental damage.
- Classification of certain listed violations to set criteria for determining the magnitude of unlisted violations.
- Separation of the economic benefit calculation from the penalty calculation.

**Enforcement Procedures (of 6-13-95):** Modifications of LRAPA's enforcement and civil penalty rules make the following changes:

- Opacity violations are separated according to severity, leaving more severe events as Class I violations and designating less severe events as Class II violations.
- Residential open burning violations are reduced from Class II to Class III violations which lowers the range of civil penalties from \$200 - \$750 down to \$50 - \$250.
- A violation for failing to report required permit information is increased from a Class III to a Class II violation.
- A "Notice of Noncompliance" is changed from a nonpunitive notice with no further action, to a preliminary notice of violation with possible further action following investigation.

**Stationary Source Rules:** Modifications add a provision for industrial sources to continue operating under an expired permit if, due to processing delays, the agency fails to issue a new permit in timely fashion. Additional modifications: clarify that Subsection 34-035-1 does not apply to Title V permittees, remove a reference to New Source Performance Standards from 34-035-3.C, remove references to Maximum Achievable Control Technology and Generally Achievable Control

Memo To: Environmental Quality Commission

**Agenda Item H, Approval of** amended Lane Regional Air Pollution Authority (LRAPA) regulations & amendment of the Clean Air Act State Implementation Plan: EQC Meeting of June 11, 1998

Page 5

Technology from 34-035-3.D, remove outdated registration requirements and make minor house-keeping clarifications.

**Recommendation for Commission Action**

It is recommended that the Commission approve the LRAPA regulations and adopt them as part of the SIP under OAR 340-020-0047.

**Attachments**

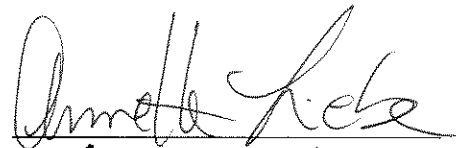
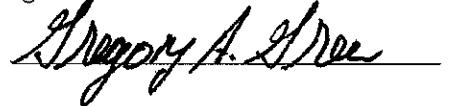
Attachments for this report are organized by date of adoption by the LRAPA Board of Directors. LRAPA attachments include the adoption report prepared by LRAPA staff including rulemaking statements, fiscal and economic impact statements, land use consistency statements, public notices, Hearing Officers' reports, comment summaries and responses, copies of the regulations and LRAPA Board of Directors' meeting minutes verifying their adoption of the regulations. In addition, the Department prepared a "Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements" to meet the requirements of OAR Chapter 340, Division 011.

- A. General Incinerator Rules: March 8, 1994, LRAPA Rescission of Title 33-020, Adoption of Title 30, and Amendment of Title 12.
- B. Enforcement Procedures: March 8, 1994, Amendment of Title 15.
- C. Enforcement Procedures: June 13, 1995, Amendment of Title 15.
- D. Stationary Source Rules: September 9, 1997, Amendment of Title 34.
- E. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements

Approved:

Section:

Division:

Report Prepared By: Dave Nordberg  
Phone: (503) 229-5519

Date Prepared: May 26, 1998

# ATTACHMENT A

## Incinerator Rules

LRAPA Adoption of March 8, 1994



## Agenda Item No. 7

## LRAPA Board of Directors Meeting

March 8, 1994

TO: Board of Directors

FROM: Donald R. Arkell, Director

SUBJ: Public Hearing on Proposed Adoption of New Title 30, "Incinerator Rules," and Rescission of Existing Refuse-Burning Equipment Rules Contained In Section 33-020; and Amendments to Title 12, "Definitions"

**BACKGROUND**

At its January 11, 1994 meeting, the LRAPA board authorized public hearing on proposed amendment of Titles 12 and 33 and adoption of new Title 30. Staff requested and received authorization from DEQ for LRAPA to serve as EQC hearings officer in a joint EQC/LRAPA hearing.

Notice of this public hearing was published in the Cottage Grove Sentinel, the Oakridge Dead Mountain Echo, the Eugene Register-Guard and the Springfield News, and in the February 1, 1994 edition of the Secretary of State's Bulletin. Staff contacted each existing affected incinerator operator to inform them of the new requirements and requested their comments on technical feasibility of compliance. Several comments suggesting minor changes were received and are reflected in this proposed rule. Written comments received, to date, from Gary Buell of Buell Chapel in Springfield, and from DEQ, are addressed in the attached pages. One additional change was made to draft Title 30, subsection 30-045-3, in response to board discussion at the January 11 meeting. It was felt that crematory incinerators should be discouraged from emitting any odors at all which affect neighboring properties, and the word "unreasonably" implies that some odor is acceptable. The word has been removed in this revised draft.

Following public hearing, the board may adopt the rules, either as proposed or with any changes deemed necessary in response to information received at the public hearing.

Public Hearing  
Proposed Title 30, "Incinerator Regulations"

March 8, 1994  
-2-

## PROBLEM STATEMENT

### Title 30, "Incinerator Regulations"

LRAPA's current incinerator and refuse-burning equipment rule (Section 33-020), adopted in 1973, is outdated and is meant to regulate the design of incinerator equipment which would no longer be permitted, today. On-site incineration of refuse is a disposal method which is a less acceptable practice now, generally, than it used to be, due to public concerns about combustion by-products such as hydrogen chloride, sulfur dioxide, and organic compounds (including dioxins and furans). Modern incineration equipment tends to be designed for specific kinds of waste material, rather than general waste categories. Newer incinerators are designed to reduce emission of the worrisome compounds efficiently, through combustion temperature controls and/or scrubbers or other air pollution control devices.

Although these rules would apply to solid waste incinerators, as well as crematoriums and infectious waste incinerators, there are presently no general refuse solid waste incinerators operating in Lane County. The rules would affect five crematoriums and one infectious waste, or hospital, incinerator in the Eugene-Springfield area. The draft rule is similar to state rules adopted in 1990.

### Title 12, "Definitions"

Title 12 currently includes most of the definitions of terms and words used in LRAPA's Rules and Regulations. In addition, each individual title contains definitions specific to the understanding of that title. There are some words and terms which mean slightly different things in the contexts of different rules, and this has caused some confusion when readers of the rules use a definition from one title to interpret the same term in another title. It is proposed to reference specific words and terms in each title but to remove the actual definitions and move them all to Title 12. For users who have copies of the complete set of rules, this will help to avoid the confusion described above. For persons who need only a specific title, a separate sheet (or sheets) containing the definitions cited in that title will be provided. These amendments are being made in conjunction with the proposed rulemaking for Title 30.

## PROPOSAL

It is proposed to rescind Section 33-020 and adopt a new Title 30, "Incinerator Regulations." Essentially, these proposed rules would establish more restrictive emission limits on opacity and specifically limit emissions of certain hazardous air

Public Hearing  
Proposed Title 30, "Incinerator Regulations"

March 8, 1994  
-3-

contaminants. In addition the proposed rules would require operators of affected facilities to ensure that specified operational parameters such as temperature and residence time are maintained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting.

Once passed, the regulatory requirements for new sources will be included in the Approval to Construct and the Air Contaminant Discharge Permit. Existing sources must demonstrate compliance with the regulatory requirements within one year of the effective date of the regulations.

## EFFECTS OF PROPOSED RULES

### Title 30

1. **Public.** Because of the reduced levels of the combustion by-products listed above, the general public would enjoy cleaner air in the vicinity of incinerator facilities, and reduced concern regarding health effects.
2. **Regulated Community.** Owners of incinerators and crematoriums in Lane County would be required to operate incineration facilities under more controlled conditions. Verbal discussion with the operator of the infectious waste incinerator indicates that significant modification would be required for compliance and that optional disposal methods would be considered during the one-year compliance period. Crematory operators would have one year to install auxiliary burner equipment in the secondary chambers to meet the temperature requirements. Estimated cost would be about \$3,000 each.
3. **Other Agencies.** Adoption of the proposed rule would make LRAPA's rules consistent with state regulations.

### Title 12

The effects on the public, the regulated community and other agencies are the same: consolidation of all definitions into one title makes all definitions available in one place; removal of actual definitions from individual titles helps to avoid confusion between differing definitions for the same terms or words, as applied to different titles.

Public Hearing  
Proposed Title 30, "Incinerator Regulations"

March 8, 1994  
-4-

### **OPTIONS FOR BOARD ACTION**

1. Do not adopt the rules. LRAPA's incinerator rules would remain outdated and inadequate, and inconsistent with state rules. Title 12 definitions would remain incomplete and somewhat confusing.
2. Postpone action and direct staff to bring back a revised proposal. The rules as proposed are acceptable to affected sources. They are also acceptable to the state, with the incorporation of draft revisions requested by DEQ. Therefore, there is no perceptible advantage to redrafting the proposals.
3. Adopt new Title 30 and amendments to Titles 12 and 33, as proposed. LRAPA would have rules adequate to handle modern incineration equipment, and the definitions section would help to make LRAPA Rules and Regulations more easily understandable.

### **DIRECTOR'S RECOMMENDATION**

It is the director's recommendation that the board adopt the rules as proposed.

DRA/mjd

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### Legal Authority

ORS 183, 468A.135, OAR 340-11-010 and 340-25-850 to 340-25-905, and the Federal Clean Air Act Amendments of 1990.

### Need for Amendments

**Title 30:** LRAPA's current incinerator and refuse-burning equipment rules (Section 33-020), adopted in 1973, are outdated and are meant to regulate the design of incinerator equipment of a general-purpose nature which would no longer be permitted, today. Public concerns about combustion by-products considered to pose threats to public health have resulted in development of equipment which is designed more for specific kinds of materials. This equipment reduces emissions of the worrisome compounds efficiently, through combustion temperature controls and/or air pollution controls. It is proposed to rescind the outdated rules in Title 33 and adopt a new Title 30 which would require operators of incineration equipment to ensure that specified operational parameters such as temperature and residence time are maintained during operations, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of these operational parameters.

**Title 12:** Existing Title 12 contains most, but not all, definitions used in interpreting LRAPA Rules and Regulations. In addition, each individual title contains definitions of words and terms used in that title. Some words and terms are defined differently in different titles, resulting in confusion when a reader uses a definition from one title to interpret the meaning of the same term in another title. It is proposed to reference the important words and terms in each title but to move the actual definitions to Title 12.

### Principal Documents Relied Upon

1. Attorney General's Uniform and Model Rules of Procedure
2. LRAPA Title 33
3. OAR 340-25 (Sections 850 through 905)
4. LRAPA Staff Report to LRAPA Board of Directors, January 11, 1994
5. Clean Air Act Amendments of 1990
6. ORS 183, 468 and 468A et. seq.

### FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on Other Agencies: **Title 30**--Adoption of the proposed rule would bring LRAPA's rules into line with state regulations. **Title 12**--Consolidation of all definitions into one title makes all definitions available in one place. Removal of actual definitions from individual titles helps to avoid confusion between differing definitions for the same terms or words, as applied to different titles.

Impact on Public: **Title 30**--Because of the reduced levels of potentially harmful combustion by-products, the general public would enjoy cleaner air in the vicinity of incinerator facilities, and reduced concern regarding health effects. **Title 12**--Same as above.

Impact on Regulated Community: **Title 30**--Owners of incinerators and crematoriums in Lane County would be required to operate incineration facilities under more controlled conditions. All comments received from crematorium operators indicate that compliance is feasible and within their means. Verbal discussion with the operator of the infectious waste incinerator indicates that significant modifications would be required for compliance and that optional disposal methods would be considered during the one-year compliance period. **Title 12**--Same as above.

### LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD

# OREGON BULLETIN

RECEIVED

JAN 3 1 1994

LANE REGIONAL AIR  
POLLUTION AUTHORITY



**VOLUME 33, No. 8**  
**Issue Date: February 1, 1994**

This issue contains Notices of Proposed Rulemaking officially filed **December 16, 1993, 8:00 a.m. through January 14, 1994, 5:00 p.m.** and resumes of the Administrative Rule Orders filed for which the Secretary of State's office has completed filing standards review. Administrative Rule Orders which have been filed but have not yet undergone the review will be published in the next issue of the Oregon Bulletin.



Published by  
**PHIL KEISLING**  
Secretary of State

**NOTICES OF PROPOSED RULEMAKING HEARING - Continued**

administrative costs, and provide additional revenue for research and development.

**LAST DATE FOR COMMENT:** 2-25-94 - 5 PM

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Harold Sawyer - (503) 229-5776

**CONTACT FOR THIS PROPOSAL:** Stephen Crane

**ADDRESS:** DEQ Western Region, Air Quality Division, 750 Front Street NE, Suite 120, Salem, OR 97310

**TELEPHONE:** (503) 373-7302, (503) 373-8240, or Toll Free 1-800-452-4011

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

\*\*\*\*

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-3-94	10 AM	Department of Environmental Quality 811 SW 6th Avenue - Conference Room 3a Portland, OR

**HEARINGS OFFICER:** Peter Dalke

**STATUTORY AUTH:** ORS 468.020, 468B.010, 468B.015 and 468B.020

**ADOPT:** OAR 340-43-190

**SUMMARY:** The proposed rule provides that the Department shall require, prior to issuing a chemical mining facility permit and as a condition of the permit, that those persons or entities who control a chemical mine permittee also assume liability for any environmental injury, remediation expenses, and penalties which result as a consequence of activities that are associated with the permit. An exception to this requirement may be granted by the EQC pursuant to specific criteria in the rule.

**LAST DATE FOR COMMENT:** 3-10-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Harold Sawyer

**ADDRESS:** Department of Environmental Quality, 811 SW 6th Avenue, Portland, OR 97204

**TELEPHONE:** (503) 229-5776 or Toll Free 1-800-452-4011

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

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-3-94	2 PM	Department of Environmental Quality Conference Room 3A 811 SW 6th Portland, Oregon

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-8-94	10 AM	Eastern Oregon State College Hoke College Center - Room 201 LaGrande, Oregon

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-8-94	2 PM	Adult and Family Services - Ash Building 545 SW 2nd Avenue, Suite B Corvallis, Oregon

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-10-94	10 AM	Central Oregon Community College Hitchcock Auditorium, Pioneer Building 2600 NW College Way Bend, Oregon

**HEARINGS OFFICER:** Deanna Mueller-Crispin (Portland); Charles W. Donaldson, (Corvallis); Tim Davison (LaGrande); other to be announced.

**STATUTORY AUTH:** ORS 459.045, 468.020; Senate Bill 42, 1993 Legislature; Senate Bill 1012, 1993 Legislature; Senate Bill 1037, 1993 Legislature.

**ADOPT:** OAR 340-93-063

**AMEND:** OAR 340-90-010, 90-030, 90-040, 90-060, 91-030, 91-080, 93-030, 93-050, 93-060, 93-070, 93-080, 93-090, 93-110, 93-120, 93-130, 93-140, 93-150, 93-160, 93-170, 93-190, 93-250, 94-001, 94-010, 94-030, 94-040, 94-060, 94-080, 94-100, 94-110, 94-120, 94-130, 94-140, 95-010, 95-020, 95-030, 95-040, 95-050, 95-060, 95-070, 95-080, 95-090, 96-010, 96-020, 96-030, 96-040, 96-050, 97-001, 97-110 and 97-120

**SUMMARY:** The proposed rules would implement changes in the management of solid waste required and/or allowed by 1993 Legislation, along with other changes identified by the Department to promote improved solid waste program operation. The proposed rules would establish dates for provision of financial assurance for land disposal sites; change the length of post-closure care for land disposal sites; change the collection of some solid waste permit fees from an annual billing to self-reporting; establish a new permit category for Special Soil Treatment Permits; establish two new solid waste permit fees; and establish as permanent rule the effective dates for certain federal solid waste regulations adopted on October 29, 1993 by temporary rule.

**LAST DATE FOR COMMENT:** 3-14-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Harold Sawyer - (503) 229-5776

**AGENCY CONTACT FOR THIS PROPOSAL:** Deanna Mueller-Crispin

**ADDRESS:** DEQ, Waste Management and Cleanup Division, 811 SW 6th Avenue, Portland, Oregon 97204

**TELEPHONE:** (503) 229-5808 or Toll Free 1-800-452-4011

\*\*\*\*

(Lane Regional Air Pollution Authority)

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-8-94	12:30 PM	Springfield City Hall City Council Chambers 225 North 5th Street Springfield, OR

**HEARINGS OFFICER:** Donald R. Arkell

**STATUTORY AUTH:** ORS 183 & 468A

**AMEND:** LRAPA Title 15, "Enforcement Procedures and Civil Penalties"

**SUMMARY:** It is proposed to amend Title 15 to accommodate recent



## NOTICES OF PROPOSED RULEMAKING HEARING - Continued

statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: addition of a Notice of Permit Violation category for sources with air contaminant discharge permits; removal of the Notice of Intent to Impose a Civil Penalty category; creation of a new \$2,500 civil penalty matrix for open burning violations; addition of a new \$100,000 civil penalty for cases involving endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and separation of the economic benefit calculation from the penalty calculation.

**LAST DATE FOR COMMENT:** 3-7-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Donald R. Arkell, Director

**ADDRESS:** Lane Regional Air Pollution Authority, 225 North 5th, Suite 501, Springfield, OR 97477-4671

**TELEPHONE:** (503) 726-2514

\*\*\*\*

<b>DATE:</b> 3-8-94	<b>TIME:</b> 12:30 PM	<b>LOCATION:</b> Springfield City Hall City Council Chambers 225 North 5th Street Springfield, OR
------------------------	--------------------------	---------------------------------------------------------------------------------------------------------------



**HEARINGS OFFICER:** Donald R. Arkell

**STATUTORY AUTH:** ORS 183 & 468A

**ADOPT:** New Title 30, "Incinerator Regulations"

**AMEND:** LRAPA Title 12, "Definitions"

**RESCIND:** Section 33-020, "Incinerator and Refuse Burning Equipment"

**SUMMARY:** New Title 30, "Incinerator Regulations", would replace the agency's existing refuse-burning equipment rules contained in Section 33-020, which are out-dated and inadequate. The proposed new rules would deal with modern incineration equipment which tends to be designed for specific kinds of waste materials, rather than the general waste categories for which the existing rules were written. Operators of affected facilities would be required to ensure that specific operational parameters such as temperature and residence time are maintained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of these operational parameters. Existing sources would be required to demonstrate compliance within one year of the effective date of the regulations.

Amendments to Title 12, "Definitions", include additional of all definitions from individual Titles and some revised definitions.

**LAST DATE FOR COMMENT:** 3-7-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Donald R. Arkell, Director

**ADDRESS:** Lane Regional Air Pollution Authority, 225 North 5th, Suite 501, Springfield, OR 97477-4671  
**TELEPHONE:** (503) 726-2514



\*\*\*\*

### Fish & Wildlife, Department of Chapter 635

<b>DATE:</b> 2-23-94	<b>TIME:</b> 8 AM	<b>LOCATION:</b> Department of Fish and Wildlife Commission Room 2501 SW First Avenue Portland, OR 97201
-------------------------	----------------------	----------------------------------------------------------------------------------------------------------------------

**HEARINGS OFFICER:** \*An agenda will be available 10 days prior to the meeting and is available by writing or calling the address below.

**STATUTORY AUTH:** ORS 497.022

**ADOPT:** 635-10-007

**SUMMARY:** New rule regarding Computerized License System Agents. Those agents who sold more than 3,000 documents in a calendar year using new Point-of-Sale license system.

**LAST DATE FOR COMMENT:** 2-15-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Richard Coreson

**ADDRESS:** Department of Fish and Wildlife, PO Box 59, Portland, Oregon 97207

**TELEPHONE:** (503) 229-5410, Ext.300

\*\*\*\*

<b>DATE:</b> 2-23-94	<b>TIME:</b> TBA	<b>LOCATION:</b> Department of Fish and Wildlife 2501 SW First Avenue Portland, OR 97201
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**HEARINGS OFFICER:** Oregon Fish and Wildlife Commission

**STATUTORY AUTH:** ORS 496.012, 496.138, 496.146, 496.300 and House Bill 2538

**ADOPT:** Chapter 635, Division 90

**SUMMARY:** Implement HB 2538 (1993 Legislature) which established the Access and Habitat Board and Program.

**LAST DATE FOR COMMENT:** 2-23-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Jan Ragni (agency); Mary Potter (division), Larry Cooper (staff contact)

**ADDRESS:** Department of Fish and Wildlife Commission, PO Box 59, Portland, OR 97207

**TELEPHONE:** (503) 229-5454 - ext. 460

\*Auxiliary aids for persons with disabilities are available upon advance

**NOTICE OF PROPOSED RULEMAKING HEARING**

(Statement of Need and Fiscal Impact Accompanies this Form)

**AGENCY:** Lane Regional Air Pollution Authority and  
Department of Environmental Quality

The above named agencies give notice of hearing.

**HEARING TO BE HELD:**

**Date:** March 8, 1994                      **Time:** 12:30 p.m.

**Location:** City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon

Hearings Officer: Donald R. Arkell

Pursuant to the statutory authority of ORS 183 and 468A, the following action is proposed:

**AMEND:** LRAPA Title 12, "Definitions"

**RESCIND:** Section 33-020, "Incinerator and Refuse Burning Equipment"

**ADOPT:** New Title 30, "Incinerator Regulations"

X Prior Notice Given

**SUMMARY:** New Title 30, "Incinerator Regulations," would replace the agency's existing refuse-burning equipment rules contained in Section 33-020, which are outdated and inadequate. The proposed new rules would deal with modern incineration equipment which tends to be designed for specific kinds of waste materials, rather than the general waste categories for which the existing rules were written. Operators of affected facilities would be required to ensure that specified operational parameters such as temperature and residence time are maintained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of these operational parameters. Existing sources would be required to demonstrate compliance within one year of the effective date of the regulations.

Amendments to Title 12, "Definitions," include additional of all definitions from individual Titles and some revised definitions.


Notice of Public Hearing  
Amendments to LRAPA Rules and Regulations

-2-

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by March 7, 1994 will also be considered. Written comments should be sent to, and copies of the proposal rulemaking may be obtained from:

**AGENCY:** Lane Regional Air Pollution Authority  
**ADDRESS:** 225 North 5th, Suite 501  
Springfield, OR 97477-4671

**ATTN:** Donald R. Arkell, Director  
**PHONE:** (503) 726-2514

  
Signature

01-12-94  
Date

RECEIVED

FEB - 4 1994

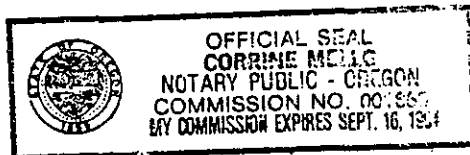
LANE REGIONAL AIR  
POLLUTION AUTHORITY

## Affidavit of Publication

State of Oregon  
County of Lane

I, Peter Morales, being first duly sworn, depose and say that I am Publisher of The Cottage Grove Sentinel, a newspaper of general circulation, as defined by ORS 193,010, and 193,020, printed and published at Cottage Grove in the aforesaid county and state; that Notice of Intent to Adopt Rules

a printed copy of which is hereto annexed, was published once a week in the entire issue of said newspaper for 1 successive and consecutive weeks in the following issues: 2/2/94



Peter Morales  
Subscribed and sworn to before me  
this 2 day of Feb, 1994

Corrine Mello  
Notary Public for Oregon  
(My commission  
expires ) 9/16/94

**NOTICE OF INTENT TO  
ADOPT AMENDMENTS  
TO  
OREGON'S AIR QUALITY  
IMPLEMENTATION PLAN**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 15, "Enforcement Procedures and Civil Penalties," to accommodate recent statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: (1) addition of a new enforcement category, the Notice of Permit Violation, for sources with air contaminant discharge permits; (2) removal of the Notice of Intent to Impose a Civil Penalty category; (3) creation of a new \$2,500 civil penalty matrix for open burning violations; (4) addition of a new \$100,000 civil penalty for cases which

involve endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; (5) classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and (6) separation of the economic benefit calculation from the penalty calculation.

To rescind Section 33-020 and adopt new Title 30, "Incinerator Regulations," to replace the agency's existing refuse-burning equipment rules which are out-dated and inadequate. The proposed new rules would deal with modern incineration equipment which tends to be designed for specific kinds of waste material, rather than the general waste materials for which the existing rules were written. Operators of affected facilities would be required to ensure that specified operational parameters such as temperature and residence time are main-

tained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of these operational parameters. Existing sources would be required to demonstrate compliance within one year of the effective date of the regulations.

To amend Title 12, "Definitions," to include all definitions from individual Titles of LRAPA's Rules and Regulations, and to revise some definitions.

WHO IS AFFECTED: Title 15—Persons subject to Air Contaminant Discharge Permits, Federal Operating Permits and Indirect Source Permits in Lane County; persons involved in asbestos abatement in Lane County; persons who engage in open burning in Lane County; and anyone else involved in any activity subject to LRAPA's air quality standards and rules. Title 30—Solid waste incinerators, crematoriums and infectious waste incinerators. Title 12—Any users of

LRAPA's Rules and Regulations.

**PUBLIC HEARING:**

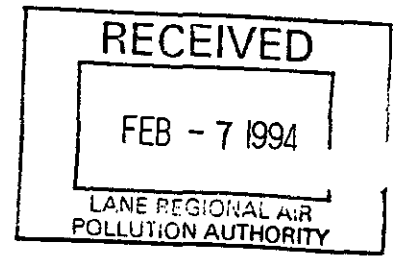
Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:

Location: City Council Chambers Date: Tuesday, March 8, 1994

Springfield City Hall  
225 North 5th Street  
Time: 12:30 p.m.

Springfield, Oregon  
Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building), Springfield, Oregon until March 8, 1994. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514; by attending the public hearing and providing oral comments; or written comment may be submitted until March 7, 1994, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

27-1t



**NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 15, "Enforcement Procedures and Civil Penalties," to

accommodate recent statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: (1) addition of a new enforcement category, the Notice of Permit Violation, for sources with air contaminant discharge permits; (2) removal of the Notice of Intent to Impose a Civil Penalty category; (3) creation of a new \$2,500 civil penalty matrix for open burning violations; (4) addition of a new \$100,000 civil penalty for cases which involve endangerment of public health or extensive environmental damage; if the violation is reckless or intentional; (5) classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and (6) separation of the economic benefit calculation from the penalty calculation.

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**PUBLIC HEARING**  
Public hearing on the above rule adoption will be held before the LRAPA Board of Directors.

Location: City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon  
Date: Tuesday, March 8, 1994  
Time: 12:30 p.m.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building), Springfield, Oregon until March 8, 1994. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514; by attending the public hearing and providing oral comments; or written comment may be submitted until March 7, 1994, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

To Be Published: Wednesday, February 2, 1994

f.2 (5)

# Affidavit of Publication

STATE OF OREGON, COUNTY OF LANE - ss

I, Leota J. Emery, being duly sworn, depose and say that I am the Legal Clerk of the Springfield News, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state: that the

LRAPA

Notice of Intent to Adopt Amendments To Oregon's Air Quality Implementation Plan

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for successive and consecutive weeks in the following issues:

February 2, 1994

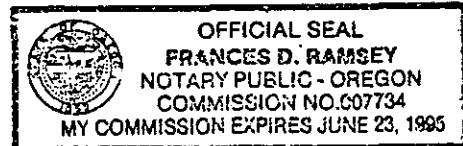
THE SPRINGFIELD NEWS

By Leota J. Emery

Subscribed and sworn to me this 3rd day of February, 1994

Notary Public for Oregon

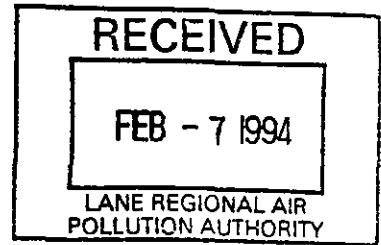
(My Commission expires June 23, 1995)



Legal Notice Advertising

- LANE REG. AIR POLL AUTH
- DONALD ARKELL
- 225 N 5TH #501
- SPRINGFIELD OR 97477

- Tearsheet Notice
- Duplicate Affidavit



AFFIDAVIT OF PUBLICATION

STATE OF OREGON, } ss. COUNTY OF LANE, }

WENDY L. WALSH

I, being first duly sworn, depose and say that I am the Advertising Manager, or his principal clerk, of the Eugene Register-Guard, a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the

NOTICE OF INTENT

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for ONE successive and consecutive DAY in the following issues:

FEBRUARY 2, 1994

Legal Notices

NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

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PUBLIC HEARING:

Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:

Location: City Council Chambers Date: Tuesday, March 8, 1994 Springfield City Hall 225 North 5th Street Time: 12:30 p.m. Springfield, Oregon

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building), Springfield, Oregon until March 8, 1994. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514; by attending the public hearing and providing oral comments; or written comment may be submitted until March 7, 1994, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

No. 15295 - February 2, 1994.

Wendy L. Walsh (signature)

Subscribed and sworn to before me this 2/4/94

Shannon Pool (signature) Notary Public of Oregon



My Commission Expires: 11-13-97

AFFIDAVIT

**Affidavit of Publication**

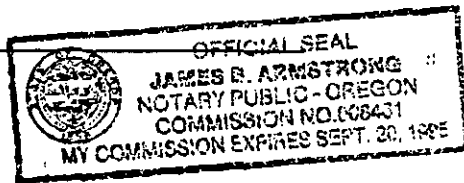
STATE OF OREGON  
COUNTY OF LANE

I, Kena Young, being first duly sworn, deposes that I am the Office Manager of the *Dead Mountain Echo*, a newspaper of general circulation published at Oakridge, Oregon in the aforesaid county and state, as defined by ORS 193-010 ET SEQ, that the Notice of intent to adopt amend's was inserted in the entire issue of said newspaper for one week in the 2/2/94 issue, # 44.

Signed: Kena Young

Subscribed and sworn before me this 3rd day of February, 1994.

James B. Armstrong Notary Public of Oregon  
My commission expires: \_\_\_\_\_



LANE REGIONAL

AIR POLLUTION AUTHORITY



(503) 726-2514 • FAX (503) 726-1205  
 225 North 5th, Suite 501  
 Springfield, OR 97477-4671

Donald R. Arkell, Director

## MEMORANDUM

To: Record of Adoption Proceedings, LRAPA Titles 12, 30 and 33

From: Donald R. Arkell, Hearings Officer

Subject: Public Hearing, March 8, 1994

### Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 12:38 p.m. on March 8, 1994 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed rescission of Section 33-020, "Incinerator and Refuse Burning Equipment," adoption of new Title 30, "Incinerator Rules," and amendments to Title 12, "Definitions." There was no one present who wished to comment on the proposed rules.

### Summary of Testimony

There was no oral testimony presented at the hearing.

Written comments were received prior to the hearing date from DEQ and from Gary Buell of Buell Chapel in Springfield. Those comments, along with LRAPA's responses, are detailed in the attached pages. The draft rules presented at the hearing contained revisions made in response to the written comments.

### Notice of Proposed Action

Prior to the authorization for hearing, notice of the proposed rulemaking was sent to each of the affected sources currently operating in Lane County. In addition, notice of the hearing and intended action was published in the February 1, 1994 edition of the Secretary of State's Bulletin, and in the Oakridge Dead Mountain Echo, the Cottage Grove Sentinel, the Eugene Register-Guard, and the Springfield News.



Proposed Amendments to LRAPA Titles 12, "Definitions," and  
33, "Prohibited Practices and Control of Special Classes,"  
and Adoption of New Title 30, "Incinerator Regulations"

March 8, 1994

WRITTEN COMMENTS AND LRAPA RESPONSES

Oregon Department of Environmental Quality

A. Title 12

1. In general, the Department supports LRAPA's effort to improve clarity of the Definitions by combining them where feasible in Title 12. However, there are several cases where definitions intended to apply to one Title now apply inappropriately to all Titles, and there are other cases where definitions which should apply to multiple Titles only apply to one Title. In a few cases where a term has more than one meaning, the various definitions of the term may have been applied to the wrong Title. In some cases, this can significantly alter the meaning and stringency of a requirement. While specific examples identified during the Department's review are listed below, LRAPA must carefully trace each definition to ensure that it has the correct applicability.

LRAPA Response: We generally agree with these comments and have taken the actions described in the following responses.

2. The leadin to Title 12, "To aid in the understanding of these rules, the following general definitions are provided." should be replaced with wording such as, "As used in LRAPA Rules and Regulations, Titles 11 through 50, except where otherwise defined for purposes of a specific Title:"

LRAPA Response: Existing wording is retained, except that the word "general" is deleted from the sentence.

3. The first definition of "Actual Emissions" applies only to the baseline period; a general definition for other specified periods is needed. In addition, part B of that definition could be misinterpreted to allow sources to exceed permit limits. See the definition in OAR 340-28-110 which includes recent amendments made by the EQC to address these and other concerns.

LRAPA Response: We agree. The first definition of "Actual Emissions" is deleted from this draft, and DEQ's definition in 340-28-110 is added in its place.

4. The definition of "Air Contaminant Discharge Permit" must include the application review report, or LRAPA must otherwise revise its rules or permits to ensure that the components of the PSEL calculation are enforceable.

LRAPA Response: LRAPA permits will be revised to deal with this on an individual basis.

5. The definition of "Air Contaminant Source" appears to refer to the wrong Title. In addition, the language related to SIC groups relates only to major New Source Review; for other purposes, such as air contaminant discharge permits, the source includes the entire plant site.

LRAPA Response: We agree. Since the terms "Air Contaminant" and "Source" are defined in Title 12, a definition for Air Contaminant Source is not necessary. The definition of "Air Contaminant Source" is deleted from this draft of Title 12.

6. The definitions of "Existing Source" and "New Source" can not apply to the entire set of Titles as written. For example, certain New Source Performance Standards apply to sources prior to the date they were adopted by LRAPA. Use of the term "in existence" is not clear in all cases; it could mean operating, constructed, under construction or modified, depending on the application. Reference to the date of adoption rather than an actual date could create confusion, since LRAPA only publishes the last amendment date in the individual Titles (although an index of amendments is published).

LRAPA Response: The words "in existence" are changed to "constructed" in this draft. Where a date is necessary it will be indicated in the body of the rules, as appropriate.

7. The definition of "Federal Operating Permit Program" should refer to the EPA (not DEQ) Administrator. It should also refer to rules adopted by the EQC (OAR 340-28-2100 through 340-28-2320 and 340-28-2560 through 340-28-2740), since LRAPA will be enforcing EQC rules in Lane County.

LRAPA Response: We agree, and this is added to the draft, as suggested.

8. The definitions of "Fugitive Emissions" need revision. OAR 340-28-110 defines fugitive emissions as those not passing through a stack or vent for most purposes, and as those which could not reasonably pass through a stack or vent for purposes of defining a major source for the Federal Operating Permit Program (FOP). The general definition includes more fugitive emissions. It applies to most cases including New Source Review, since fugitive emissions are not exempt from new Source Review in Oregon as they are in the Federal program. The FOP definition matches the narrower

federal definition because it is used to exempt sources from the FOP. In LRAPA Title 12, the first definition, as revised, should apply to Title 35, and the first definition prior to the current revisions should apply to the remainder of LRAPA rules.

LRAPA Responses: The first definition is changed by taking the word "except" out at the beginning of the definition, so that this is used in reference to Title 35. The second definition in the draft is changed to read as it does in the existing rule, except that the word "functionally" is added before "equivalent opening" at the end of the sentence.

9. The definition of "incineration operation" not referenced in Title 30. If it is not used in title 30 or elsewhere, it should be removed.

LRAPA Response: We agree, and this is deleted from the draft, as suggested.

10. The EQC definition of "Major Modification" was recently revised to clarify that emission decreases required by rule may not be used in netting. This change must be made to the LRAPA rules.

LRAPA Response: We feel that the existing definition already addresses this. The rule, as written, states that mandated decreases cannot be included. We believes that mandated decreases include those which are required by regulation.

11. The first definition of "Major Source" should apply only to the Federal Operating Permit Program (FOP). Because LRAPA will enforce EQC FOP rules, it is unclear why the definition was added. In any case, it should refer to a specific Title and should not apply to Title 38, in particular. The last definition of "Major Source," which applies to Title 38, should reference the definition of "source," not "stationary source," since that term is not defined (see also comment A.17 below).

LRAPA Response: We agree that reference to Title 38 should be deleted from the first definition of "Major Source." We also have further clarified that the first definition of "Major Source" is applicable only to those sources subject to the Federal Operating Permit Program. The second definition of "Major Source," as used in Title 35, is deleted because we are no longer collecting interim fees. The third definition is revised to clarify that it only applies to Title 38, and the word "Stationary" is deleted.

12. The definition of "Non-major source" should apply to Title 38, only.

LRAPA Response: We agree, and this change is included in the draft.

13. The definitions of "Particulate Matter" and "Particulate Matter Emission" need applicability clarified; the first and third definitions apply to all Titles, and the second applies to Title 39. The second definition should also apply to Section 33-060 (wood products industry rules). The third definition needs to specify the applicable test method, or the test method must be specified in the rules where the test is required. For example, the Incinerator rules in Title 30 should refer to Method 5.

LRAPA Response: The first definition of "Particulate Matter" is deleted. The second definition is modified to include Title 33, as well as Title 39. Because the Department's Source Manual contains all the applicable test methods, all of the test methods are deleted from the definition. The last definition clarifies the term "applicable reference methods" to read "applicable EPA reference methods." We disagree with citing the specific test methods in the definition.

14. The definition of "Reference Method" may be objectionable to EPA. EPA has commented that Reference Methods are approved by EPA and may not be revised by local agencies unless that authority is delegated.

LRAPA Response: We agree, and the definition is changed, as suggested.

15. The definition of "Regulated Pollutant" should refer to Title 35, only. For other purposes, there are other regulated pollutants.

LRAPA Response: We agree, and the definition of "Regulated Pollutant" is deleted.

16. The definition of "Solid Waste" is identical to the EQC's definition. For your information, the Department may propose amendments to this definition because it has caused some confusion. For example, the term "mixture" could imply that a waste consisting of only one combustible material is not a solid waste.

LRAPA Response: LRAPA will change the definition when the Department proposes its amendments.

17. The definition of "Source" should be split into two parts. The language related to SIC groups relates only to major New Source Review, and the definition of a major source for purposes of the Federal Operating Permit Program. For other purposes, such as air contaminant discharge permits, the source includes the entire plant site.

LRAPA Response: We agree and feels this is addressed in the draft rules.

18. The definitions of "startup," "shutdown," and "startup/shutdown" overlap in some ways and also leave gaps. These applicabilities should be clarified.

LRAPA Response: The definitions of "startup" and "shutdown," as used in Title 36 are identical to DEQ's; therefore, we see no reason to change them. The definition of "startup," as used in all other titles except Title 46, accurately reflects our intended meaning.

19. The definition of "TSP" should refer to the Reference Method in 40 CFR Part 50, Appendix B.

LRAPA Response: We agree, and the definition is changed as suggested.

20. The definitions of "VOC" must be revised. The EQC definition in OAR Chapter 340, Division 28, was recently revised due to comments from EPA.

LRAPA Response: We agree, and the definition is changed as suggested.

#### B. Titles 30 and 33

1. Title 30 is generally consistent with OAR 340-25-850 through 340-25-905. However, EPA has expressed some concerns with the EQC's rules for solid waste incinerators and infectious waste incinerators as compared to EPA rules for municipal solid waste combustors in 40 CFR Part 60. For your information, the Department may propose amendments to the incinerator rules to address these concerns. The Department recommends that LRAPA ensure that its rules are at least as stringent as 40 CFR Part 60, Subparts Ca and Ea, in addition to EQC rules.

LRAPA Response: If amendments are proposed, LRAPA will consider them for adoption at that time.

2. Section 30-005 is identical to the comparable EQC rule. For your information, the Department may propose amendments to this applicability. The rule was intended to apply to all permitted incinerators, but the language applies to all incinerators. Any non-permitted incinerators and other refuse-burning equipment continue to be subject to OAR 340-21-020 and 340-21-025.

LRAPA Response: If amendments are proposed, LRAPA will consider them for adoption at that time.

3. In Section 30-010, both the definitions of "startup" and "startup/shutdown" are referenced. See comment A18.

LRAPA Response: See LRAPA's response under item A18 (Title 12 comments).

4. In Section 30-020.8, insert "of dioxin/furans" after 30 nanograms.

LRAPA Response: We agree, and the changes are made, as suggested.

5. In Section 30-025, change the cross-reference in paragraph 3 from section 1 to section 2. Also, the requirement in OAR 340-25-870(5) for flue gas outlet temperature should be added.

LRAPA Response: LRAPA agrees, and the cross-reference in paragraph 3 is changed from section 1 to section 2. We understand that there would be a need for this in incinerators which need to drop the temperatures in the stack to protect pollution control equipment; however, we have no such incinerators in Lane County. Consequently, we don't believe there is a need in Lane County for flue gas temperature outlet measurements, and we are not including this requirement in the rule draft.

6. In Section 30-030, in paragraph 2.B, insert "temperature" after "chamber." In paragraph 3, clarify that these monitors are in addition to those specified in paragraphs 1 and 2.

LRAPA Response: We agree, and the changes are made as suggested.

7. In Section 30-035.12, substitute the defined terms "solid waste incinerator" and "infectious waste incinerator" for the term "waste incinerator."

LRAPA Response: We agree with this and, in fact, have made this change throughout the draft rule.

8. In Section 30-040, specify what requirements apply prior to demonstration of compliance with Title 30. This might be existing permit conditions. Alternately, you might delay repeal of Section 33-020 until after the compliance date in Section 30-040. See also comment A9.

LRAPA Response: We agree with this and have proposed language to address this concern. We will be enforcing the conditions of the existing permit until such time as the existing incinerators must demonstrate compliance with these draft rules.

9. In Section 30-050.3, change "30-010.4" to "Title 12."

LRAPA Response: We agree, and the change is made as suggested.

10. In Section 30-060.2, delete the first sentence. This sentence is unnecessary and would exempt sources from all requirements including the requirements to test and demonstrate compliance. Requiring existing sources to comply

with existing permit conditions during the compliance schedule is acceptable, provided that the requirements of Section 33-020 are incorporated in their permits and repeal of Section 33-020 does not revoke the authority for those permit conditions.

LRAPA Response: We agree, and the changes are made as suggested.

**Gary Buell, Buell Chapel, Springfield**

- A. Section 30-050-1 reads, in part, "At no time while firing waste shall the temperature in the primary chamber fall below 1400°F, or higher." I think the word "primary" should be changed to secondary or final.

LRAPA Response: We agree, and the change is made as suggested.

- B. I would also suggest that the 1400°F be reduced to 1000°, with the understanding that 1400°F be reached within 10 minutes.

LRAPA Response: This would be less restrictive than the state requirement. The reason for the 1400°F secondary chamber requirement is to prevent any smoking from premature ignition in the primary chamber. This could occur if the primary chamber is hot due to a prior cremation. Sources have one year from the date of rule adoption to install equipment necessary to achieve the 1400°F requirement.

## LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 30  
Incinerator RegulationsSection 30-005 Purpose and Applicability

The purpose of these rules is to establish state-of-the-art emission standards, design requirements, and performance standards for all solid, infectious waste and crematory incinerators, in order to minimize air contaminant emissions and provide adequate protection of public health. The rules apply to all existing solid and infectious waste and crematory incinerators and to all that will be built, modified, or installed within Lane County, Oregon. These rules shall not apply to municipal waste combustors.

Section 30-010 Definitions

Words and terms used in this title are defined as follows, unless the context requires otherwise:

- "Acid Gases" means any exhaust gas which includes hydrogen chloride and sulfur dioxide.
- "Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each air contaminant subject to regulation under the Clean Air Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard, or any standard for hazardous air pollutants. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.
- "Biological Waste," includes blood and blood products, excretions, exudates, secretions, suctionings 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 (see also "infectious waste").



- "Continuous Emissions Monitoring" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous monitoring equipment and operation shall be certified in accordance with EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Department's CEM Manual.
- "Crematory Incinerator" means an incinerator used solely for the cremation of non-pathological human and non-pathological animal remains.
- "Cultures and stocks" includes 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. "Cultures" does not include throat and urine cultures (see also "infectious waste").
- "Department" means the Oregon Department of Environmental Quality.
- "Dioxins and Furans" means total tetra- through octachlorinated dibenzo-p-dioxins and dibenofurans.
- "Director" means the Director of the Lane Regional Air Pollution Authority and authorized deputies or officers.
- "Dry Standard Cubic Foot" means the amount of gas, free of uncombined water, that would occupy a volume of 1 cubic foot at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" means adjustment of gas volume to that which would result at a concentration of 7% oxygen (dry basis).
- "Emission" means a release into the ambient air of air contaminants.
- "Existing Source" means any air contaminant source in existence prior to the date of adoption of rules affecting that source.
- "Fugitive Emissions," except as used in Title 35, means emissions of any air contaminant which escapes to the ambient air from any point or area that is not identifiable as a stack, vent, duct, or functionally equivalent opening. (Title 12 contains another definition of "fugitive emissions" for use with title 35.)
- "Incineration Operation" means any operation in which combustion is carried on in an incinerator, for the principal purpose or with the principal result, of oxidizing wastes to reduce their bulk and/or facilitate disposal.
- "Incinerator" means a combustion device specifically for destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes. This does not include devices such as open or screened barrels, drums, or process boilers.

- "Infectious Waste" means waste which contains or may contain any disease-producing microorganism or material including, but not limited to, biological waste, cultures and stocks, pathological waste, and sharps (see individual definitions for these terms).
- "Infectious Waste Incinerator" means an incinerator which is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat.
- "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background.
- "Particulate Matter" means any solid or liquid material, except uncombined water, which exists as a liquid or solid at standard conditions.
- "Parts Per Million (ppm)" means parts of a contaminant per million parts of gas by volume on a dry-gas basis (1 ppm equals 0.0001% by volume).
- "Pathological waste" includes 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 wastes" does not include teeth, or formaldehyde or other preservative agents (see also "infectious waste").
- "Permit" or "Air Contaminant Discharge Permit" means a written permit issued by the Authority, pursuant to LRAPA and DEQ rules and regulations.
- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Person in Charge of Property" means an agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property.
- "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.
- "Refuse" means unwanted matter.
- "Refuse Burning Equipment" means a device designed to reduce the volume of refuse by combustion.
- "Secondary (or Final) Combustion Chamber" means the discrete equipment, chamber, or space, excluding the stack, in which the products of pyrolysis are combusted in the presence of excess air, such that essentially all carbon is burned to carbon dioxide.

- "Sharps" includes 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 (see also "infectious waste").
- "Solid Waste" means refuse, more than 50% of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.
- "Solid Waste Incinerator" means an incinerator which is operated or utilized for the disposal or treatment of solid waste, including combustion for the recovery of heat.
- "Source" means any building, structure, facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. This includes all of the pollutant emitting activities which belong to the same industrial grouping or major group (i.e. which have the same two-digit code) as described in EPA's Standard Industrial Classification (SIC) manual (U.S. Office of Management and Budget 1987). (Title 12 contains another definition of "source" for use with other rules.)
- "Standard Conditions" means a gas temperature of sixty-eight (68) degrees Fahrenheit and a gas pressure of 29.92 inches of mercury.
- "Startup/Shutdown" means the time during which an air contaminant source or emission control equipment is brought into normal operation and normal operation is terminated, respectively.
- "Startup," means that time during which an air contaminant source or emission control equipment is brought into normal operation. (Title 12 contains another definition of "startup" for use with other rules.)
- "Transmissometer" means a device that measures opacity and conforms to EPA specification Number 1 in Title 40 CFR, Part 60, Appendix B.

Section 30-015 Best Available Control Technology for Solid and Infectious Waste Incinerators

1. Notwithstanding the specific emission limits set forth in Section 30-020, in order to maintain overall air quality at the highest possible levels, each solid and infectious waste incinerator is required to use best available control technology (BACT). In no event shall the application of BACT result in emissions of any air contaminant which would exceed the emission limits set forth in these rules.
2. All installed equipment shall be operated and maintained in such a manner that emissions of air contaminants are kept at the lowest possible level.

Section 30-020 Emission Limitations for Solid and Infectious Waste Incinerators

No person shall cause, suffer, allow, or permit the operation of any solid or infectious waste incinerator in a manner which violates the following emission limits and requirements:

1. Particulate Matter Emissions (PM)
  - A. For new solid and infectious waste incinerators, emissions from each stack shall not exceed 0.015 grains per dry standard cubic foot of exhaust gases.
  - B. For existing solid and infectious waste incinerators, emissions from each stack shall not exceed 0.030 grains per dry standard cubic foot of exhaust gases.
2. Hydrogen Chloride (HCl)
  - A. For existing and new solid and infectious waste incinerators, emissions of hydrogen chloride from each stack shall not exceed 50 ppm as an average during any sixty (60)-minute period, corrected to 7% O<sub>2</sub> (dry basis); or
  - B. Shall be reduced by at least ninety (90)% by weight from their potential HCl emissions rate on an hourly basis.
3. Sulfur Dioxide (SO<sub>2</sub>)
  - A. For existing and new solid and infectious waste incinerators, emissions of sulfur dioxide from each stack shall not exceed 50 ppm as a running three (3)-hour average, corrected to 7% O<sub>2</sub>, (dry basis); or
  - B. Shall be reduced by at least 70% by weight from their potential SO<sub>2</sub> emission rate on a three (3)-hour basis.
4. Carbon Monoxide (CO). For existing and new solid and infectious waste incinerators, emissions of carbon monoxide from each stack shall not exceed 100 ppm as a running eight (8)-hour average, corrected to 7% O<sub>2</sub> (dry basis).
5. Nitrogen Oxide (NO<sub>x</sub>). For new solid and infectious waste incinerators with the potential to process 250 tons/day or more of wastes, emissions of nitrogen oxide from each stack shall not exceed 200 ppm as a running 24-hour average, corrected to 7% O<sub>2</sub> (dry basis).
6. Opacity. Opacity, as measured visually by an applicable EPA Method or by a transmissometer, shall not exceed 10% for a period aggregating more than three (3) minutes in any running sixty (60)-minute period.
7. Fugitive Emissions. All solid and infectious waste incinerators shall be operated in a manner which prevents or minimizes fugitive emissions, including but not

limited to the paving of all normally traveled roadways within the plant boundary and enclosing of all material transfer points.

8. Dioxin/furans. For solid and infectious waste incinerators with a waste charging rate of 250 tons/day or greater, emissions from each stack shall not exceed 30 nanograms of dioxin/furans per dry standard cubic foot.
9. Other Wastes. No solid or infectious waste incinerator subject to these rules shall burn radioactive or hazardous waste, or any other waste not specifically authorized in the Authority's Air Contaminant Discharge Permit.
10. Other contaminants. For any incinerator subject to these rules, in the absence of an air-contaminant-specific emission limit or ambient air quality standard, the Authority may establish, by permit, emission limits for any other air contaminants to protect human health and the environment.

#### Section 30-025 Design and Operation for Solid and Infectious Waste Incinerators

1. Each solid or infectious waste incinerator shall have at least a primary and secondary combustion chamber.
2. Temperature and residence time. Each solid or infectious waste incinerator shall be designed and operated to maintain temperatures of at least 1400° F in the primary chamber. Combustion gases in the secondary chamber shall be maintained at a minimum temperature of 1800° F for at least one (1) second residence time.
3. Auxiliary Burners. Each solid or infectious waste incinerator shall be designed and operated with automatically controlled auxiliary burners capable of maintaining the combustion chamber temperatures specified in section 2 of this rule, and shall have sufficient auxiliary fuel capacity to maintain said temperatures.
4. Interlocks. Each solid or infectious waste incinerator shall be designed and operated with an interlock system which:
  - A. Prevents charging until the final combustion chamber reaches 1800° F;
  - B. For batch-fed solid or infectious waste incinerators, prevents recharging until each combustion cycle is complete;
  - C. Ceases charging if the secondary chamber temperature falls below 1800° F for any continuous fifteen (15)-minute period; and
  - D. Ceases charging if carbon monoxide levels exceed 150 ppm (dry basis), corrected to 7% O<sub>2</sub> over a continuous fifteen (15)-minute period.
5. Air Locks. Each mechanically fed solid or infectious waste incinerator shall be designed and operated with an air lock control system to prevent opening the incinerator to the room environment. The volume of the loading system must be

designed so as to prevent overcharging, to assure complete combustion of the waste.

6. **Combustion Efficiency.** Except during periods of startup and shutdown, each solid or infectious waste incinerator shall achieve a combustion efficiency of 99.9% based on a running eight (8)-hour average, computed as follows:

$$CE = \frac{CO_2}{CO_2 + CO} \times 100$$

CO = Carbon monoxide in the exhaust gas, parts per million by volume (dry) at standard conditions

CO<sub>2</sub> = Carbon dioxide in the exhaust gas, parts per million by volume (dry) at standard conditions

7. **Stack Height.** Each solid or infectious waste incinerator stack shall be designed in accordance with Good Engineering Practice (GEP) as defined in Title 40 CFR, Parts 51.100(ii) and 5118, in order to avoid the flow of stack pollutants into any building ventilation intake plenum.
8. **Operator Training and Certification.** Each solid or infectious waste incinerator shall be attended at all times during operation by one or more individuals who have received training necessary for proper operation. A description of the training program shall be submitted to the Authority for approval. A satisfactory training program shall consist of any of the following:
- A. Certification by the American Society of Mechanical Engineers (ASME) for solid waste incinerator operation; or
  - B. For infectious waste incineration, successful completion of EPA's Medical Waste Incinerator Operating training course; or
  - C. Other certification or training by a qualified organization as to proper operating practices and procedures, which has been pre-approved by the Authority prior to enrollment. In addition, the owner or operator of a solid or infectious waste incinerator facility shall develop and submit a manual for proper operation and maintenance, to be reviewed with employees responsible for incinerator operation on an annual basis.
  - D. Copies of the written certificate of training of the operator shall be kept on site at all times, available for Authority review.
9. **Odors.** In cases where solid or infectious waste incinerator operation causes odors which interfere with the use and enjoyment of property, the Authority may require, by permit, additional practices and procedures to prevent or eliminate those odors.

Section 30-030 Continuous Emission Monitoring for Solid and Infectious Waste Incinerators

1. Each solid waste incinerator shall be equipped with continuous monitoring for the following:
  - A. Sulfur dioxide;
  - B. Carbon monoxide;
  - C. Opacity;
  - D. Primary combustion chamber temperature;
  - E. Final combustion chamber temperature;
  - F. Flue gas outlet temperature;
  - G. Oxygen;
  - H. Nitrogen oxide--new incinerators with a potential waste feed rate of 250 tons/day or more; and
  - I. HCl--for incinerators with a potential waste feed rate of 250 tons per day or more.
  
2. Each infectious waste incinerator shall be equipped with continuous monitoring for the following:
  - A. Carbon monoxide;
  - B. Opacity;
  - C. Primary combustion chamber temperature;
  - D. Final combustion chamber temperature; and
  - E. HCl.
  
3. The Authority may, at any time following the effective date of these rules, require the installation and operation of any other continuous emission monitors which the Authority determines are necessary in order to demonstrate compliance with emission limits set forth in these regulations.
  
4. The monitors specified above shall comply with EPA performance specifications in Title 40, CFR, Part 60, and the Department's CEM Manual. All monitoring equipment shall be located, operated and maintained so as to accurately monitor emission levels, in order to demonstrate compliance with LRAPA Title 30.

Section 30-035 Reporting and Testing for Solid and Infectious Waste Incinerators

1. Reporting
  - A. Compliance test results shall be reported to the Authority within thirty (30) days of completion of the test.
  
  - B. All records associated with continuous monitoring data including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least two (2) years and shall be furnished to the Authority upon request.

2. Source Testing
  - A. Each solid or infectious waste incinerator must be tested to demonstrate compliance with the standards in these rules.
  - B. Compliance testing shall be conducted at the maximum design rate using waste that is representative of normal operation. If requested by the owner/operator, compliance testing may be performed at a lower rate; however, permit limits will be established based on the lower rate of operation.
  - C. Unless otherwise specified by the Authority, each solid or infectious waste incinerator shall be tested at start-up for particulate matter, hydrogen chloride, sulfur dioxide, and carbon monoxide emissions. Solid and infectious waste incinerators with potential waste feed rates of 250 tons/day or more shall be tested for dioxin/furans and NO<sub>x</sub> at startup.
3. Other air contaminant compliance testing. The Authority may, at any time after the effective date of this rule, conduct or require source testing and require access to information specific to the control, recovery, or release of other air contaminants.

#### Section 30-040 Compliance for Solid and Infectious Waste Incinerators

1. All existing solid and infectious waste incinerators must demonstrate compliance with the applicable provisions of these rules one year after the effective date of this regulation. Subject to approval of the Authority, existing data such as that collected in accordance with the requirements of an Air Contaminant Discharge Permit may be used to demonstrate compliance.
2. Until compliance is demonstrated, existing solid and infectious waste incinerators shall continue to be subject to all applicable permit conditions.
3. All new solid and infectious waste incinerators must demonstrate compliance with the applicable provisions of these rules as soon as possible, but not later than ninety (90) days after startup.
4. Compliance with these rules does not relieve the owner or operator of the solid or infectious waste incinerator from the responsibility to comply with requirements of the Department's Solid and Hazardous Waste rules (Oregon Administrative Rules, Chapter 340, Division 61) regarding the disposal of ash generated from solid and infectious waste incinerators.

#### Section 30-045 Emission Limitations of Crematory Incinerators

1. No person shall cause to be emitted particulate matter from any crematory incinerator in excess of 0.080 grains per dry standard cubic foot of exhaust gases.
2. Opacity. No visible emissions shall be present except for a period aggregating no more than three (3) minutes in any sixty (60)-minute period, as measured by



an applicable EPA Method. At no time shall visible emissions exceed an opacity of 10%.

3. Odors. In cases where crematory incinerator operation cause odors which interfere with the use and enjoyment of property, the Authority may require by permit the use of good practices and procedures to prevent or eliminate those odors.

#### Section 30-050 Design and Operation of Crematory Incinerators

1. Temperature and residence time. The temperature in the final combustion chamber shall be 1800° F for new incinerators, and 1600° F for existing crematory incinerators, with a residence time of at least 0.5 second. At no time while firing waste shall the temperature in the final chamber fall below 1400° F.
2. Operator training and certification. Each crematory incinerator shall be operated at all times under the direction of individuals who have received training necessary for proper operation. A description of the training program shall be submitted to the Authority for approval. Copies of the training certificates of the operators shall be maintained on site at all times and available to the Authority for review.
3. As defined in Title 12 of these rules, crematory incinerators may only be used for incineration of human and animal bodies (together with associated coffins, caskets, combustible containers, wrappings or clothing). No other material, including infectious waste as defined by 30-010.10 of these rules, may be incinerated unless specifically authorized in the Authority's Air Contaminant Discharge Permit. On a case-by-case basis, the Authority may allow the cremation of human anatomical parts or fetal remains, upon request.

#### Section 30-055 Monitoring and Reporting for Crematory Incinerators

1. All crematory incinerators shall operate and maintain continuous monitoring for final combustion chamber exit temperature. Additional monitoring and reporting may be required by permit.
2. All records associated with continuous monitoring data including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least one year and shall be furnished to the Authority upon request.
3. All crematory incinerators must conduct source testing to demonstrate compliance with these rules in accordance with a schedule specified by the Authority. The test results shall be submitted to the Authority no later than thirty (30) days after completion of the test.

Section 30-060 Compliance of Crematory Incinerators

1. All existing crematory incinerators must demonstrate compliance with the applicable provisions of these rules within one year after the effective date of the regulations. Subject to approval by the Authority, existing data such as that collected in accordance with the requirements of an Air Contaminant Discharge Permit or in response to regulatory requirements may be used to demonstrate compliance.
2. Until compliance is demonstrated, existing crematory incinerators shall continue to be subject to all applicable permit conditions.
3. New crematory incinerators must demonstrate compliance with the emission limits and operating requirements of these rules before commencing regular operation.

Statutory Authority: ORS Chapters 183.341 and 468A.135

EXISTING INCINERATOR RULES

TITLE 33  
PROHIBITED PRACTICES AND CONTROL OF SPECIAL CLASSES

~~[Section 33 020 Incinerator and Refuse Burning Equipment~~

~~A. No person shall cause, permit or maintain any emission from any refuse burning equipment which does not comply with the emission limitations of these Rules.~~

~~B. Every person operating refuse burning equipment shall be able at all times during the operation to know the appearance of the emissions.~~

~~C. Refuse Burning Hours~~

~~1. No person shall permit or maintain the operation of refuse burning equipment at any time other than 1/2 hour after sunrise to 1/2 hour before sunset, except with prior approval of the Authority.~~

~~2. Approval of the Authority for the operation of such equipment may be granted upon the submission of a written request giving:~~

~~a. Name and address of the applicant.~~

~~b. Location of the refuse burning equipment.~~

~~c. Description of refuse burning equipment and its control apparatus.~~

~~d. Type and quantity of refuse.~~

~~e. Good cause for issuance of such approval.~~

~~f. Hours, other than daylight hours, during which the applicant seeks to operate the equipment.~~

~~g. Length of time for which the approval is sought.~~

~~D. Design and Construction Standards~~

~~1. Notwithstanding any other section of these Rules, construction of any article, machine, equipment or contrivance for commercial, industrial or residential incineration operations shall maintain 1500°F for 0.3 seconds in secondary chamber gas path. One and two family residential disposal in Area "B" are exempt from this paragraph.~~

~~2. Notwithstanding any other section of the Rules, construction of any article, machine, equipment or contrivance for disposal of Type 4 waste shall maintain 1700°F for 0.4 seconds in secondary chamber gas path.~~

- ~~3. After January 1, 1974, the operation of any source described in this section that fails to meet the design standards of this section shall be deemed prima facie evidence of violation of section 32-055 of the Rules.~~
- ~~E. Incinerator operating instructions shall be furnished by the supplier to the Program Director for approval coincident with submission of construction plans. The supplier shall furnish adequate training in the operation of the incinerator to the purchaser prior to the required test operation.~~
- ~~F. When a commercial or industrial incinerator is constructed or assembled on site, the Program Director shall be notified so that the internal dimensions may be determined while the incinerator is still open.~~
- ~~G. Fuel burning equipment, incinerators and equipment used in manufacturing processes shall be provided with sufficient control apparatus to meet the emission standards of these regulations to include means whereby the operator of the equipment shall be able at all times during the operation to know the appearance of the emission.]~~

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 12  
Definitions

*(These draft amendments include revisions to some definitions and addition of definitions from other LRAPA titles. The numbers have also been removed from individual definitions and replaced with "bullets" to avoid having to renumber with subsequent additions or deletions.)*

Section 12-001 Definitions of Words and Terms Used in LRAPA Rules and Regulations

To aid in the understanding of these rules, the following [general] definitions are provided.

- "Acid Gases" means any exhaust gas which includes hydrogen chloride and sulfur dioxide.
- "Actual Emissions" means the mass rate of emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.
  - ~~[A. In general, actual emissions as of the baseline period shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the selected time period.~~
  - ~~B. The Authority may presume that existing source specific permitted mass emissions for the source are equivalent to the actual emissions of the source if they are within 10% of the calculated actual emissions.~~
  - ~~C. For any newly permitted emission source which had not yet begun normal operation in the baseline period, actual emissions shall equal the potential to emit of the source.~~
- ~~"Actual Emission" means all emissions including but not limited to routine process emissions; fugitive emissions; and excess emissions from maintenance, startups and shutdowns, equipment malfunctions, and other activities.]~~
  - ~~A. For purposes of determining actual emissions as of the baseline period:
 
    - ~~(1) Except as provided in paragraph (2) of this subsection, actual emissions shall equal the average rate at which the source actually~~~~

emitted the pollutant during a baseline period and which is representative of normal source operation;

- (2) The Authority may presume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10 percent of the actual emissions calculated under paragraph (1) of this subsection.
- B. For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.
- C. For purposes of determining actual emissions for Emission Statements under OAR 340-28-1500 through 340-28-1520, Major Source Interim Emission Fees under OAR 340-28-2400 through 340-28-2550, and Federal Operating Permit Fees under OAR 340-28-2560 through 340-28-2720, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.
- "Adequately wet" means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. The absence of visible emissions is not sufficient evidence of being adequately wet.
  - "Adoption" means the carrying of a motion by the Board with regard to the subject matter or issues of an intended Authority action.
  - "Agricultural open burning" means the open burning of "agricultural wastes," which are materials actually generated by an agricultural operation but excluding those materials described in Section 47-015-1.E.
  - "Agricultural operation" means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the raising and sale of livestock or poultry, which activity is necessary to serve that purpose; it does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.
  - "Air Contaminant" means solid, liquid or gaseous materials suspended in the ambient air. This does not include water vapor.
  - "Air Contaminant Discharge Permit" means a written permit issued by the Authority in accordance with duly adopted procedures, which by its conditions authorizes the permittee to construct, install, modify or operate specified facilities, conduct specified activities, or emit, discharge or dispose of air contaminants in accordance with specified practices, limitations, or prohibitions.
  - ~~"Air Contaminant Source" means, for the purposes of this title, any building, structure, or facility, or combination thereof, which emits or is capable of emitting air contaminants to the atmosphere, and is located on~~

~~one or more contiguous or adjacent properties, and is owned or operated by the same person or by persons under common control. This includes all of the pollutant emitting activities which belong to the same industrial grouping, or major group (i.e., which have the same two digit code) as described in EPA's Standard Industrial Classification (SIC) manual (U.S. Office of Management and Budget, 1987). This definition does not include fuel burning equipment used to heat one or two family dwellings or internal combustion engines used in motor vehicles, aircraft, and marine vessels enroute to or from a source.]~~

- "Air Conveying System" means an air moving device such as a fan or blower, and associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream. It does not include particle dryers.
- "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are, or are likely to be, injurious to the public welfare, to the health of human, plant or animal life or to property, or which unreasonably interfere with enjoyment of life and property.
- "Air Pollution Control Equipment" means any equipment which has as its essential purpose a reduction in the emissions of air contaminants, or a reduction in the effect of such emissions.
- "Air Quality Maintenance Area (AQMA)" means any area that has been identified by the Authority or the Department, and approved by the Board or the Commission, as having the potential for exceeding any federal, state or local ambient air quality standard.
- "Air Quality Maintenance Area (AQMA) Analysis" means an analysis of the impact on air quality in an AQMA of emissions from existing air contaminant sources and emissions associated with projected growth and development.
- "Aircraft Operation" means any aircraft landing or takeoff.
- "Airport" means any area of land or water which is used or intended for use for the landing and takeoff of aircraft, or any appurtenant areas, facilities, or rights-of-way, such as terminal facilities, parking lots, roadways, and aircraft maintenance and repair facilities.
- "Ambient Air" means the air that surrounds the earth to which the general public has access, excluding the volume of gases contained within any building or structure.
- "Ambient Air Monitoring Site Criteria" means the general probe siting specifications in Appendix E of 40 CFR 58.
- "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cumingtonite-grunerite (amosite), anthophyllite, actinolite and trimolite.

## Definitions

- "Asbestos-containing waste material" means any waste which contains mill tailings or any commercial asbestos and is generated by a source subject to the provisions of this subsection, including but not limited to asbestos mill tailings, control device asbestos waste, friable asbestos waste material, asbestos abatement project waste and bags or containers that previously contained commercial asbestos.
- "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air. Note: An asbestos abatement project is not considered to be a source under 43-010-2 through 43-010-6. Emergency fire fighting is not an asbestos abatement project.
- "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in Section 43-015-3.
- "Asbestos-containing material" means asbestos or any material containing at least 1% asbestos by weight, including particulate asbestos material.
- "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.
- "Asbestos tailings" means any solid waste product of asbestos mining or milling operations which contains asbestos.
- "Approved Method" means an analytical method for measuring air contaminant concentrations which are described or referenced in Appendices to 40 CFR 50 and 40 CFR 53. These methods are approved by the Authority.
- "Assessable Emission" means a unit of emissions for which the major source will be assessed a fee. It includes an emission of a pollutant defined in LRAPA 35-010 from one emission point or from an area within a major source. For routine process emissions, emissions of each pollutant in LRAPA 35-010 from each emission point, included in an air contaminant discharge permit, shall be an assessable emission.
- "Associated Parking" means a discrete parking facility or facilities owned, operated and/or used in conjunction with an indirect source.
- "ASTM" means the American Society for Testing Materials.
- "Authority" means the Lane Regional Air Pollution Authority.
- "Authority-Approved Method" means any method of sampling and analyzing for an air contaminant approved by the Authority. These methods are listed in the state Department of Environmental Quality's Source Sampling Manual.



March 8, 1994

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## Title 12

## Definitions

- "Auxiliary Combustion Equipment" includes, but is not limited to, fans or air curtain incinerators.
- "Average Daily Traffic" means the total traffic volume during a given time period in whole days greater than one day and less than one year, divided by the number of days in that time period, commonly abbreviated as ADT.
- "Average Operating Opacity" means the opacity of emissions determined using EPA method 9 on three days within a 12-month period which are separated from each other by at least 30 days. A violation of the average operating opacity limitation is judged to have occurred if the opacity of emissions on each of the three days is greater than the specified average operating opacity limitation.
- "Baseline concentration" means that ambient concentration level for a particular regulated pollutant which existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration for any pollutant may be estimated using modeling based on actual emissions for the calendar year 1978. Actual emissions increases or decreases occurring before January 1, 1978 will be included in the baseline concentration.
- "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.
- "Baseline Period" means either calendar years 1977 or 1978. The Authority shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
- "Begin Actual Construction" means to begin to engage in a continuous program of on-site construction or on-site modification, including site clearing, grading, dredging, or landfilling in preparation for the fabrication, erection, installation or modification of a source.
- "Beryllium" means the element beryllium. Where weight or concentrations are specified in these Rules, such weights or concentrations apply to beryllium only, excluding any associated elements.
- "Beryllium Alloy" means any metal to which beryllium has been added in order to increase its beryllium content, and which contains more than one-tenth of one percent (0.1 %) beryllium by weight.
- "Beryllium-Containing Waste" means any material contaminated with beryllium and/or beryllium compounds used or generated during any process or operation performed by a source subject to these rules.
- "Beryllium ore" means any naturally occurring material mined or gathered for its beryllium content.
- "Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of

reduction of each air contaminant subject to regulation under the Clean Air Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutants. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.

- "Biological Waste," includes blood and blood products, excretions, exudates, secretions, suctionings 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 (see also "infectious waste").
- "BLS" means Black Liquor Solids, dry weight.
- "Board" means the Board of Directors of the Lane Regional Air Pollution Authority.
- "Calculated Emission" means actual emissions estimated using Authority-approved procedures.
- "Chair" means the chair of the Board of Directors of the Lane Regional Air Pollution Authority.
- "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.
- "Class I Area" means any federal, state, or Indian reservation land which is so classified. For the State of Oregon, these are as follows:
  - A. Mt. Hood Wilderness;
  - B. Eagle Cap Wilderness;
  - C. Hells Canyon Wilderness;
  - D. Mt. Jefferson Wilderness;
  - E. Mt. Washington Wilderness;
  - F. Three Sisters Wilderness;
  - G. Strawberry Mountain Wilderness;
  - H. Diamond Peak Wilderness;
  - I. Crater Lake National Park;
  - J. Kalmiopsis Wilderness;
  - K. Mountain Lake Wilderness;
  - L. Gearhart Mountain Wilderness.

- "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of weight of material collected to total weight of input to the collector.
- "Combustion Promoting Materials" include, but are not limited to, propane, diesel oil, or jellied diesel.
- "Commence Construction" means to begin to engage in a continuous program of on-site construction or on-site modification, including site clearing, grading, dredging, or landfilling in preparation for the fabrication, erection, installation or modification of a source; or entry into binding agreements or contractual obligations which cannot be canceled or modified without substantial loss to the owner or operator.
- "Commercial Area" means land which is zoned or used for commercial operations including retail sales and services.
- "Commercial asbestos" means any variety of asbestos which is produced by extracting asbestos from asbestos ore.
- "Commercial Open Burning" means the open burning of "commercial wastes," which are materials actually generated or used by a commercial operation.
- "Commission" means the Environmental Quality Commission.
- "Compliance" means meeting the requirements of the Authority's or [~~other government agencies~~] Department's, Commission's or EPA's rules, permits or orders.
- "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.
- "Construction" means any physical change including fabrication, erection, installation, or modification of a facility, building or emission unit; or change in method of operation of a source which would result in a change in actual emissions.
- "Construction Open Burning" means the open burning of "construction wastes," which are materials actually resulting from or produced by a building or construction project.
- "Contested Case" means a proceeding before the Board or a Hearings Officer:
  - A. In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard; or
  - B. Where the Authority has discretion to suspend or revoke a right or privilege of a person; or

- C. For the suspension, revocation or refusal to renew or issue a permit where the licensee or applicant for a license demands such hearing; or
- D. Where Authority rule or order provides for hearing substantially of the character required by ORS 183.415, 183.425 and 183.450 to 183.470.
- "Contingency Requirements" means the requirements of Sections 39-001 through 39-060.
  - "Continual Monitoring" means sampling and analysis, in a continuous or timed sequence, using techniques which will adequately reflect actual emission rates or concentrations on a continuous basis.
  - "Continuous Emissions Monitoring" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous monitoring equipment and operation shall be certified in accordance with EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Department's CEM Manual.
  - "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect calculated emissions and actual emission levels or concentrations on a continuing basis, in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission and parameter monitoring systems.
  - "Crematory Incinerator" means an incinerator used solely for the cremation of non-pathological human and non-pathological animal remains.
  - "Cultures and stocks" includes 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. "Cultures" does not include throat and urine cultures (see also "infectious waste").
  - "Daily Arithmetic Average" means the average concentration over the twenty-four hour period in a calendar day, or Authority-approved equivalent period, as determined by continuous monitoring equipment or reference method testing. Determinations based on EPA reference methods or equivalent methods in accordance with the Department Source Test Manual consist of three (3) separate consecutive runs having a minimum sampling time of sixty (60) minutes each and a maximum sampling time of eight (8) hours each. The three values for concentration (ppm or grains/dscf) are averaged and expressed as the daily arithmetic average which is used to determine compliance with process weight limitations, grain loading or volumetric concentration limitations and to determine daily emission rate.
  - "Debris Clearing" means the removal of wood, trees, brush or grass in preparation for a land improvement or construction project.
  - "Demolish" or "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

## Definitions

- "Demolition Open Burning" means the open burning of "Demolition Wastes," which are materials actually resulting from or produced by the complete or partial destruction or tearing down of a man-made structure or the clearing of any site to abate a nuisance, or land clearing for site preparation for development.
- "Department" means the Oregon Department of Environmental Quality.
- "Design Criteria" means the numerical as well as narrative description of the basis of design including, but not necessarily limited to, design flow rates, temperatures, humidities, descriptions of the types and chemical species of contaminants, uncontrolled and expected controlled mass emission rates and concentrations, scopes of any vendor-supplied and owner-supplied equipment and utilities, and a description of any operational controls.
- "Dioxins and Furans" means total tetra- through octachlorinated dibenzo-p-dioxins and dibenofurans.
- "Director" means the Director of the Lane Regional Air Pollution Authority and authorized deputies or officers.
- "Distillate Fuel Oil" means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils.
- "Documented Violation" means any violation which the Authority or other government agency [~~verifies through~~] ~~records after~~ observation, investigation or data collection.
- "Dry Material" includes, but is not limited to, dried wood, feed, seed, or other materials.
- "Dry Standard Cubic Foot" means the amount of gas, free of uncombined water, that would occupy a volume of 1 cubic foot at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" means adjustment of gas volume to that which would result at a concentration of 7% oxygen (dry basis).
- "Emission" means a release into the ambient air of air contaminants.
- "Emission Estimate Adjustment Factor (EEAF)" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.
- "Emission Factor" means an average value which relates the quantity of a pollutant released to the atmosphere with the activity associated with the release of that pollutant.
- "Emission Limitation" means a requirement established by LRAPA, local government, the State of Oregon DEQ or the U. S. EPA, which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis. This includes requirements on opacity limits, equipment prescriptions, fuel specifications, and operation and maintenance procedures.

- "Emission Point" means the location, place in horizontal plane and vertical elevation at which an emission enters the outdoor atmosphere.
- "Emission Reduction Credit Banking" means to reserve emission reductions for future use by the reserver or assignee.
- "Emission Reporting Form" means a paper or electronic form developed by the Authority that shall be completed by the permittee to report calculated emissions or permitted emissions for interim emission fee assessment purposes.
- "Emission Standard" is the same as "Emission Limitation".
- "Emission Unit" means any part of a source (including specific process equipment) which emits or would have the potential to emit any air contaminant subject to regulation under the Clean Air Act, State of Oregon laws, or these regulations.
- "Enforcement" means any documented action taken to address a violation.
- "EPA" means the United States Environmental Protection Agency.
- "EPA Method 9" means the method for Visual Determination of the Opacity of Emissions From Stationary Sources as promulgated by the U.S. Environmental Protection Agency in Title 40 of the Code of Federal Regulations, Part 60, Appendix A, Method 9.
- "Eugene/Springfield Air Quality Maintenance Area" means that area described in Section 4.6.2.1 and Figure 4.6.2.1--1 of the State of Oregon State Implementation Plan Revision, Eugene/Springfield AQMA, as approved by the Board on November 6, 1980.
- "Eugene-Springfield Urban Growth Area (ESUGA)" means the area within and around the cities of Eugene and Springfield, as described in the August 23, 1982 acknowledged Eugene-Springfield Metropolitan Area General Plan, as amended.
- "Event" means any period of excess emissions.
- "Excess Emissions" means emissions which are in excess of an Air Contaminant Discharge Permit or any applicable air quality rule.
- "Existing Source" means any air contaminant source [~~in existence~~] ~~constructed~~ prior to the date of adoption of rules affecting that source.
- "Expressway" means a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.
- "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating

- includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.
- "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel including but not limited to ships.
  - "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.
  - "Federal Operating Permit Program" means a program approved by the EPA Administrator under 40 CFR Part 70 (last amended by 57 FR 32295, July 21, 1992). The rules and regulations which shall apply until superceded by LRAPA rules and regulations are OAR 340-28-2100 through 340-28-2320 and 340-28-2560 through 340-28-2740, and all of OAR 340-32.
  - "Filing" or "filed" means receipt in the office of the Director. Such receipt is adequate where filing is required for a document on a matter before the Authority, except a claim of personal liability.
  - "Fire Hazard" means the presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare, or to adjacent lands.
  - "Fire Permit Issuing Agency" means any governmental fire permit issuing agency, such as city fire department, rural fire protection district, water district, forest protection district or county court or board of county commissioners or their designated representative, as applicable.
  - "Flagrant" means any documented violation where the respondent ha[s]d actual knowledge of the law and [has] consciously set out to commit the violation.
  - "Formal Enforcement Action" means an administrative action signed by the Director or authorized representative[s] which is issued to a respondent [~~on the basis that~~] for a documented violation. [~~has been documented,~~] A formal enforcement action may requir[ing]e the respondent to take specific action within a specified time frame and/or stat[ing]e the consequences for continued non-compliance.
  - "Freeway" means an expressway with full control of access.
  - "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.
  - "Fugitive Emissions," as used in Title 35, means emissions of any air contaminant which [~~escapes to the ambient air from any point or area that is not identifiable as~~] could not reasonably pass through a stack, vent, duct, or functionally equivalent opening.
  - "Fugitive Emission," except as used in Title 35, means [~~dusts, fumes, gases, mist, odorous matter, vapors or any combination thereof not easily given to~~]

~~measurement, collection, and treatment by conventional pollution control methods.] emissions of any air contaminant which escapes to the ambient air from any point or area that is not identifiable as a stack, vent, duct, or functionally equivalent opening.~~

- "Full-scale asbestos abatement project" means any asbestos abatement project which is intended to prevent the release of asbestos fibers into the air and which is not classified as a "small-scale asbestos abatement project."
- "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and serving of food.
- "Gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds per square inch or greater.
- "General Arrangement," in the context of the compliance schedule requirements in this division, means drawings or reproductions which show, as a minimum, the size and location of equipment served by the emission-control system, the location and elevation above grade of the ultimate point of contaminant emission to the atmosphere, and the diameter of the emission vent.
- "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new minor sources, modifications of minor sources, and area source growth.
- "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.
- "Hazardous Air Contaminant" means any air contaminant considered by the Authority to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.
- "Hazardous Waste" means a hazardous waste as defined in 40 CRF 261.3.
- "HEPA filter" means a high-efficiency particulate air filter capable of filtering 0.3 micrometer particles with 99.97 percent efficiency.
- "Highway Section" means a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program.
- "Immediately," as relates to notifying LRAPA of episodes of excess emissions, means one of the following:
  - A. During LRAPA's normal work hours, 8:00 a.m. to 5:00 p.m. Monday through Friday, report is to be made as soon as possible but no more than one (1) hour after the beginning of the excess emissions; or
  - B. During LRAPA's off-duty hours or on weekends or holidays, report is to be made as soon as possible but no more than one (1) hour after the



beginning of the excess emissions, using LRAPA's electronic telephone answering equipment. If the person reporting the incident is unable to access the telephone answering equipment because of overloaded telephone circuits or telephone equipment malfunction, the report must be made to the LRAPA business office at the beginning of the next working day.

- "Inactive asbestos waste disposal site" means any disposal site where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.
- [~~• "Incineration Operation" means any operation in which combustion is carried on in an incinerator, for the principal purpose or with the principal result, of oxidizing wastes to reduce their bulk and/or facilitate disposal.~~]
- "Incinerator" means a combustion device specifically for destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes. This does not include devices such as open or screened barrels, drums, or process boilers.
- "Indirect Source" means a facility, building, structure, installation, or any portion or combination thereof, which indirectly causes or may cause mobile source activity that results in emissions of an air contaminant for which there is a federal, state or local standard. Such Indirect Sources shall include, but shall not be limited to:
  - A. Highways and roads;
  - B. Parking facilities;
  - C. Retail, commercial and industrial facilities;
  - D. Recreation, amusement, sports and entertainment facilities;
  - E. Airports;
  - F. Office and government buildings;
  - G. Apartment and mobile home parks;
  - H. Educational facilities;
  - I. Hospital facilities; and
  - J. Religious facilities.
- "Indirect Source Construction Permit" means a written permit in letter form issued by the Authority, bearing the signature of the Director, which authorizes the permittee to commence construction of an indirect source, under construction and operation conditions and schedules as specified in the permit.
- "Indirect Source Emission Control Program (ISECP)" means a program which reduces mobile source emissions resulting from the use of the Indirect Source.
- "Industrial Area" means land which is zoned or used for industrial operations, including manufacturing.
- "Industrial Open Burning" means the open burning of "industrial wastes," which are materials produced as a direct result of any manufacturing or industrial process.

- "Infectious Waste" means waste which contains or may contain any disease-producing microorganism or material including, but not limited to, biological waste, cultures and stocks, pathological waste, and sharps (see individual definitions for these terms).
- "Infectious Waste Incinerator" means an incinerator which is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat.
- "Intentional," [~~when used with respect to a result or to conduct described by a statute, rule, permit, standard or order defining a violation,~~] means [~~that~~] ~~conduct~~ by a person [~~acts~~] with a conscious objective to cause the result of ~~the conduct~~ [~~or to engage in the conduct so described~~].
- "Interim Emission Fee" means \$13 per ton for each assessable emission subject to emission fees under LRAPA 35-010 for calculated or permitted emissions released during calendar years 1991 and 1992.
- "Interim storage of asbestos-containing material" means the storage of asbestos-containing waste material which has been placed in a container outside a regulated area until transported to an authorized landfill.
- "Kraft Mill" or "Mill" means any industrial operation which uses for a cooking liquor an alkaline sulfide solution containing sodium hydroxide and sodium sulfide in its pulping process.
- "Land Clearing" means the removal of trees, brush, logs, stumps, debris or man-made structures for the purpose of site clean-up or site preparation for construction.
- "Late Payment" means an interim emission fee which is postmarked after the due date.
- "Leaves" means needle or leaf materials which have fallen from trees, shrubs, or plants on the property around a dwelling unit.
- "Lime Kiln" means any production device in which calcium carbonate is thermally converted to calcium oxide.
- "Lowest Achievable Emission Rate (LAER)" means that rate of emissions which reflects:
  - A. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
  - B. The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term allow a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable new source performance standards or standards for

hazardous air pollutants.

- "Magnitude of the Violation" means the extent of a violator's deviation from federal, state and the Authority's statutes, rules, standards, permits or orders [~~taking into account such factors as, but not limited to, concentration, volume, duration, toxicity, or proximity to human or environmental receptors~~]. In determining magnitude, the Authority shall consider available information, including such factors as concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In any case, the Authority may consider any single factor to be conclusive. Deviations shall be categorized as major, moderate or minor [~~as follows~~]:
  - A. ~~"Major" means a substantial deviation from the standard;~~
  - B. ~~"Moderate" means a significant deviation from the standard;~~
  - C. ~~"Minor" means a slight deviation from the standard.~~
- "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase (as defined in this section) for any pollutant subject to regulation under the Clean Air Act. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases must take into account all accumulated increases and decreases (not including mandated decreases) in actual emissions occurring at the source since January 1, 1978, or since the time of the last major source or major modification approval issued for the source pursuant to the rules for that pollutant, whichever time is more recent. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the major modification requirements of this title, including the retrofit of required controls. For the purposes of this title, fugitive emissions shall be included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions shall not be included in calculations of potential emissions which are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emissions must be added to the primary emissions and become subject to these rules.
- "Major Source," for those sources subject to the Federal Operating Permit Program, means a stationary source which emits, or has the potential to emit, any pollutant regulated under the Clean Air Act at a Significant Emission Rate [~~as defined in Title 38~~]; or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control), belonging to a single major industrial grouping or supporting the major industrial group and that are described in paragraphs (A) or (B) of this definition. For the purposes of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (US Office of Management and Budget, 1987) or support the major industrial group.

A. A major source under section 112 of the Act, which is defined as:

(1) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any Hazardous Air Pollutant (HAP) which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such HAP, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(2) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

B. A major stationary source as defined in part D of Title I of the Act, including:

(1) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25 and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements do not apply;

(2) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(3) For carbon monoxide nonattainment areas,

(a) that area classified as "serious," and

(b) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide;

(4) For particulate matter (PM<sub>10</sub>) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM<sub>10</sub>.

~~["Major Source" or "Source" means any permitted source or group of stationary sources located within a contiguous area and under common control, or any stationary facility or source of air pollutants which directly emits or is permitted to emit:~~

~~A. 100 tons per year or more of any regulated pollutant; or~~

~~B. 50 tons per year or more of a volatile organic compound and is located in a serious ozone non attainment area.]~~

- "Major Source," as used in Title 38, means a [stationary] source which emits, or has the potential to emit, any pollutant regulated under the Clean Air Act at a Significant Emission Rate (as defined in this section). For the purposes of this title, fugitive emissions shall be included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions shall not be included in calculations of potential emissions which are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emissions must be added to the primary emissions and become subject to these rules.
- "Material Balance" means a procedure for calculating emissions based on the difference between the amount of material added to a process and the amount consumed and recovered from a process.
- "Maximum Opacity" means the opacity as determined by EPA Method 9 (average of 24 consecutive observations).
- "Mercury" means the element mercury, excluding any associated elements and includes mercury in particulates, vapors, aerosols, and compounds.
- "Mercury Ore" means any mineral mined specifically for its mercury content.
- "Mercury Ore Processing Facility" means a facility processing mercury ore to obtain mercury.
- "Mercury Chlor-Alkali Cell" means a device which is basically composed of an electrolyzer section and denuder (decomposer) section, and which utilizes mercury to produce chlorine gas, hydrogen gas, and alkali metal hydroxide.
- "Mobile Source" means self-propelled vehicles, powered by internal combustion engines, including but not limited to automobiles, trucks, motorcycles and aircraft.
- "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-01-005 through 137-04-010 as amended and in effect on April 29, 1988.
- "Modification of an Air Contaminant Source" means any physical change or change in operation of a source which would result in a non-permitted increase in the air contaminant emissions from that source.
- "Motor Vehicle" means any self-propelled vehicle designed for transporting persons or property on a public street or highway.
- "Negative pressure enclosure" means any enclosure of an asbestos abatement project area where ambient air pressure is greater than the air pressure within the enclosure, and the air inside the enclosure is changed at least two times an hour by exhausting it through a HEPA filter.

- "New Source" means any air contaminant source not in existence prior to adoption of rules affecting that source.
- "Nonattainment Area" means a geographical area within the jurisdiction of the Authority which exceeds any federal, state or local primary or secondary ambient air quality standard as designated by the Board, the Environmental Quality Commission, or the Environmental Protection Agency.
- "Non-Condensibles" means gases and vapors, contaminated with TRS compounds, from the digestion and multiple-effect evaporation processes of a kraft mill.
- "Nonfriable asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined by weight that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.
- "Non-Major Source," as used in Title 38 means a stationary source which will not emit, and does not have the potential to emit, any pollutant regulated under the Clean Air Act at a Significant Emission Rate [~~as defined in Title 38~~].
- "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
- "Nuisance to the Public" means an interference with a right or privilege common to members of the public, as determined through a formal process by the Board.
- "Nuisance Conditions" means unusual or annoying amounts of air contaminants. In determining whether a nuisance condition exists, consideration shall be given to all relevant factors including but not limited to the density of the affected population and the duration of the offending activity.
- "Odor" means the property of a substance which allows its detection by the sense of smell.
- "Off-Street Area or Space" means any area or space not located on a public road dedicated for public use.
- "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a new major source or major modification of a source.
- "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background.
- "Opacity Readings" are the individual readings which comprise a visual opacity determination.
- "Open Outdoor Burning" includes burning in open outdoor fires, burn barrels, and incinerators which do not meet emission limitations specified in Section

33-020 of these Rules, and any other outdoor burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.

- "Order" means:
  - A. Any action satisfying the definition given in ORS Chapter 183; or
  - B. Any other action so designated in ORS Chapter 468 or 468.A.
- "Other Sources of TRS emissions" means sources of TRS emissions in a kraft mill other than recovery furnaces and lime kilns, including but not limited to:
  - A. Vents from knotters, brown stock washing systems, evaporators, blow tanks, blow heat accumulators, black liquor storage tanks, black liquor oxidation system, pre-steaming vessels, tall oil recovery operation; and
  - B. Any vent which is shown to contribute to an identified nuisance condition.
- "Parking and Traffic Circulation Plan" means a plan developed by a city, county or regional government or regional planning agency, the implementation of which assures the attainment and maintenance of the state and local ambient air quality standards.
- "Parking Facility" means any building, structure, lot or portion thereof, designed and used primarily for the temporary storage of motor vehicles in designated parking spaces.
- "Parking Space" means any off-street area of space below, above or at ground level, open or enclosed, that is used for parking one motor vehicle at a time.
- "Particle Fallout Rate" means the weight of particulate matter which settles out of the air in a given length of time over a given area.
- "Particleboard" means mat-formed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binder.
- "Particulate asbestos material" means any finely divided particles of asbestos material.
- ~~[.0425 "Particulate Matter" means any matter except uncombined water which exists as a liquid or solid at standard conditions.]~~
- ~~[• "Particulate Matter" means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an Authority approved method.]~~
- "Particulate Matter," as used in Titles 33 and 39, means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured in accordance with the Department Source Test Manual. ~~[Particulate matter emission determinations shall consist of the average of three~~

~~separate consecutive runs. For sources tested using DEQ Method 5 or DEQ method 7, each run shall have a minimum sampling time of one hour, a maximum sampling time of eight hours, and a minimum sampling volume of 31.8 dscf. For sources tested using DEQ Method 8, each run shall be sampled isokinetically, shall have a minimum sampling time of 15 minutes and shall collect a minimum particulate sample of 100 mg. Wood waste boilers shall be tested with DEQ Method 5; veneer dryers, wood particle dryers and fiber dryers shall be tested with DEQ Method 7; and air conveying systems shall be tested with DEQ Method 8; pulp mills shall be tested with DEQ method 5, except that water shall be used instead of acetone as the clean-up solvent.]~~

- "Particulate Matter Emissions" means all solid or liquid matter, other than uncombined water, emitted to the ambient air, as measured by an applicable EPA reference methods.
- "Parts Per Million (ppm)" means parts of a contaminant per million parts of gas by volume on a dry-gas basis (1 ppm equals 0.0001% by volume).
- "Pathological waste" includes 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 wastes" does not include teeth, or formaldehyde or other preservative agents (see also "infectious waste").
- "Permit" or "Air Contaminant Discharge Permit" means a written permit issued by the Authority, pursuant to LRAPA and DEQ rules and regulations.
- "Permitted Emissions," as used in title 35, means assessable emission portion of the Plant Site Emission Limit.
- "Permittee" means the owner or operator of the facility, in whose name the operation of the source is authorized by [an] the Air Contaminant Discharge Permit or the federal operating permit.
- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Person in Charge of Property" means an agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property.
- "Plant Site Emission Limit (PSEL)" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL may consist of more than one assessable emission.
- "Plywood" means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.



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- "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an approved method as listed in 40 CFR 53.
- "PM<sub>10</sub> Emissions" means emissions of [~~PM10~~] finely divided solid or liquid material, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by [~~an~~] applicable reference methods in accordance with the Department [~~of Environmental Quality~~]'s Source Sampling Manual.
- "Population" means that population estimate most recently published by the Center for Population Research and Census, Portland State University, or any other population estimate approved by the Authority.
- "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.
- "ppm" means parts of air contaminant per million parts of air on a volume basis.
- "Prevention of Significant Deterioration Increments" means maximum allowable ambient air quality impacts over baseline concentrations in areas designated Class I, II or III, as follows:

Micrograms Per Cubic Meter

	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>
Particulate Matter--			
TSP Annual Geometric Mean	5	19	37
* TSP 24-Hour Maximum	10	37	75
Sulfur Dioxide--			
Annual Arithmetic Mean	2	20	40
* 24-Hour Maximum	5	91	182
* 3-Hour Maximums	25	512	700

(\* For these time periods, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.)

- "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.
- "Prior Violation" means any violation established, with or without admission, by payment of a civil penalty, by an order of default, by

issuance of a Notice of Non-Compliance or a Notice of Permit Violation, or by a stipulated or final order of the Authority.

- "Process Unit" includes all equipment and appurtenances for the processing of bulk material which are united physically by conveyor or chute or pipe or hose for the movement of product material provided that no portion or item of the group will operate separately with product material not common to the group operation. Such a grouping is considered encompassing all the equipment used from the point of initial charging or feed to the point or points of discharge of material where such discharge will:
  - A. Be stored,
  - B. Proceed to a separate process, or
  - C. Be physically separated from the equipment comprising the group.
- "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.
- "Process Weight" means total weight of the materials, including solid fuels but not including liquid and gaseous fuels and combustion air introduced into any process unit which may cause any emission into the atmosphere.
- "Production (Kraft Mill)" means the daily amount of air-dried unbleached pulp, or equivalent, produced during the 24-hour period each calendar day, or Authority-approved equivalent period, and expressed in air-dried metric tons (admt) per day. The corresponding English unit is air-dried tons (adt) per day.
- "Propellant" means a fuel and oxidizer physically or chemically combined containing beryllium or beryllium compounds, which undergoes combustion to provide rocket propulsion.
- "Propellant plant" means any facility engaged in the mixing, casting, or machining of propellant.
- "Public nuisance" see "Nuisance to the Public."
- "Reasonable Receptor and Exposure Sites" means locations where people might reasonably be expected to be exposed to air contaminants generated in whole or in part by the indirect source in question. Location of ambient air sampling sites and methods of sample collection shall conform to criteria on file with the Department of Environmental Quality.
- "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.
- "Recovery Furnace (Kraft Mill)" means the combustion device in which dissolved wood solids are incinerated and pulping chemicals recovered from the molten smelt. For these regulations, and where present, this term shall include the direct contact evaporator.

## Definitions

- "Reference Method" means [~~a source testing technique approved by LRAPA~~] any EPA approved method. (The methods are listed in the state Department of Environmental Quality's Source Sampling Manual.)
- "Refuse" means unwanted matter.
- "Refuse Burning Equipment" means a device designed to reduce the volume of refuse by combustion.
- "Regional Authority" means a regional air quality control authority established under the provisions of ORS 468.505.
- "Regional Planning Agency" means any planning agency which has been recognized as a substate-clearinghouse for the purposes of conducting project review under the United States Office of Management and Budget Circular Number A-95, or other governmental agency having planning authority.
- [~~• "Regulated Pollutant" means PM<sub>10</sub>, Sulfur Dioxide (SO<sub>2</sub>), Oxides of Nitrogen (NO<sub>x</sub>), Lead (Pb), Volatile Organic Compounds (VOC), and Carbon Monoxide (CO); and any other pollutant subject to a New Source Performance Standard (NSPS) such as Total Reduced Sulfur (TRS) from kraft pulp mills and Fluoride (F) from aluminum mills.~~]
- "Renovate" or "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.
- "Residential Area" means land which is zoned or used for single or multiple family or suburban residential purposes.
- "Residential Open Burning" means the open burning of clean wood, paper products, and yard debris which are actually generated in or around a dwelling for four (4) or fewer family living units. Once this material is removed from the property of origin it becomes commercial waste. Such materials actually generated in or around a dwelling of more than four (4) family living units are commercial wastes.
- "Residual Fuel Oil" means any oil meeting the specifications of ASTM Grade 4, Grade 5 or Grade 6 fuel oils.
- "Resource Recovery Facility" means any facility at which municipal solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing municipal solid waste for reuse. Energy conversion facilities must utilize municipal solid waste to provide fifty (50) percent or more of the heat input to be considered a resource recovery facility.
- "Respondent" means the person to whom a formal enforcement action is issued.
- "Responsible person" means each person who is in ownership, control, or custody of the property on which the open burning occurs, including any tenant thereof; or who is in ownership, control, or custody of the materials

which are burned; or any person who causes or allows open burning to be initiated or maintained.

- "Ringelmann Chart" means the Ringelmann Smoke Chart with instructions for use as published in May, 1967, by the United States Bureau of Mines.
- "Risk of Harm" means the level of risk to public health or the environment created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation. [~~Risk of harm shall be categorized as major, moderate or minor levels.~~]
- "Roadways" mean surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.
- "Rule" means any agency directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirement of any agency. The term includes the amendment or repeal of a prior rule, but does not include:
  - A. Internal management directives, regulations or statements between agencies, or their officers or their employees, or within an agency, between its officers or between employees, unless hearing is required by statute, or action by agencies directed to other agencies or other units of government.
  - B. Declaratory rulings issued pursuant to ORS 183.410 or 305.105.
- "Secondary (or Final) Combustion Chamber" means the discrete equipment, chamber, or space, excluding the stack, in which the products of pyrolysis are combusted in the presence of excess air, such that essentially all carbon is burned to carbon dioxide.
- "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:
  - A. Emissions from ships and trains coming to or from a facility;
  - B. Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.
- "Sensitive Area" means locations which are actual or potential air quality non-attainment areas, as determined by LRAPA.
- "Sharps" includes 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 (see also "infectious waste").

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- "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than:

Pollutant	Annual	Pollutant Averaging Time			
		24-hour	8-hour	3-hour	1-hour
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	---	25 ug/m <sup>3</sup>	---
TSP or PM10	0.2 ug/m <sup>3</sup>	1.0 ug/m <sup>3</sup>	---	---	---
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>	---	---	---	---
CO	---	---	0.5 mg/m <sup>3</sup>	---	2 mg/m <sup>3</sup>

For sources of volatile organic compounds (VOC), a major source or major modification will be deemed to have a significant impact if it is located within thirty (30) kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

- "Significant Emission Rate" means emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Pollutant	Significant Emission Rate
Carbon Monoxide	100 tons/year
Nitrogen Oxides	40 tons/year
Particulate Matter	25 tons/year
PM10	15 tons/year
Sulfur Dioxide	40 tons/year
Volatile Organic Compounds	40 tons/year
Lead	0.6 ton/year
Mercury	0.1 ton/year
Beryllium	0.0004 ton/year
Asbestos	0.007 ton/year
Vinyl Chloride	1 ton/year
Fluorides	3 tons/year
Sulfuric Acid Mist	7 tons/year
Total Reduced Sulfur (including hydrogen sulfide)	10 tons/year
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons/year

For pollutants not listed above, the Authority shall determine the rate that constitutes a significant emission rate.

Any emissions increase less than these rates associated with a new source or modification which would construct within ten (10) kilometers of a Class I area and would have an impact on such area equal to or greater than 1 ug/m<sup>3</sup> (24-hour average) shall be deemed to be emitting at a significant emission rate.

- "Significant Impairment" occurs when visibility impairment, in the judgement of the Authority, interferes with the management, protection, preservation,

or the enjoyment of the visual experience of visitors within a Class I area. The determination will be made on a case-by-case basis, considering the recommendation of the Federal Land Manager, the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered with respect to visitor use of the Class I Area, and the frequency and occurrence of natural conditions that reduce visibility.

- "Significant Upgrading of Pollution Control Equipment" means a modification or a rebuild of an existing pollution control device for which a capital expenditure of 50 percent or more of the replacement cost of the existing device is required, other than ongoing routine maintenance.
- "Slash" means forest debris of woody vegetation to be burned under the Oregon Smoke Management Plan administered by the Oregon Department of Forestry pursuant to ORS. 477.515. The burning of such slash is related to the management of forest land and does not include the burning of any other material created by land clearing.
- "Small-scale asbestos abatement project" means any short-duration asbestos abatement project as defined in 41, below, and/or removal, renovation, encapsulation, repair, or maintenance procedures intended to prevent asbestos containing material from releasing fibers into the air and which:
  - A. Remove, encapsulate, repair or maintain less than 40 linear feet or 80 square feet of asbestos-containing material;
  - B. Do not subdivide an otherwise full-scale asbestos abatement project into smaller-sized units in order to avoid the requirements of these rules;
  - C. Utilize all practical worker isolation techniques and other control measures; and
  - D. Do not result in worker exposure to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air calculated as an eight (8) hour time-weighted average.
- "Small-scale, short-duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:
  - A. Removal of asbestos-containing insulation on pipes;
  - B. Removal of asbestos-containing insulation on beams or above ceilings;
  - C. Replacement of an asbestos-containing gasket on a valve;
  - D. Installation or removal of a small section of drywall; or
  - E. Installation of electrical conduits through or proximate to asbestos-containing materials.

Small-scale activities shall be limited to no more than forty (40) linear feet or eighty (80) square feet of asbestos-containing materials. An activity that would otherwise qualify as a full-scale abatement project shall not be subdivided into smaller units in order to avoid the requirements of these rules.

- F. No such activity described above shall result in airborne asbestos concentrations above 0.1 fibers per cubic centimeter of air (calculated on an 8-hour weighted average).
- "Smelt dissolving tank vent (Kraft Mill)" means the vent serving the vessel used to dissolve the molten smelt produced by the recovery furnace.
  - "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash and other combustible materials present in sufficient quantity to be observable.
  - "Solid Waste" means refuse, more than 50% of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.
  - "Solid Waste Incinerator" means an incinerator which is operated or utilized for the disposal or treatment of solid waste, including combustion for the recovery of heat.
  - "Source," except as used in Titles 32 and 34, and those sources subject to the Federal Operating Permit Program, means any building, structure, facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. This includes all of the pollutant emitting activities which belong to the same industrial grouping or major group (i.e. which have the same two-digit code) as described in EPA's Standard Industrial Classification (SIC) manual (U.S. Office of Management and Budget 1987).
  - "Source," as used in LRAPA Title 38, New Source Review, and the definitions of "BACT," "Commenced," "Construction," "Emission Limitation," "Emission Standard," "LAER," "Major Modification," "Major Source," "Potential to Emit," and "Secondary Emissions" as these terms are used for purposes of LRAPA Title 38, includes all pollutant-emitting activities which belong to a single major industrial group (i.e., which have the same two-digit code), as described in the Standard Industrial Classification Manual, (U. S. Office of Management and Budget, 1987) or are supporting the major industrial group.
  - "Source Category" means a group of major sources determined by the Authority to be using similar raw materials and having equivalent process control and pollution control equipment.
  - "Source Test" means the average of at least three test runs during operating conditions representative of the period for which emissions are to be calculated, conducted in accordance with the Department's Source Sampling Manual or other Authority-approved methods.
  - "Special Problem Area" means the formally designated Eugene/ Springfield AQMA and other specifically defined areas that the Board and the Environmental Quality Commission may formally designate in the future.

- "Standard Conditions" means a gas temperature of sixty-eight (68) degrees Fahrenheit and a gas pressure of 29.92 inches of mercury.
- "Standard Cubic Foot (SCF)" means that amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at standard conditions.
- "Standard Dry Cubic Meter" means the amount of gas that would occupy a volume of one cubic meter, if the gas were free of uncombined water, at a temperature of 20° C. (68° F.) and a pressure of 760 mm of Mercury (29.92 inches of Mercury). The corresponding English unit is standard dry cubic foot. When applied to recovery furnace gases, "standard dry cubic meter" requires adjustment of the gas volume to that which would result in a concentration of 8% oxygen if the oxygen concentration exceeds 8%. When applied to lime kiln gases, "standard dry cubic meter" requires adjustment of the gas volume to that which would result in a concentration of 10% oxygen if the oxygen concentration exceeds 10%. The mill shall demonstrate that oxygen concentrations are below noted values or furnish oxygen levels and corrected pollutant data.
- "Startup/Shutdown" means the time during which an air contaminant source or emission control equipment is brought into normal operation and normal operation is terminated, respectively.
- "Shutdown," as used in Title 36, means that time during which normal operation of an air contaminant source or emission control equipment is terminated.
- "Startup," as used in Title 36, means that time during which an air contaminant source or emission control equipment is brought into normal operation.
- "Startup," except as used in Title 36 and 46, means commencement of operation of a new or modified source resulting in release of contaminants to the ambient air.
- "Structural member" means any load-supporting member, such as beams and load-supporting walls, or any non-supporting member, such as ceilings and non-load-supporting walls.
- "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars (\$500).
- "Tempering Oven" means any facility used to bake hardboard following an oil treatment process.
- "Threshold Level of Olfactory Detection" means the odor perception threshold for fifty percent (50%) of the odor panel as determined by the ASTM procedure DI 391-57 Standard Method of Measurement of Odor in Atmospheres (Dilution method), or an equivalent method.



- "Total Reduced Sulfur (TRS)" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, and any other organic sulfides present, expressed as hydrogen sulfide (H<sub>2</sub>S).
- "Transmissometer" means a device that measures opacity and conforms to EPA specification Number 1 in Title 40 CFR, Part 60, Appendix B.
- "TSP" means particulate matter as measured by an [approved] reference method.
- "Unavoidable" means events which are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.
- "Uncombined Water" means water which is not chemically bound to a substance.
- "Upset" or "Breakdown" mean any failure or malfunction of any pollution control equipment or process equipment which may cause excess emissions.
- "Vehicle Trip" means a single movement by a motor vehicle which originates or terminates at or uses an Indirect Source.
- "Veneer" means a single flat panel of wood not exceeding one-quarter (1/4) inch in thickness, formed by slicing or peeling from a log.
- "Veneer Dryer" means equipment in which veneer is dried.
- "Verified Emission Factor" means an emission factor approved by the Authority and developed for a specific major source or source category and approved for application to that major source by the Authority.
- "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof, and includes both acts and omissions. Violations shall be classed according to risk of harm as follows:
  - A. "Class One or I" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in an agency permit or board order;
  - B. "Class Two or II" means any violation which poses a moderate risk of harm to public health or the environment;
  - C. "Class Three or III" means any violation which poses a minor risk of harm to public health or the environment.
- "Visual Opacity Determination" consists of a minimum of twenty-four (24) opacity readings recorded every fifteen (15) seconds and taken by a trained observer.
- "Visibility Impairment" means any humanly perceptible change in visual range, contrast, or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

- [~~"VOC" means volatile organic compounds as defined in 40 CFR 51.100(S)-]~~
- "Volatile Organic Compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.
  - (A) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane 2 (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:
    - (1) Cyclic, branched, or linear, completely fluoroinated alkanes;
    - (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
    - (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
    - (4) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
  - B. For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds, as listed in subsection A, may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.
  - C. As a precondition to excluding these compounds, as listed in subsection A, as VOC or at any time thereafter, the Authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Authority, the amount of negligibly reactive compounds in the source's emissions.
- "Volatile Organic Compound (VOC)," as used in Title 35, means any organic compound which would be emitted during use, application, curing or drying of a surface coating, solvent, or other EPA material. Excluded from this definition are those compounds which EPA classifies as having negligible photochemical reactivity, which include: methane, ethane, methylene chloride, 1,1,1--trichlor-ethane (methyl chloriform), trichlorofluoromethane

(CFC-11), dichloro-fluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC 115).

- "Waste generator" means any person performing an asbestos abatement project or any owner or operator of a source covered by this section whose act or process generates asbestos-containing waste material.
- "Waste shipment record" means the shipment document, required to be originated and signed by the waste generator; used to track and substantiate the disposition of asbestos-containing waste material.
- "Wigwam Waste Burner" means a burner which consists of a single combustion chamber, which has the general features of a truncated cone and is used for incineration of refuse.
- "Woody Yard Trimmings" means woody limbs, branches and twigs, with any attached leaves, which have been cut from or fallen from trees or shrubs from the property around a dwelling unit.
- "Yard Debris" means wood, needle, or leaf materials from trees, shrubs, or plants from the property around a dwelling unit.

**\*\* ACTION \*\*** MSP (Callahan/Nicholas)(Unanimous) adoption of amendments to Title 15, "Enforcement."

**PUBLIC HEARING--  
PROPOSED AMEND-  
MENTS TO TITLES  
12 (DEFINITIONS)  
AND 33, AND  
ADOPTION OF NEW  
TITLE 30  
(INCINERATORS):** Arkell said this was the package of rule changes which received the most comments. Most were relatively minor technical comments in Title 12, the definitions section of the rules. The proposal attempts to put all definitions used throughout the rules into one title and then to reference words and terms used in each of the other titles, as needed. There are several words or terms which are used differently in different titles and so require more than one definition in Title 12. Staff has attempted to simplify use of the rules and avoid confusion by putting all definitions in one place instead of in the individual titles.

As with the draft Title 15, Arkell said, there were some small errors in the drafts for Title 12. He pointed out a few of those errors so that the board could see the types of changes to be made in the final version of the rules. Examples are: (1) on page 27 of Title 12, under the definition of "source," the word "except" should be taken out because the word "source" does need to be defined for use in the two titles which the word "except" would exclude; (2) on page 28, under the definition of "startup-shutdown" and the second definition of "start-up," the word "except" and the words "Title 36 and" should be omitted. Arkell said that the changes would not change the intended meaning of the rules. In each case, LRAPA staff agreed with the comments received, and it just did not get entered into the draft rules.

**Public Hearing** Dodrill opened the public hearing at 12:38 p.m. There was no one present who wished to comment on the rule proposals. Dodrill asked Arkell whether there was any additional material submitted which was not in the agenda packets. Arkell responded that there had been no further written comments or phone calls received. The hearing was closed at 12:38 p.m.

**Discussion** Dodrill asked whether the board felt comfortable with making the minor changes which Arkell had described, after the fact. Consensus was that the changes were not substantive and seemed to be consistent with the intent of the rules.

**\*\* ACTION \*\*** MSP (Frazier/Nicholas)(Unanimous) to rescind Section 33-020, the existing incinerator rules.



MSP (Callahan/Frazier)(Unanimous) to adopt new Title 30 incinerators rules.

MSP (Frazier/Hornbuckle)(Unanimous) to adopt amendments to Title 12 definitions.

**AUTHORIZATIONS TO  
EXPEND FEDERAL  
SUPPLEMENTAL  
GRANT FUNDS--**  
**(1) ENGINEERING  
SERVICES DATA  
SYSTEM UPDATE** Allen explained that the next four items on the agenda were resolutions authorizing expenditure of federal supplemental grant funds for which LRAPA was able to qualify after the current budget was adopted last year. The first one, Resolution Number 94-7; was to upgrade the engineering services data system. Allen said this was a pass-through grant from EPA through DEQ and that, in addition to a person to do the work, the grant would also pay for creation of a work area and for a computer, both of which

# ATTACHMENT B

## Enforcement Procedures

LRAPA Adoption of March 8, 1994

## Agenda Item No. 6

## LRAPA Board of Directors Meeting

March 8, 1994

TO: Board of Directors

FROM: Donald R. Arkell, Director

SUBJ: **Public Hearing on Proposed Amendments to LRAPA Title 15,  
"Enforcement Procedures and Civil Penalties"****BACKGROUND**

At its January 11, 1994 meeting, the LRAPA board authorized public hearing on proposed changes to Title 15. Staff requested and received authorization from DEQ for LRAPA to serve as EQC hearings officer in a joint EQC/LRAPA hearing.

Notice of this public hearing was published in the Cottage Grove Sentinel, the Oakridge Dead Mountain Echo, the Eugene Register Guard and the Springfield News, and in the February 1, 1994 edition of the Secretary of State's Bulletin. In addition, an announcement summarizing what is proposed was sent out in December to all holders of Air Contaminant Discharge Permits, asbestos abatement contractors, local governments, special interest groups, and other interested parties. To date, written responses have been received from: Chuck Gottfried of Lane Testing, Inc. in Springfield; the Department of Environmental Quality in Portland; and the U. S. Environmental Protection Agency, Region 10, in Seattle. These comments have been considered and, when appropriate, incorporated into the revised draft rule presented today. The specific staff responses and recommended changes to the proposed rules resulting from comments received prior to the public hearing are detailed in the attached pages. Following the public hearing, the board may adopt the rules, with any of the recommended changes, or with any additional changes deemed necessary in response to information received at the public hearing.

**PROBLEM STATEMENT**

Recent legislative amendments compel a number of basic changes to enforcement of environmental regulations in Oregon. The Department of Environmental Quality has made use of these in its current rules. Combined, the statutory and state rule changes are as follows:

- Addition of a new enforcement category, the Notice of Permit Violation.
- Removal of an enforcement action category, the Notice of Intent to Impose a Civil Penalty (five-day warning period) for civil penalties from all sources other than violations of terms or conditions of an air contaminant discharge permit.

- Creation of a new \$2,500 civil penalty matrix for open burning violations.
- Addition of a new \$100,000 civil penalty for cases which involve endangerment of public health or extensive environmental damage, if the violation is reckless or intentional.
- Classification of selected listed violations according to risk of harm and magnitude, to establish criteria to determine magnitude of other violations not listed.
- Separation of the economic benefit calculation from the penalty calculation.

As these statutory and regulatory changes by the state make local rules out-dated, LRAPA's rules must be changed.

In addition to the changes referenced above, some additional revisions must be made to accommodate the federal operating permit program. Included in this proposal are some amendments that are not now in the state's rules, but will address the needs of the new operating permit program that is currently being implemented. EQC rulemaking is also underway. Some of the comments from DEQ address issues and proposals it is making. LRAPA has included state recommendations where appropriate.

There are parts of LRAPA's enforcement rules, such as the civil penalty schedules, that must be the same as state rules. However, there are some areas in which LRAPA has more flexibility. This proposal provides a more streamlined process of initiating enforcement action than the DEQ rules, due to LRAPA's organizational structure. There is flexibility in the scope of applicability and transition from current rules to new rules. The existing rules and proposed LRAPA rules similarly apply actions initiated on or after the effective date. This new LRAPA proposal would further limit the new rules to violations occurring on or after the effective date. This could be interpreted as less restrictive but appears to expedite a smoother transition. The LRAPA proposal clearly distinguishes and limits applicability of new rules to old violations as prior violations for purposes of calculating penalties. The DEQ rules appear to exempt all enforcement actions occurring prior to the effective date from consideration as prior violations. The LRAPA rule proposal in this case would likely be considered more restrictive. The board will decide whether or not past enforcement actions will count as prior violations under these rules, and whether actions pending at the effective date of these amendments will be completed under old or new rules.

There is also flexibility in the extent to which the LRAPA Board of Directors wishes to review mitigation of penalties. For example, the state's rule says that any mitigation of penalty by the DEQ Director is final. The LRAPA Board may choose to be involved in this process or to delegate that responsibility to the LRAPA Director. During board review of the working draft of these rules, some members

indicated a feeling that mitigated penalties for major violations should be approved by the board. The reasons given were more board involvement and insulation of staff from charges of capricious actions. For lesser violations, the proposal mirrors the state rules, where all mitigation by the DEQ director is final (see Section 15-040.1).

## EFFECTS OF PROPOSAL

### 1. Public

- A. Improves air quality over the long run due to the ability to assess penalties earlier in the enforcement process.
- B. The replacement of the old \$500 matrix with a new \$2,500 civil penalty matrix for open burning should act as a greater deterrent to illegal open burning.
- C. A new \$100,000 civil penalty maximum for cases involving endangerment of public health or extensive environmental damage due to reckless or intentional actions should act as a larger deterrent to this type of violation.

### 2. Regulated Community

- A. Sources subject to Federal Operating Permits will no longer be allowed a five-day warning period prior to civil penalty assessment.
- B. A new \$2,500 civil penalty matrix for open burning resulting in higher fines for open burning violations for individuals and businesses subject to open burning restrictions.
- C. Certain Class I Major and Moderate violations will incur larger base penalties.
- D. A new \$100,000 maximum civil penalty will be incurred in cases that involve endangerment to public health, or extensive environmental damage, caused by reckless or intentional actions.
- E. Additional specified penalties for violations mean greater consistency in calculation of civil penalties.
- F. The economic benefit adjustment to the civil penalty formula will be added as a separate calculation, resulting in higher total civil penalties for those violators who derived significant economic benefit from non-compliance.



### 3. Other Agencies

- A. Adoption of the proposed amendments, by making LRAPA's enforcement rules consistent with DEQ's, would bring state-wide rule consistency.
- B. Larger penalties would accrue to Lane County.

### OPTIONS FOR BOARD ACTION

1. Do not adopt rules. LRAPA enforcement rules would continue to lack the changes required by recent legislative actions. LRAPA would continue to be inconsistent with state enforcement rules.
2. Postpone action and direct staff to bring back a revised draft. Interested parties have had several months during which to provide comments and suggestions regarding these rule amendments. All comments received have been addressed in the current draft, and it is unlikely that further substantive changes would result from postponement of action by the board.
3. Adopt the revisions, as proposed with recommended changes. LRAPA enforcement rules would be brought up to date with legislative changes and revisions to state enforcement rules. The rules would provide clearer guidelines for determining risk of harm and magnitude of violation and establishing civil penalty amounts. A new \$100,000 civil penalty matrix would provide a strong deterrent to intentional or reckless activities resulting in endangerment of public health or extensive environmental damage. LRAPA would have rules in place to begin enforcing the federal operating permit program.

### DIRECTOR'S RECOMMENDATION

It is the director's recommendation that the board adopt the amendments to Title 15, as proposed with recommended changes.

DRA/mjd

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### Legal Authority

ORS 183, 468, 468A, LRAPA Title 14, and the Federal Clean Air Act Amendments of 1990.

### Need for Amendments

Recent legislative changes compel a number of basic changes to enforcement of environmental regulations in Oregon. The Department of Environmental Quality has made use these in its rules, including: addition of a new enforcement category, the Notice of Permit Violation; removal of an enforcement action category, the Notice of Intent to Impose a Civil Penalty (five-day warning period) for civil penalties from all sources other than violations of terms or conditions of an air contaminant discharge permit; creation of a new \$2,500 civil penalty matrix for open burning violations; addition of a new \$100,000 civil penalty for cases which involve endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; classification of selected violations according to level of risk of harm, and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and separation of the economic benefit calculation from the penalty calculation. As these statutory and regulatory changes by the state make local rules out-dated, LRAPA's enforcement rules, Title 15, must be changed. In addition to the changes listed above, some additional revisions must be made to accommodate the federal operating permit program.

### Principal Documents Relied Upon

1. LRAPA Titles 14 and 15
2. OAR 340-12-026 through 340-12-090
3. LRAPA Staff Report to LRAPA Board of Directors, January 11, 1994 "
4. Clean Air Act Amendments of 1990
5. ORS 183, 468 and 468A et. seq.

## FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on State Agencies: Adoption of the proposed amendments, by making LRAPA's enforcement rules consistent with DEQ's would bring state-wide rule consistency.

Statement of Need for Proposed Rule Amendments  
LRAPA Title 15  
Public Hearing March 8, 1994  
-2-

FISCAL AND ECONOMIC IMPACT STATEMENT (CON'T.)

Impact on Local Agencies: Larger penalties would accrue to Lane County.

Impact on Public: Improves air quality over the long run due to: the earlier civil penalty assessment for major sources; a greater deterrence to illegal open burning through increased penalties; a greater deterrence of major violations involving endangerment of public health or extensive environmental damage due to reckless or intentional actions.

Impact on Regulated Community: Restricting of the five-day Notice of Permit Violation to air contaminant discharge permit holders will subject major sources to civil penalties earlier in the enforcement process. A new \$2,500 civil penalty matrix for open burning will result in higher fines for open burning violations. Certain Class I Major and Moderate violations will incur larger base penalties. A new \$100,000 maximum civil penalty will be incurred in cases that involve endangerment to public health, or extensive environmental damage, caused by reckless or intentional actions. Additional specified penalties for violations mean greater consistency in calculation of civil penalties. The economic benefit adjustment to the civil penalty formula, as a separate calculation, will be added to the civil penalty amount, resulting in higher civil penalties for those violators who derived significant economic benefit from non-compliance and more equity to sources which are in compliance.

LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD  
01/11/94

**NOTICE OF PROPOSED RULEMAKING HEARING**  
(Statement of Need and Fiscal Impact Accompanies this Form)

**AGENCY:** Lane Regional Air Pollution Authority and  
Department of Environmental Quality

The above named agencies give notice of hearing.

**HEARING TO BE HELD:**

Date: March 8, 1994                      Time: 12:30 p.m.

Location: City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon

Hearings Officer: Donald R. Arkell

Pursuant to the statutory authority of ORS 183 and 468A, the following action is proposed:

**AMEND:** LRAPA Title 15, "Enforcement Procedures and Civil Penalties."

X Prior Notice Given

**SUMMARY:** It is proposed to amend Title 15 to accommodate recent statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: addition of a Notice of Permit Violation category for sources with air contaminant discharge permits; removal of the Notice of Intent to Impose a Civil Penalty category; creation of a new \$2,500 civil penalty matrix for open burning violations; addition of a new \$100,000 civil penalty for cases involving endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and separation of the economic benefit calculation from the penalty calculation.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by March 7, 1994 will also be considered. Written comments should be sent to, and copies of the proposal rulemaking may be obtained from:

**AGENCY:** Lane Regional Air Pollution Authority  
**ADDRESS:** 225 North 5th, Suite 501  
Springfield, OR 97477-4671

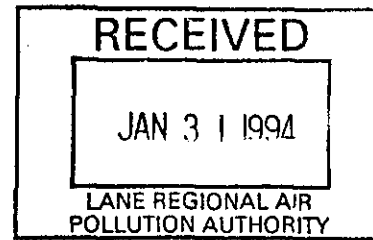
**ATTN:** Donald R. Arkell, Director  
**PHONE:** (503) 726-2514

Signature

Date

01-12-94

# OREGON BULLETIN



**VOLUME 33, No. 8**  
**Issue Date: February 1, 1994**

This issue contains Notices of Proposed Rulemaking officially filed **December 16, 1993, 8:00 a.m. through January 14, 1994, 5:00 p.m.** and resumes of the Administrative Rule Orders filed for which the Secretary of State's office has completed filing standards review. Administrative Rule Orders which have been filed but have not yet undergone the review will be published in the next issue of the Oregon Bulletin.



Published by  
**PHIL KEISLING**  
Secretary of State

### NOTICES OF PROPOSED RULEMAKING HEARING - Continued

administrative costs, and provide additional revenue for research and development.

**LAST DATE FOR COMMENT:** 2-25-94 - 5 PM

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Harold Sawyer - (503) 229-5776

**CONTACT FOR THIS PROPOSAL:** Stephen Crane

**ADDRESS:** DEQ Western Region, Air Quality Division, 750 Front Street NE, Suite 120, Salem, OR 97310

**TELEPHONE:** (503) 373-7302, (503) 373-8240, or Toll Free 1-800-452-4011

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

\*\*\*\*

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-3-94	10 AM	Department of Environmental Quality 811 SW 6th Avenue - Conference Room 3a Portland, OR

**HEARINGS OFFICER:** Peter Dalke

**STATUTORY AUTH:** ORS 468.020, 468B.010, 468B.015 and 468B.020

**ADOPT:** OAR 340-43-190

**SUMMARY:** The proposed rule provides that the Department shall require, prior to issuing a chemical mining facility permit and as a condition of the permit, that those persons or entities who control a chemical mine permittee also assume liability for any environmental injury, remediation expenses, and penalties which result as a consequence of activities that are associated with the permit. An exception to this requirement may be granted by the EQC pursuant to specific criteria in the rule.

**LAST DATE FOR COMMENT:** 3-10-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Harold Sawyer

**ADDRESS:** Department of Environmental Quality, 811 SW 6th Avenue, Portland, OR 97204

**TELEPHONE:** (503) 229-5776 or Toll Free 1-800-452-4011

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

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-3-94	2 PM	Department of Environmental Quality Conference Room 3A 811 SW 6th Portland, Oregon

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-8-94	10 AM	Eastern Oregon State College Hoke College-Center - Room 201 LaGrande, Oregon

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-8-94	2 PM	Adult and Family Services - Ash Building 545 SW 2nd Avenue, Suite B Corvallis, Oregon

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-10-94	10 AM	Central Oregon Community College Hitchcock Auditorium, Pioneer Building 2600 NW College Way Bend, Oregon

**HEARINGS OFFICER:** Deanna Mueller-Crispin (Portland); Charles W. Donaldson, (Corvallis); Tim Davison (LaGrande); other to be announced.

**STATUTORY AUTH:** ORS 459.045, 468.020; Senate Bill 42, 1993 Legislature; Senate Bill 1012, 1993 Legislature; Senate Bill 1037, 1993 Legislature.

**ADOPT:** OAR 340-93-063

**AMEND:** OAR 340-90-010, 90-030, 90-040, 90-060, 91-030, 91-080, 93-030, 93-050, 93-060, 93-070, 93-080, 93-090, 93-110, 93-120, 93-130, 93-140, 93-150, 93-160, 93-170, 93-190, 93-250, 94-001, 94-010, 94-030, 94-040, 94-060, 94-080, 94-100, 94-110, 94-120, 94-130, 94-140, 95-010, 95-020, 95-030, 95-040, 95-050, 95-060, 95-070, 95-080, 95-090, 96-010, 96-020, 96-030, 96-040, 96-050, 97-001, 97-110 and 97-120

**SUMMARY:** The proposed rules would implement changes in the management of solid waste required and/or allowed by 1993 Legislation, along with other changes identified by the Department to promote improved solid waste program operation. The proposed rules would establish dates for provision of financial assurance for land disposal sites; change the length of post-closure care for land disposal sites; change the collection of some solid waste permit fees from an annual billing to self-reporting; establish a new permit category for Special Soil Treatment Permits; establish two new solid waste permit fees; and establish as permanent rule the effective dates for certain federal solid waste regulations adopted on October 29, 1993 by temporary rule.

**LAST DATE FOR COMMENT:** 3-14-94

**DATE PROPOSED TO BE EFFECTIVE:**


**CONTACT PERSON:** Harold Sawyer - (503) 229-5776

**AGENCY CONTACT FOR THIS PROPOSAL:** Deanna Mueller-Crispin

**ADDRESS:** DEQ, Waste Management and Cleanup Division, 811 SW 6th Avenue, Portland, Oregon 97204

**TELEPHONE:** (503) 229-5808 or Toll Free 1-800-452-4011

\*\*\*\*

	<b>(Lane Regional Air Pollution Authority)</b>	
<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION:</b>
3-8-94	12:30 PM	Springfield City Hall City Council Chambers 225 North 5th Street Springfield, OR
<b>HEARINGS OFFICER:</b> Donald R. Arkell		
<b>STATUTORY AUTH:</b> ORS 183 & 468A		
<b>AMEND:</b> LRAPA Title 15, "Enforcement Procedures and Civil Penalties"		
<b>SUMMARY:</b> It is proposed to amend Title 15 to accommodate recent		



# NOTICES OF PROPOSED RULEMAKING HEARING - Continued

statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: addition of a Notice of Permit Violation category for sources with air contaminant discharge permits; removal of the Notice of Intent to Impose a Civil Penalty category; creation of a new \$2,500 civil penalty matrix for open burning violations; addition of a new \$100,000 civil penalty for cases involving endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and separation of the economic benefit calculation from the penalty calculation.

**LAST DATE FOR COMMENT: 3-7-94**

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Donald R. Arkell, Director

**ADDRESS:** Lane Regional Air Pollution Authority, 225 North 5th, Suite 501, Springfield, OR 97477-4671

**TELEPHONE:** (503) 726-2514

**ADDRESS:** Lane Regional Air Pollution Authority, 225 North 5th, Suite 501, Springfield, OR 97477-4671  
**TELEPHONE:** (503) 726-2514

\*\*\*\*

## Fish & Wildlife, Department of Chapter 635

**DATE:**  
2-23-94

**TIME:**  
8 AM

**LOCATION:**  
Department of Fish and Wildlife  
Commission Room  
2501 SW First Avenue  
Portland, OR 97201

**HEARINGS OFFICER:** \*An agenda will be available 10 days prior to the meeting and is available by writing or calling the address below.

**STATUTORY AUTH:** ORS 497.022

**ADOPT:** 635-10-007

**SUMMARY:** New rule regarding Computerized License System Agents. Those agents who sold more than 3,000 documents in a calendar year using new Point-of-Sale license system.

**LAST DATE FOR COMMENT:** 2-15-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Richard Coreson

**ADDRESS:** Department of Fish and Wildlife, PO Box 59, Portland, Oregon 97207

**TELEPHONE:** (503) 229-5410, Ext.300

\*\*\*\*

**DATE:**  
3-8-94

**TIME:**  
12:30 PM

**LOCATION:**  
Springfield City Hall  
City Council Chambers  
225 North 5th Street  
Springfield, OR

**HEARINGS OFFICER:** Donald R. Arkell

**STATUTORY AUTH:** ORS 183 & 468A

**ADOPT:** New Title 30, "Incinerator Regulations"

**AMEND:** LRAPA Title 12, "Definitions"

**RESCIND:** Section 33-020, "Incinerator and Refuse Burning Equipment"

**SUMMARY:** New Title 30, "Incinerator Regulations", would replace the agency's existing refuse-burning equipment rules contained in Section 33-020, which are out-dated and inadequate. The proposed new rules would deal with modern incineration equipment which tends to be designed for specific kinds of waste materials, rather than the general waste categories for which the existing rules were written. Operators of affected facilities would be required to ensure that specific operational parameters such as temperature and residence time are maintained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of these operational parameters. Existing sources would be required to demonstrate compliance within one year of the effective date of the regulations.

Amendments to Title 12, "Definitions", include additional of all definitions from individual Titles and some revised definitions.

**LAST DATE FOR COMMENT:** 3-7-94

**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Donald R. Arkell, Director

**DATE:**  
2-23-94

**TIME:**  
TBA

**LOCATION:**  
Department of Fish and Wildlife  
2501 SW First Avenue  
Portland, OR 97201

**HEARINGS OFFICER:** Oregon Fish and Wildlife Commission

**STATUTORY AUTH:** ORS 496.012, 496.138, 496.146, 496.300 and House Bill 2538

**ADOPT:** Chapter 635, Division 90

**SUMMARY:** Implement HB 2538 (1993 Legislature) which established the Access and Habitat Board and Program.

**LAST DATE FOR COMMENT:** 2-23-94

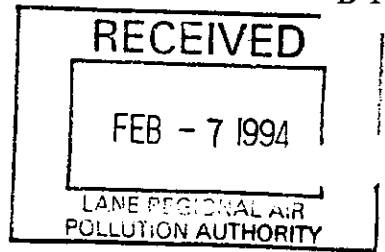
**DATE PROPOSED TO BE EFFECTIVE:**

**CONTACT PERSON:** Jan Ragni (agency); Mary Potter (division), Larry Cooper (staff contact)

**ADDRESS:** Department of Fish and Wildlife Commission, PO Box 59, Portland, OR 97207

**TELEPHONE:** (503) 229-5454 - ext. 460

\*Auxiliary aids for persons with disabilities are available upon advance



# Affidavit of Publication

STATE OF OREGON, COUNTY OF LANE - ss

I, Leota J. Emery being duly sworn, depose and say that I am the Legal Clerk of the Springfield News, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state; that the

LRAPA

Notice of Intent to Adopt Amendments To Oregon's Air Quality Implementation Plan

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for successive and consecutive weeks in the following issues:

February 2, 1994

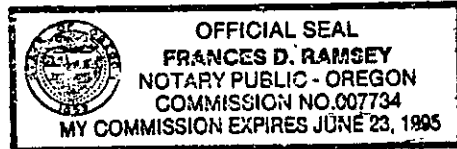
THE SPRINGFIELD NEWS

By Leota J. Emery

Subscribed and sworn to me this 3rd day of February, 1994

Leota J. Emery  
Notary Public for Oregon

(My Commission expires June 23, 1995)



### NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 15, "Enforcement Procedures and Civil Penalties," to accommodate recent statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: (1) addition of a new enforcement category, the Notice of Permit Violation, for sources with air contaminant discharge permits; (2) removal of the Notice of Intent to Impose a Civil Penalty category; (3) creation of a new \$2,500 civil penalty matrix for open burning violations; (4) addition of a new \$100,000 civil penalty for cases which involve endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; (5) classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and (6) separation of the economic benefit calculation from the penalty calculation.

To rescind Section 33-020 and adopt new Title 30, "Incinerator Regulations," to replace the agency's existing refuse-burning equipment rules which are out-dated and inadequate. The proposed new rules would deal with modern incineration equipment which tends to be designed for specific kinds of waste material, rather than the general waste materials for which the existing rules were written. Operators of affected facilities would be required to ensure that specified operational parameters such as temperature and residence time are maintained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of

these operational parameters. Existing sources would be required to demonstrate compliance within one year of the effective date of the regulations.

To amend Title 12, "Definitions," to include all definitions from individual Titles of LRAPA's Rules and Regulations, and to revise some definitions.

WHO IS AFFECTED: Title 15- Persons subject to Air Contaminant Discharge Permits, Federal Operating Permits and Indirect Source Permits in Lane County; persons involved in asbestos abatement in Lane County; persons who engage in open burning in Lane County; and anyone else involved in any activity subject to LRAPA's air quality standards and rules. Title 30- Solid waste incinerators, crematoriums and infectious waste incinerators. Title 12- Any users of LRAPA's Rules and Regulations.

#### PUBLIC HEARING

Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:

Location: City Council Chambers

Springfield City Hall

225 North 5th Street

Springfield, Oregon

Date: Tuesday, March 8, 1994

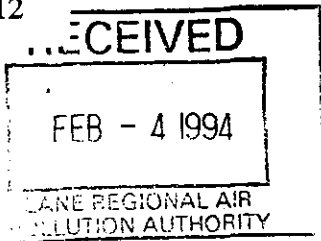
Time: 12:30 p.m.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building), Springfield, Oregon until March 8, 1994. The public may comment on the proposed regulations by calling the LRAPA business office, 728-2514; by attending the public hearing and providing oral comments; or written comment may be submitted until March 7, 1994, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

To Be Published: Wednesday, February 2, 1994

f.2 (5)





# Affidavit of Publication

State of Oregon  
County of Lane

I, Peter Morales, being first duly sworn, depose and say that I am Publisher of The Cottage Grove Sentinel, a newspaper of general circulation, as defined by ORS 193,010, and 193,020, printed and published at Cottage Grove in the aforesaid county and state; that Notice of intent to adopt rules

a printed copy of which is hereto annexed, was published once a week in the entire issue of said newspaper for 1 successive and consecutive weeks in the following issues: 27 2 / 94



Peter Morales  
Subscribed and sworn to before me  
this 2 day of Feb, 1994  
Corrine Mello  
Notary Public for Oregon  
(My commission expires ) 9/16/94

## NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 15, "Enforcement Procedures and Civil Penalties," to accommodate recent statutory and regulatory changes made by the state in response to requirements of the Clean Air Act Amendments of 1990 and the Title V Federal Operating Permit Program. Specific changes being proposed include: (1) addition of a new enforcement category, the Notice of Permit Violation, for sources with air contaminant discharge permits; (2) removal of the Notice of Intent to Impose a Civil Penalty category; (3) creation of a new \$2,500 civil penalty matrix for open burning violations; (4) addition of a new \$100,000 civil penalty for cases which

involve endangerment of public health or extensive environmental damage, if the violation is reckless or intentional; (5) classification of selected violations according to level of risk of harm and specification of a method to determine if the violation is a major, moderate or minor deviation from standards; and (6) separation of the economic benefit calculation from the penalty calculation.

To rescind Section 33-020 and adopt new Title 30, "Incinerator Regulations," to replace the agency's existing refuse-burning equipment rules which are out-dated and inadequate. The proposed new rules would deal with modern incineration equipment which tends to be designed for specific kinds of waste material, rather than the general waste materials for which the existing rules were written. Operators of affected facilities would be required to ensure that specified operational parameters such as temperature and residence time are main-

tained during operation, that those parameters be monitored, and that proof of compliance be demonstrated through source tests and periodic reporting of these operational parameters. Existing sources would be required to demonstrate compliance within one year of the effective date of the regulations.

To amend Title 12, "Definitions," to include all definitions from individual Titles of LRAPA's Rules and Regulations, and to revise some definitions.

WHO IS AFFECTED: Title 15—Persons subject to Air Contaminant Discharge Permits, Federal Operating Permits and Indirect Source Permits in Lane County; persons involved in asbestos abatement in Lane County; persons who engage in open burning in Lane County; and anyone else involved in any activity subject to LRAPA's air quality standards and rules. Title 30—Solid waste incinerators, crematoriums and infectious waste incinerators. Title 12—Any users of

LRAPA's Rules and Regulations.

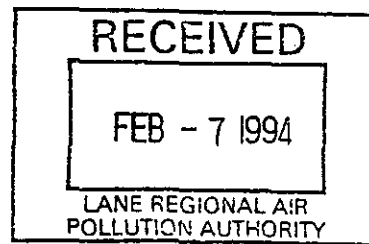
**PUBLIC HEARING:**  
Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:  
Location: City Council Chambers Date: Tuesday, March 8, 1994  
Springfield City Hall  
225 North 5th Street  
Time: 12:30 p.m.  
Springfield, Oregon

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building), Springfield, Oregon until March 8, 1994. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514; by attending the public hearing and providing oral comments; or written comment may be submitted until March 7, 1994, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

Legal Notice Advertising

- LANE REG. AIR POLL AUTH
- DONALD ARKELL
- 225 N 5TH #501
- SPRINGFIELD OR 97477

- Tearsheet Notice
- Duplicate Affidavit



AFFIDAVIT OF PUBLICATION

STATE OF OREGON, )  
COUNTY OF LANE, )

ss.

WENDY L. WALSH

I, WENDY L. WALSH, being first duly sworn, depose and say that I am the Advertising Manager, or his principal clerk, of the Eugene Register-Guard, a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the

NOTICE OF INTENT

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for ONE successive and consecutive DAY in the following issues:

FEBRUARY 2, 1994

Legal Notices

Legal Notices

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No. 15295 - February 2, 1994.

*Wendy L. Walsh*

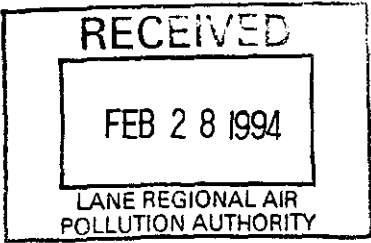
Subscribed and sworn to before me this 2/4/94

*Shannon Pool*  
Notary Public of Oregon



My Commission Expires: 11-13-97

AFFIDAVIT



**Affidavit of Publication**

STATE OF OREGON  
COUNTY OF LANE

I, Kena Young, being first duly sworn, deposes that I am the Office Manager of the *Dead Mountain Echo*, a newspaper of general circulation published at Oakridge, Oregon in the aforesaid county and state, as defined by ORS 193-010 ET SEQ, that the

Legal notice was inserted in the entire issue of said newspaper for 1wk in the 2/2/94 issue, # 44.

Signed: Kena Young

Subscribed and sworn before me this 25<sup>th</sup> day of Feb, 1994.

Loxi Dever Notary Public of Oregon

My commission expires: 1/26/97



c:\affidavt(WP)

*Lane Reg. Air Pollution Auth.*

LANE REGIONAL

AIR POLLUTION AUTHORITY



Donald R. Arkell, Director

## MEMORANDUM

To: Record of Adoption Proceedings, LRAPA Title 15  
From: Donald R. Arkell, Hearings Officer  
Subject: Public Hearing, March 8, 1994

### Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 12:19 p.m. on March 8, 1994 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of amendments to LRAPA Title 15, "Enforcement Procedures and Civil Penalties." There was no one present who wished to comment on the proposed rules.

### Summary of Testimony

There was no oral testimony presented at the hearing.

Written comments were received prior to the hearing date from DEQ and EPA, and from Chuck Gottfried of Lane Testing, Inc. in Springfield. Those comments, along with LRAPA's responses, are detailed in the attached pages. The draft rules presented at the hearing contained revisions made in response to the written comments.

### Notice of Proposed Action

Prior to the authorization for hearing, notice of the proposed rulemaking was sent to all holders of LRAPA Air Contaminant Discharge Permits, and to approximately 150 other businesses, local governments, fire districts, asbestos abatement contractors, environmental consultants, professional associations, special interest groups and individuals. In addition, notice of the hearing and intended action was published in the February 1, 1994 edition of the Secretary of State's Bulletin, and in the Oakridge Dead Mountain Echo, the Cottage Grove Sentinel, the Eugene Register-Guard, and the Springfield News.

Hearings Officer's Report  
LRAPA Title 15

March 8, 1994  
-2-

Action of the LRAPA Board of Directors

Based on the information presented, the board voted unanimously to adopt the amended proposal for Title 15.

DRA/MJD

Proposed Amendments to LRAPA Title 15  
"Enforcement Procedures and Civil Penalties"

March 8, 1994

WRITTEN COMMENTS AND LRAPA RESPONSES

Oregon Department of Environmental Quality

1. Subsection 15-030.1.C(1)(n) (This is actually subsection "m.")

DEQ Recommendation: A permittee, who would have received a Notice of Permit Violation, but instead received a civil penalty or Department Order because of the application of OAR 340-12-040(2)(d),(e),(f), or (g) shall not have the violation(s) cited in the former action counted as a prior significant action, if the permittee fully complied with the provisions of any compliance order contained in the former action.

Hearing Proposal: None.

Reason: The addition of this provision recognizes and encourages full and immediate compliance by a permittee for violations of a permit condition.

LRAPA Response: The referenced DEQ rules are the exceptions from the requirement to issue advance notice prior to assessment of civil penalty. These correspond to LRAPA proposed rules, section 15-018-2.D, E and F, which allow immediate civil penalties for sources subject to Federal Operating Permits, all permit holders who violate SIP requirements contained in the permits, or any violation of a requirement for which civil penalty is required under a federally approved program. We have concerns as to whether EPA would approve the DEQ recommendations, and we believe we should include any prior violation in the calculation of civil penalty.

2. Subsection 15-030.1.C(6)(b)

DEQ Recommendation: In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.

Hearing Proposal: In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.

Reason: Providing the Department with the alternative to use the version of the model that most accurately calculates a Respondent's economic benefit received through noncompliance allows the use of future updates of the model. By specifically stating that the Department will provide information about the use of the model, the Department will have to respond to requests from violators concerning the inputs made by the Department and how the model calculates the benefit received.

LRAPA's Response: We agree, and the changes are made as suggested. "Authority" is substituted for "Department," as appropriate.

3. Subsection 15-030.3.B

DEQ Recommendation: In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

Hearing Proposal: In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount.

Reason: The change is made for the same reason as listed above for the use of the BEN model.

LRAPA Response: We agree, and the changes are made as suggested. "Authority" is substituted for "Department," as appropriate.

4. Subsection 15-055.1.L

DEQ Recommendation: Failure to perform testing or monitoring required by a permit, rule or order;

Systematic failure to keep records required by a permit, rule or order;

Hearing Proposal: Failure to perform testing, monitoring or record keeping required by a permit rule or order;

Reason: Eliminates minor deviations and scrivener's errors from being considered a Class One violation.

LRAPA's Response: DEQ does not define "systematic." We believe any minor deviations or errors in record-keeping cited in the Department's reasoning can be dealt with as discretionary determination of violation.

### **Chuck Gottfried, Lane Testing, Inc.**

Concern and Recommendation: Mr. Gottfried expressed concern regarding the \$2,500 civil penalty matrix for open burning violations. His comments are summarized by the following sentence from his letter: "It is unwise and unfair that open burning penalties be drawn rigidly from the matrix without the potential for mitigation." He strongly suggests that the LRAPA director be allowed to mitigate penalties. (See attached letter for Mr. Gottfried's complete comments.)

LRAPA's Response: In establishing civil penalty schedules, LRAPA rules must be identical to DEQ rules. The rules do provide for mitigation of civil penalties, in general, including open burning violations. For small to moderate civil penalties under the \$2,500 matrix, the director considers mitigation upon request by the respondent. For large civil penalties associated with major open burning violations, under the \$10,000 matrix, the board would need to concur in approving mitigation or settlement.

### **U. S. Environmental Protection Agency, Region 10, Seattle**

Concern and Recommendation: EPA has a question concerning the \$100,000 special fine category. It is unclear from the information we received whether this is a special category that would be imposed, on top of penalties already assessed, for egregious violations, or if this was a statutory maximum. EPA recommends that the intent of this amount be clarified in the final version of the rule.

LRAPA Response: We agree, and Section 15-050 is revised, adding a new number 1, specifying that the \$100,000 special fine is in addition to other penalties assessed. This is according to statute. The following two items in the section are renumbered 2 and 3.



## LANE REGIONAL AIR POLLUTION AUTHORITY

## TITLE 15

Enforcement Procedure and Civil PenaltiesSection 15-001 Policy

1. The goals of enforcement [is] are to:
  - A. Obtain and maintain compliance with the Authority's statutes, rules, permits and orders;
  - B. Protect the public health and the environment;
  - C. Deter future violators and violations; and
  - D. Ensure an appropriate and consistent enforcement program.
2. ~~[Except as provided by 15-015-4,]~~ [t] The Authority will endeavor by conference, conciliation and persuasion to solicit compliance ~~[prior to initiating and following issuance of any enforcement action (except as provided by 15-015-4)].~~
3. ~~[Subject to subsection 2 of this section,]~~ [t] The Authority shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in subsection 1 of this section~~[, under the particular circumstances of each violation].~~
4. Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Section 15-0[55]003 Scope of Applicability

~~[The amendments to Title 15 shall only apply to formal enforcement actions issued by the Authority on or after the effective date of such amendments and not to any cases pending or formal enforcement actions issued prior to the effective date of such amendments. Any cases pending or formal enforcement actions issued prior to the effective date of the amendments shall be subject to various sections of the LRAPA Rules and Regulations, as prior to amendment.]~~ These amendments shall apply to violations occurring on or after the effective date of such amendments. They shall not apply to cases pending. For purposes of determining Class and Magnitude of violation, only, LRAPA rules and regulations in effect prior to these amendments shall apply to violations occurring before the effective date of these amendments. For purposes of determining number and gravity of prior violations, these amendments will apply.

Section 15-005 Definitions

~~[These definitions are in addition to the general definitions contained in Title 12 of these Rules and Regulations.]~~ Definitions of the following words and terms used in Title 15 can be found in Title 12, "Definitions."

- "Class One Equivalent" or "Equivalent"

- [1-] • "Compliance" ~~{means meeting the requirements of the Authority's or other government agencies' rules, permits or orders.}~~

[2.] • ~~"Documented Violation" [means any violation which the Authority or other government agency verifies through observation, investigation or data collection.]~~

[3.] • ~~"Enforcement" [means any documented action taken to address a violation.]~~

• ~~"Federal Operating Permit Program"~~

[4.] • ~~"Flagrant" [means any documented violation where the respondent has actual knowledge of the law and has consciously set out to commit the violation.]~~

[5.] • ~~"Formal Enforcement Action" [means an administrative action signed by the Director or authorized representatives which is issued to a respondent on the basis that a violation has been documented, requiring the respondent to take specific action within a specified time frame and stating consequences for continued non compliance.]~~

[6.] • ~~"Intentional" [when used with respect to a result or to conduct described by a statute, rule, permit, standard or order defining a violation, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.]~~

[7.] • ~~"Magnitude of the Violation" [means the extent of a violator's deviation from federal, state and the Authority's statutes, rules, standards, permits or orders, taking into account such factors as, but not limited to, concentration, volume, duration, toxicity, or proximity to human or environmental receptors. Deviations shall be categorized as major, moderate or minor, as follows:~~

~~A. "Major" means a substantial deviation from the standard;~~

~~B. "Moderate" means a significant deviation from the standard;~~

~~C. "Minor" means a slight deviation from the standard.]~~

• ~~"Negligence" or "negligent"~~

[8.] • ~~"Order" [means:~~

~~A. Any action satisfying the definition given in ORS Chapter 183; or~~

~~B. Any other action so designated in ORS Chapter 468.]~~

• ~~"Person"~~

[9.] • ~~"Prior Violation" [means any violation established by payment of a civil penalty, by an order of default, or a stipulated or final order of the Authority.]~~

• ~~"Reckless or Recklessly"~~

- [10.] • "Respondent" [~~means the person to whom a formal enforcement action is issued.~~]
- [11.] • "Risk of Harm" [~~means the level of risk to public health or the environment created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation. Risk of harm shall be categorized as major, moderate or minor levels.~~]
- [12.] • "Violation" [~~means a transgression of any statute, rule, order, license, permit, or any part thereof, and includes both acts and omissions. Violations shall be classed according to risk of harm as follows:~~
- A. [~~"Class One or I" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in an agency permit or board order;~~
  - B. [~~"Class Two or II" means any violation which poses a moderate risk of harm to public health or the environment;~~
  - C. [~~"Class Three or III" means any violation which poses a minor risk of harm to public health or the environment.~~]

#### Section 15-010 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense[;] and that, in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

#### Section 15-015 Notice of Violation

- [1.] When the Director [~~or his authorized agent representative,~~] or the board has cause to believe that a violation has occurred, the Director or authorized representative may document the violation and initiate any of the enforcement actions described in subsections 15-018 and 15-020 [~~issue a Notice of Violation~~] by serving the appropriate notice to the responsible party or respondent according to ORS 183 and these rules and regulations. Cause to believe a violation has occurred can be prima facie evidence based on first-hand observations, reports of observations by citizens or government officials, results of tests, instrument reading or any other evidence [~~found~~] which the Director finds, in his discretion, to be sufficient to constitute cause to believe.
- [2.] Except as provided in subsection 4 of this section, prior to the assessment of any civil penalty the Authority shall serve a Notice of Violation upon the respondent. Service shall be made when the notice is posted, addressed to or personally delivered to the respondent or a person designated by law as competent to receive service for the respondent. Generally, the notice shall be personally delivered or sent by registered or certified mail.

- ~~3. The prior Notice of Violation shall be in writing, specify the violation and state that the Authority will assess a civil penalty if the violation continues or occurs after five days following receipt of the notice.~~
- ~~4. The following are exceptions:~~
- ~~A. Notice of Violation prior to assessing a civil penalty shall not be required where the respondent has otherwise received a documented actual notice not less than five days prior to the violation for which a penalty is assessed.~~
- ~~B. No advance notice, written or actual, shall be required under subsections 2 and 3 of this section if:~~
- ~~(1) The act or omission constituting the violation is intentional;~~
- ~~(2) The air pollution contamination source would normally not be in existence for five days;~~
- ~~(3) The air pollution contamination source might leave or be removed from the jurisdiction of the Authority;~~
- ~~(4) The penalty to be imposed is for a violation of Section 43-015 relating to the control of asbestos fiber releases into the environment, or rules adopted thereafter.]~~

#### Section 15-018 Notice of Permit Violations and Exceptions

1. Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit, the Authority shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the Authority within five (5) working days of receipt of the Notice of Permit Violation:
- A. A written response from the permittee acceptable to the Authority certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable the Authority to determine that compliance has been achieved.
- B. A written proposal, acceptable to the Authority, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:
- (1) Proposed compliance dates;
- (2) Proposed date to submit a detailed compliance schedule;
- (3) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;

(4) A statement that the permittee has reviewed all other conditions and limitations of the permit, and no other violations of the permit were discovered by the permittee.

C. In the event that any compliance schedule to be approved by the Authority, pursuant to subsection 1.B of this section, provides for a compliance period of greater than six (6) months, the Authority shall incorporate the compliance schedule into an Order described in LRAPA subsection 15-020-4.A which provides for stipulated penalties in the event of any non-compliance therewith. Stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. Stipulated penalties may also be required for compliance periods of less than or equal to six (6) months. The stipulated penalties shall be set at amounts consistent with those established under LRAPA Section 15-045.

D. The certification allowed in subsection 1.A of this section shall be signed by a Responsible Official, based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of the permitted facility means one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, either a principal executive officer or appropriate elected official.

2. No advance notice prior to assessment of a civil penalty shall be required under subsection 1 of this section, and the Authority may issue a Notice of Civil Penalty Assessment, without any preconditions, if:

A. The violation is intentional;

B. The violation would not normally occur for five consecutive days;

C. The permittee has received a Notice of Permit Violation or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the documented violation;

D. The permittee is subject to the federal operating permit program under ORS 468.A-300 to 468.A-320, OAR 340 Divisions 28 and 32, and violates any rule or standard adopted or permit and/or order issued under ORS 468.A and applicable to the permittee; or

E. If EPA notifies the Department that the advance notice provision of ORS 468.126 would disqualify a program from federal approval or delegation.

~~F. The permittee has an Air Contaminant Discharge Permit and violates any State Implementation Plan requirement contained in the permit.~~

~~For purposes of this section, "permit" includes permit renewals and modifications, and no such renewal or modification shall result in the requirement that the Authority provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation or other formal enforcement action with respect to the permit within 36 months.~~

### Section 15-020 Enforcement Actions

#### 1. Notice of Non-compliance (NON): ~~[An enforcement action which:]~~

A. ~~Informs a person [of the existence] of a violation[, the actions required to resolve the violation] and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved [and that the need for formal enforcement action will be evaluated;].~~

B. ~~Shall be issued under the direction of the Director or authorized representative[+].~~

C. ~~Shall be issued for, but is not limited to, all classes of documented violations.~~

~~[D. Satisfies the requirements of 15-001-2.]~~

#### 2. Notice of Permit Violation (NPV): ~~[and Intent to Assess a Civil Penalty. A formal enforcement action which:]~~

A. ~~Is issued pursuant to Section 15-01[5]8;~~

B. ~~[May include a time schedule by which compliance is to be achieved;] Shall be issued by the Director or authorized representative;~~

~~[C. Shall be issued by the Director;]~~

~~[D] B. Shall be issued for, but is not limited to, the first occurrence of a documented Class One (I) permit violation which is not excepted under Sub[-S]section 15-01[5]8-[4]2, or the repeated or continuing occurrence of documented Class Two or Three (II or III) permit violations not excepted under subsection 15-018-2, or where a [Notice of Non-compliance] NON has failed to achieve compliance [by the respondent] or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36-month period without being issued an NPV.~~

~~[E. Satisfies the requirements of 15-001-2.]~~

3. Notice of Civil Penalty Assessment (CPA): [~~A formal enforcement action which:~~]
- A. Is issued pursuant to ORS 468.13[5]0, ORS 468.140, and LRAPA Sections 15-015, 15-025 and 15-030;
  - B. Shall be issued by the Director or authorized representative;
  - C. May be issued for, but is not limited to, the occurrence of any class of documented violation [~~excepted by Sub Section 15-015-4, for any class of repeated or continuing documented violations or where a person has failed to comply with a Notice of Violation and Intent to Assess a Civil Penalty or an Order of the board~~] that is not limited by the NPV requirement of LRAPA Section 15-018.
4. [~~Enforcement~~] Order[~~A formal enforcement action which~~]:
- A. Is issued pursuant to ORS Chapters 183, [~~or~~] 468, or 468A, and LRAPA Title 14. [~~+~~]
  - B. May be in the form of a Board [~~Order,~~] or Director Order or a Stipulation and Final Order (SFO). [~~+~~]
    - (1) Board Orders shall be issued by the Board [~~of Directors (Board)], or by the Director on behalf of the Board~~]. [~~+~~]
    - (2) Director Orders shall be issued by the Director or authorized representative. [~~+~~]
    - (3) [~~Stipulated Final~~] All Other Orders:
      - (a) May be negotiated [~~between the Authority and the subject party~~];
      - (b) Shall be signed by the Director or authorized representative [~~on behalf of the Authority~~] and the authorized representative of [~~the subject~~] each other party [~~;~~ and
      - (c) Shall be approved by the Board or by the Director on behalf of the Board].  - C. May be issued for any class of violations.
5. The [~~formal~~] enforcement actions described in subsections 1 through 4 of this section shall not limit the [~~Authority~~] Director or Board from seeking legal or equitable remedies [~~in the proper court~~] as provided by ORS Chapters 468 and 468A.

#### Section 15-025 Civil Penalty Schedule Matrices

1. In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the [~~Authority's~~] Board's and Director's authorizing rules, regulations, permits or orders by service of a written Notice of [~~Assessment of~~] Civil Penalty Assessment upon the [~~r~~]Respondent. Except for civil penalties assessed

under LRAPA 15-045 and 15-050 (stipulated or intentional/reckless), or Title 16, t[+]he amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 15-030:

A. \$10,000 Matrix

\$10,000 Matrix  
←----- Magnitude of Violation

		Major	Moderate	Minor
C L A S S  o f  V I O L A T I O N	Class I	[ <del>\$5,000</del> \$6,000]	[ <del>\$2,500</del> \$3,000]	\$1,000
	Class II	\$2,000	\$1,000	\$ 500
	Class III	\$ 500	\$ 250	\$ 100

No civil penalty issued by the Director pursuant to [~~this~~] the \$10,000 matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to [~~the following types of violations:~~

[~~(1)~~] A] any violation related to air quality statutes, rules, permits or orders, except for the [~~residential~~] selected open burning violations listed in subsection 1.B, below. [±]

[~~(2)~~] Any violation related to ORS 468.875, 468.899 or LRAPA Title 43, relating to asbestos abatement projects.]

[B. ~~\$500 Matrix~~

~~\$500 Matrix~~  
←----- Magnitude of Violation

		Major	Moderate	Minor



E A S S S	Class I	\$400	\$300	\$200
	<hr/>			
	Class II	\$300	\$200	\$100
O L A T I I	Class III	\$200	\$100	\$ 50

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than five hundred dollars (\$500) for each day of each violation. This matrix shall apply to the following types of violations:

- (1) Any violation related to residential open burning.]

**B. \$2,500 Matrix**

		\$2,500 Matrix		
		←----- Magnitude of Violation		
		Major	Moderate	Minor
C L A S S	Class I	\$2,500	\$1,000	\$500
	<hr/>			
	Class II	\$750	\$500	\$200
O L A T I I	Class III	\$250	\$100	\$ 50

No civil penalty issued by the Director pursuant to the \$2,500 matrix shall be less than fifty dollars (\$50). The total penalty may exceed twenty-five hundred dollars (\$2,500) for each day of each violation, but shall not exceed \$10,000 for each day of each violation.

The \$2,500 matrix shall be applied to any violation related to violations of the Authority's Title 47 open burning rules, excluding all industrial open burning violations and violations of Section 47-015-1.E, where the volume of the prohibited materials burned is greater than or equal to twenty-five cubic yards. In cases of the open burning of tires, this matrix shall apply only if the number of tires burned is less than fifteen (15). The matrix set forth in Section 1A, above, shall be applied to all open burning violations not covered by this section.

Section 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)

1. When determining the amount of civil penalty to be assessed for any violation, other than violations of LRAPA Title 16, which are determined in Title 16, and of ORS 468.996, which are determined according to the procedure set forth below in Section 15-050, the Director or authorized representative shall apply the following procedures:
  - A. Determine the class [~~of violation~~] and the magnitude of each violation[~~+~~].
  - B. Choose the appropriate base penalty (BP) established by the matrices of Section 15-025 [~~based upon the above finding+~~] after determining the class and magnitude of each violation.
  - C. Starting with the base penalty (BP), determine the amount of penalty through application of the formula:  

$$BP + [(0.1 \times BP)(P + H + [E+] 0 + R + C)] + EB$$
 where:
    - (1) "P" is whether the [~~+~~]Respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purpose of determining "P," Class One equivalent or equivalent means two Class Two violations, one Class Two and two Class Three violations, or three Class Three violations. The values for "P" and the finding which supports each are as follows:
      - (a) 0 if no prior violations or ~~there is~~ insufficient information on which to base a finding;
      - (b) 1 if the prior violation is [~~an unrelated Class Three~~] one Class Two or two Class Threes;
      - (c) 2 if the prior violation(s) [~~is an unrelated Class Two, two unrelated Class Threes or an identical Class Three~~] are one Class One or equivalent;
      - (d) 3 if the prior violations [~~(s) is an unrelated Class One, three unrelated Class Threes or two identical Class Threes~~] are two Class Ones or equivalent;

- (e) 4 if the prior violations are three Class Ones or equivalents [~~are two unrelated Class Twos, four unrelated Class Threes, an identical Class Two or three identical Class Threes~~];
  - (f) 5 if the prior violations are [~~five unrelated Class Threes or four identical Class Threes~~] four Class Ones or equivalents;
  - (g) 6 if the prior violations are [~~two or more unrelated Class Ones, three or more unrelated Class Twos, six or more unrelated Class Threes, an identical Class One, two identical Class Twos or five identical Class Threes~~] five Class Ones or equivalents;
  - (h) 7 if the prior violations are six Class Ones or equivalents;
  - (~~h~~) 8 if the prior violations are [~~two or more identical~~] seven Class Ones [~~, three or more identical Class Twos, or six or more identical Class Threes~~] or equivalents [~~];~~];
  - (j) 9 if the prior violations are eight Class Ones or equivalents;
  - (k) 10 if the prior violations are nine or more class Ones or equivalents, or if any of the prior violations were issued for any violation of ORS 468.996.
  - (l) In determining the appropriate value for prior violations as listed above, the Authority shall reduce the appropriate factor by:
    - (i) A value of one(1) if the number of prior violations in a particular class falls between corresponding factors;
    - (ii) A value of two (2) if all the prior violations are greater than three years old but less than five years old;
    - (iii) A value of four (4) if all the prior violations are greater than five years old;
    - (iv) In making the above reductions, the value of P shall not be less than 0.
  - (m) Any prior violation which occurred more than ten years prior to the time of the present violation shall not be included in the above determination.
- (2) "H" is past history of the [~~+~~] Respondent in taking all feasible steps or procedures necessary or appropriate to correct any prior violations. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral, the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:

- (a) -2 if [violator] Respondent took all feasible steps to correct [any violation] each prior violation;
- (b) 0 if there is no prior history or if there is insufficient information on which to base a finding[+];
- ~~[(c) 1 if violator took some, but not all, feasible steps to correct a Class Two or Three violation;~~
- ~~(d) 2 if violator took some, but not all, feasible steps to correct a Class One violation;~~
- ~~(e) 3 if no action was taken to correct prior violations.]~~
- ~~[(3) "E" is the economic condition of the respondent. The values for "E" and the finding which supports each are as follows:~~
- ~~(a) 0 to 2 if economic condition is poor, subject to subsection (4) of this section, or the [r] Respondent gained no economic benefit through non-compliance;~~
- ~~(b) 0 if there is insufficient information on which to base a finding or the [r] Respondent gained no economic benefit (condition) through non-compliance;~~
- ~~(c) 2 if economic condition is good and the [r] Respondent gained a minor to moderate economic benefit through non-compliance;~~
- ~~(d) 4 if the [r] Respondent gained a significant economic benefit through non-compliance.]~~
- ~~[(4) "O" is whether the violation was [a single occurrence or was] repeated or continuous [during the period resulting in the civil penalty assessment]. The values for "O" and the finding which supports each are as follows:~~
- ~~(a) 0 if [single occurrence] the violation existed for one day or less and did not recur on the same day. [±]~~
- ~~(b) 2 if [repeated or continuous] the violation recurred on the same day. If the violation occurred on more than one day, and multiple day penalties are determined, "O" shall be 0.~~
- ~~[(5) "R" is whether the violation resulted from an unavoidable accident, or a negligent, [or] intentional or flagrant act of the [r] Respondent. The values for "R" and the finding which supports each are as follows:~~
- ~~[(a) 2 if unavoidable accident;~~
- ~~[(b)a) 0 if an unavoidable accident or there is insufficient information to make any other finding;~~

([e]b) 2 if negligent;

~~[(d) 4 if grossly negligent;]~~

([e]c) 6 if intentional; or

([f]d) 10 if flagrant.

([6]5) "C" is the [violator's] Respondent's cooperativeness [in correcting] and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:

(a) -2 if [violator is] Respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;

(b) 0 if [violator is neither cooperative nor uncooperative or] there is insufficient information [on which] to [base] make a finding, or if the violation or the effects of the violation could not be corrected;

(c) 2 if [violator is] Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

(6) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Director or Board may increase the penalty by the approximated dollar sum of the economic benefit, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. After determining the base penalty and applying the civil penalty formula above to determine the gravity portion of the civil penalty, "EB" is to be determined as follows:

(a) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable.

(b) In determining the economic benefit component of a civil penalty, the Authority may use the U. S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Authority shall use the version of the model that the Authority finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Authority will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that

the standard value does not reflect that Respondent's actual circumstance.

(c) As stated above, under no circumstances shall the imposition of the economic benefit component of the penalty result in a penalty exceeding the statutory maximum allowed for the violation by rule or statute. When a violation has extended over more than one calendar day, however, for determining the maximum penalty allowed, the Director may treat the violation as extending over at least as many days as necessary to recover the economic benefit of noncompliance. When the purpose of treating a violation as extending over more than one calendar day is to recover the economic benefit, the Director has the discretion not to impose the gravity and/or magnitude-based portion of the penalty for more than one day.

2. In addition to the factors listed in subsection (1) of this rule, the Director may consider any other relevant rule of the Authority and shall state the effect the consideration had on the penalty. On review, the Board or hearings officer shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Authority.

~~3. If the Director or the Board, on review, find that the economic benefit of non-compliance exceeds the amount represented by the "4" in subsection (1)(C)(3)(d) of this section, the penalty may be increased by the amount of economic gain, as long as the penalty does not exceed the maximum penalty allowed by rule and statute.~~

~~4. In any contested case proceeding or settlement in which respondent has raised economic condition as an issue, respondent has the responsibility of providing written or other documentary evidence concerning its economic condition. In determining whether to mitigate a penalty based on economic condition, the Director or the Board, on review, may consider the causes and circumstances of respondent's economic condition.]~~

3. The Director or Board may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Director or Board documentary evidence concerning Respondent's inability to pay the full penalty amount.

A. When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Director or Board may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.

B. In determining the Respondent's ability to pay a civil penalty, the Authority may use the U. S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Authority shall use the version of the model that the Authority finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Authority



will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

- C. In appropriate circumstances, the Director or Board may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance.

Section 15-035 Written Notice of [Assessment of] Civil Penalty Assessment--When Penalty Payable

1. A civil penalty shall be due and payable [~~when the respondent is served a written notice of assessment of civil penalty signed by the Director~~] ten (10) days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed [~~Service~~] shall be served [~~in the same way as for a Notice of Violation,~~] with a notice in the form and manner provided in ORS 183.415 and LRAPA Section [~~15-015~~] 14-170.
2. The written notice of [~~assessment of~~] civil penalty assessment shall [~~substantially follow the form prescribed by ORS 183.415(2) for a notice of opportunity for a hearing in a contested case~~] comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.
- [3-] The rules prescribing procedure in contested case proceedings contained in [~~ORS 183.413 through 183.497 and in~~] LRAPA Title 14 shall apply thereafter.

Section 15-040 Compromise or Settlement of Civil Penalty by Director

1. Any time [~~subsequent to~~] after service of the written notice of [~~assessment~~] of civil penalty assessment, the Board or Director may, in their discretion, compromise or settle any unpaid civil penalty at any amount that the Board or Director deems appropriate. A refusal to compromise or settle shall not be subject to review. Any compromise or settlement executed by the Director shall [~~not~~] be final [~~until approved by the Board~~], except for major Class I violations with penalties calculated under 15-025-1.A, which must be approved by the board.
2. In determining whether a penalty should be compromised or settled, the Board or Director may take into account the following:
  - A. New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in LRAPA Section 15-030.
  - B. The effect of compromise or settlement on deterrence;
  - C. Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

- D. Whether Respondent has had any previous penalties which have been compromised or settled;
- E. Whether the compromise or settlement would be consistent with the Authority's goal of protecting the public health and environment;
- F. The relative strength or weakness of the Authority's case.

#### Section 15-045 Stipulated Penalties

Nothing in Title 15 shall affect the ability of the Board or Director to include stipulated penalties in a Stipulat[ed]ion and Final Order, Consent Order, Consent Decree or any other agreement issued pursuant to ORS Chapter 468, 468 A or these rules and regulations.

#### Section 15-050 Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below.

Any person who intentionally or recklessly violates any provision of ORS 468, 468A, or any rule or standard or order of the Director or Board which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures.

1. The base penalties listed in 15-050-2 are to be used in lieu of the penalty method in 15-025-1.A and B.
2. Select one of the following base penalties after determining the cause of the violation:
  - A. \$50,000 if the violation was caused recklessly;
  - B. \$75,000 if the violation was caused intentionally;
  - C. \$100,000 if the violation was caused flagrantly.
3. Then determine the civil penalty through application of the formula:
 
$$BP + (.1 \times BP)(P + H + O + C) + EB$$
 in accordance with the applicable subsections of Section 15-030.

#### Section 15-05[0]5 Air Quality Classification of Violation

Violations pertaining to air quality shall be classified as follows:

##### 1. Class One

[A. Exceeding an allowable emission level such that an ambient air quality standard is exceeded;]

[M] A. Violati[on of]ng conditions or terms of an order or variance;



- [G] B. Violat[ion of]ing a compliance schedule or condition in a permit (except as defined in 15-055-3.B);
  - [B. Exceeding an allowable emission level such that emissions of potentially dangerous amounts of a toxic[s] or otherwise hazardous substance are emitted;]
  - C. Exceeding emission limitations or opacity limitations in permits or air quality regulations;
  - D. Exceeding an emission or opacity permit limitation for a criteria pollutant, by a factor of greater than or equal to two (2) times the limitation, within ten (10) kilometers of either a Non-Attainment Area or a Class I Area for that criteria pollutant;
  - E. Exceeding the annual emission limitations of a permit, rule or order;
  - F. Exceeding an applicable emission limit of a regulated hazardous air pollutant;
  - G. Exceeding operating restrictions which limit a synthetic minor source's potential to emit and which result in emissions above the thresholds which define a major source, under the Federal Operating Permit program, pursuant to OAR 340-28-110(57);
- [G] H. Causing emissions that are potentially a hazard to public [safety] health and welfare;
- [D] I. Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;
- [E] J. Constructing or operating a source without a valid Air Contaminant Discharge Permit and/or federal operating permit;
- [F] K. Modifying a source with an Air Contaminant Discharge Permit and/or federal operating permit without first notifying and receiving approval from the Authority;
  - L. Failing to perform testing, monitoring, or record keeping required by a permit, rule or order;
  - M. Failing to submit semi-annual compliance certifications;
  - N. Failing to file a timely application for a Federal Operating Permit pursuant to OAR 340-28-2120;
- [H] O. Violat[ion of]ing a work practice requirement for asbestos abatement projects which [results in or creates the likelihood] causes a potential for public exposure to asbestos or release of asbestos into the environment;
- [I] P. Stor[age]ing or accumul[ati]ng [of] friable asbestos material or asbestos-containing waste material from an asbestos abatement project which

- ~~[results in or creates the likelihood]~~ causes a potential for public exposure to asbestos or release of asbestos into the environment;
- [J] Q. Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation or disposal of asbestos-containing waste material;
- R. ~~Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor.~~
- [K] S. Violati~~on of~~ng a disposal requirement for asbestos-containing waste material which ~~[results in or creates the likelihood of]~~ causes a potential for public exposure to asbestos or release of asbestos into the environment;
- [L] T. Illegal open burning of materials prohibited by Sub-Section 47-015-1.E;
- U. ~~Failing to provide access to premises or records when required by law, rule, permit or order;~~
- [O] V. Submitting falsified actual or calculated ~~[interim]~~ emission ~~[fee]~~ data~~[-]~~;
- [N] W. Any other violation related to air quality which ~~causes a major harm or poses a major risk of harm~~ to public health or the environment.

## 2. Class Two

- ~~[A. Allowing discharges of a magnitude that, though not actually likely to cause an ambient air violation, may have endangered citizens;~~
- ~~[B. Exceeding emission limitations in permits or air quality rules;]~~
- ~~[C. Exceeding opacity limitations in permits or air quality rules;]~~
- [D] A. Violating standards ~~in permits or rules~~ for fugitive dust, particulate deposition or odors ~~[in permits or air quality rules];~~
- [E] B. Illegal open burning~~[-, not otherwise classified]~~ of ~~commercial, construction and/or demolition waste;~~
- [F] C. Illegal residential open burning;
- [G] D. Fail~~ure~~ing to report ~~excess emissions due to~~ upset or breakdown of air pollution control equipment;
- [H] E. Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;
- F. ~~Under-reporting of the amount of asbestos involved in an asbestos abatement project;~~

- [F] G. Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;
- [F] H. Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;
- [K. ~~Conduct of an asbestos abatement project by a contractor not licensed as an asbestos abatement contractor;~~]
- I. ~~Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;~~
- [L] J. Failure to provide notification of an asbestos abatement project;
- K. ~~Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR Chapter 340, Division 160;~~
- M] L. Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.
- M. ~~Failing to submit a complete Air Contaminant Discharge Permit application 60 (sixty) days prior to permit expiration or prior to modifying a source;~~
- N. ~~Exceeding operating restrictions which limit a synthetic minor source's potential to emit, but which does not result in emissions above the thresholds which define a major source, under the Federal Operating Permit program, pursuant to OAR 340-28-110(57);~~
- [N] O. Failure to pay a[n-interim-emission] fee required by the federal operating permit program.
- [O] P. Substantial underpayment of a[n-interim-emission] fee required by the federal operating permit program.
- [P] Q. Submitting inaccurate ~~actual or calculated~~ [interim] emission [fee] data.
- R. ~~Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;~~
- S. ~~Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;~~
- T. ~~Selling any chlorofluorocarbon- or halon-containing product prohibited under ORS 468A.635.~~

## 3. Class Three

- A. Fail[ure]ing to file a Notice of Construction [~~or permit application~~];
- B. Fail[ure]ing to report as a condition of a rule, compliance order or permit;
- C. Improper notification of an asbestos abatement project;
- ~~[D. Failure to comply with asbestos abatement certification, licensing, certification, or accreditation requirements not elsewhere classified;]~~
- ~~[E. Failure to notify Authority of an emission limit violation on a timely basis;]~~
- ~~[F. Failure to submit annual or monthly reports required by rule or permit;]~~
- [G] D. Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

Section 15-060 Selected Magnitude Categories

Magnitudes for selected violations may be determined as follows:

1. Opacity limitation violations:

- A. Major--opacity measurements or readings of more than 25 percent opacity over the applicable limitation;
- B. Moderate--opacity measurements or readings from greater than 10 percent to 25 percent or less opacity over the applicable limitation;
- C. Minor--opacity measurements or readings or 10 percent or less opacity over the applicable limitation.

2. Steaming rates and fuel usage limitations:

- A. Major--greater than 1.3 times any applicable limitation;
- B. Moderate--from 1.1 to and including 1.3 times any applicable limitation;
- C. Minor--less than 1.1 times any applicable limitation.

3. Magnitude determinations for Air Contaminant Discharge Permit emission limitation violations for selected air pollutants shall be made based upon the following table:

POLLUTANT	AMOUNT
Carbon Monoxide	100 tons
Nitrogen Oxides	40 tons
Particulate Matter	
A. TSP	5 tons
B. PM <sub>10</sub>	5 tons
Sulfur Dioxide	40 tons
Volatile Organic Compounds	40 tons
Lead	1200 lbs
Mercury	200 lbs
Beryllium	0.8 lbs
Asbestos	14 lbs
Vinyl Chloride	1 tons
Fluorides	3 tons
Sulfuric Acid Mist	7 tons
Hydrogen Sulfide	10 tons
Total Reduced Sulfur (including hydrogen sulfide)	10 tons
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons

A. Major:

- (1) Exceeding the annual amount, as established by permit, rule or order, by more than the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by more than 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by more than 0.5 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by more than 0.1 percent of the above amount.

## B. Moderate:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 50 up to and including 100 percent of the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 5 up to and including 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.25 up to and including 0.50 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.10 percent of the above amount.

## C. Minor:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 5 up to and including 50 percent of the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 0.25 up to and including 5 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.25 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount of 0.05 percent or less of the above amount.

## 4. Hazardous air pollutant violations:

- A. Major--exceeding the applicable emissions limit by two (2) times the de minimus rate;
- B. Moderate--exceeding the applicable emissions limit by one and a half (1-1/2) to two (2) times the de minimus rate;
- C. Minor--exceeding the applicable emissions limit by less than one and a half (1-1/2) times the de minimus rate.

## 5. Federal operating permit program violations:

- A. Major--missing filing deadline by thirty (30) calendar days or more; filing false or misleading information in application;
- B. Moderate--missing filing deadline by seven (7) to twenty-nine (29) calendar days;

C. Minor--missing filing deadline by less than seven (7) calendar days.

6. Asbestos Violations:

A. Major--more than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;

B. Moderate--from 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;

C. Minor--less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material.

D. The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5 percent asbestos.

7. Asbestos Air Clearance Violations:

A. Major--more than .1 fibers per cubic centimeter;

B. Moderate--more than .05 fibers per cubic centimeter up to and including .1 fibers per cubic centimeter;

C. Minor--more than .01 fibers per cubic centimeter up to and including .05 fibers per cubic centimeter.

8. Open Burning Violations:

A. Major--open burning of material constituting more than 5 cubic yards in volume;

B. Moderate--open burning of material constituting from 1 up to and including 5 cubic yards in volume;

C. Minor--open burning of material constituting less than 1 cubic yard in volume.

Section 15-06[0]5 Appeals

1. Any person who is issued a corrective action order or who is assessed with a civil penalty under Title 15 may appeal such order or penalty to the Authority within twenty-one (21) days of the date of mailing of the notice. The hearing and appeal shall be conducted according to Title 14 of these rules.
2. In reviewing the order or the penalty assessed by the Director, the Hearings Officer shall consider the factors set forth in Section 15-030, the findings of the Director and the evidence and argument presented at the hearing. The Hearings Officer shall make findings as to those factors deemed to be significant.

3. Unless the issue is raised in respondent's answer to the order or notice of assessment of civil penalty, the Hearings Officer may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.
4. If a timely request for a hearing is not received by the Authority, the Director may issue a final order upon default based upon a prima facie case as provided in Sections 14-175.4.C and 14-205.2. If the penalty is not paid within ten (10) days of issuance of the final order, the order shall constitute a judgement and may be filed as provided in ORS 468.135(4).



LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 15

Enforcement Procedure and Civil Penalties

Section 15-001 Policy

1. The goals of enforcement are to:
  - A. Obtain and maintain compliance with the Authority's statutes, rules, permits and orders;
  - B. Protect the public health and the environment;
  - C. Deter future violators and violations; and
  - D. Ensure an appropriate and consistent enforcement program.
2. As required by this Title, the Authority will endeavor by conference, conciliation and persuasion to solicit compliance.
3. The Authority shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in subsection 1 of this section.
4. Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Section 15-003 Scope of Applicability

These amendments shall apply to violations occurring on or after the effective date of such amendments. They shall not apply to cases pending. For purposes of determining Class and Magnitude of violation, only, LRAPA rules and regulations in effect prior to these amendments shall apply to violations occurring before the effective date of these amendments. For purposes of determining number and gravity of prior violations, these amendments will apply.

Section 15-005 Definitions

Words and terms used in this title are defined as follows, unless the context requires otherwise:

- "Class I (one) Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class II (two) violations, one Class II and two Class III (three) violations, or three Class III violations.
- "Compliance" means meeting the requirements of the Authority's or Department's, Commission's or EPA's rules, permits or orders.
- "Documented Violation" means any violation which the Authority or other government agency records after observation, investigation or data collection.

- "Enforcement" means any documented action taken to address a violation.
- "Federal Operating Permit Program" means a program approved by the DEQ Administrator under 40 CFR Part 70 (last amended by 57 FR 32295, July 21, 1992).
- "Flagrant" means any documented violation where the respondent had actual knowledge of the law and consciously set out to commit the violation.
- "Formal Enforcement Action" means an administrative action signed by the Director or authorized representative[s] which is issued to a respondent for a documented violation. A formal enforcement action may require the respondent to take specific action within a specified time frame and/or state the consequences for continued non-compliance.
- "Intentional," means conduct by a person with a conscious objective to cause the result of the conduct.
- "Magnitude of the Violation" means the extent of a violator's deviation from federal, state and the Authority's statutes, rules, standards, permits or orders. In determining magnitude, the Authority shall consider available information, including such factors as concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In any case, the Authority may consider any single factor to be conclusive. Deviations shall be categorized as major, moderate or minor.
- "Negligence" or "negligent" means failing to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.
- "Order" means:
  - A. Any action satisfying the definition given in ORS Chapter 183; or
  - B. Any other action so designated in ORS Chapter 468 or 468.A.
- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Prior Violation" means any violation established, with or without admission, by payment of a civil penalty, by an order of default, by issuance of a Notice of Non-Compliance or a Notice of Permit Violation, or by a stipulated or final order of the Authority.
- "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.
- "Respondent" means the person to whom a formal enforcement action is issued.
- "Risk of Harm" means the level of risk to public health or the environment created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation.

- "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof, and includes both acts and omissions. Violations shall be classed according to risk of harm as follows:
  - A. "Class I (one)" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in an agency permit or board order;
  - B. "Class II (two)" means any violation which poses a moderate risk of harm to public health or the environment;
  - C. "Class III (three)" means any violation which poses a minor risk of harm to public health or the environment.

#### Section 15-010 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense and that, in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

#### Section 15-015 Notice of Violation

When the Director or the board has cause to believe that a violation has occurred, the Director or authorized representative may document the violation and initiate any of the enforcement actions described in subsections 15-018 and 15-020 by serving the appropriate notice to the responsible party or respondent according to ORS 183 and these rules and regulations. Cause to believe a violation has occurred can be prima facie evidence based on first-hand observations, reports of observations by citizens or government officials, results of tests, instrument reading or any other evidence which the Director finds, in his discretion, to be sufficient to constitute cause to believe.

#### Section 15-018 Notice of Permit Violations and Exceptions

1. Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit, the Authority shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the Authority within five (5) working days of receipt of the Notice of Permit Violation:
  - A. A written response from the permittee acceptable to the Authority certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable the Authority to determine that compliance has been achieved.
  - B. A written proposal, acceptable to the Authority, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:
    - (1) Proposed compliance dates;
    - (2) Proposed date to submit a detailed compliance schedule;

- (3) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;
  - (4) A statement that the permittee has reviewed all other conditions and limitations of the permit, and no other violations of the permit were discovered by the permittee.
- C. In the event that any compliance schedule to be approved by the Authority, pursuant to subsection 1.B of this section, provides for a compliance period of greater than six (6) months, the Authority shall incorporate the compliance schedule into an Order described in LRAPA subsection 15-020-4.A which provides for stipulated penalties in the event of any non-compliance therewith. Stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. Stipulated penalties may also be required for compliance periods of less than or equal to six (6) months. The stipulated penalties shall be set at amounts consistent with those established under LRAPA Section 15-045.
- D. The certification allowed in subsection 1.A of this section shall be signed by a Responsible Official, based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of the permitted facility means one of the following:
- (1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
  - (3) For a municipality, state, federal, or other public agency, either a principal executive officer or appropriate elected official.
2. No advance notice prior to assessment of a civil penalty shall be required under subsection 1 of this section, and the Authority may issue a Notice of Civil Penalty Assessment, without any preconditions, if:
- A. The violation is intentional;
  - B. The violation would not normally occur for five consecutive days;
  - C. The permittee has received a Notice of Permit Violation or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the documented violation;
  - D. The permittee is subject to the federal operating permit program under ORS 468.A-300 to 468.A-320, OAR 340 Divisions 28 and 32, and violates any rule or standard adopted or permit and/or order issued under ORS 468.A and applicable to the permittee; or
  - E. If EPA notifies the Department that the advance notice provision of ORS 468.126 would disqualify a program from federal approval or delegation.

- F. The permittee has an Air Contaminant Discharge Permit and violates any State Implementation Plan requirement contained in the permit.

For purposes of this section, "permit" includes permit renewals and modifications, and no such renewal or modification shall result in the requirement that the Authority provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation or other formal enforcement action with respect to the permit within 36 months.

### Section 15-020 Enforcement Actions

#### 1. Notice of Non-compliance (NON):

- A. Informs a person of a violation and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved.
- B. Shall be issued under the direction of the Director or authorized representative.
- C. Shall be issued for, but is not limited to, all classes of documented violations.

#### 2. Notice of Permit Violation (NPV):

- A. Is issued pursuant to Section 15-018;
- B. Shall be issued by the Director or authorized representative;
- C. Shall be issued for, but is not limited to, the first occurrence of a documented Class I permit violation which is not excepted under Subsection 15-018-2, or the repeated or continuing occurrence of documented Class II or III permit violations not excepted under subsection 15-018-2, or where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36-month period without being issued an NPV.

#### 3. Notice of Civil Penalty Assessment (CPA):

- A. Is issued pursuant to ORS 468.130, ORS 468.140, and LRAPA Sections 15-015, 15-025 and 15-030;
- B. Shall be issued by the Director or authorized representative;
- C. May be issued for, but is not limited to, the occurrence of any class of documented violation that is not limited by the NPV requirement of LRAPA Section 15-018.

#### 4. Order:

- A. Is issued pursuant to ORS Chapters 183, 468, or 468A, and LRAPA Title 14.
- B. May be in the form of a Board or Director Order or a Stipulation and Final Order (SFO).

- (1) Board Orders shall be issued by the Board, or by the Director on behalf of the Board.
- (2) Director Orders shall be issued by the Director or authorized representative.
- (3) All Other Orders:
  - (a) May be negotiated;
  - (b) Shall be signed by the Director or authorized representative and the authorized representative of each other party.

C. May be issued for any class of violations.

5. The enforcement actions described in subsections 1 through 4 of this section shall not limit the Director or Board from seeking legal or equitable remedies as provided by ORS Chapters 468 and 468A.

Section 15-025 Civil Penalty Schedule Matrices

1. In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Board's and Director's authorizing rules, regulations, permits or orders by service of a written Notice of Civil Penalty Assessment upon the Respondent. Except for civil penalties assessed under LRAPA 15-045 and 15-050 (stipulated or intentional/reckless), or Title 16, the amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 15-030:

A. \$10,000 Matrix

\$10,000 Matrix  
 <----- Magnitude of Violation

		Major	Moderate	Minor
C L A S S  o f  V I O L A T I O N	Class I	\$6,000	\$3,000	\$1,000
	Class II	\$2,000	\$1,000	\$ 500
	Class III	\$ 500	\$ 250	\$ 100

No civil penalty issued by the Director pursuant to the \$10,000 matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to any violation related to air quality statutes, rules, permits or orders, except for the selected open burning violations listed in subsection 1.B, below.

B. \$2,500 Matrix

\$2,500 Matrix  
 <----- Magnitude of Violation

		Major	Moderate	Minor
C L A S S  o f  V I O L A T I O N	Class I	\$2,500	\$1,000	\$500
	Class II	\$750	\$500	\$200
	Class III	\$250	\$100	\$ 50

No civil penalty issued by the Director pursuant to the \$2,500 matrix shall be less than fifty dollars (\$50). The total penalty may exceed twenty-five hundred dollars (\$2,500) for each day of each violation, but shall not exceed \$10,000 for each day of each violation.

The \$2,500 matrix shall be applied to any violation related to violations of the Authority's Title 47 open burning rules, excluding all industrial open burning violations and violations of Section 47-015-1.E, where the volume of the prohibited materials burned is greater than or equal to twenty-five cubic yards. In cases of the open burning of tires, this matrix shall apply only if the number of tires burned is less than fifteen (15). The matrix set forth in Section 1A, above, shall be applied to all open burning violations not covered by this section.

Section 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)

1. When determining the amount of civil penalty to be assessed for any violation, other than violations of LRAPA Title 16, which are determined in Title 16, and of ORS 468.996, which are determined according to the procedure set forth below in Section 15-050, the Director or authorized representative shall apply the following procedures:

- A. Determine the class and the magnitude of each violation.
- B. Choose the appropriate base penalty (BP) established by the matrices of Section 15-025 after determining the class and magnitude of each violation.
- C. Starting with the base penalty (BP), determine the amount of penalty through application of the formula:

$BP + [(.1 \times BP)(P + H + O + R + C)] + EB$  where:

(1) "P" is whether the Respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purpose of determining "P," Class I equivalent or equivalent means two Class II violations, one Class II and two Class III violations, or three Class III violations. The values for "P" and the finding which supports each are as follows:

(a) 0 if no prior violations or there is insufficient information on which to base a finding;

(b) 1 if the prior violation is one Class II or two Class III's;

(c) 2 if the prior violation(s) are one Class I or equivalent;

(d) 3 if the prior violations are two Class I's or equivalent;

(e) 4 if the prior violations are three Class I's or equivalents;

(f) 5 if the prior violations are four Class I's or equivalents;

(g) 6 if the prior violations are five Class I's or equivalents;

(h) 7 if the prior violations are six Class I's or equivalents;

(i) 8 if the prior violations are seven Class I's or equivalents;

(j) 9 if the prior violations are eight Class I's or equivalents;

(k) 10 if the prior violations are nine or more class I's or equivalents, or if any of the prior violations were issued for any violation of ORS 468.996.

(l) In determining the appropriate value for prior violations as listed above, the Authority shall reduce the appropriate factor by:

(i) A value of one(1) if the number of prior violations in a particular class falls between corresponding factors;

(ii) A value of two (2) if all the prior violations are greater than three years old but less than five years old;

(iii) A value of four (4) if all the prior violations are greater than five years old;



- (iv) In making the above reductions, the value of P shall not be less than 0.
  - (m) Any prior violation which occurred more than ten years prior to the time of the present violation shall not be included in the above determination.
- (2) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any prior violations. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral, the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:
- (a) -2 if Respondent took all feasible steps to correct each prior violation;
  - (b) 0 if there is no prior history or if there is insufficient information on which to base a finding;
  - (c) 2 if the Respondent took no feasible steps to correct each prior violation.
- (3) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:
- (a) 0 if the violation existed for one day or less and did not recur on the same day;
  - (b) 2 if the violation recurred on the same day. If the violation occurred on more than one day, and multiple day penalties are determined, "O" shall be 0.
- (4) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:
- (a) 0 if an unavoidable accident or there is insufficient information to make any other finding;
  - (b) 2 if negligent;
  - (c) 6 if intentional; or
  - (d) 10 if flagrant.
- (5) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:
- (a) -2 if Respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;
  - (b) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;

- (c) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.
- (6) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Director or Board may increase the penalty by the approximated dollar sum of the economic benefit, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. After determining the base penalty and applying the civil penalty formula above to determine the gravity portion of the civil penalty, "EB" is to be determined as follows:
- (a) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable.
  - (b) In determining the economic benefit component of a civil penalty, the Authority may use the U. S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Authority shall use the version of the model that the Authority finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Authority will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.
  - (c) As stated above, under no circumstances shall the imposition of the economic benefit component of the penalty result in a penalty exceeding the statutory maximum allowed for the violation by rule or statute. When a violation has extended over more than one calendar day, however, for determining the maximum penalty allowed, the Director may treat the violation as extending over at least as many days as necessary to recover the economic benefit of noncompliance. When the purpose of treating a violation as extending over more than one calendar day is to recover the economic benefit, the Director has the discretion not to impose the gravity and/or magnitude-based portion of the penalty for more than one day.
2. In addition to the factors listed in subsection (1) of this rule, the Director may consider any other relevant rule of the Authority and shall state the effect the consideration had on the penalty. On review, the Board or hearings officer shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Authority.
3. The Director or Board may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the

Director or Board documentary evidence concerning Respondent's inability to pay the full penalty amount.

- A. When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Director or Board may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.
- B. In determining the Respondent's ability to pay a civil penalty, the Authority may use the U. S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Authority shall use the version of the model that the Authority finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Authority will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.
- C. In appropriate circumstances, the Director or Board may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance

#### Section 15-035 Written Notice of Civil Penalty Assessment--When Penalty Payable

1. A civil penalty shall be due and payable ten (10) days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and LRAPA Section 14-170.
2. The written notice of civil penalty assessment shall comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.
3. The rules prescribing procedure in contested case proceedings contained in LRAPA Title 14 shall apply thereafter.

#### Section 15-040 Compromise or Settlement of Civil Penalty by Director

1. Any time after service of the written notice of of civil penalty assessment, the Board or Director may, in their discretion, compromise or settle any unpaid civil penalty at any amount that the Board or Director deems appropriate. A refusal to compromise or settle shall not be subject to review. Any compromise or settlement executed by the Director shall be final, except for major Class I violations with penalties calculated under 15-025-1.A, which must be approved by the board.
2. In determining whether a penalty should be compromised or settled, the Board or Director may take into account the following:
  - A. New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in LRAPA Section 15-030.

- B. The effect of compromise or settlement on deterrence;
- C. Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
- D. Whether Respondent has had any previous penalties which have been compromised or settled;
- E. Whether the compromise or settlement would be consistent with the Authority's goal of protecting the public health and environment;
- F. The relative strength or weakness of the Authority's case.

#### Section 15-045 Stipulated Penalties

Nothing in Title 15 shall affect the ability of the Board or Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued pursuant to ORS Chapter 468, 468.A or these rules and regulations.

#### Section 15-050 Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below.

Any person who intentionally or recklessly violates any provision of ORS 468, 468A, or any rule or standard or order of the Director or Board which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures.

1. The base penalties listed in 15-050-2 are to be used in lieu of the penalty method in 15-025-1.A and B.
2. Select one of the following base penalties after determining the cause of the violation:
  - A. \$50,000 if the violation was caused recklessly;
  - B. \$75,000 if the violation was caused intentionally;
  - C. \$100,000 if the violation was caused flagrantly.
3. Then determine the civil penalty through application of the formula:
 
$$BP + (.1 \times BP)(P + H + O + C) + EB$$
 in accordance with the applicable subsections of Section 15-030.

#### Section 15-055 Air Quality Classification of Violation

Violations pertaining to air quality shall be classified as follows:

1. Class One
  - A. Violating conditions or terms of an order or variance;

- B. Violating a compliance schedule or condition in a permit (except as defined in 15-055-3.B);
- C. Exceeding emission limitations or opacity limitations in permits or air quality regulations (except those listed in Section 15-055-2.A);
- D. Exceeding an emission or opacity permit limitation for a criteria pollutant, by a factor of greater than or equal to two (2) times the limitation, within ten (10) kilometers of either a Non-Attainment Area or a Class I Area for that criteria pollutant;
- E. Exceeding the annual emission limitations of a permit, rule or order;
- F. Exceeding an applicable emission limit of a regulated hazardous air pollutant;
- G. Exceeding operating restrictions which limit a synthetic minor source's potential to emit and which result in emissions above the thresholds which define a major source, under the Federal Operating Permit program, pursuant to OAR 340-28-110(57);
- H. Causing emissions that are potentially a hazard to public health and welfare;
- I. Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;
- J. Constructing or operating a source without a valid Air Contaminant Discharge Permit and/or federal operating permit;
- K. Modifying a source with an Air Contaminant Discharge Permit and/or federal operating permit without first notifying and receiving approval from the Authority;
- L. Failing to perform testing, monitoring, or record keeping required by a permit, rule or order;
- M. Failing to submit semi-annual compliance certifications;
- N. Failing to file a timely application for a Federal Operating Permit pursuant to OAR 340-28-2120;
- O. Violating a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- P. Storing or accumulating friable asbestos material or asbestos-containing waste material from an asbestos abatement project which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- Q. Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation or disposal of asbestos-containing waste material;
- R. Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor.

- S. Violating a disposal requirement for asbestos-containing waste material which causes a potential for public exposure to asbestos or release of asbestos into the environment;
  - T. Illegal open burning of materials prohibited by Sub-Section 47-015-1.E;
  - U. Failing to provide access to premises or records when required by law, rule, permit or order;
  - V. Submitting falsified actual or calculated emission data;
  - W. Any other violation related to air quality which causes a major harm or poses a major risk of harm to public health or the environment.
2. Class Two
- A. Violating standards in permits or rules for fugitive dust, particulate deposition or odors;
  - B. Illegal open burning of commercial, construction and/or demolition waste;
  - C. Illegal residential open burning;
  - D. Failing to report excess emissions due to upset or breakdown of air pollution control equipment;
  - E. Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;
  - F. Under-reporting of the amount of asbestos involved in an asbestos abatement project;
  - G. Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;
  - H. Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;
  - I. Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;
  - J. Failure to provide notification of an asbestos abatement project;
  - K. Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR Chtr 340, Division 160;
  - L. Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.
  - M. Failing to submit a complete Air Contaminant Discharge Permit application 60 (sixty) days prior to permit expiration or prior to modifying a source;

- N. Exceeding operating restrictions which limit a synthetic minor source's potential to emit, but which does not result in emissions above the thresholds which define a major source, under the Federal Operating Permit program, pursuant to OAR 340-28-110(57);
  - O. Failure to pay a fee required by the federal operating permit program.
  - P. Substantial underpayment of a fee required by the federal operating permit program.
  - Q. Submitting inaccurate actual or calculated emission data.
  - R. Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;
  - S. Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;
  - T. Selling any chlorofluorocarbon- or halon-containing product prohibited under ORS 468A.635.
3. Class Three
- A. Failing to file a Notice of Construction;
  - B. Failing to report as a condition of a rule, compliance order or permit;
  - C. Improper notification of an asbestos abatement project;
  - D. Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

#### Section 15-060 Selected Magnitude Categories

Magnitudes for selected violations may be determined as follows:

- 1. Opacity limitation violations:
  - A. Major--opacity measurements or readings of more than 25 percent opacity over the applicable limitation;
  - B. Moderate--opacity measurements or readings from greater than 10 percent to 25 percent or less opacity over the applicable limitation;
  - C. Minor--opacity measurements or readings or 10 percent or less opacity over the applicable limitation.
- 2. Steaming rates and fuel usage limitations:
  - A. Major--greater than 1.3 times any applicable limitation;
  - B. Moderate--from 1.1 to and including 1.3 times any applicable limitation;
  - C. Minor--less than 1.1 times any applicable limitation.

3. Magnitude determinations for Air Contaminant Discharge Permit emission limitation violations for selected air pollutants shall be made based upon the following table:

	AMOUNT
Carbon Monoxide	100 tons
Nitrogen Oxides	40 tons
Particulate Matter	
A. TSP	5 tons
B. PM <sub>10</sub>	5 tons
Sulfur Dioxide	40 tons
Volatile Organic Compounds	40 tons
Lead	1200 lbs
Mercury	200 lbs
Beryllium	0.8 lbs
Asbestos	14 lbs
Vinyl Chloride	1 tons
Fluorides	3 tons
Sulfuric Acid Mist	7 tons
Hydrogen Sulfide	10 tons
Total Reduced Sulfur (including hydrogen sulfide)	10 tons
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons

A. Major:

- (1) Exceeding the annual amount, as established by permit, rule or order, by more than the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by more than 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by more than 0.5 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by more than 0.1 percent of the above amount.

B. Moderate:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 50 up to and including 100 percent of the above amount;



- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 5 up to and including 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.25 up to and including 0.50 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.10 percent of the above amount.

C. Minor:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 5 up to and including 50 percent of the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 0.25 up to and including 5 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.25 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount of 0.05 percent or less of the above amount.

4. Hazardous air pollutant violations:

- A. Major--exceeding the applicable emissions limit by two (2) times the de minimus rate;
- B. Moderate--exceeding the applicable emissions limit by one and a half (1-1/2) to two (2) times the de minimus rate;
- C. Minor--exceeding the applicable emissions limit by less than one and a half (1-1/2) times the de minimus rate.

5. Federal operating permit program violations:

- A. Major--missing filing deadline by thirty (30) calendar days or more; filing false or misleading information in application;
- B. Moderate--missing filing deadline by seven (7) to twenty-nine (29) calendar days;
- C. Minor--missing filing deadline by less than seven (7) calendar days.

6. Asbestos Violations:

- A. Major--more than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;
- B. Moderate--from 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;

- C. Minor--less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material.
  - D. The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5 percent asbestos.
7. Asbestos Air Clearance Violations:
- A. Major--more than .1 fibers per cubic centimeter;
  - B. Moderate--more than .05 fibers per cubic centimeter up to and including .1 fibers per cubic centimeter;
  - C. Minor--more than .01 fibers per cubic centimeter up to and including .05 fibers per cubic centimeter.
8. Open Burning Violations:
- A. Major--open burning of material constituting more than 5 cubic yards in volume;
  - B. Moderate--open burning of material constituting from 1 up to and including 5 cubic yards in volume;
  - C. Minor--open burning of material constituting less than 1 cubic yard in volume.

#### Section 15-065 Appeals

1. Any person who is issued a corrective action order or who is assessed with a civil penalty under Title 15 may appeal such order or penalty to the Authority within twenty-one (21) days of the date of mailing of the notice. The hearing and appeal shall be conducted according to Title 14 of these rules.
2. In reviewing the order or the penalty assessed by the Director, the Hearings Officer shall consider the factors set forth in Section 15-030, the findings of the Director and the evidence and argument presented at the hearing. The Hearings Officer shall make findings as to those factors deemed to be significant.
3. Unless the issue is raised in respondent's answer to the order or notice of assessment of civil penalty, the Hearings Officer may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.
4. If a timely request for a hearing is not received by the Authority, the Director may issue a final order upon default based upon a prima facie case as provided in Sections 14-175.4.C and 14-205.2. If the penalty is not paid within ten (10) days of issuance of the final order, the order shall constitute a judgement and may be filed as provided in ORS 468.135(4).

LANE REGIONAL AIR POLLUTION AUTHORITY  
 BOARD OF DIRECTORS MEETING  
 TUESDAY--MARCH 8, 1994  
 SPRINGFIELD CITY COUNCIL CHAMBERS  
 225 North 5th Street  
 Springfield, Oregon

**ATTENDANCE:**

**Board** Steve Dodrill, Chair--Eugene; Terry Callahan--Oakridge; Marie Frazier--Lane County; Mark Hommer--At-Large; Kevin Hornbuckle--Eugene; Gretchen Nicholas--Eugene  
 (ABSENT: Ralf Walters--Springfield)

**Staff** Don Arkell--Director, Mike Tharpe, Kim Partridge, Sharon Allen, Merrie Dinteman

**OPENING:** Dodrill called the meeting to order at 12:13 p.m.

**MINUTES:** MSP (Frazier/Callahan)(unanimous) approval of the minutes of the February 8, 1994 meeting, as submitted.

**EXPENSE REPORT:** Sharon Allen distributed a spreadsheet showing the amounts originally budgeted for FY 93/94 and the effects of the supplemental federal grant funds received thus far during the same time period. Expenditure of the funds for each grant is approved by resolution by the board, and the spreadsheet showed the distribution of each grant, by resolution number.

RECEIVED  
 MARCH 10 1994  
 SPRINGFIELD CITY COUNCIL CHAMBERS  
 225 NORTH 5TH STREET  
 SPRINGFIELD, OREGON

Dodrill commented that the report seemed to indicate that AIRmetrics is falling behind anticipated revenues and asked whether there are any problems. Allen responded that the amount budgeted is higher than what is actually expected, to avoid having to go back to the budget committee for a supplemental budget if the amount were to exceed the budget.

**\*\* Action \*\*** MSP (Hommer/Nicholas)(unanimous) approval of expense report through February 28, 1994, as presented.

**ADVISORY COMMITTEE:** Kim Partridge reported that the committee began working on PM10 redesignation for Eugene-Springfield in February and is expected to continue with that project for the next nine or ten months.

**PUBLIC PARTICIPATION:** None.

<p>★                  PUBLIC HEARING--                  PROPOSED AMEND-                  MENTS TO LRAPA                  TITLE 15                  (ENFORCEMENT):</p>	<p>Arkell said comments on the proposed amendments to Title 15 were received the previous week, and the rule proposal was revised to reflect those and other comments and LRAPA's responses.</p>
<p>Public Hearing</p>	<p>Dodrill opened the public hearing at 12:19 p.m. There was no one present who wished to comment on the proposed amendments, the public hearing was closed at 12:19.</p>
<p>Discussion</p>	<p>Nicholas asked whether the issue of board involvement in civil penalty mitigations still needed to be resolved. Arkell responded that the board had decided that the director's decision on mitigations would be final except for Class I major violations</p>



of the \$10,000 penalty matrix. Nicholas expressed concern that board review of the large penalties not extend the process for a long period of time. Arkell said that the large penalties are expected to be negotiated at the staff level over a two to three month period prior to being brought to the board and that board involvement would add no more than a month to the process. He said experience has shown that the step of bringing the mitigation request before the board has not delayed implementation of any compliance schedules associated with the order, and the matters are resolved fairly expeditiously once the negotiations are concluded. Arkell added that he plans to keep the board informed of progress during negotiations and bring the board in at the time when decisions must be made, rather than waiting until the agreement is already accomplished before involving the board in it.

Nicholas was also concerned that citizens be informed about the increased penalties for open burning violations so that it doesn't take them by surprise. She asked how such notification is accomplished. Arkell said the most cost effective medium is newspaper articles. He said that notice regarding previous open burning rule changes was mailed to over 900 individuals who had obtained burning permits in the affected areas, and some of those people still said they were unaware of the rule changes. The agency does have a list of LRAPA permitted sources and other interested parties to which notices are mailed, in addition to newspaper, TV and radio coverage.

Frazier asked whether the enhanced penalties will result in additional staff costs, and also whether the penalties will still go to the county. Arkell explained that, with increased penalties, the possibility of increasing frequency of contested cases also goes up. He said that additional staff costs would likely be for legal assistance rather than regular staff. The small penalty cases which are contested are the ones that cause the financial problems, because the cost of legal assistance may exceed the amount of the penalties, using up available funds and leaving the agency in a weakened position from which to pursue the larger cases. He pointed out that the Authority's request to the county for reimbursement of legal costs for enforcement becomes even more important with the likelihood of increased contested cases. Frazier said the requested had gone to Finance and Audit, and some questions were raised. Arkell said he would contact Margo Drivas to discuss the questions.

Hornbuckle asked whether the higher cost associated with more contested cases was part of the justification for the larger penalty amounts. Arkell responded that the increase in penalties is due primarily to requirements of the federal Clean Air Act and corresponding state rules.

Arkell also said there were some small errors in the rule draft, mostly where the changes in response to comments did not get put into this draft. The changes will be made in the final version of the rules.



**\*\* ACTION \*\*** MSP (Callahan/Nicholas)(Unanimous) adoption of amendments to Title 15, "Enforcement."

**PUBLIC HEARING--  
PROPOSED AMEND-  
MENTS TO TITLES  
12 (DEFINITIONS)  
AND 33, AND  
ADOPTION OF NEW  
TITLE 30  
(INCINERATORS):**

Arkell said this was the package of rule changes which received the most comments. Most were relatively minor technical comments in Title 12, the definitions section of the rules. The proposal attempts to put all definitions used throughout the rules into one title and then to reference words and terms used in each of the other titles, as needed. There are several words or terms which are used differently in different titles and so require more than one definition in Title 12. Staff has attempted to simplify use of the rules and avoid confusion by putting all definitions in one place instead of in the individual titles.

As with the draft Title 15, Arkell said, there were some small errors in the drafts for Title 12. He pointed out a few of those errors so that the board could see the types of changes to be made in the final version of the rules. Examples are: (1) on page 27 of Title 12, under the definition of "source," the word "except" should be taken out because the word "source" does need to be defined for use in the two titles which the word "except" would exclude; (2) on page 28, under the definition of "startup-shutdown" and the second definition of "start-up," the word "except" and the words "Title 36 and" should be omitted. Arkell said that the changes would not change the intended meaning of the rules. In each case, LRAPA staff agreed with the comments received, and it just did not get entered into the draft rules.

**Public Hearing**

Dodrill opened the public hearing at 12:38 p.m. There was no one present who wished to comment on the rule proposals. Dodrill asked Arkell whether there was any additional material submitted which was not in the agenda packets. Arkell responded that there had been no further written comments or phone calls received. The hearing was closed at 12:38 p.m.

**Discussion**

Dodrill asked whether the board felt comfortable with making the minor changes which Arkell had described, after the fact. Consensus was that the changes were not substantive and seemed to be consistent with the intent of the rules.

**\*\* ACTION \*\***

MSP (Frazier/Nicholas)(Unanimous) to rescind Section 33-020, the existing incinerator rules.

MSP (Callahan/Frazier)(Unanimous) to adopt new Title 30 incinerators rules.

MSP (Frazier/Hornbuckle)(Unanimous) to adopt amendments to Title 12 definitions.

**AUTHORIZATIONS TO  
EXPEND FEDERAL  
SUPPLEMENTAL  
GRANT FUNDS--**

Allen explained that the next four items on the agenda were resolutions authorizing expenditure of federal supplemental grant funds for which LRAPA was able to qualify after the current budget was adopted last year. The first one, Resolution Number 94-7, was to upgrade the engineering services data system.

**(1) ENGINEERING  
SERVICES DATA  
SYSTEM UPDATE**

Allen said this was a pass-through grant from EPA through DEQ and that, in addition to a person to do the work, the grant would also pay for creation of a work area and for a computer, both of which

(2) OAKRIDGE  
PM10 STUDY

will be used in the future when interns are brought in to work on these special projects.

(3) NORTH EUGENE  
MONITORING SITE

Staff has found that the information currently in the data system often does not reflect what is actually the case. The work being accomplished under this grant is to develop an emissions inventory form to send out to air contaminant sources, to validate the information received and enter it into the system. The end result will be to update the system, itself, as well as the information in the system.

(4) WOODSTOVE  
EDUCATION

Frazier suggested that all four resolutions be acted on at the same time, since all were related to supplemental grant funding for special projects.

**\*\* ACTION \*\*** MSP (Frazier/Callahan)(Unanimous) adoption of LRAPA Resolutions Numbers 94-7, 94-8, 94-9 and 94-10.

**DIRECTOR'S REPORT:** Arkell spoke about two items of good news for LRAPA.

CO Redesignation EPA has officially redesignated Eugene-Springfield as an attainment area for carbon monoxide. It will be more expeditious to do the transportation types of planning and longer-range issue resolution that the community is involved with now, without the constraints of having a CO non-attainment designation and having to deal with that. However, Arkell said, redesignation does not mean that nothing more needs to be done for CO. The standards must be maintained for the next ten years, as part of the redesignation. In addition, in eight years, we must submit information to EPA detailing how we plan to maintain the standards for another ten years. There is also a new set of federal rules called "conformity rules" which will require all federally funded projects and programs having to do with transportation to conform to the State Implementation Plan as it relates to CO attainment in Eugene-Springfield. LRAPA is in the process, now, of working with LCOG, the Department of Transportation, and others involved in transportation planning, to ensure that conformity is preserved when decisions are made on projects and programs in this area.

PM10 Emissions LRAPA has updated its emissions inventory, and it is estimated that total emissions from woodstoves in the Eugene-Springfield urban area is now down by about half from what it was at the time the last emissions inventory was performed. The number of households that use wood as the primary source of heat is down by about a third, and those households which still use wood are using less of it. Staff has never been completely comfortable with attributing the lower wintertime air contaminant levels to the home wood heating curtailment efforts, because it was not known for sure what effect the weather had on the levels, in conjunction with the curtailment programs. The wintertime weather since 1985/86, when air standards were exceeded due to cold stagnant weather and buildup of emissions from home wood heating, has been different in that there have been no such prolonged periods of air stagnation. The current heating season did have some periods of air stagnation similar to those which occurred in 1985/86. The fact that PM10 levels remained well

below the standard during those times does tend to demonstrate that the curtailment program is having the desired effect.

The situation in Oakridge is not quite as good, although there were no violations of the PM10 standard in Oakridge this year. A saturation study performed this winter indicates that the Willamette City area is still the high impact area, and we picked up some levels which were higher than when a similar study was performed two years ago. The centerpiece of the attainment strategy proposed for the Oakridge PM10 SIP is to continue to accelerate turn-over rate for old woodstoves, through loans and grants for low-income households, rather than institute a mandatory curtailment program. We want to get as much of a reduction in emissions as possible through replacement rather than having to go up to Oakridge whenever there's a red day and issue tickets to people. We're still looking for a more permanent source of revenue for the grant program, which has awarded about \$200,000 to date, replacing a little over 100 stoves. It is estimated that 50 to 100 more stoves will need to be replaced in order to demonstrate compliance with the standard in Oakridge.

The person who has been working on the SIP document for Oakridge was bought out by another company, and the new company is now negotiating a new contract with LRAPA for the individual to continue the SIP development process. The SIP is expected to be completed and ready for public hearing and adoption by June of this year.

**OLD BUSINESS:**

Employee compensation review. Dodrill reported that he, Don Nelson and Don Churnside met in January to discuss concerns about the upcoming budget process and consideration of employee salaries and benefits. Sharon Allen provided a document for them which compares LRAPA's salaries and benefits with five other air pollution control agencies in the West. At Don Nelson's request, Dodrill related two main concerns to the board and asked for discussion:

1. Pension contribution. LRAPA currently contributes 14 percent of salaries into a pension fund for employees. The employees are not required to contribute any of the 14 percent. Nelson would like to see LRAPA's contribution to employees' pension accounts rolled back to 5 or 6 percent, with the employees contributing more if they wish, up to the 14 percent.
2. Salary increases for the coming year. LRAPA employees are eligible each year for a 2.5 percent longevity increase and a 2.5 percent merit increase. In addition, there is sometimes a cost-of-living adjustment (COLA) increase. Nelson believes that COLA increases should be capped at 3 percent, and he does not want to see any COLA this year. Also, if there were any decreases in salary, Nelson would like to see that amount of reduction in the LRAPA contributions from the cities and the county, instead of having the funds returned to LRAPA's general fund, to be used for other purposes.

Nicholas said she would not feel comfortable making that type of decision without a lot more detailed information. She feels that it is appropriate for salaries and pension benefits to be somewhat keyed to the market. While she does not think LRAPA's salary and pension plans should be higher than other agencies', she does not want to see the board make a move which would jeopardize LRAPA's ability to compete, with regard to recruitment and employee retention.

Hornbuckle agreed with Nicholas and said he would also like to see more information before making any decisions, but his initial response is that he would not support a rollback in the pension plan contribution.

Frazier asked whether the PERS ballot measure later this year will have any effect on LRAPA's pension plan. Arkell said LRAPA's plan is a private plan through a private company and is not like PERS. Allen said LRAPA's plan is the same as the City of Springfield's, except that LRAPA is too small to contract a plan like theirs with a larger guaranteed fund percentage. LRAPA's plan's earnings rate fluctuates up and down with the market and the economy, and LRAPA employees are not guaranteed a certain amount at retirement. Frazier commented that, with the PERS initiative on the ballot, maybe something should be done with LRAPA's plan, too. She also said she would like to see written recommendations from the subcommittee, since the budget committee will need that information to help them to make the necessary decisions during the budget preparation process.

Dodrill said he does not feel that a rollback of the retirement contribution is appropriate. He said the budget committee should look at cost of living increases, but he feels that LRAPA salaries and pension contributions seem to be in line with those of similar agencies. Dodrill said that Don Nelson plans to leave March 11 and will be out of town for five weeks. Since Nelson will not be back until after the budget committee meets, Dodrill will ask him to submit a written report before he leaves.

Arkell said staff will provide the board with the same information which was sent to the subcommittee. He said that, since it is necessary to get on with preparation of the FY 94/95 budget, staff would like to proceed on that with the retirement plan as it is now, and as the budget committee reviews other information, they can request changes in the budget document, if necessary. Arkell said staff had anticipated that the committee would not want to see a COLA this year. He added that there are ramifications to major changes in the retirement plan, and the board will need more information before providing final guidance on that point.

**NEW BUSINESS:** Budget Committee Appointment. Mark Hommer recommended appointment of Jay Maudlin of Dexter to the LRAPA Budget Committee.

**\*\* ACTION \*\*** MSP (Callahan/Frazier)(Unanimous) appointment of Jay Maudlin to the LRAPA Budget Committee.



One more appointment needs to be made to the committee by next month. Charlie Ward's appointment, representing Eugene, expired in December. Dodrill said he will contact Ward to determine whether Ward wishes to serve another term on the committee.

New board members. Frazier welcomed both Mark Hommer and Kevin Hornbuckle to the LRAPA Board of Directors.

New staff member. Arkell announced that Craig Bressan, from Cleveland, Ohio, has accepted the position of permit specialist and will start April 5, working on Title V operating permits. Mike Tharpe said Bressan has had experience with most aspects of LRAPA's operations, including permitting, compliance and ambient monitoring, and should be able to pick up his duties with minimal training.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at 1:20 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, April 12, 1994, at 12:00 p.m. in the Springfield City Council Chambers.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary

# ATTACHMENT C

## Enforcement Procedures

LRAPA Adoption of June 13, 1995

**AGENDA ITEM NO. 7****LRAPA Board of Directors Meeting****June 13, 1995**

TO: Board of Directors

FROM: Don Arkell, Director

SUBJ: Public Hearing--Proposed Amendments To LRAPA Titles 15 and 34

**DESCRIPTION OF PROBLEMS AND PROPOSED SOLUTIONS****1. Title 15--Enforcement Procedures and Civil Penalties****A. Description of Problem Number 1**

Section 15-055 classifies different violations according to severity, as Class One, Class Two or Class Three. Among the violations listed as Class One are all emission limit or opacity violations. In addition, the more severe violations of emissions and opacity are listed as Class One. Listing all violations of this type, as well as a subset, under the same class appears to be an oversight. It is reasonable to reclassify one of these so that the most severe violation is listed in a higher class than the less severe violation. In this case, the severity is described in terms of magnitude over the standard and distance from sensitive air quality areas.

**Background**

Opacity is a measurement of visible emissions. The technical definition of opacity is the percentage of transmitted light which is obscured by a visible plume of smoke or dust. Opacity is measured by a meter in the stack or visually by a trained observer at the point of discharge. Emission limits are usually described in terms of pounds per hour, grains per standard cubic foot, or tons per year.

**Suggested Solution**

Move 15-055-1.C to the Class Two classification section, 15-055.2, and cross-reference the two items to ensure correct classification of violations according to severity.

**B. Description of Problem Number 2**

Illegal residential open burning is a Class Two violation by LRAPA regulations. The Class Two civil penalties are too high for the magnitude of harm caused by unlawful residential open burning.

Background

The penalty amounts associated with Class Three would generally be more in line with what would be expected for illegal residential open burning. The penalty range for Class Two violations is \$200 to \$750, while for a Class Three violation the range would be \$50 to \$250.

Suggested Action

Make illegal residential open burning a Class Three violation by moving 15-055-2.C to 15-055-3.

C. Description of Problem Number 3

Failing to report information required by a rule, compliance order or permit is a Class Three violation in LRAPA regulation, while it is a Class Two violation in DEQ regulations.

Background

When companies fail to submit these reports, it makes it difficult for the Authority to determine compliance with permit conditions and regulations. Because of this, we believe this should be a Class Two violation.

Suggested Action

Make this a Class Two violation by moving 15-055-3.B to 15-055-2.

D. Description of Problem Number 4

Currently the investigative process we go through when a violation is observed may take two to three weeks. Once we have all the facts, the paperwork necessary to document and issue the enforcement action may take an additional two to three weeks. This delay in getting the violation to the responsible party reduces the immediate deterrent effect of the action, and any new information discovered during an appeal process can cause a change in the findings or amount of calculated penalty.

Background

The Notice of Non-Compliance (NON) is, by rule, the lowest level of official enforcement action. Although there is no penalty, NON's are considered prior violations, are non-appealable, and should be issued after full investigation. Some agencies use a system of preliminary notice and conference prior to determining a penalty. While the current LRAPA regulations arguably do allow implementation of a similar system, it would be better to more clearly define this process in the regulations.

### Suggested Action

- (1) Change the definition of "prior violation" in Title 15 to delete reference to Notice of Non-Compliance and Notice of Permit Violation. This would make these types of non-appealable notices exempt from use as prior violations when calculating penalties for any future violations. An NON would simply be a preliminary notice documenting the violation and which would, as appropriate, direct corrective action, warn the violator not to violate again, or be followed by further action which could involve penalties.
  - (2) In Section 15-020-1, entitled, "Notice of Non-Compliance," add a subsection D which states: "[Notices of Non-Compliance] may be issued prior to issuance of a Notice of Civil Penalty or an Order." This would provide the mechanism to put a source on preliminary notice of a violation in a timely manner and also give staff time to more thoroughly investigate the facts and consult with the violator and/or complainant before deciding the appropriate course of action.
2. Title 34--Stationary Source Rules and Permitting Procedures. This proposed amendment relates to fees charged for Synthetic Minor Permits (SMPs). Staff wishes to revise the proposal to apply the fee changes more narrowly. Since the revised proposal could provide less relief from fees than the original proposal, staff believes the rulemaking process should be re-started for the revised proposal.

### Description of Problem

The regulations as currently written require sources applying for a Synthetic Minor Permit (SMP) to also have an Air Contaminant Discharge Permit (ACDP) and to pay all fees associated with both permits. In effect, the SMP fee is a surcharge which reflects the additional work to process the SMP application and to determine compliance annually with the SMP conditions, which are in addition to ACDP conditions.

### Background

Title V federal operating permit requirements apply to major sources having potential to emit more than 100 tons per year (TPY) of any criteria pollutant, or 10 TPY of any hazardous air pollutant (HAP) or an aggregate of 25 tons of HAPs per year. Those sources wishing to avoid the Title V Operating Permit Program can do so by limiting their emissions to a level below the applicable Title V threshold level. The emission limits are achieved through operational limits such as general production hours or rates of operation. Those sources are issued SMPs.

The rules require that these sources also have an Air Contaminant Discharge Permit (ACDP) and to pay the standard permit review and annual inspection fees associated with this ACDP. The SMP fee is added to the ACDP fee to cover the additional work of processing and compliance determination.

There have been a few cases where the SMP work and the ACDP work have overlapped. This occurs in cases where a single facility on a plantsite, such as a gas-fired boiler with oil backup, would require a Title V permit only because of the boiler's potential to emit more than 100 TPY, due to the fact that the boiler is capable of burning fuel oil for an extended period. It is relatively simple to evaluate a source with a single facility for both SMP and ACDP. Charging the full fee rate for both of these activities is double dipping. It was originally proposed to reduce all SMP fees to alleviate this problem. This would make LRAPA SMP fees significantly lower than those charged by DEQ.

#### Revisions to Proposal

The problem of double-dipping is confined to a few synthetic minor sources with one or two simple, straightforward processes which don't require much additional analysis to satisfy both SMP and ACDP compliance assurance requirements. The original proposal would reduce the SMP fees across the board from \$1,000 to \$300 for permit application or modifications and \$200 for the annual compliance assurance determinations for all SMPs, both simple and complicated. The full fees should apply to multi-facility, more complex sources, as there is considerably more work than with the simple sources. The revised proposal is to limit the SMP fee reduction to those cases which are simple to evaluate because they have only one or two simple facilities, such as spray painting, gas boilers, and dry kilns. If the board agrees with this revised recommendation, a re-proposal is necessary, including the public notice and comment process. We would recommend that a new public hearing date be scheduled for September 12.

### **PUBLIC NOTICE AND COMMENT**

Notice of the June 13 hearing was published in local newspapers and in the May 1 edition of the Secretary of State's Bulletin. The proposed amendments were submitted to the DEQ for review and comment. DEQ indicated that the proposed rules are at least as stringent as state rules and has authorized LRAPA to act as hearings officer for EQC at the June 13 hearing. No comments were received from EPA.

### **OPTIONS FOR BOARD ACTION FOR TITLE 15**

1. Do not adopt the proposed amendments. The problems with the enforcement rules, described above, would continue to exist.

Proposed Rule Amendments (Titles 15 and 34)  
June 13, 1995

-5-

2. Adopt amendments to Titles 15 as proposed. The problems with the enforcement rules would be alleviated.

#### **OPTIONS FOR BOARD ACTION FOR TITLE 34, TABLE A**

1. Adopt amendments to Title 34 as proposed. This would result in fee relief for all SMP sources. In cases of larger, more complex sources, the lower SMP fees would not be adequate to cover costs associated with permitting of synthetic minor sources.
2. Do not take action on the original proposal. Authorize another public hearing on September 12 for a revised proposal which would reflect a more accurate relationship between the costs involved in the permitting process and the fees charged.

#### **DIRECTOR'S RECOMMENDATION**

It is recommended that the board adopt the proposed amendments to Title 15 as proposed. It is further recommended that a future hearing be authorized for amendment of the fees in Title 34, Table A, for selected synthetic minor permits.

DRA/LWT/mjd

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### Legal Authority

ORS 183, 468.065, 468A.135 and 468A.155, OAR 340-11-010 and 340-28-1750 and LRAPA Titles 13, 14, 15 and 34, and the Federal Clean Air Act Amendments of 1990.

### Need for Amendments

#### Title 15:

- Two categories of violations, all emission limit or opacity violations and higher-magnitude emissions and opacity violations, are currently listed as Class One violations. It is proposed to reclassify the broader category of all emission limit or opacity violations as a Class Two violation, subject to a lower civil penalty range.
- Illegal residential open burning is currently included among Class Two violations, for which the civil penalties are too high for the magnitude of harm caused by this type of violation. It is proposed to reclassify illegal residential open burning from a Class Two to a Class Three violation.
- Currently, delays in notifying a respondent of a violation occur due to the need for complete investigation. It is proposed to change the rules to allow Notice of Non-Compliance to be used as an initial notification of existence of a violation. This change would provide a clear process for immediate notification of the violation situation while still allowing sufficient time to complete a more thorough investigation before deciding the appropriate course of action.

#### Title 34:

- Sources which opt for Synthetic Minor status are also subject to Air Contaminant Discharge Permits and are charged permit processing and compliance inspection fees for both permits under the current fee schedule. The same review process can cover both permit requirements, and charging the current full fees constitutes double dipping. It is proposed to amend LRAPA's permitting fee schedule to reduce the fees charged in Table A, Part I, for Synthetic Minor Permits.



Statements of Need and Fiscal Impact  
Proposed Amendments to LRAPA Titles 15 and 34  
Hearing Date: June 13, 1995  
-2-

Principal Documents Relied Upon

1. Attorney General's Uniform and Model Rules of Procedure
2. LRAPA Titles 13, 14, 15 and 34 (Table A)
3. LRAPA Memorandum to Interested Persons, March 24, 1995
4. Clean Air Act Amendments of 1990
5. ORS 183, 468 and 468A et. seq.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

1. ENFORCEMENT

A. Public. Under proposed changes to Title 15, persons who conduct illegal residential burning would incur lesser penalties.

B. Regulated Businesses.

(1) Notices of non-compliance will be issued in a more timely manner. More information will be available prior to determination of appropriate civil penalties and economic benefit.

(2) Notices of Non-Compliance will not be included when calculating penalties for future violations.

C. Other Agencies. No apparent impact.

2. PERMIT FEES

A. Public. No apparent impact.

B. Regulated Businesses. Fees for synthetic minor sources will be reduced by \$1,600 for each permit application or modification, and by \$800 annually for compliance determinations.

C. Other Agencies. No apparent impact.

**LAND USE CONSISTENCY STATEMENT**

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

MAY - 4 1995

# OREGON BULLETIN

VOLUME 34, No. 11  
Issue Date: May 1, 1995

This issue contains Notices of Proposed Rulemaking officially filed March 16, 1995, 8 am through April 14, 1995, 5 pm, and resumes of the Administrative Rule Orders filed for which the Secretary of State's office has completed filing standards review. Administrative Rule Orders which have been filed but have not yet undergone the review will be published in the next issue of the Oregon Bulletin.



Published by  
**PHIL KEISLING**  
Secretary of State

.....

**Environmental Quality, Department of  
Chapter 340**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-13-95	12:15 pm	City Council Chambers Springfield City Hall 225 North 5th St. Springfield, OR

**Hearing Officer:** Donald R. Arkell

**Statutory Auth.:** ORS Chs. 183 and 468A

**Proposed Amendments:** 340-20-047, LRAPA Titles 15, "Enforcement Procedures and Civil Penalties", and 34, "Stationary Source Rules and Permitting Procedures" (Table A, Part I)

**Last Date for Comment:** 6-12-95

**Summary:** LRAPA Title 15. It is proposed to amend Lane Regional Air Pollution's enforcement rules to:

Reclassify emission limit or opacity violations from Class One violations to Class Two violations. This provides a lower range of civil penalties. More serious emissions and opacity violations will remain as Class One violations.

Reduce the penalty range for residential open burning as a Class Three violation instead of Class Two.

Change the definition of "prior violation" to delete reference to Notice of Non-Compliance (NON) and Notice of Permit Violation (NPV). The NON will be considered a preliminary notice which documents violations and, as appropriate, directs corrective action, notifies of further enforcement action or warns of further enforcement action upon repeat violation.

Add conforming language in describing Notice of Non-Compliance.

The NPV, alone, will not be considered a prior violation for the purpose of assessing civil penalties.

LRAPA Title 34. Sources which opt for Synthetic Minor status are required to obtain Air Contaminant Discharge Permits which have certain additional record-keeping and reporting requirements. The same review process can cover both permit requirements. Fees are to be based on anticipated costs of issuing permits. Charging both sets of fees in these cases constitutes double dipping. It is proposed to amend LRAPA's industrial permitting fee schedule to reduce the fees charged in Table A, Part I, for Synthetic Minor source permits.

**Rules Coordinator:** Christopher Rich

**Address:** 811 SW 6th Ave., Portland, OR 97204

**Telephone:** (503) 229-6775

.....

# Affidavit of Publication

State of Oregon  
County of Lane

I, Corrine Mello, being first duly sworn, depose and say that I am Office Manager of The Cottage Grove Sentinel, a newspaper of general circulation, as defined by ORS 193,010, and 193,020, printed and published at Cottage Grove in the aforesaid county and state; that

Notice of intent to adopt rule amendments

a printed copy of which is hereto annexed, was published once a week in the entire issue of said newspaper for \_\_\_\_\_ successive and consecutive weeks in the following issues: \_\_\_\_\_

5/10/95

**NOTICE OF INTENT TO ADOPT AMENDMENTS TO**

**OREGON'S AIR QUALITY IMPLEMENTATION PLAN**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title "Enforcement Procedures and Civil Penalties."

Specific changes include: reclassify the category of all emission limit or opacity violations from a Class One to a Class Two violation, subject to a lower civil penalty range; reclassify of the category of illegal residential open burning from a Class Two to a Class Three violation, subject to a lower civil penalty range; change the definition of "prior violation" to delete reference to Notice of Non-Compliance (NON) and Notice of Permit Violation (NPV); amend wording in appropriate sections to provide a clear process for immediate notification that a violation situation exists while still allowing sufficient time to complete a more thorough investigation before deciding the appropriate course of action for the violation.

To amend LRAPA Title "Stationary Source Rules and Permitting Procedures." Specific changes include: correct an over-charge situation by reducing the total fees to

which Synthetic Minor Permits are subject (Table A, Part I).

WHO IS AFFECTED: Persons subject to Air Contaminant Discharge Permits,

Synthetic Minor Permits, Federal Operating Permits in Lane County; persons involved in asbestos abatement in Lane County; persons who engage in open burning in Lane County; and anyone else who may engage in unlawful activity in violation of LRAPA rules.

**PUBLIC HEARING:**

Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:

Location: City Council Chambers Date: Tuesday, June 13, 1995

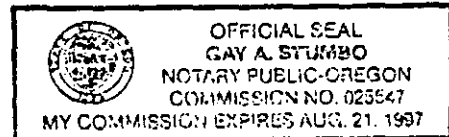
Springfield City Hall  
225 North 5th Street  
Time: 12:15 p.m.

Springfield, Oregon

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall building), Springfield, Oregon until June 13, 1995. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514; or written comment may be submitted until June 13, 1995, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

Corrine Mello  
Subscribed and sworn to before me  
this 10 day of May; 19 95.

Gay A. Stumbo  
Notary Public for Oregon  
(My commission  
expires ) 8/21/97





# Affidavit of Publication

State of Oregon  
County of Lane

I, Larry Roberts being first  
duly sworn deposes and say that I am the  
Publisher of the Dead Mountain  
Echo, a newspaper of general circulation pub-  
lished at Oakridge, Oregon in the aforesaid county  
and state, as defined by ORS 193-010 ET SEQ  
that attached

.....  
a printed copy of which is hereto annexed, was  
published in the entire issue of said newspaper  
for 1 successive and consecutive weeks  
in the following issues

5-11-95 #5

Signed: [Signature]

Subscribed and sworn to before me this

30th day of May, 1995

[Signature] Notary Public of Oregon  
My commission expires: 2-11-97



Legal Notice Advertising

- LANE REGIONAL AIR  
ATTN: MERRIE DINTEMAN
- 225 N. 5TH, SUITE 501
- SPRINGFIELD, OR 97477-4671

- Tearsheet Notice
- Duplicate Affidavit

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, )  
COUNTY OF LANE, ) ss.

I, WENDY L. WALSH  
being first duly affirmed, depose and say that I am the Advertising  
Manager, or his principal clerk, of the Eugene Register-Guard, a  
newspaper of general circulation as defined in ORS 193.010 and  
193.020; published at Eugene in the aforesaid county and state;  
that the

NOTICE OF INTENT

a printed copy of which is hereto annexed, was published in the  
entire issue of said newspaper for ONE successive and  
consecutive DAY in the following issues:

MAY 10, 1995

**NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

To amend LRAPA Title 15, "Enforcement Procedures and Civil Penalties." Specific changes include: reclassify the category of all emission limit or opacity violations from a Class One to a Class Two violation, subject to a lower civil penalty range; reclassify the category of illegal residential open burn from a Class Two to a Class Three violation, subject to a lower civil penalty range; change the definition of "prior violation" to delete reference to Notice of Non-Compliance (NON) and Notice of Permit Violation (NPV); amend wording in appropriate sections to provide a clear process for immediate notification that a violation situation exists while still allowing sufficient time to complete a more thorough investigation before deciding the appropriate course of action for the violation.

To amend LRAPA Title 34, "Stationary Source Rules and Permitting Procedures." Specific changes include: correct an over-charge situation by reducing the total fees to which Synthetic Minor Permits are subject (Table A, Part I).

**WHO IS AFFECTED:**  
Persons subject to Air Contaminant Discharge Permits, Synthetic Minor Permits, Federal Operating Permits in Lane County; persons involved in asbestos abatement in Lane County; persons who engage in open burning in Lane County; and anyone else who may engage in unlawful activity in violation of LRAPA rules.

**PUBLIC HEARING:**  
Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:  
Location: City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon  
Date: Tuesday, June 13, 1995  
Time: 12:15 p.m.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 North 5th, Suite 501 (Springfield City Hall Building), Springfield, Oregon until June 13, 1995. The public may comment on the proposed regulation by calling the LRAPA business office, 726-2514; or written comment may be submitted until June 13, 1995, to the LRAPA Board of Directors, 225 North 5th, Suite 501, Springfield, Oregon 97477-4671.

No 17237 — May 10, 1995.

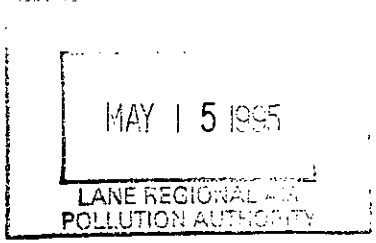


Wendy L. Walsh

Subscribed and affirmed to before me this 5/16/95

Debbie Buzalsky  
Notary Public of Oregon

My Commission Expires:



**NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:

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**WHO IS AFFECTED:** Persons subject to Air Contaminant Discharge Permits, Synthetic Minor Permits, Federal Operating Permits in Lane County; persons involved in asbestos abatement in Lane County; persons who engage in open burning in Lane County; and anyone else who may engage in unlawful activity in violation of LRAPA rules.

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**Affidavit of Publication**

STATE OF OREGON, COUNTY OF LANE - ss

I, Leota J. Emery being duly sworn, depose and say that I am the Legal Clerk of the Springfield News, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state: that the

LRAPA  
Notice of Intent to Adopt Amendments To Oregon's Air Quality Implementation Plan.

..... a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for..... successive and consecutive weeks in the following issues:

May 10, 1995

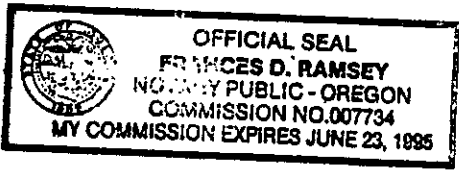
THE SPRINGFIELD NEWS

By Leota J. Emery

Subscribed and sworn to me this 10th day of May, 1995

Frances D. Ramsey  
Notary Public for Oregon

(My Commission expires June 23, 1995)



LANE REGIONAL



(503) 726-2514 • FAX (503) 726-1205  
 225 North 5th, Suite 501  
 Springfield, OR 97477-4671

AIR POLLUTION AUTHORITY

Donald R. Arkell, Director

## MEMORANDUM

To: Record of Adoption Proceedings, LRAPA Titles 15 and 34

From: Donald R. Arkell, Hearings Officer

Subject: Public Hearing, June 13, 1995

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority on June 13, 1995 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of amendments to LRAPA Title 15, "Enforcement Procedures and Civil Penalties," and Title 34, "Permits," Table A, "Air Contaminant Sources and Associated Fee Schedule."

Summary of Testimony

There was no public testimony presented at the hearing.

Written testimony was received from DEQ and EPA:

1. DEQ correspondence granted hearings officer authorization for EQC so that this could be a joint EQC/LRAPA hearing. DEQ also stated that the proposed rules met stringency requirements.
2. EPA correspondence indicated that, while the proposed rules were consistent with the DEQ rules, EPA had some concerns which it had also raised with DEQ. EPA suggested revisions to the proposal (see attached correspondence\*).

\* *The staff report for the June 13 board meeting indicates that no comments were received from EPA. The reason for this is that the letter from EPA was damaged by the post office and repackaged for delivery to LRAPA. It did not arrive until after the hearing date. Staff was aware of the EPA concerns with the state's rules but chose to keep LRAPA rules consistent with the state's.*



Hearings Officer's Report  
Amendments to LRAPA Titles 15 and 34

June 13, 1995  
-2-

Action of the LRAPA Board of Directors

Prior to the hearing date, staff reevaluated the proposed amendments to Title 34 and determined that the proposal should be revised. Because the revisions would substantially alter the original proposal, it is necessary to go through the notice and review process again with the new proposal. For that reason, staff requested that the board act only on the changes to Title 15 and authorize another hearing on revised amendments to Title 34, Table A.

Based on the information presented, the board voted unanimously to adopt the proposed amendments to Title 15. The board authorized public hearing on September 12, 1995 on a revised amendment proposal for Title 34, Table A.

DRA/MJD

*Changes are on pages 2, 5, 14, 15 and 16*

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 15

Enforcement Procedure and Civil Penalties

Section 15-001 Policy

1. The goals of enforcement are to:
  - A. Obtain and maintain compliance with the Authority's statutes, rules, permits and orders;
  - B. Protect the public health and the environment;
  - C. Deter future violators and violations; and
  - D. Ensure an appropriate and consistent enforcement program.
2. As required by this Title, the Authority will endeavor by conference, conciliation and persuasion to solicit compliance.
3. The Authority shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in subsection 1 of this section.
4. Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

Section 15-003 Scope of Applicability

These amendments shall apply to violations occurring on or after the effective date of such amendments. They shall not apply to cases pending. For purposes of determining Class and Magnitude of violation, only, LRAPA rules and regulations in effect prior to these amendments shall apply to violations occurring before the effective date of these amendments. For purposes of determining number and gravity of prior violations, these amendments will apply.

Section 15-005 Definitions

Words and terms used in this title are defined as follows, unless the context requires otherwise:

- "Class I (one) Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class II (two) violations, one Class II and two Class III (three) violations, or three Class III violations.
- "Compliance" means meeting the requirements of the Authority's or Department's, Commission's or EPA's rules, permits or orders.

- "Documented Violation" means any violation which the Authority or other government agency records after observation, investigation or data collection.
- "Enforcement" means any documented action taken to address a violation.
- "Federal Operating Permit Program" means a program approved by the DEQ Administrator under 40 CFR Part 70 (last amended by 57 FR 32295, July 21, 1992).
- "Flagrant" means any documented violation where the respondent had actual knowledge of the law and consciously set out to commit the violation.
- "Formal Enforcement Action" means an administrative action signed by the Director or authorized representative[s] which is issued to a respondent for a documented violation. A formal enforcement action may require the respondent to take specific action within a specified time frame and/or state the consequences for continued non-compliance.
- "Intentional," means conduct by a person with a conscious objective to cause the result of the conduct.
- "Magnitude of the Violation" means the extent of a violator's deviation from federal, state and the Authority's statutes, rules, standards, permits or orders. In determining magnitude, the Authority shall consider available information, including such factors as concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In any case, the Authority may consider any single factor to be conclusive. Deviations shall be categorized as major, moderate or minor.
- "Negligence" or "negligent" means failing to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.
- "Order" means:
  - A. Any action satisfying the definition given in ORS Chapter 183; or
  - B. Any other action so designated in ORS Chapter 468 or 468.A.
- "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
- "Prior Violation" means any violation established, with or without admission, by payment of a civil penalty, by an order of default, [~~by issuance of a Notice of Non-Compliance or a Notice of Permit Violation,~~] or by a stipulated or final order of the Authority.
- "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

- "Respondent" means the person to whom a formal enforcement action is issued.
- "Risk of Harm" means the level of risk to public health or the environment created by the likelihood of exposure, either individual or cumulative, or the actual damage, either individual or cumulative, caused by a violation.
- "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof, and includes both acts and omissions. Violations shall be classed according to risk of harm as follows:
  - A. "Class I (one)" means any violation which poses a major risk of harm to public health or the environment, or violation of any compliance schedule contained in an agency permit or board order;
  - B. "Class II (two)" means any violation which poses a moderate risk of harm to public health or the environment;
  - C. "Class III (three)" means any violation which poses a minor risk of harm to public health or the environment.

#### Section 15-010 Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense and that, in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

#### Section 15-015 Notice of Violation

When the Director or the board has cause to believe that a violation has occurred, the Director or authorized representative may document the violation and initiate any of the enforcement actions described in subsections 15-018 and 15-020 by serving the appropriate notice to the responsible party or respondent according to ORS 183 and these rules and regulations. Cause to believe a violation has occurred can be prima facie evidence based on first-hand observations, reports of observations by citizens or government officials, results of tests, instrument reading or any other evidence which the Director finds, in his discretion, to be sufficient to constitute cause to believe.

#### Section 15-018 Notice of Permit Violations and Exceptions

1. Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit, the Authority shall provide a Notice of Permit Violation to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the Authority within five (5) working days of receipt of the Notice of Permit Violation:
  - A. A written response from the permittee acceptable to the Authority certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable the Authority to determine that compliance has been achieved.

- B. A written proposal, acceptable to the Authority, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:
- (1) Proposed compliance dates;
  - (2) Proposed date to submit a detailed compliance schedule;
  - (3) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;
  - (4) A statement that the permittee has reviewed all other conditions and limitations of the permit, and no other violations of the permit were discovered by the permittee.
- C. In the event that any compliance schedule to be approved by the Authority, pursuant to subsection 1.B of this section, provides for a compliance period of greater than six (6) months, the Authority shall incorporate the compliance schedule into an Order described in LRAPA subsection 15-020-4.A which provides for stipulated penalties in the event of any non-compliance therewith. Stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. Stipulated penalties may also be required for compliance periods of less than or equal to six (6) months. The stipulated penalties shall be set at amounts consistent with those established under LRAPA Section 15-045.
- D. The certification allowed in subsection 1.A of this section shall be signed by a Responsible Official, based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" of the permitted facility means one of the following:
- (1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
  - (3) For a municipality, state, federal, or other public agency, either a principal executive officer or appropriate elected official.
2. No advance notice prior to assessment of a civil penalty shall be required under subsection 1 of this section, and the Authority may issue a Notice of Civil Penalty Assessment, without any preconditions, if:
- A. The violation is intentional;
  - B. The violation would not normally occur for five consecutive days;

- C. The permittee has received a Notice of Permit Violation or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the documented violation;
- D. The permittee is subject to the federal operating permit program under ORS 468.A-300 to 468.A-320, OAR 340 Divisions 28 and 32, and violates any rule or standard adopted or permit and/or order issued under ORS 468.A and applicable to the permittee; or
- E. If EPA notifies the Department that the advance notice provision of ORS 468.126 would disqualify a program from federal approval or delegation.
- F. The permittee has an Air Contaminant Discharge Permit and violates any State Implementation Plan requirement contained in the permit.

For purposes of this section, "permit" includes permit renewals and modifications, and no such renewal or modification shall result in the requirement that the Authority provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation or other formal enforcement action with respect to the permit within 36 months.

#### Section 15-020 Enforcement Actions

##### 1. Notice of Non-compliance (NON):

- A. Informs a person of a violation and the consequences of the violation or continued non-compliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved. ~~The notice may state that further enforcement action may, or will be taken.~~
- B. Shall be issued under the direction of the Director or authorized representative.
- C. Shall be issued for, but is not limited to, all classes of documented violations.
- ~~D. May be issued prior to issuance of a Notice of Civil Penalty or an Order.~~

##### 2. Notice of Permit Violation (NPV):

- A. Is issued pursuant to Section 15-018;
- B. Shall be issued by the Director or authorized representative;
- C. Shall be issued for, but is not limited to, the first occurrence of a documented Class I permit violation which is not excepted under Subsection 15-018-2, or the repeated or continuing occurrence of documented Class II or III permit violations not excepted under subsection 15-018-2, or where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36-month period without being issued an NPV.

06/13/95

-6-

3. Notice of Civil Penalty Assessment (CPA):
  - A. Is issued pursuant to ORS 468.130, ORS 468.140, and LRAPA Sections 15-015, 15-025 and 15-030;
  - B. Shall be issued by the Director or authorized representative;
  - C. May be issued for, but is not limited to, the occurrence of any class of documented violation that is not limited by the NPV requirement of LRAPA Section 15-018.
4. Order:
  - A. Is issued pursuant to ORS Chapters 183, 468, or 468A, and LRAPA Title 14.
  - B. May be in the form of a Board or Director Order or a Stipulation and Final Order (SFO).
    - (1) Board Orders shall be issued by the Board, or by the Director on behalf of the Board.
    - (2) Director Orders shall be issued by the Director or authorized representative.
    - (3) All Other Orders:
      - (a) May be negotiated;
      - (b) Shall be signed by the Director or authorized representative and the authorized representative of each other party.
  - C. May be issued for any class of violations.
5. The enforcement actions described in subsections 1 through 4 of this section shall not limit the Director or Board from seeking legal or equitable remedies as provided by ORS Chapters 468 and 468A.

#### Section 15-025 Civil Penalty Schedule Matrices

1. In addition to any liability, duty or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Board's and Director's authorizing rules, regulations, permits or orders by service of a written Notice of Civil Penalty Assessment upon the Respondent. Except for civil penalties assessed under LRAPA 15-045 and 15-050 (stipulated or intentional/reckless), or Title 16, the amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in Section 15-030:

## A. \$10,000 Matrix

		\$10,000 Matrix ←----- Magnitude of Violation		
		Major	Moderate	Minor
C L A S S  o f  V I O L A T I O N	Class I	\$6,000	\$3,000	\$1,000
	Class II	\$2,000	\$1,000	\$ 500
	Class III	\$ 500	\$ 250	\$ 100

No civil penalty issued by the Director pursuant to the \$10,000 matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to any violation related to air quality statutes, rules, permits or orders, except for the selected open burning violations listed in subsection 1.B, below.



## B. \$2,500 Matrix

		\$2,500 Matrix ←----- Magnitude of Violation		
		Major	Moderate	Minor
C L A S S  o f  V I O L A T I O N	Class I	\$2,500	\$1,000	\$500
	Class II	\$750	\$500	\$200
	Class III	\$250	\$100	\$ 50

No civil penalty issued by the Director pursuant to the \$2,500 matrix shall be less than fifty dollars (\$50). The total penalty may exceed twenty-five hundred dollars (\$2,500) for each day of each violation, but shall not exceed \$10,000 for each day of each violation.

The \$2,500 matrix shall be applied to any violation related to violations of the Authority's Title 47 open burning rules, excluding all industrial open burning violations and violations of Section 47-015-1.E, where the volume of the prohibited materials burned is greater than or equal to twenty-five cubic yards. In cases of the open burning of tires, this matrix shall apply only if the number of tires burned is less than fifteen (15). The matrix set forth in Section 1A, above, shall be applied to all open burning violations not covered by this section.

Section 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)

1. When determining the amount of civil penalty to be assessed for any violation, other than violations of LRAPA Title 16, which are determined in Title 16, and of ORS 468.996, which are determined according to the procedure set forth below in Section 15-050, the Director or authorized representative shall apply the following procedures:
  - A. Determine the class and the magnitude of each violation.
  - B. Choose the appropriate base penalty (BP) established by the matrices of Section 15-025 after determining the class and magnitude of each violation.

- C. Starting with the base penalty (BP), determine the amount of penalty through application of the formula:

$BP + [(.1 \times BP)(P + H + O + R + C)] + EB$  where:

- (1) "P" is whether the Respondent has any prior violations of statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purpose of determining "P," Class I equivalent or equivalent means two Class II violations, one Class II and two Class III violations, or three Class III violations. The values for "P" and the finding which supports each are as follows:
- (a) 0 if no prior violations or there is insufficient information on which to base a finding;
  - (b) 1 if the prior violation is one Class II or two Class III's;
  - (c) 2 if the prior violation(s) are one Class I or equivalent;
  - (d) 3 if the prior violations are two Class I's or equivalent;
  - (e) 4 if the prior violations are three Class I's or equivalents;
  - (f) 5 if the prior violations are four Class I's or equivalents;
  - (g) 6 if the prior violations are five Class I's or equivalents;
  - (h) 7 if the prior violations are six Class I's or equivalents;
  - (i) 8 if the prior violations are seven Class I's or equivalents;
  - (j) 9 if the prior violations are eight Class I's or equivalents;
  - (k) 10 if the prior violations are nine or more class I's or equivalents, or if any of the prior violations were issued for any violation of ORS 468.996.
- (l) In determining the appropriate value for prior violations as listed above, the Authority shall reduce the appropriate factor by:
- (i) A value of one(1) if the number of prior violations in a particular class falls between corresponding factors;
  - (ii) A value of two (2) if all the prior violations are greater than three years old but less than five years old;
  - (iii) A value of four (4) if all the prior violations are greater than five years old;
  - (iv) In making the above reductions, the value of P shall not be less than 0.
- (m) Any prior violation which occurred more than ten years prior to the time of the present violation shall not be included in the above determination.

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- (2) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any prior violations. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral, the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:
- (a) -2 if Respondent took all feasible steps to correct each prior violation;
  - (b) 0 if there is no prior history or if there is insufficient information on which to base a finding;
  - (c) 2 if the Respondent took no feasible steps to correct each prior violation.
- (3) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:
- (a) 0 if the violation existed for one day or less and did not recur on the same day;
  - (b) 2 if the violation recurred on the same day. If the violation occurred on more than one day, and multiple day penalties are determined, "O" shall be 0.
- (4) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:
- (a) 0 if an unavoidable accident or there is insufficient information to make any other finding;
  - (b) 2 if negligent;
  - (c) 6 if intentional; or
  - (d) 10 if flagrant.
- (5) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:
- (a) -2 if Respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;
  - (b) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;
  - (c) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

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- (6) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Director or Board may increase the penalty by the approximated dollar sum of the economic benefit, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. After determining the base penalty and applying the civil penalty formula above to determine the gravity portion of the civil penalty, "EB" is to be determined as follows:
- (a) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable.
  - (b) In determining the economic benefit component of a civil penalty, the Authority may use the U. S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Authority shall use the version of the model that the Authority finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Authority will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.
  - (c) As stated above, under no circumstances shall the imposition of the economic benefit component of the penalty result in a penalty exceeding the statutory maximum allowed for the violation by rule or statute. When a violation has extended over more than one calendar day, however, for determining the maximum penalty allowed, the Director may treat the violation as extending over at least as many days as necessary to recover the economic benefit of noncompliance. When the purpose of treating a violation as extending over more than one calendar day is to recover the economic benefit, the Director has the discretion not to impose the gravity and/or magnitude-based portion of the penalty for more than one day.
2. In addition to the factors listed in subsection (1) of this rule, the Director may consider any other relevant rule of the Authority and shall state the effect the consideration had on the penalty. On review, the Board or hearings officer shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Authority.
  3. The Director or Board may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Director or Board documentary evidence concerning Respondent's inability to pay the full penalty amount.

- A. When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Director or Board may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.
- B. In determining the Respondent's ability to pay a civil penalty, the Authority may use the U. S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Authority shall use the version of the model that the Authority finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Authority will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.
- C. In appropriate circumstances, the Director or Board may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance

Section 15-035 Written Notice of Civil Penalty Assessment--When Penalty Payable

1. A civil penalty shall be due and payable ten (10) days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and LRAPA Section 14-170.
2. The written notice of civil penalty assessment shall comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.
3. The rules prescribing procedure in contested case proceedings contained in LRAPA Title 14 shall apply thereafter.

Section 15-040 Compromise or Settlement of Civil Penalty by Director

1. Any time after service of the written notice of civil penalty assessment, the Board or Director may, in their discretion, compromise or settle any unpaid civil penalty at any amount that the Board or Director deems appropriate. A refusal to compromise or settle shall not be subject to review. Any compromise or settlement executed by the Director shall be final, except for major Class I violations with penalties calculated under 15-025-1.A, which must be approved by the board.
2. In determining whether a penalty should be compromised or settled, the Board or Director may take into account the following:
  - A. New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in LRAPA Section 15-030.

- B. The effect of compromise or settlement on deterrence;
- C. Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
- D. Whether Respondent has had any previous penalties which have been compromised or settled;
- E. Whether the compromise or settlement would be consistent with the Authority's goal of protecting the public health and environment;
- F. The relative strength or weakness of the Authority's case.

#### Section 15-045 Stipulated Penalties

Nothing in Title 15 shall affect the ability of the Board or Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued pursuant to ORS Chapter 468, 468.A or these rules and regulations.

#### Section 15-050 Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below.

Any person who intentionally or recklessly violates any provision of ORS 468, 468A, or any rule or standard or order of the Director or Board which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures.

1. The base penalties listed in 15-050-2 are to be used in lieu of the penalty method in 15-025-1.A and B.
2. Select one of the following base penalties after determining the cause of the violation:
  - A. \$50,000 if the violation was caused recklessly;
  - B. \$75,000 if the violation was caused intentionally;
  - C. \$100,000 if the violation was caused flagrantly.

3. Then determine the civil penalty through application of the formula:

$BP + (.1 \times BP)(P + H + O + C) + EB$ , in accordance with the applicable subsections of Section 15-030.

#### Section 15-055 Air Quality Classification of Violation

Violations pertaining to air quality shall be classified as follows:

1. Class One
  - A. Violating conditions or terms of an order or variance;

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- B. Violating a compliance schedule or condition in a permit (except as defined in 15-055-3.B);
- ~~[C. Exceeding emission limitations or opacity limitations in permits or air quality regulations (except those listed in Section 15-055-2.A);]~~
- [D]. Exceeding an emission or opacity permit limitation for a criteria pollutant, by a factor of greater than or equal to two (2) times the limitation, within ten (10) kilometers of either a Non-Attainment Area or a Class I Area for that criteria pollutant (if greater than 10 kilometers from either a Non-Attainment Area or a Class I Area, see 15-055-2.C);
- [E]. Exceeding the annual emission limitations of a permit, rule or order;
- [F]. Exceeding an applicable emission limit of a regulated hazardous air pollutant;
- [G]. Exceeding operating restrictions which limit a synthetic minor source's potential to emit and which result in emissions above the thresholds which define a major source, under the Federal Operating Permit program, pursuant to OAR 340-28-110(57);
- [H]. Causing emissions that are potentially a hazard to public health and welfare;
- [I]. Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;
- [J]. Constructing or operating a source without a valid Air Contaminant Discharge Permit and/or federal operating permit;
- [K]. Modifying a source with an Air Contaminant Discharge Permit and/or federal operating permit without first notifying and receiving approval from the Authority;
- [L]. Failing to perform testing, monitoring, or record keeping required by a permit, rule or order;
- [M]. Failing to submit semi-annual compliance certifications;
- [N]. Failing to file a timely application for a Federal Operating Permit pursuant to OAR 340-28-2120;
- [O]. Violating a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- [P]. Storing or accumulating friable asbestos material or asbestos-containing waste material from an asbestos abatement project which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- [Q]. Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation or disposal of asbestos-containing waste material;

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- [R]Q. Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor.
- [S]R. Violating a disposal requirement for asbestos-containing waste material which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- [T]S. Illegal open burning of materials prohibited by Sub-Section 47-015-1.E;
- [U]T. Failing to provide access to premises or records when required by law, rule, permit or order;
- [V]U. Submitting falsified actual or calculated emission data;
- [W]V. Any other violation related to air quality which causes a major harm or poses a major risk of harm to public health or the environment.

## 2. Class Two

- A. Violating standards in permits or rules for fugitive dust, particulate deposition or odors;
- B. Illegal open burning of commercial, construction and/or demolition waste;
- C. ~~[Illegal residential open burning]~~ Exceeding emission limitations or opacity limitations in permits or air quality regulations by more than 5 percent (if within 10 kilometers of either a Non-Attainment Area or a Class I Area, see 15-055-1.C);
- D. Failing to report excess emissions due to upset or breakdown of air pollution control equipment;
- E. Violation of a work practice requirement for asbestos abatement projects which are not likely to result in public exposure to asbestos or release of asbestos into the environment;
- F. Under-reporting of the amount of asbestos involved in an asbestos abatement project;
- G. Improper storage of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which is not likely to result in public exposure to asbestos or release of asbestos into the environment;
- H. Violation of a disposal requirement for asbestos-containing waste material which is not likely to result in public exposure to asbestos or release of asbestos to the environment;
- I. Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;
- J. Failure to provide notification of an asbestos abatement project;



- K. Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR Chapter 340, Division 160;
  - L. Any other violation related to air quality which poses a moderate risk of harm to public health or the environment.
  - M. Failing to submit a complete Air Contaminant Discharge Permit application 60 (sixty) days prior to permit expiration or prior to modifying a source;
  - N. Exceeding operating restrictions which limit a synthetic minor source's potential to emit, but which does not result in emissions above the thresholds which define a major source, under the Federal Operating Permit program, pursuant to OAR 340-28-110(57);
  - O. Failure to pay a fee required by the federal operating permit program.
  - P. Substantial underpayment of a fee required by the federal operating permit program.
  - Q. Submitting inaccurate actual or calculated emission data.
  - R. Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;
  - S. Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;
  - T. Selling any chlorofluorocarbon- or halon-containing product prohibited under ORS 468A.635.
3. Class Three
- A. Failing to file a Notice of Construction;
  - B. Failing to report as a condition of a rule, compliance order or permit;
  - C. Improper notification of an asbestos abatement project;
  - D. ~~Illegal residential open burning;~~
  - [D] E. Any other violation related to air quality which poses a minor risk of harm to public health or the environment.

Section 15-060 Selected Magnitude Categories

Magnitudes for selected violations may be determined as follows:

- 1. Opacity limitation violations:
  - A. Major--opacity measurements or readings of more than 25 percent opacity over the applicable limitation;

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- B. Moderate--opacity measurements or readings from greater than 10 percent to 25 percent or less opacity over the applicable limitation;
  - C. Minor--opacity measurements or readings or 10 percent or less opacity over the applicable limitation.
2. Steaming rates and fuel usage limitations:
- A. Major--greater than 1.3 times any applicable limitation;
  - B. Moderate--from 1.1 to and including 1.3 times any applicable limitation;
  - C. Minor--less than 1.1 times any applicable limitation.

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3. Magnitude determinations for Air Contaminant Discharge Permit emission limitation violations for selected air pollutants shall be made based upon the following table:

	AMOUNT
Carbon Monoxide	100 tons
Nitrogen Oxides	40 tons
Particulate Matter	
A. TSP	5 tons
B. PM <sub>10</sub>	5 tons
Sulfur Dioxide	40 tons
Volatile Organic Compounds	40 tons
Lead	1200 lbs
Mercury	200 lbs
Beryllium	0.8 lbs
Asbestos	14 lbs
Vinyl Chloride	1 tons
Fluorides	3 tons
Sulfuric Acid Mist	7 tons
Hydrogen Sulfide	10 tons
Total Reduced Sulfur (including hydrogen sulfide)	10 tons
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons

A. Major:

- (1) Exceeding the annual amount, as established by permit, rule or order, by more than the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by more than 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by more than 0.5 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by more than 0.1 percent of the above amount.

B. Moderate:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 50 up to and including 100 percent of the above amount;

- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 5 up to and including 10 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.25 up to and including 0.50 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.10 percent of the above amount.

C. Minor:

- (1) Exceeding the annual amount, as established by permit, rule or order, by an amount from 5 up to and including 50 percent of the above amount;
- (2) Exceeding the monthly amount, as established by permit, rule or order, by an amount from 0.25 up to and including 5 percent of the above amount;
- (3) Exceeding the daily amount, as established by permit, rule or order, by an amount from 0.05 up to and including 0.25 percent of the above amount;
- (4) Exceeding the hourly amount, as established by permit, rule or order, by an amount of 0.05 percent or less of the above amount.

4. Hazardous air pollutant violations:

- A. Major--exceeding the applicable emissions limit by two (2) times the de minimus rate;
- B. Moderate--exceeding the applicable emissions limit by one and a half (1-1/2) to two (2) times the de minimus rate;
- C. Minor--exceeding the applicable emissions limit by less than one and a half (1-1/2) times the de minimus rate.

5. Federal operating permit program violations:

- A. Major--missing filing deadline by thirty (30) calendar days or more; filing false or misleading information in application;
- B. Moderate--missing filing deadline by seven (7) to twenty-nine (29) calendar days;
- C. Minor--missing filing deadline by less than seven (7) calendar days.

6. Asbestos Violations:

- A. Major--more than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;

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- B. Moderate--from 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;
  - C. Minor--less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material.
  - D. The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5 percent asbestos.
7. Asbestos Air Clearance Violations:
- A. Major--more than .1 fibers per cubic centimeter;
  - B. Moderate--more than .05 fibers per cubic centimeter up to and including .1 fibers per cubic centimeter;
  - C. Minor--more than .01 fibers per cubic centimeter up to and including .05 fibers per cubic centimeter.
8. Open Burning Violations:
- A. Major--open burning of material constituting more than 5 cubic yards in volume;
  - B. Moderate--open burning of material constituting from 1 up to and including 5 cubic yards in volume;
  - C. Minor--open burning of material constituting less than 1 cubic yard in volume.

#### Section 15-065 Appeals

1. Any person who is issued a corrective action order or who is assessed with a civil penalty under Title 15 may appeal such order or penalty to the Authority within twenty-one (21) days of the date of mailing of the notice. The hearing and appeal shall be conducted according to Title 14 of these rules.
2. In reviewing the order or the penalty assessed by the Director, the Hearings Officer shall consider the factors set forth in Section 15-030, the findings of the Director and the evidence and argument presented at the hearing. The Hearings Officer shall make findings as to those factors deemed to be significant.
3. Unless the issue is raised in respondent's answer to the order or notice of assessment of civil penalty, the Hearings Officer may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.
4. If a timely request for a hearing is not received by the Authority, the Director may issue a final order upon default based upon a prima facie case as provided in Sections 14-175.4.C and 14-205.2. If the penalty is not paid within ten (10) days of issuance of the final order, the order shall constitute a judgement and may be filed as provided in ORS 468.135(4).

## MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY  
 BOARD OF DIRECTORS MEETING  
 TUESDAY--JUNE 13, 1995  
 SPRINGFIELD CITY COUNCIL CHAMBERS  
 225 North 5th Street  
 Springfield, Oregon

**ATTENDANCE:**

**Board** Mark Hommer, Chair--At-Large; Steve Cornacchia--Lane County; Steve Dodrill--Eugene; Kevin Hornbuckle--Eugene; Al Johnson--Eugene; Pat Patterson--Cottage Grove/Oakridge; Ralf Walters--Springfield  
 (ABSENT: None)

**Staff** Don Arkell--Director; Mike Tharpe; Sharon Moody; Kim Partridge; Merrie Dinteman

**Advisory Com.** Lorena Young, Chair

**Other:** Chuck Stoddard, J. H. Baxter Co.

**OPENING:** Hommer called the meeting to order at 12:21 p.m.

**MINUTES:** MSP (Dodrill/Hornbuckle)(Unanimous) approval of April 11, 1995 minutes, as submitted.

**EXPENSE REPORT:** Sharon Moody explained that Title V revenues are a little lower than what was anticipated, because a large source based its fees on actual emissions rather than Plant Site Emission Limits, resulting in a \$20,000 deficit in Title V for FY 94/95. June has been the biggest month, ever, for the Portable Sampler Fund, with approximately \$132,000 in sales (88 samplers) for the month. The General Fund should come out about even, with little or no deficit expected.

Dodrill asked about the grant revenue in the General Fund being lower than what was anticipated. Moody explained that LRAPA is operating on a reimbursement basis and does not receive funds until after the money has been expended and billed to EPA. In addition, some of the work being done under the large pass-through grant for the Pocatello SIP is taking longer than anticipated. This is work being done by private contractors. EPA has extended the ending dates on those projects, at least into the next fiscal year and, possibly, for another year after that. That grant is good through 1997.

The board approved the expense reports through May 31, 1995, as presented.

**ADVISORY COMMITTEE:** The board packets included a report of 1994 activities submitted by the 1994 committee chair. There was no discussion of that report.

MINUTES  
LRAPA BOARD OF DIRECTORS MEETING

JUNE 13, 1995

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**PUBLIC PARTICIPATION:** None.

**PUBLIC HEARING--  
LRAPA BUDGET  
FY 95/96;  
LRAPA SUPPLE-  
MENTAL BUDGET  
FY 94/95  
(PORTABLE  
SAMPLER FUND):** Arkell briefly explained that the reason this public hearing was rescheduled to today from its original date of May 9 was that the newspaper did not print the hearing notice the required number of days prior to that date. He said notice of today's hearing was published as required, and affidavit of publication would be placed in the hearing record. Arkell recommended that the board adopt the budget, as approved by the LRAPA Budget Committee in April. He also recommended board adoption of a supplemental budget for the Portable Sampler Fund for FY 94/95, to accommodate larger sales volume than was anticipated at the time the budget was adopted last year.

**\*\* MOTION \*\*** MSP (Dodrill/Patterson)(Unanimous) approval of LRAPA Resolution Number 95-14, adopting the FY 95/96 LRAPA budget.

**\*\* MOTION \*\*** MSP (Hornbuckle/Walters)(Unanimous) approval of LRAPA Resolution Number 95-15, adopting the FY 94/95 Supplemental Budget for the Portable Sampler Fund.

**PUBLIC HEARING--  
PROPOSED AMEND-  
MENTS TO LRAPA  
TITLE 15  
(ENFORCEMENT)  
AND TITLE 34  
(PERMITS FEES):**



Arkell briefly described the proposed changes to Title 15, LRAPA's enforcement and civil penalty rules, as follows:

1. Separate opacity violations according to severity, leaving more severe violations in Class I category and moving less severe violations to Class II category;
2. Reduce residential open burning violations from Class II to Class III, changing the civil penalty range from \$200--\$750 down to \$50--\$250;
3. Change failure to report required permit information and data from a Class III to a Class II violation; and
4. Change the Notice of Noncompliance from the current non-punitive notice with no further action to a preliminary notice of violation with possible further action following investigation.

Arkell then spoke briefly about the proposal to reduce the fees for all Synthetic Minor Permits. This was proposed to avoid double charging for both Air Contaminant Discharge Permits and Synthetic Minor Permits. Since the amendments were originally proposed, staff had revised its proposal to limit the adjustment of fees to small facilities which have two or less equipment types (such as spray paint booth operators, small dry kiln lumber operators, etc.). Because this is a substantive change from the original proposal, Arkell said staff believes the amendments should go through the public comment period again, and public hearing should be held at another time. Arkell said staff wished to withdraw the proposal to amend Title 34 at this time and limit today's hearing to Title 15 amendments. He asked for



authorization hold public hearing at the September 12 board meeting on a revised amendment proposal for Title 34 permit fees.

Walters asked what portion of the permitting program the new fee structure would cover. Arkell said these fees are designed to offset the extra cost for processing the Synthetic Minor Permits. Those sources are already required to get a regular Air Contaminant Discharge permit, for which they pay a full set of fees. There is an extra cost involved in processing a Synthetic Minor Permit. The problem is that, for the smaller sources, the amount that is in the current fee schedule is more than what the additional cost is for the permitting process.

Patterson asked when and how interested parties are notified of the fee adjustments. Arkell responded that the rule would become effective immediate, unless there is a different effective date adopted in the rule. All sources subject to these fees are notified of the proposed changes prior to the hearing date, and the revised fee schedule is sent out following adoption.

**\*\* MOTION \*\***

**MSP (Dodrill/Walters)(Unanimous) adoption of amendments to LRAPA Title 15 as proposed.**

Public hearing was authorized for September 12, 1995 on a revised proposal to amend Title 34.

**MITIGATION OF  
CIVIL PENALTY--  
JOHN BARNETT:**

Arkell described the illegal open burning which led to LRAPA enforcement action. He said the original penalty of \$11,000 was based on information supplied by the respondent regarding the cost of disposing of the land clearing debris by methods other than burning. The respondent appealed the civil penalty and, prior to hearing, submitted a lower estimate of the cost of disposal. Staff determined that the revised amount was reasonable, according to prior experience with similar volumes of debris. Based on the new information, the civil penalty was recalculated at \$2,500. Staff asked the board to authorize reduction of the penalty.

**\*\* MOTION \*\***

**MSP (Cornacchia/Patterson)(Unanimous) approval of reduction of civil penalty in Case Number 94-33, John N. Barnett, from \$11,000 to \$2,500.**

**AUTHORIZATION TO  
EXPEND FEDERAL  
SUPPLEMENTAL  
GRANT FUNDS:**

There were seven separate requests for authorization to expend federal supplemental grant funds, as follows:

1. Number 95-7--carry-over grant of \$1,805.05 to complete a Hazardous Air Pollutant Emissions Inventory;
2. Number 95-8--\$15,000 to complete an investigation of Hazardous Air Pollutants (HAPs) around a wood treatment facility;
3. Number 95-9--carry-over grant of \$8,873.57 to complete an upgrade of LRAPA's Engineering Services Data System;



4. Number 95-10--\$16,000 for purchase of Continuous Emissions Monitoring audit apparatus for non-Title V sources;
5. Number 95-11--\$15,000 for Emissions Inventory of permitted sources;
6. Number 95-12--\$15,000 for drafting a PM10 Maintenance Plan for Eugene-Springfield, as part of redesignation to attainment status; and
7. Number 95-13--\$10,826.73 for an ozone study.

Charles Stoddard of J. H. Baxter in Eugene was present to volunteer his plant as a subject for the grant to study HAPs around a wood treatment facility. Arkell commented that J. H. Baxter has been very cooperative about the proposed study and that the study is a good way to document chemicals that might be of human health concern. Board members expressed appreciation to J. H. Baxter for their positive attitude in working with LRAPA toward a common goal.

**\*\* MOTION \*\***

MSP (Cornacchia/Hornbuckle)(Unanimous) approval of LRAPA Resolutions 95-7 through 95-13, delegating to staff the decision as to whether or not to use J. H. Baxter as a study site, as offered.

**DIRECTOR'S REPORT:** Arkell touched briefly on a few items of interest.

Hyundai Plant. The proposed Hyundai semi-conductor plant in Eugene will need three permits from LRAPA: an Authority to Construct prior to construction of the facility; an Indirect Source Permit which addresses parking, traffic patterns, etc.; and an Air Contaminant Discharge Permit under which to operate. Cornacchia said information regarding the permits would be helpful for board members to have when talking to people about projects such as the Hyundai plant. He asked Arkell to provide a brief written description of these three types of permits for that purpose.

Default Orders. There was some discussion regarding the fact that, when a respondent in an enforcement action fails to pay a civil penalty LRAPA enters a Default Order and Judgement with Lane County, placing a lien on the respondent's property. Cornacchia asked whether a property would just have a lien on it for a very long time, or whether LRAPA would try to foreclose. Arkell responded that LRAPA does not try to foreclose. The judgement shows up if the property owner tries to borrow money or sell the property. Cornacchia was concerned that simply letting a lien stand does no good for the agency. He feels that all tools need to be utilized. He asked that staff meet with legal counsel about the practice of putting liens on the properties and then doing nothing about them for years, and bring the results back to the board at a future meeting.

MINUTES  
LRAPA BOARD OF DIRECTORS MEETING

JUNE 13, 1995

5

**OLD BUSINESS:**

Mission Statement. Arkell presented draft amendments to the agency's personnel policy manual. Some changes are intended to update the manual to reflect changes in statutes. He called attention to page 8, section 10, "Department," which staff proposed to include the policy statements which the board developed over the past few months, and asked for board comments. Dodrill said he thought the changes reflected much of what the board has discussed, but he wanted to be sure that the policy reflects the consistency and timeliness issues stressed by Gretchen Nicholas and mentioned in the survey comments provided by the advisory committee. Arkell said he would find a place to include those concerns. He added that the enforcement rules just adopted address one aspect of timeliness for enforcement, and other rules, such as permitting rules, include specific timelines for different aspects of the agency's operations. In addition, staff is in the final stages of preparing an operations manual which establishes procedures to address those issues. One specific additional change which Arkell suggested to the personnel manual was removing the words "Lane County residents and entities" from 10.A(1) and (2), because the policy should relate to everyone. Hornbuckle suggested revising C under Department to remove the gender bias.

**\*\* MOTION \*\***

MSP (Hornbuckle/Walters)(Unanimous) to change wording in section 10 to use the word "entities" instead of "community" in describing the regulated entities; and to change the phrase, "across the regulated community" to "among the regulated entities" in 10.A(3).

Eugene Ozone Ordinance. Arkell asked for direction from the board to proceed with a contract with the city to provide technical assistance and a public information program regarding the city's ozone ordinance. The public education program would be paid for by the city. Patterson reiterated his opinion that LRAPA should limit its involvement with city ordinances. He said he would agree with LRAPA providing technical assistance and support, but the terms of LRAPA's involvement must be very clear. Hornbuckle stated his opposition to LRAPA's becoming involved in any way with the ordinance. He said he voted against the ordinance because the ordinance which was adopted is weak and is not what was intended by proponents of the original ordinance proposal. Cornacchia asked whether the city asked for LRAPA's participation, or whether LRAPA volunteered. Arkell responded that the city asked for LRAPA's help. He added that staff is not interested in enforcing the ordinance but recommended that, as an air pollution control agency, LRAPA should participate in a technical role to provide information to the city.

**\*\* MOTION \*\***

MSP (Cornacchia/Walters) approval of staff's negotiating an agreement with the city to provide technical assistance and a public education program regarding the city's ozone ordinance. Hornbuckle requested a show of hands. The vote was 4 to 3, with Cornacchia, Hommer, Johnson and Walters in favor and Dodrill, Hornbuckle and Patterson in opposition.

Small Business Assistance/Compliance Advisory Panel. Following previous discussions by the board regarding recommending a person for appointment to the state's Compliance Advisory Panel, a letter of interest in appointment was submitted by Lorena Young, the current chair of the LRAPA Advisory Committee. Arkell recommended that the board approve the letter of interest and forward a recommendation to the Compliance Advisory Panel chairperson that Young be appointed as a representative on the panel.

**\*\* MOTION \*\*** MSP (Dodrill/Walters)(Unanimous) recommendation of appointment of Lorena Young to the Compliance Advisory Panel.

**NEW BUSINESS:** Election of Vice-Chair. Dodrill noted that, since Gretchen Nicholas is no longer on the board, and Hommer has taken over as Chair, the board needed to elect a new vice-chair to take over if Hommer is unavailable. He said that, according to the rotation of officers among the participating entities, the position should be held by a representative from either Springfield or Lane County.

**\*\* MOTION \*\*** Dodrill nominated Ralf Walters to serve as 1995 vice chair of the LRAPA Board of Directors. Hommer seconded the nomination. Walters accepted the nomination, and he was elected by unanimous vote.

**ADJOURNMENT:** The meeting adjourned at 1:35 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, July 11, 1995, 12:15 p.m., in the Springfield City Council Chambers.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary

# ATTACHMENT D

## Stationary Source Rules

LRAPA Adoption of Sept. 9, 1995

AGENDA ITEM NO. 6

LRAPA Board of Directors Meeting

September 9, 1997

TO: Board of Directors

FROM: John Ruscigno, Interim Director

SUBJ: Public Hearing on Proposed Amendments to LRAPA Rules & Regulations, Title 34 (Permitting Rules)

Staff has identified a number of problems with LRAPA's permitting rules and has begun the process of developing solutions. Some solutions will be long-term and will require significant discussion and consideration to determine the best way to handle them. DEQ is also tackling some of the same issues and is currently developing amendments to its rules. LRAPA staff would like to coordinate efforts with DEQ so that the resulting rules are compatible.

There is, however, one major problem which needs immediate attention and which can be made at this time, independent of the larger, long-term issues. Consequently, it is proposed that Title 34 be amended in stages, beginning with this public hearing to take care of the most urgent issue, as well as some minor housekeeping changes.

DESCRIPTION OF PROBLEMS AND PROPOSED SOLUTIONS

1. Section 34-030. This section contains an archaic requirement for mandatory registration. This was written at a time when Table A did not include all the sources it now includes. Consequently, this requirement is no longer necessary, and it is proposed to remove it.
2. Subsection 34-035-1. This section does not apply to Title V Operating Permit sources, but that is not stated in the rule. It is proposed to add the appropriate clarifying language to make LRAPA's rules conform to federal and state requirements.
3. Subsection 34-035-3.C. The current language in sub-part (2) of this subsection would require an excessive fee, in some cases, due to the reference to NSPS. It is proposed to remove reference to NSPS. The rule will still be flexible enough to require appropriate fees.
4. Subsection 34-035-3.D. The current language in sub-part (2) of this subsection would require an excessive fee, in some cases, due to the references to MACT and GACT. It is proposed to remove references to MACT and GACT. The rule will still be flexible enough to require appropriate fees.
5. Section 34-130. There are occasions when a facility submits an application for renewal of a permit, but LRAPA does not take action on the new permit until after the old one has

expired. While LRAPA has always kept the old permit in force until the new one is issued, there is no provision for that in the rules. It is proposed to add a new subsection 16 to this section which provides for continuation of a permit when an applicant has submitted all required information for application for a permit renewal within the required time frame, but the existing permit expires prior to LRAPA's taking action on the new one. The proposed language is comparable to DEQ's language. This is a major deficiency in the rules which requires prompt attention.

6. Housekeeping changes for clarification:
  - A. Section 34-025. Add the date the section was moved to another title.
  - B. Subsection 34-035-4.A. The term "Approval to Construct" is changed to "Authority to Construct" for consistency.
  - C. Subsection 34-060-5.B(2). The word "of" is changed to "or" to correct a typographical error.
  - D. Table A, Part I, Item F. The rule reference is changed from 34-050 to 34-035 to correct a typographical error.

#### PUBLIC NOTICE AND COMMENT

At the July 8 meeting, the board authorized public hearing on September 9, 1997. Notice was published in local newspapers and in the Secretary of State's Oregon Bulletin. Individual notices were also sent to LRAPA's mailing list of interested parties which includes, among others, all Lane County permittees, as well as Oregon DEQ in Eugene, Salem and Portland and EPA Region 10 in Portland and Seattle. The proposal was also presented to the LRAPA Advisory Committee for discussion and recommendations. Comments received, to date, as a result of the public notice process are discussed below. In addition, staff has applied the standard rulemaking justification questions to this proposal, and the results are also discussed below.

#### COMMENTS RECEIVED AND LRAPA RESPONSES

DEQ. The only comments received, to date, were from DEQ in Portland. DEQ staff reviewed the proposed amendments and concluded that they ensure that LRAPA's regulations remain at least as stringent as DEQ rules. They had no suggested changes.

DEQ also authorized LRAPA to serve as hearings officer for EQC, making today's hearing a joint EQC/LRAPA hearing. Following adoption of the amendments by the LRAPA board, a hearings officer's report will be prepared and submitted to DEQ for inclusion in its presentation of the amendments to the EQC. If EQC approves the amendments, DEQ will submit them to EPA Region 10 in Seattle for EPA approval.

LRAPA Advisory Committee.

At their July 29, 1997, meeting the LRAPA Advisory Committee discussed the proposed changes in Title 34. What follows is a summary of their definitive comments and staff response:

1. The term "complete application" should be defined in LRAPA policy.

**Response:** It is the intention of the LRAPA staff to develop a detailed agency policy on the administrative processing of ACDPs. The term "complete application" will be defined in that policy. However, that policy will not be developed until the entire Title 34 has been revised. It is anticipated that this will be completed within a year.

2. The terms "minimal", "moderate", "substantial", and "extensive" as used in Section 34-035-3 need to be defined in LRAPA policy.

**Response:** These terms will be defined in LRAPA policy (see response to comment 1).

3. As a point of clarification, the term "ambient air standards" as used in Section 34-060-4B(2) should be changed to read "National Ambient Air Quality Standards (NAAQS)".

**Response:** The staff agrees with this comment and will make this change.

4. The staff should consider modifying how the construction fees are determined to include charging by the hour for staff time spent in the review.

**Response:** As part of the current revision of Title 34, the entire fee schedule will be reviewed for possible changes. This will include the method of setting fees for construction reviews.

**RULEMAKING JUSTIFICATION ANALYSIS**

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

**Response:** These proposed changes will bring LRAPA's rules more in line with the state rules. For example, the state already has provisions in its rules which provide for extending an expired permit when the state has failed, in a timely manner, to take action on a permit renewal application. The state rules also explicitly state that ACDP rules are not applicable to Title V sources.

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

**Response:** This question is not applicable since these proposed changes only address the administrative process and do not require additional controls on permitted sources.

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

**Response:** This question is not applicable since these proposed changes only address the administrative process.

4. Will the proposed requirement improve existing requirements or prevent the need for costly retrofit to meet more stringent future requirements?

**Response:** This question is not applicable since these proposed changes only address the administrative process and not additional emission control requirements.

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

**Response:** The only timing issue is the necessity to address the expired permit problem as expeditiously as possible.

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

**Response:** This question is not applicable since the proposed changes only address the administrative process, and not additional emission control requirements.

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

**Response:** The proposed changes will maintain reasonable equity for sources. By addressing the expired permit problem, LRAPA assures that sources will be treated fairly.

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

**Response:** The only cost issues addressed in the proposed changes are in Section 34-035-3 (construction review). The proposed changes would improve the equity by reducing the financial burden on some smaller sources.

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

**Response:** The proposed changes would bring LRAPA's procedural requirements more in line with the state's requirements.

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



**Response:** This question is not applicable since the proposed changes only address the administrative process and do not require any additional emission controls.

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

**Response:** This question is not applicable since the proposed changes only address the administrative process problem and not an air quality problem..

#### OPTIONS FOR BOARD ACTION

1. Do not adopt the proposed amendments. Permittees who have submitted all necessary information for permit renewal application would continue to be technically operating under an expired permit if the new permit is not issued by the expiration date in the existing permit. The rules would continue to include several incorrect references and typos.
2. Adopt the proposed amendments. The most urgent problem would be resolved, and LRAPA staff would have time to develop the best possible solutions to the larger issues without the pressure of needing the immediate changes.

#### DIRECTOR'S RECOMMENDATION

It is the director's recommendation that the board adopt the proposed amendments to LRAPA Title 34.

JJR/MJD

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### Legal Authority

ORS 183, 468.065, 468A.135 and 468A.155, OAR 340-11-010 and 340-20-047, LRAPA Titles 14 and 34, and the Federal Clean Air Act Amendments of 1990.

### Need for Amendments

The proposed amendments would add a provision to LRAPA's permitting rules (Title 34), to allow an industrial source which has submitted a complete renewal application prior to the expiration date of its permit to continue operating under provisions of the existing permit if LRAPA does not issue a new permit prior to the expiration date of the existing permit. Current state DEQ air quality rules include this provision, but LRAPA rules do not.

The rest of the proposed amendments would remove obsolete requirements, remove references to NSPS, MACT and GACT in subsections of 34-035, correct grammatical and typographical errors, and make the rules clearer and easier to understand.

### Principal Documents Relied Upon

1. Attorney General's Uniform and Model Rules of Procedure
2. LRAPA Titles 14 and 34
3. LRAPA Staff Report to LRAPA Board of Directors, July 8, 1997
4. Clean Air Act Amendments of 1990
5. ORS 183, 468 and 468A et. seq.

## FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on State Agencies: None.

Impact on Local Agencies: None.

Impact on Public: None.

Impact on Industry: None.

Statement of Need for Proposed Rule Amendments  
LRAPA Title 34  
Hearing Date: 09/09/97

-2-

LAND USE CONSISTENCY STATEMENT

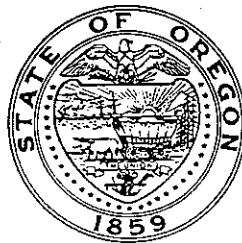
The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

JJR/MJD  
07/08/1997

# OREGON BULLETIN

**VOLUME 36, No. 14**  
**Issue Date: August 1, 1997**

**For June 14, 1997 - July 15, 1997**



Published by  
**PHIL KEISLING**  
Secretary of State  
Copyright 1997 Oregon Secretary of State

# NOTICES OF PROPOSED RULEMAKING

**Date:** 08-18-97  
**Time:** 9:00 am  
**Location:** Oregon State Correctional Institution  
 Visiting Room  
 3405 Deer Park Drive SE  
 Salem, Oregon 97310-9385

08-19-97      8:00 am  
 Department of Corrections  
 Parole Board Conference Room  
 2575 Center Street NE  
 Salem, Oregon 97310-0470

**Hearing Officer:** Dave Schumacher  
**Statutory Auth.:** ORS 179.040, 423.020, 423.030 & 423.075  
**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075  
**Proposed Amendments:** 291-143-0080  
**Last Date for Comment:** 08-19-97  
**Summary:** Amendment of the rule is necessary to provide greater exercise of religious rights for inmates assigned to Administrative Segregation or Death Row in Department of Corrections facilities.  
**Rules Coordinator:** Dave Schumacher  
**Address:** Department of Corrections, 2575 Center Street NE, Salem, Oregon 97310-0470  
**Telephone:** (503) 945-0933


*\*Auxiliary aids for persons with disabilities are available upon advance notice.*  
**Rules Coordinator:** Jan Ragni  
**Address:** Oregon Department of Fish and Wildlife, Box 59, Oregon 97207  
**Telephone:** (503) 872-5270 - ext. 5458

**Date:** 08-22-97      **Time:** 8:00 am      **Location:** Oregon Department of Fish and Wildlife  
 Commission Room  
 2501 SW First Avenue  
 Portland, Oregon 97201

**Hearing Officer:** TBA  
**Statutory Auth.:** ORS 496.138, 496.146 & 506.119  
**Stats Implemented:** ORS 496.162 & 506.129  
**Proposed Amendments:** 635-011  
**Last Date for Comment:** 08-22-97  
**Summary:** Establishes new procedures for future adoption of regulations.

*\*Auxiliary aids for persons with disabilities are available upon advance notice.*  
**Rules Coordinator:** Jan Ragni  
**Address:** Oregon Department of Fish and Wildlife, Box 59, Oregon 97207  
**Telephone:** (503) 872-5270 - ext. 5458

**Department of Environmental Quality and Lane Regional Air Pollution Authority  
Chapter 340**



**Date:** 09-09-97      **Time:** 12:15 pm      **Location:** City Council Chambers  
 Springfield City Hall  
 225 5th Street  
 Springfield, Oregon

**Hearing Officer:** John J. Ruscigno  
**Statutory Auth.:** ORS 183 & 468A  
**Proposed Amendments:** LRAPA, Title 34, "Stationary Source Rules and Permitting Procedures." This action will also result in amendment of OAR 340-020-0047.  
**Last Date for Comment:** 09-03-97  
**Summary:** Under the proposed amendments, LRAPA would add provision for industrial sources to continue operating under expired permit if agency fails to issue new permit prior to expiration date of existing permit (provided source has submitted complete application package prior to expiration dates). A second amendment would clarify that subsection 34-035-1 does not apply to sources subject to Title V Operating Permit requirements. A third amendment would remove reference to NSPS from subsection 34-035-3.C. A fourth amendment would remove reference to MACT and GACT from subsection 34-035-4.C. A fifth amendment would remove archaic requirements for registration from section 34-030. In addition, a few minor housekeeping changes would provide greater clarity.  
**Rules Coordinator:** John Ruscigno  
**Address:** Lane Regional Air Pollution Authority, 225 North 5th., Suite 501, Springfield, Oregon  
**Telephone:** (541) 726-2514 - ext. 216

**Date:** 08-22-97      **Time:** 8:00 am      **Location:** Oregon Department of Fish and Wildlife  
 Commission Room  
 2501 SW First Avenue  
 Portland, Oregon 97201

**Hearing Officer:** TBA  
**Statutory Auth.:** ORS 496.138, 496.146 & 506.119  
**Stats. Implemented:** ORS 496.162 & 506.129  
**Proposed Amendments:** 635-011, 635-013, 635-014, 635-016, 635-018, 635-019, 635-021, 635-023 & 635-039  
**Last Date for Comment:** 08-22-97  
**Summary:** Adopt amendments to 1998 sport fishing regulations for fish, shellfish, bullfrogs, and marine invertebrates.

*\*Auxiliary aids for persons with disabilities are available upon advance notice.*  
**Rules Coordinator:** Jan Ragni  
**Address:** Oregon Department of Fish and Wildlife, Box 59, Oregon 97207  
**Telephone:** (503) 872-5270 - ext. 5458

**Date:** 08-22-97      **Time:** 8:00 am      **Location:** Oregon Department of Fish and Wildlife  
 Commission Room  
 2501 SW First Avenue  
 Portland, Oregon 97201

**Hearing Officer:** Oregon Fish and Wildlife Commission  
**Statutory Auth.:** ORS 496.012, 496.138, 496.146, 497.298, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.223  
**Proposed Amendments:** 635-058  
**Last Date for Comment:** 08-22-97

**Summary:** Expand upon prohibited, controlled and noncontrollable lists, and to permit the sale of parts of certain nonnative species.  
*\*Auxiliary aids for persons with disabilities are available upon advance notice.*  
**Rules Coordinator:** Larry Cooper  
**Address:** Box 59, Portland, Oregon 97207  
**Telephone:** (503) 872-5260 - ext. 5347

**Department of Fish and Wildlife  
Chapter 635**

**Date:** 08-22-97      **Time:** 8:00 am      **Location:** Oregon Department of Fish and Wildlife  
 Commission Room  
 2501 SW First Avenue  
 Portland, Oregon 97201

**Hearing Officer:** TBA  
**Statutory Auth.:** Section 13, Chapter 8 1997 Session Laws (HB 3700)  
**Stats. Implemented:** Section 13, Chapter 8 1997 Session Laws (HB 3700)  
**Proposed Adoptions:** New Rule  
**Proposed Amendments:** 635-001  
**Last Date for Comment:** 08-22-97  
**Summary:** In accordance with Section 13, Chapter 8, 1997 Session Laws (HB 3700), adopt rule containing schedule for depositing \$1 million into the Watershed Improvement Grant Fund from revenues generated by surcharge of angling licenses.

**Date:** 08-22-97      **Time:** 8:00 am      **Location:** Oregon Department of Fish and Wildlife  
 Commission Room  
 2501 SW First Avenue  
 Portland, Oregon 97201

**Hearing Officer:** Oregon Fish and Wildlife Commission  
**Statutory Auth.:** ORS 496.012, 496.138, 496.146, 496.147 & 496.148  
**Proposed Amendments:** 635-045, 635-051, 635-054

# Affidavit of Publication

State of Oregon  
County of Lane

**LEGAL NOTICE  
NOTICE OF INTENT TO ADOPT  
AMENDMENTS TO OREGON'S AIR  
QUALITY IMPLEMENTATION PLAN:**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing:  
To amend LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," to: (1) add provision for industrial sources to continue operating under expired permit if agency fails to issue new permit prior to expiration date of existing permit (provided

source has submitted complete application package prior to expiration date); (2) remove archaic requirement for mandatory registration in section 34-030; (3) remove reference to NSPS in subsection 34-035-3.C; (4) remove reference to MACT and GACT in subsection 34-035-3-D; (5) correct grammatical and typographical errors for enhanced clarity.

**WHO IS AFFECTED:** Sources subject to LRAPA's Air Contaminant Discharge Permit requirements. These amendments do not affect sources under the Title V Federal Operating Permit Program.

**PUBLIC HEARING:**

Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:

Location: City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon

Date: Tuesday, September 9, 1997  
Time: 12:30 p.m.

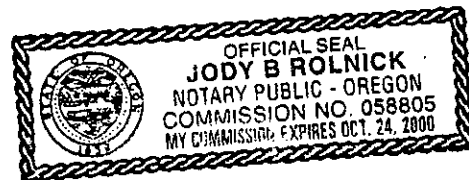
Copies of the proposed rules as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 5th Street, Suite 501 (Springfield City Hall building), Springfield, Oregon until September 9, 1997. The public may comment on the proposed regulations by calling the LRAPA business office, 726-2514 Extension 213 (Ralph Johnston) or Extension 225 (Merrie Dinteman); or written comment may be submitted until September 3, 1997, to the LRAPA Board of Directors, 224 5th Street, Suite 501, Springfield, Oregon 97477-4671. Oral testimony may be presented at the hearing.

I, Henrietta Cunningham being first duly sworn, depose and say that I am the legal clerk of The Cottage Grove Sentinel, a newspaper of general circulation, as defined by ORS 193,010, and 193,020, printed and published at Cottage Grove in the aforesaid county and state; that the Legal Notice: Lane Regional Air Pollution Authority Notice of Intent to adopt rule amendments to Oregon's air quality implementation plan

a printed copy of which is hereto annexed, was published once a week in the entire issue of said newspaper for 1 successive and consecutive weeks in the following issues: Aug. 06, 1997.

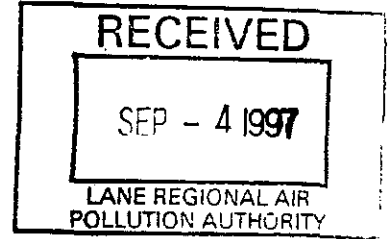
*Henrietta Cunningham*  
Subscribed and sworn to before me  
this 12 day of Aug., 19 97

*Jody B. Rolnick*  
Notary Public for Oregon  
(My commission expires) 10/24/2000



# Affidavit of Publication

**State of Oregon**  
**County of Lane**



I, Larry D. Roberts, being first duly sworn deposes and say that I am the Publisher of the Dead Mountain Echo, a newspaper of general circulation published at Oakridge, Oregon in the aforesaid county and state, as defined by ORS 193-010 ET SEQ that a notice, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for :

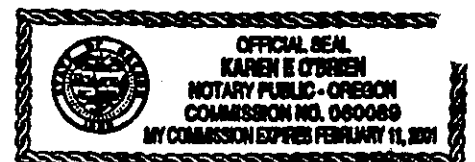
one consecutive week, in the following issues: #18, 8-7-97.

Signed: Larry D. Roberts

Subscribed and sworn to before me this ..... 3<sup>rd</sup> ..... day of ..... Sept. , 19..... 97.....

Karen E. O'Brien Notary Public of Oregon

My commission expires:..... 2-11-2001.....



Legal Notice Advertising

- Tearsheet Notice
- Duplicate Affidavit
- LANE REGIONAL AIR POLLUTION AUTHORITY  
ATTN. MERRIE DINTEMAN
- 225 NORTH 5TH, SUITE 501
- SPRINGFIELD, OR 97477-4671

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, }  
COUNTY OF LANE, } ss.

I, RHONDA K. FABRETH,  
being first duly affirmed, depose and say that I am the Advertising  
Manager, or his principal clerk, of the Eugene Register-Guard, a  
newspaper of general circulation as defined in ORS 193.010 and  
193.020; published at Eugene in the aforesaid county and state;  
that the

NOTICE OF INTENT

a printed copy of which is hereto annexed, was published in the  
entire issue of said newspaper for ONE successive and  
consecutive DAY in the following issues:

AUGUST 6, 1997

NOTICE  
OF INTENT TO  
ADOPT AMENDMENTS  
TO OREGON'S AIR QUALITY  
IMPLEMENTATION PLAN

In accordance with Title 14 of  
the Lane Regional Air Pollution  
Authority (LRAPA) Rules and Reg-  
ulations, the Board of Directors is  
proposing:

- To amend LRAPA Title 34,  
"Stationary Source Rules and  
Permitting Procedures," to: (1)  
add provision for industrial  
sources to continue operating  
under expired permit if agency  
fails to issue new permit prior to  
expiration date of existing permit  
(provided source has submitted  
complete application package  
prior to expiration date); (2)  
remove archaic requirement for  
mandatory registration in section  
34-030; (3) remove reference to  
NSPS in subsection 34-035-3.C;  
(4) remove reference to MACT  
and GACT in subsection 34-035-  
3.D; (5) correct grammatical and  
typographical errors for  
enhanced clarity.

WHO IS AFFECTED: Sources  
subject to LRAPA's Air Contami-  
nant Discharge Permit require-  
ments. These amendments do not  
affect sources under the Title V  
Federal Operating Permit  
Program.

PUBLIC HEARING:  
Public hearing on the above rule  
adoption will be held before the  
LRAPA Board of Directors:

Location:  
City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon

Date:  
Tuesday, September 9, 1997

Time:  
12:30 p.m.  
Copies of the proposed rules, as  
well as the Statements of Need  
and Fiscal Impact, are available  
for review at the LRAPA office  
located at 225 5th Street, Suite  
501 (Springfield City Hall Build-  
ing), Springfield, Oregon until Sep-  
tember 9, 1997. The public may  
comment on the proposed regula-  
tions by calling the LRAPA busi-  
ness office, 726-2514 Extension  
213 (Ralph Johnston) or Extension  
225 (Merrie Dinteman); or written  
comment may be submitted until  
September 3, 1997, to the LRAPA  
Board of Directors, 225 5th Street,  
Suite 501, Springfield, Oregon  
97477-4671. Oral testimony may  
be presented at the hearing.

No. 20865 — August 6, 1997.

*Rhonda K. Fabreth*

Subscribed and affirmed to before me this 8/13/97

*Debbie Buzalsky*  
Notary Public of Oregon

My Commission Expires: 8-29-98

AFFIDAVIT





**NOTICE OF INTENT TO ADOPT AMENDMENTS TO OREGON'S AIR QUALITY IMPLEMENTATION PLAN**

In accordance with Title 14 of the Lane Regional Air Pollution Authority (LRAPA) Rules and Regulations, the Board of Directors is proposing: To amend LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," to: (1) add provision for industrial sources to continue operating under expired permit if agency fails to issue new permit prior to expiration date of existing permit (provided source has submitted complete application package prior to expiration date); (2) remove archaic requirement for mandatory registration in section 34-030; (3) remove reference to NSPS in subsection 34-035-3C; (4) remove reference to MACT and GACT in subsection 34-0353D; (5) correct grammatical and typographical errors for enhanced clarity.

**WHO IS AFFECTED:** Sources subject to LRAPA's Air Contaminant Discharge Permit requirements. These amendments do not affect sources under the Title V Federal Operating Permit Program.

**PUBLIC HEARING:** Public hearing on the above rule adoption will be held before the LRAPA Board of Directors:

**Location:**

City Council Chambers  
Springfield City Hall  
225 North 5th Street  
Springfield, Oregon

Date: Tuesday, September 9, 1997

Time: 12:30 p.m.

Copies of the proposed rules, as well as Statements of Need and Fiscal Impact, are available for review at the LRAPA office located at 225 5th Street, Suite 501 (Springfield City Hall building), Springfield, Oregon until September 9, 1997. The public may comment on the proposed

regulations by calling the LRAPA business office, 726-2514 Extension 213 (Ralph Jonnston) or Extension 225 (Merrie Dinteman); or written comment may be submitted until September 3, 1997, to the LRAPA Board of Directors, 225 5th Street, Suite 501, Springfield, Oregon 97477-4671. Oral testimony may be presented at the hearing.

au.6

(033)

# Affidavit of Publication

STATE OF OREGON, COUNTY OF LANE - ss

I, .....Melva Smith..... being duly sworn, depose and say that I am the.....legal clerk..... of the Springfield News, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at Springfield in the aforesaid county and state: that the

Notice of Intent to Adopt Amendments to Oregon's Air Quality Implementation Plan

..... a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for..... 1..... successive and consecutive weeks in the following issues:

August 6, 1997

THE SPRINGFIELD NEWS

By *Melva Smith*.....

Subscribed and sworn to me this..... 6th..... day of

August, 19 97

*Frances D. Ramsey*  
Notary Public for Oregon

(My Commission expires ..... 8-9-99.....)



**NOTICE OF PROPOSED RULEMAKING HEARING**

(Statement of Need and Fiscal Impact Accompanies this Form)

**AGENCY:** Lane Regional Air Pollution Authority and  
Department of Environmental Quality

The above named agency gives notice of hearing.

**HEARING TO BE HELD:**

**Date:** September 9, 1997                      **Time:** 12:15 p.m.

**Location:** City Council Chambers  
Springfield City Hall  
225 5th Street  
Springfield, Oregon

**Hearings Officer:** John J. Ruscigno (541) 726-2514 Ext. 216  
**Rule Coordinator:** Merrie Dinteman (541) 726-2415 Ext. 225

Pursuant to the statutory authority of ORS 183 and 468A, the following action is proposed:

**AMEND:** LRAPA Title 34, "Stationary Source Rules and Permitting Procedures." This action will also result in amendment of OAR 340-20-047.

X Prior Notice Given

**SUMMARY:**

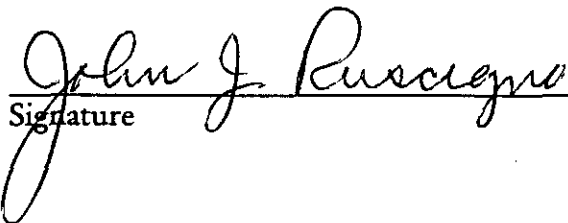
Under the proposed amendments, LRAPA would add provision for industrial sources to continue operating under expired permit if agency fails to issue new permit prior to expiration date of existing permit (provided source has submitted complete application package prior to expiration date). A second amendment would clarify that subsection 34-035-1 does not apply to sources subject to Title V Operating Permit requirements. A third amendment would remove reference to NSPS from subsection 34-035-3.C. A fourth amendment would remove reference to MACT and GACT from subsection 34-035-4.C. A fifth amendment would remove archaic requirement for mandatory registration from section 34-030. In addition, a few minor housekeeping changes would provide greater clarity.

Notice of Proposed Rulemaking Hearing  
LRAPA Title 34 Rule Amendments  
Public Hearing September 9, 1997  
-2-

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by September 3, 1997 will also be considered. Written comments should be sent to, and copies of the proposal rulemaking may be obtained from:

AGENCY: Lane Regional Air Pollution Authority  
ADDRESS: 225 North 5th, Suite 501  
Springfield, OR 97477

ATTN: John J. Ruscigno, Interim Director  
PHONE: (541) 726-2514 Extension 216

 7/10/97  
Signature Date

LANE REGIONAL

AIR POLLUTION AUTHORITY



(541) 726-2514 • FAX (541) 726-1205  
225 North 5th, Suite 501  
Springfield, OR 97477-4671

## MEMORANDUM

TO: Record of Adoption Proceedings, LRAPA Title 34

FROM: John J. Ruscigno, Hearings Officer

SUBJ: Public Hearing, September 9, 1997

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority on September 9, 1997 in the Springfield City Council Chamber at 225 5<sup>th</sup> Street, Springfield, Oregon. LRAPA had received authorization from the DEQ Air Quality Administrator to serve as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of amendments to LRAPA Title 34, "Stationary Source Rules and Permitting Procedures," including Part I of Table A, "Air Contaminant Sources and Associated Fee Schedule."

Summary of Testimony

There was no public testimony presented at the hearing.

Written comments received from DEQ prior to the hearing date granted LRAPA hearings officer authorization for EQC, and also stated that the proposed rules met stringency requirements.

Action of the LRAPA Board of Directors

Based on the information presented, the board voted unanimously to adopt the proposed amendments to Title 34.

/MJD

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 34

Stationary Source Rules and Permitting Procedures

Section 34-001 General Policy and Rule Organization

In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the county, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, LRAPA has set forth in this title the air pollution control rules and permitting procedures which apply to all stationary sources regulated by the Authority in Lane County..

This title is organized as follows:

34-010 Rules applicable to all stationary sources, including:

- 34-015 Request for Information
- 34-020 Information Exempt from Disclosure
- 34-025 Highest and Best Practicable Treatment and Control (HBPT)
- 34-030 Source Registration
- 34-035 Requirements for Construction
- 34-040 Compliance Schedules

34-050 Rules applicable to sources required to have Air Contaminant Discharge Permits (ACDP) or Federal Operating Permits (FOP), including:

- 34-060 Plant Site Emission Limits (PSEL) Rules
- 34-070 Sampling, Testing, Monitoring and Reporting
- 34-080 Excess Emissions

34-090 Rules applicable to sources required to have Air Contaminant Discharge Permits (ACDP), including:

- 34-100 Permit Categories
- 34-110 Requirements to Obtain Permit
- 34-120 Synthetic Minor Permitting Procedures
- 34-130 General Procedures for ACD Permits
- 34-140 Permit Duration
- 34-150 ACDP Fees
- 34-160 New Source Review

34-170 Rules applicable to sources required to have Federal Operating Permits (FOP), as specified by OAR 340-28-2100 through 2740 and OAR 340-32 in its entirety, including:

34-180 Authority to Implement

34-190 Definitions

34-200 Federal Operating Permitting Program Requirements and Procedures

#### Section 34-005 Definitions

All relevant definitions for this title can be found with the general definitions listed in Title 12, with the following exceptions:

1. Plant Site Emission Limit (PSEL) definitions, which may be found in Section 34-060; and
2. Definitions pertaining to Federal Operating Permits (FOP's), which may be found in OAR 340-28-110.

### RULES APPLICABLE TO ALL STATIONARY SOURCES

#### Section 34-010 Applicability

Unless specified elsewhere, 34-015 through 34-040 shall apply to all stationary sources in Lane County.

#### Section 34-015 Request for Information

All sources subject to Title 34 shall provide in a reasonably timely manner any and all information that the Authority may reasonably require for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:

1. issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
2. ascertain applicability of any requirement;
3. ascertain compliance or noncompliance with any applicable requirement; and
4. incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.

Compliance with this section may require the installation and maintenance of continuous monitors and electronic data handling systems.

Section 34-020 Information Exempt from Disclosure

1. Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to the Authority under Title 34 shall be presumed to be subject to inspection upon request by any person unless such information is determined to be exempt from disclosure pursuant to subsections 2 or 3 of this section.
2. If an owner or operator claims that any writing, as that term is defined in ORS 192.410(5), is confidential or otherwise exempt from disclosure, in whole or in part, the owner or operator shall comply with the following procedures:
  - A. The writing shall be clearly marked with a request for exemption from disclosure. For a multi-page writing, each page shall be so marked.
  - B. The owner or operator shall state the specific statutory provision under which it claims exemption from disclosure and explain why the writing meets the requirements of that provision.
  - C. For writings that contain both exempt and non-exempt material, the proposed exempt material shall be clearly distinguishable from the non-exempt material. If possible, the exempt material shall be arranged so that it is placed on separate pages from the non-exempt material.
3. For a writing to be considered exempt from disclosure as a "trade secret," it shall meet all of the following criteria:
  - A. the information shall not be patented;
  - B. it shall be known only to a limited number of individuals within a commercial concern who have made efforts to maintain the secrecy of the information;
  - C. it shall be information which derives actual or potential economic value from not being disclosed to other persons; and
  - D. it shall give its users the chance to obtain a business advantage over competitors not having the information.

Section 34-025 Highest and Best Practicable Treatment and Control Requirements

See Title 32, Section 32-005-1 through 9 (11/10/94).

Section 34-030 Source Registration

Any air contaminant source which is not subject to the ACDP rules (34-090 through 34-160) or the Federal Operating Permit program rules (34-170 through 34-200) shall register with the Authority upon request pursuant to 34-030-1 through 4. ~~Mandatory registration is required for sources specified in 34-030-5.~~

1. Registration shall be completed within thirty (30) days following the mailing date of the request by the Authority.
2. Registration shall be made on forms furnished by the Authority and completed by the owner, lessee of the source, or agent.
3. The following information shall be reported by registrants:
  - A. name, address, and nature of business;
  - B. name of local person responsible for compliance with these rules;
  - C. name of person authorized to receive requests for data and information;
  - D. a description of the production processes and a related flow chart;
  - E. a plot plan showing the location and height of all air contaminant sources (the plot plan shall also indicate the nearest residential or commercial property);
  - F. type and quantity of fuels used;
  - G. amount, nature, and duration of air contaminant emissions;
  - H. estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and
  - I. any other information requested by the Authority.
4. Once a year, upon the annual date of registration, a person responsible for an air contaminant source shall reaffirm in writing the correctness and current status of the information furnished to the Authority. Any changes in any of the factual data reported under subsection 3 of this section shall be reported to the Authority, at which time re-registration may be required on forms furnished by the Authority.
- ~~5. The following air contaminant sources shall register with the Authority annually, as required by this rule:
  - ~~A. Sources within the urban growth boundary~~~~



- ~~\_\_\_\_\_ (1) sources listed in Table A, Part II, but too small to require a discharge permit;~~
  - ~~\_\_\_\_\_ (2) service stations;~~
  - ~~\_\_\_\_\_ (3) paint shops;~~
  - ~~\_\_\_\_\_ (4) fiberglass layup operations;~~
  - ~~\_\_\_\_\_ (5) dry cleaners with discharges to the ambient air;~~
  - ~~\_\_\_\_\_ (6) panel manufacturing operations.~~
- ~~\_\_\_\_\_ B. Sources outside the urban growth boundary which are listed in Table A, Part II, but are too small to require a discharge permit.~~

**Section 34-035 Requirements for Construction (or Non-Major Modification) (Major Modification Requirements are Contained in Title 38)**

1. **Application:** No person shall commence construction or modification of an air contaminant source without first obtaining an Authority to Construct from the Authority. **Section 34-035 shall not apply to Oregon Title V Operating Permit Program sources.**
2. The owner or operator of an air contaminant discharge source planning a construction project (or non-major modification) which would change emissions shall submit to the Director a construction review fee and a Notice of Construction which includes all information necessary to perform any analysis or make any determination required by these rules. Such information shall include the following:
  - A. name, address, and nature of business;
  - B. name of local person responsible for compliance with these rules;
  - C. name of person authorized to receive requests for data and information;
  - D. a description of the production processes and a related flow chart;
  - E. a plot plan showing the location and height of all air contaminant sources and indicating the nearest residential or commercial property;
  - F. type and quantity of fuels used;
  - G. Amount, nature and duration of air contaminant emissions;
  - H. Plans and specifications for air pollution control equipment and facilities and their relationship to the production process;
  - I. estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

- J. any information on pollution prevention measures and cross-media impacts desired to be considered in determining applicable control requirements and evaluating compliance methods;
  - K. where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Authority to establish operational and maintenance requirements under subsections 32-007-1 and 2 ;
  - L. amount and method of refuse disposal; and
  - M. corrections and revisions to the plans and specifications to ensure compliance with applicable rules, orders and statutes.
3. Construction review by the Authority is subject to applicable fees listed in Table A Part I of this title. Construction review fees are assessed based on the review levels defined below:
- A. Level I review applies to construction projects which meet all of the following criteria:
    - (1) do not result in an increase in emissions or production;
    - (2) do not require ACDP modification prior to the ACDP renewal date;
    - (3) add a single piece of air pollution control equipment or replace an existing emission or process unit with a device of equivalent capacity; and
    - (4) require minimal review by the Authority.
  - B. Level II review applies to construction projects which:
    - (1) do not result in an increase in emissions; or
    - (2) result in changes in emissions or throughputs to multiple emission points from those identified in the ACDP permit application; and
    - (3) require a moderate amount of review by the Authority.
  - C. Level III review applies to construction projects which:
    - (1) result in emission increases which are less than the Significant Emission Rate (SER) as defined in LRAPA Title 38 (New Source Review), subsection 005-12; or
    - (2) ~~are subject to NSPS (New Source Performance Standards) see LRAPA Title 46); and~~
    - (3) require a substantial amount of review and analysis by the Authority.

- D. Level IV review applies to construction projects which:
- (1) result in an emission increase which is greater than or equal to the SER and are therefore subject to New Source Review/Prevention of Significant Deterioration review; or
  - (2) ~~are subject to a Maximum Available Control Technology (MACT) or Generally Achievable Control Technology (GACT) determination;~~ and
  - (3) require extensive review and analysis by the Authority.
- E. For construction projects which do not clearly fit any of the levels described in subsections A through D of this section, the Authority shall assign a review level based on an estimate of the review time required and the level which most closely fits the construction project. The Authority may waive construction fees for sources with minimal or letter permits as defined in 34-100-5 and 6.
4. Within sixty (60) days of receipt of all required information, the Authority shall make a determination as to whether the proposed construction or non-major modification is in accordance with the provisions of these rules. In accordance with 34-060-4.C, modifications which increase emissions above baseline emission rates shall require a 30-day public notice period.
- A. If the proposed construction is found to be in accordance with the provisions of these rules, the Authority shall issue a "Notice of Approval Authority to Construct." This issuance shall not relieve the owner or operator of the obligation of complying with all other titles of these rules.
  - B. If the proposed construction is found not to be in accordance with the provisions of these rules, the Director may issue an order prohibiting construction. Failure to issue the order within the sixty (60) day period shall be considered a determination that the construction may proceed in accordance with the information provided in the application.
  - C. Any person against whom an order prohibiting construction is issued may, within twenty (20) days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for a hearing, and shall be submitted to the Director. Any hearing shall be conducted as a contested case pursuant to Title 14.
  - D. Deviation from approved plans or specifications, without the written permission of the Director, shall constitute a violation of these rules.
  - E. The Authority may require any order or other notice to be displayed on the premises designated. No person shall mutilate, alter, or remove such order or notice unless authorized to do so by the Authority.
5. Notice shall be provided in writing to the Authority of the completion of construction and the date when operation will commence. Such notice will be

provided within thirty (30) days of completion of the construction project on forms provided by the Authority. The Authority, following receipt of the notice of completion, shall inspect the premises.

Section 34-040 Compliance Schedules for Existing Sources Affected by New Rules

1. No existing source of air contaminant emissions will be allowed to operate out of compliance with the provisions of new rules, unless the owner or operator of that source first obtains a Board-approved compliance schedule which lists the steps being taken to achieve compliance and the final date when compliance will be achieved. Approval of a reasonable time to achieve compliance shall be at the discretion of the Board.
2. The owner or operator of any existing air contaminant source found by the Director to be in non-compliance with the provisions of new rules shall submit to the Board for approval a proposed schedule of compliance to meet those provisions. This schedule shall be in accordance with timetables contained in the new rules or in accordance with an administrative order by the Director. This schedule shall contain, as necessary, reasonable time milestones for engineering, procurement, fabrication, equipment installation and process refinement. This request shall also contain documentation of the need for the time extension to achieve compliance and the justification for each of the milestones indicated in the schedule.
3. Within one hundred and twenty (120) days of the submittal date of the request, the Board shall act to either approve or disapprove the request. A schedule for compliance becomes effective upon the date of the written order of the Board.
4. Compliance schedules of longer than eighteen (18) months' duration shall contain requirements for periodic reporting of progress toward compliance.
5. An owner or operator of an air contaminant source operating in non-compliance with these rules, but under an approved compliance schedule, who fails to meet that schedule or make reasonable progress toward completion of that schedule, shall be subject to enforcement procedures in accordance with these rules.

**RULES APPLICABLE TO SOURCES REQUIRED TO HAVE  
ACDP OR FEDERAL OPERATING PERMITS**

Section 34-050 Applicability

Sections 34-060 through 34-080 shall apply to all stationary sources required to obtain ACDP's under 34-090 through 34-160 or Federal Operating Permits under 34-170 through 34-200.

Section 34-060 Plant Site Emission Limit Rules

1. Policy. The Authority recognizes the need to establish a more definitive method for regulating increases and decreases in air emissions of permit holders as contained in Section 34-060. However, by the adoption of these rules, the Authority does not intend to:
  - A. Limit the use of existing production capacity of any air quality permittee (except for synthetic minor source permittees);
  - B. Cause any undue hardship or expense to any permittee due to the utilization of existing unused productive capacity; or,
  - C. Create inequity within any class of permittees subject to specific industrial standards which are based on emissions related to production.
2. Plant Site Emission Limits (PSEL) may be established at levels higher than baseline if a demonstrated need exists to emit at a higher level, PSD increments and air quality standards would not be violated, and reasonable further progress in implementing control strategies would not be impeded.
3. Definitions
  - "Actual Emissions" means the mass rate of emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.
    - A. For purposes of determining actual emissions as of the baseline period:
      - (1) Except as provided in paragraph (2) of this subsection, actual emissions shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation;
      - (2) The Authority may assume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10 percent of the actual emissions calculated under paragraph (1) of this subsection.
    - B. For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.

- C. For purposes of determining actual emissions for emission statements for Major Source Interim Emission Fees under LRAPA Title 35 and for Federal Operating Permit Fees under OAR 340-28-2560 through 340-28-2720, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.
- "Aggregate Insignificant Emissions" means the annual actual emissions of any regulated air pollutant as defined in OAR 340-28-110, for any federal operating permit major source, including the usage of exempt mixtures, up to the lowest of the following applicable level:
    - A. one ton for each criteria pollutant;
    - B. 500 pounds for PM10 in a PM10 nonattainment area;
    - C. 120 pounds for lead;
    - D. the lesser of the amount established in OAR 340-32-4500, Table 3, or 1,000 pounds for each Hazardous Air Pollutant;
    - E. an aggregate of 5,000 pounds for all Hazardous Air Pollutants.
  - "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.
  - "Baseline Period" means either calendar years 1977 or 1978. The Authority shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
  - "Categorically Insignificant Activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.
    - A. constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under OAR Chapter 340, Divisions 20 through 32, or less than 0.1% by weight of any carcinogen listed in the U. S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year.
    - B. evaporative and tail pipe emissions from on-site motor vehicle operation;

- C. distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;
- D. natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;
- E. office activities;
- F. food service activities;
- G. janitorial activities;
- H. personal care activities;
- I. groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;
- J. on-site laundry activities;
- K. on-site recreation facilities;
- L. instrument calibration;
- M. maintenance and repair shop;
- N. automotive repair shops or storage garages;
- O. air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;
- P. refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;
- Q. bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;
- R. temporary construction activities;
- S. warehouse activities;
- T. accidental fires;
- U. air vents from air compressors;

- V. air purification systems;
- W. continuous emissions monitoring vent lines;
- X. demineralized water tanks;
- Y. pre-treatment of municipal water, including use of deionized water purification systems;
- Z. electrical charging stations;
- AA. fire brigade training;
- BB. instrument air dryers and distribution;
- CC. process raw water filtration systems;
- DD. pharmaceutical packaging;
- EE. fire suppression;
- FF. blueprint making;
- GG. routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;
- HH. electric motors;
- II. storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;
- JJ. on-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;
- KK. natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;
- LL. pressurized tanks containing gaseous compounds;
- MM. vacuum sheet stacker vents;



- NN. emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;
- OO. log ponds;
- PP. storm water settling basins;
- QQ. fire suppression and training;
- RR. paved roads and paved parking lots within an urban growth boundary;
- SS. hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;
- TT. health, safety, and emergency response activities;
- UU. emergency generators and pumps used only during loss of primary equipment or utility service;
- VV. non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;
- WW. non-contact steam condensate flash tanks;
- XX. non-contact steam vents on condensate receivers, deaerators and similar equipment;
- YY. boiler blowdown tanks;
- ZZ. industrial cooling towers that do not use chromium-based water treatment chemicals;
- AAA. ash piles maintained in a wetted condition and associated handling systems and activities;
- BBB. oil/water separators in effluent treatment systems;
- CCC. combustion source flame safety purging on startup;
- DDD. broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;

- EEE. stock cleaning and pressurized pulp washing, excluding open stock washing systems; and
- FFF. white water storage tanks.
- "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
  - "Plant Site Emission Limit (PSEL)" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL may consist of more than one assessable emission.
  - "Significant Emission Rate (SER)" means
    - A. Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Significant Emission Rates for Pollutants  
Regulated Under the Clean Air Act

<u>Significant Pollutant</u>	<u>Emission Rate</u>
(1) Carbon Monoxide	100.00 tons/year
(2) Nitrogen Oxides	40.00 tons/year
(3) Particulate Matter	25.00 tons/year
(4) PM <sub>10</sub>	15.00 tons/year
(5) Sulfur Dioxide	40.00 tons/year
(6) VOCs	40.00 tons/year
(7) Lead	0.60 ton/year
(8) Mercury	0.10 ton/year
(9) Beryllium	0.0004 ton/year
(10) Asbestos	0.007 ton/year
(11) Vinyl Chloride	1.00 ton/year
(12) Fluorides	3.00 tons/year
(13) Sulfuric Acid Mist	7.00 tons/year
(14) Hydrogen Sulfide	10.00 tons/year
(15) Total Reduced Sulfur (including hydrogen sulfide)	10.00 tons/year
(16) Reduced Sulfur Compounds (including hydrogen sulfide)	10.00 tons/year

- B. For pollutants not listed above, the Authority shall determine the rate that constitutes a significant emission rate.
- C. Any emissions increase less than these rates associated with a new source or modification which would construct within 10 kilometers of a

Class I area, and would have an impact on such area equal to or greater than  $1 \mu\text{g}/\text{m}^3$  (24-hour average) shall be deemed to be emitting at a significant emission rate.

#### 4. Requirements for Plant Site Emission Limits

- A. Plant Site Emission Limits (PSEL) shall be incorporated in all Air Contaminant Discharge Permits (ACDPs) and Federal Operating Permits (FOPs), except minimal source permits and special letter permits, as a means of managing airshed capacity. Except as provided for in 34-060-6 and 7, all sources subject to regular permit requirements shall be subject to PSELs for all regulated pollutants. PSELs will be incorporated in permits when permits are renewed, modified, or newly issued.
- B. The emissions limits established by PSELs shall provide the basis for:
- (1) assuring reasonable further progress toward attaining compliance with ambient air standards;
  - (2) assuring that compliance with ambient air standards and Prevention of Significant Deterioration increments are being maintained;
  - (3) administering offset, banking and bubble programs; and
  - (4) establishing the baseline for tracking consumption of Prevention of Significant Deterioration increments.

#### 5. Criteria for Establishing Plant Site Emission Limits

- A. For existing sources, PSELs shall be based on the baseline emission rate for a particular pollutant at a source and shall be adjusted upward or downward pursuant to Authority rules.
- B. If an applicant requests that the PSEL be established at a rate higher than the baseline emission rate, the applicant shall:
- (1) demonstrate that the requested increase is less than the significant emission rate increase defined in Section 34-060-3; or
  - (2) provide an assessment of the air quality impact pursuant to procedures specified in Section 38-015 to Section 38-020. A demonstration that no air quality standards or PSD increment will be violated in an attainment area or that a growth increment or offset is available in a non-attainment area shall be sufficient to allow an increase in the PSEL to an amount not greater than the plant's demonstrated need to emit as long as no physical modification of an emissions unit is involved.
- C. Increases above baseline emission rates shall be subject to public notice and opportunity for public hearing pursuant to applicable permit requirements.

- D. PSELS shall be established on at least an annual emission basis and a short-term period emission basis that is compatible with source operation and air quality standards.
  - E. Mass emission limits may be established separately within a particular source for process emissions, combustion emissions, and fugitive emissions.
  - F. Documentation of PSEL calculations shall be available to the permittee.
  - G. For new sources, PSELS shall be based on application of applicable control equipment requirements and projected operating conditions.
  - H. PSELS shall not be established which allow emissions in excess of those allowed by any applicable federal or state regulation or by any specific permit condition unless specific provisions of Section 34-060-8 are met.
  - I. PSELS may be changed pursuant to Authority rules when:
    - (1) Errors are found or better data is available for calculating PSELS.
    - (2) More stringent control is required by a rule adopted by the Environmental Quality Commission or the Authority.
    - (3) An application is made for a permit modification pursuant to the Air Contaminant Discharge Permit requirements (34-090 through 34-160) and the New Source Review requirements (Title 38), or Rules Applicable to Sources Required to Have Federal Operating Permits (34-170 through 34-200). Approval may be granted based on growth increments, offsets, or available Prevention of Significant Deterioration increments.
    - (4) The Authority finds it necessary to initiate modifications of a permit pursuant to Section 34-130-15 or OAR 340-28-2280, Reopenings.
6. Plant Site Emission Limits for Sources of Hazardous Air Pollutants
- A. For purposes of establishing PSELS, hazardous air pollutants listed under OAR 340-32-130 or OAR 340-32-5400 shall not be considered regulated pollutants under Section 34-060-4.A until such time as the Authority determines otherwise.
  - B. The Authority may establish PSELS for hazardous air pollutants for the following causes:
    - (1) An owner or operator elects to establish a PSEL for any hazardous air pollutant emitted for purposes of determining emission fees as prescribed in Title 35; or
    - (2) The source is subject to a hazardous air pollutant emission standard, limitation, or control requirement other than Plant Site Emission Limits.

- C. Procedures for establishing and modifying PSELS for hazardous air pollutant emissions shall be consistent with Section 34-060-5, except for the following:
- (1) a baseline emission rate shall not apply; and
  - (2) the provisions of Section 34-060-8 shall not apply.
- D. PSELS established for hazardous air pollutants shall not be used for any provisions other than those prescribed in subsection B of this section.
7. Plant Site Emission Limits for Insignificant Activities
- A. For purposes of establishing PSELS, emissions from categorically insignificant activities listed in Subsection 34-060-3 shall not be considered regulated air pollutants under Section 34-060-4 until such time as the Authority determines otherwise, except as provided in subsection C of this section.
- B. For purposes of establishing PSELS, emissions from non-exempt insignificant mixture usage and aggregate insignificant emissions listed in Subsection 34-060-3 shall be considered regulated air pollutants under Section 34-060-4.
- C. For purposes of determining New Source Review or Prevention of Significant Deterioration applicability, Title 38, emissions from insignificant activities shall be considered.
8. Alternative Emission Controls (Bubble)
- A. Alternative emission controls may be approved for use within a plant site such that specific mass emission limit rules are exceeded if:
- (1) such alternatives are not specifically prohibited by a permit condition;
  - (2) net emissions for each pollutant are not increased above the PSEL;
  - (3) The net air quality impact is not increased as demonstrated by procedures required by Section 38-035 (Requirements for Net Air Quality Benefit);
  - (4) No other pollutants including malodorous, toxic or hazardous pollutants are substituted;
  - (5) Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER), where required by a previously issued permit, and New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), where required, are not relaxed;
  - (6) specific mass emission limits are established for each emission unit involved such that compliance with the PSEL can be readily determined; or
  - (7) application is made for a permit modification and such modification is approved by the Authority.

- B. Operators of existing sources requesting alternative emission controls shall, at the time of application, pay the following fees:
- (1) a filing fee of \$75; and
  - (2) an application processing fee of \$500.
9. Temporary PSD Increment Allocation
- A. On demonstration to the Authority, PSELs may include a temporary or time-limited allocation against an otherwise unused PSD increment in order to accommodate voluntary fuel switching or other cost or energy saving proposals if:
- (1) no ambient air quality standard is exceeded;
  - (2) no applicable PSD increment is exceeded;
  - (3) no nuisance condition is created; and
  - (4) the applicant's proposed and approved objective continues to be realized.
- B. When such demonstration is being made for changes to the PSEL, it shall be presumed that ambient air quality monitoring shall not be required of the applicant for changes in hours of operation, changes in production levels, voluntary fuel switching or for cogeneration projects unless, in the opinion of the Authority, extraordinary circumstances exist.
- C. Such temporary allocation of a PSD increment shall be set forth in a specific permit condition issued pursuant to the Authority's notice and permit issuance or modification procedures.
- D. Such temporary allocations are for a specific time period and may be recalled with proper notice.

Section 34-070 Sampling, Testing and Monitoring of Air Contaminant Emissions

1. Program

- A. As part of its coordinated program of air quality control and preventing and abating air pollution, the Authority may:
- (1) require any person responsible for emissions of air contaminants to make or have made tests to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
  - (2) require full reporting of all test procedures and results furnished to the Authority in writing and signed by the person or persons responsible for conducting the tests; and
  - (3) require continuous monitoring of specified air contaminant emissions and periodic regular reporting of the results of such monitoring.

- B. At the request of the Authority, an owner or operator of a source required to conduct emissions tests may be required to provide emission testing facilities as follows:
- (1) sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
  - (2) utilities for sampling and testing equipment.
- C. Testing shall be conducted in accordance with the Department's Source Sampling Manual (January, 1992), the Department's Continuous Monitoring Manual (January, 1992), or an applicable EPA Reference Method unless the Authority, where allowed under applicable federal requirements:
- (1) specifies or approves, in specific cases, minor changes in methodology;
  - (2) approves the use of an equivalent method or alternative method which will provide adequate results;
  - (3) waives the requirement for tests because the owner or operator of a source has demonstrated by other means to the Authority's satisfaction that the affected facility is in compliance with applicable requirements; or
  - (4) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

## 2. Stack Heights and Dispersion Techniques

- A. 40 CFR, Parts 51.100 (ff) through 51.100(kk), 51.118, 51.160 through 51.166 (July 1, 1993) are by this reference adopted and incorporated herein, concerning stack heights and dispersion techniques.
- B. In general, the rule prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule does not forbid the construction and actual use of excessively tall stacks, nor use of dispersion techniques; it only forbids their use in calculations as noted above.
- C. This section has the following general applicability:
- (1) With respect to the use of excessive stack height, stacks 65 meters high or greater, constructed after December 31, 1970, and major modifications to existing plants after December 31, 1970 with stacks 65 meters high or greater which were constructed before that date, are subject to this section, with the exception that certain stacks at federally owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974, are exempt.
  - (2) With respect to the use of dispersion techniques, any technique implemented after December 31, 1970, at any plant, is subject to this section. However, if the plant's total allowable emissions of sulfur dioxide are less than 5,000 tons per year, then certain dispersion techniques to

increase final exhaust gas plume rise are permitted to be used when calculating compliance with ambient air quality standards for sulfur dioxide.

D. Definitions:

- (1) Where found in the federal rule, the term "reviewing agency" means the Authority, the Department, or the EPA, as applicable;
- (2) Where found in the federal rule, the term "authority administering the State Implementation Plan" means the Authority, the Department, or the EPA;
- (3) The "procedures" referred to in 40 CFR 51.164 are the New Source Review procedures at the Department (OAR 340-28-1900 to 340-28-2000) or at the Authority (Title 38); and the review procedures for new, or modifications to, minor sources, at the Department (OAR 340-28-800 to 340-28-820, 340-28-1700 to 340-28-1790) or at the Authority (34-035).
- (4) Where "the state" or "state, or local control agency" is referred to in 40 CFR 51.118, it means the Department or the Authority.
- (5) Where found in the federal rule, the terms "applicable state implementation plan" and "plan" refer to the programs and rules of the Department or the Authority, as approved by the EPA, or any EPA-promulgated regulations (see 40 CFR Part 52, Subpart MM).

3. Methods

- A. Any sampling, testing, or measurement performed under this regulation shall conform to methods contained in the Department's Source Sampling Manual or to recognized applicable standard methods approved in advance by the Authority.
- B. The Authority may approve any alternative method of sampling provided it finds that the proposed method is satisfactory and complies with the intent of these regulations and is at least equivalent to the uniform recognized procedures in objectivity and reliability, and is demonstrated to be reproducible, selective, sensitive, accurate and applicable to the program.

4. Authority Testing. The Authority, instead of requesting tests and sampling of emissions from the person responsible for an air contamination source, may conduct such tests alone or in conjunction with said person. If the testing or sampling is performed by the Authority, a copy of the results shall be provided to the person responsible for the air contamination source.

5. Records--Maintaining and Reporting

- A. Upon notification from the Director, all persons owning or operating a source within Lane County shall keep and maintain written records of the nature, type and amounts of emissions from such source and other information as may be required by the Director to determine whether the source is in



compliance with applicable emission rules, limitations or other control measures.

- B. The records shall be submitted to the Authority on an annual basis, or more frequently if requested in writing by the Authority. They shall be submitted using an Emissions Inventory Questionnaire form provided by the Authority, commencing in 1995, for the calendar year 1994. Except as may be otherwise provided by rule, annual periods are January 1 through December 31. A more frequent basis for reporting may be required due to noncompliance or to protect human health or the environment.
- C. The reports required by this rule shall be submitted by the end of the first calendar quarter of the next year (March 31).

Section 34-080 Excess Emissions

See Title 36, Section 36-001 through 36-030.

**RULES APPLICABLE TO SOURCES REQUIRED TO HAVE  
AIR CONTAMINANT DISCHARGE PERMITS (ACDP)**

Section 34-090 Purpose and Applicability

- 1. In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, no person shall construct, install, establish, modify, enlarge, develop or operate an air contaminant source listed in Table A Part II, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Authority.
- 2. The purpose of Sections 34-090 through 34-160 is to prescribe the requirements and procedures for obtaining ACDP's for stationary sources listed in Table A Part II. Sections 34-090 through 34-160 shall not apply to Federal Operating Permit program sources unless an ACDP is required by 34-110(2), 34-110(4), 34-120 or 38-001.
- 3. Sources not listed in Table A Part II are subject to requirements for construction (34-035) and may be subject to registration requirements (34-030).

Section 34-100 Permit Categories

The following list delineates the types of permit which may apply to a stationary source:

1. Title V Federal Operating Permit, for major stationary sources as defined by OAR 340-28-2110. Permitting requirements for Federal Operating Permit program sources are prescribed in Sections 34-110-2 and 4, and Sections 34-170 through 34-200.
2. Regular ACDP, for stationary sources listed in Table A Part II. Permitting requirements for regular ACD permits are prescribed in Sections 34-110 through 34-160.
3. Synthetic Minor ACDP, for stationary sources defined by OAR 340-28-110 (117). Permitting procedures for Synthetic Minor ACDP's are prescribed in Sections 34-110-2, 4 and 5, and 34-120 through 34-160.
4. Multiple Source Permit. When a single site includes more than one air contaminant source, a single ACDP may be issued including all sources located at the site. For uniformity such applications shall separately identify, by subsection, each air contaminant source included from Table A Part II. Permitting procedures for multiple source permits are the same as for regular ACDP's and are prescribed in Sections 34-130 through 34-160.
  - A. When a single air contaminant source which is included in a multiple-source ACDP is subject to permit modification, revocation, suspension, or denial, such action by the Authority shall only affect that individual source without thereby affecting any other source subject to the permit.
  - B. When a multiple-source ACDP includes air contaminant sources subject to the jurisdictions of both the Department and the Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.
5. Minimal Source Permit
  - A. The Lane Regional Air Pollution Authority may designate any source as a "minimal source" based upon the following criteria:
    - (1) quantity and quality of emissions;
    - (2) type of operation;
    - (3) compliance with Authority regulations;
    - (4) minimal impact on the air quality of the surrounding region.
  - B. If a source is designated as a minimal source, the compliance determination fee, provided by Section 34-150 (ACDP Permits) will be collected no less frequently than every five (5) years.
6. Letter Permits

- A. Any source listed in Table A, Part II, with no, or insignificant, air contaminant discharges may apply to the Authority for a letter permit.
- B. The determination of applicability of this letter permit shall be made solely by the Authority.
- C. If issued a letter permit, the application processing fee and/or annual compliance determination fee, provided by Section 34-150 (ACDP Fees) may be waived by the Authority.

Section 34-110 Permit Required

1. No person shall construct, install, establish, develop or operate any air contaminant source which is referred to in Table A Part II, appended hereto and incorporated herein by reference, without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Authority.
2. No person shall construct, install, establish, or develop any major source, as defined by OAR 340-28-2110 that will be subject to the federal operating permit program without first obtaining an ACDP from the Authority. Any Federal Operating Permit program source required to have obtained an ACDP prior to construction shall:
  - A. choose to become a synthetic minor source, Section 34-120, and remain in the ACDP program; or
  - B. file a complete application to obtain the Federal Operating Permit within twelve (12) months after initial startup.
3. No person shall modify any source covered by an ACDP under 34-100 through 34-160 such that the emissions are significantly increased without first applying for and obtaining a permit modification.
4. No person shall modify any source required to be covered by an ACDP under 34-100 through 34-160 such that the source becomes subject to the Federal Operating Permit program, 34-170 through 34-200 without first applying for and obtaining a modified ACDP. Any Federal Operating Permit program source required to have obtained an ACDP prior to modification shall:
  - A. choose to become a synthetic minor source, 34-120, and remain in the ACDP program;
  - B. choose to remain a synthetic minor source, 34-120, and remain in the ACDP program; or
  - C. file a complete application to obtain the Federal Operating Permit within twelve (12) months after initial startup of the modification.

5. No person shall increase emissions above the PSEL or operate in excess of the enforceable condition to limit potential to emit and remain a synthetic minor source without first applying for and obtaining a modified ACDP.
6. No person shall modify any source covered by an ACDP under 34-100 through 34-160 and not required to obtain a Federal Operating Permit such that:
  - A. the process equipment is substantially changed or added to; or
  - B. the emissions are significantly changed, without first notifying the Authority.

#### Section 34-120 Synthetic Minor Sources

1. Enforceable conditions to limit a source's potential to emit shall be included in the ACDP for a synthetic minor source. Enforceable conditions, in addition to the PSEL established under 34-060, shall include one or more of the following physical or operational limitations, but in no case shall exceed the conditions used to establish the PSEL:
  - A. restrictions on hours of operation;
  - B. restrictions on levels of production;
  - C. restrictions on the type or amount of material combusted, stored, or processed;
  - D. additional air pollution control equipment; or
  - E. other limitations on the capacity of a source to emit air pollutants.
2. The reporting and monitoring requirements of the conditions which limit the potential to emit contained in the ACDP of synthetic minor sources shall meet the requirements of 34-070.
3. To avoid being required to submit an application for a Federal Operating Permit, the owner or operator of a major source shall obtain an ACDP or a modification to an ACDP containing conditions that would qualify the source as a synthetic minor source prior to the time the owner or operator would be required to submit a Federal Operating Permit application.
4. Applications for synthetic minor source status shall be subject to notice procedures of 34-130-5.
5. Synthetic minor source owners or operators who cause their source to be subject to the Federal Operating Permit program by requesting an increase in the source's potential to emit, when that increase uses the source's existing capacity and does not result from construction or modification, shall:

- A. become subject to 34-170 through 34-200 (OAR 340-28-2100 through 340-28-2320);
  - B. submit a Federal Operating Permit application pursuant to OAR 340-28-2120; and
  - C. receive a Federal Operating Permit before commencing operation in excess of the enforceable conditions to limit potential to emit.
6. Synthetic minor source owners or operators who cause their source to be subject to the Federal Operating Permit program by requesting an increase in the source's potential to emit, when that increase is the result of construction or modification, shall:
- A. submit an application for the modification of the existing ACDP;
  - B. receive the modified ACDP before beginning construction or modification;
  - C. become subject to 34-170 through 34-200 (OAR 340-28-2100 through 340-28-2320); and
  - D. submit a Federal Operating Permit application under OAR 340-28-2120 to obtain a Federal Operating Permit within twelve (12) months after initial startup of the construction or modification.
7. Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-28-2110(1)(a).

Section 34-130 General Procedures for Obtaining ACDP Permits (*Note: Procedures for reviewing new major sources or major modifications are contained in Title 38, New Source Review.*)

1. No person shall commence construction, installation or modification of an air contaminant discharge source prior to obtaining an Air Contaminant Discharge Permit. The Director may allow commencement of construction prior to obtaining an ACDP, if applicant demonstrates no emissions increase of any regulated pollutant.
2. Any person intending to construct, install or establish a new source or renew an expired permit shall submit a complete permit application on forms provided by the Authority and containing the following information:
  - A. name, address and nature of business;
  - B. a description of the production processes and a related flow chart;
  - C. a plot plan showing location of all air contaminant sources, all discharge points and the surrounding residential and commercial property;

- D. type and quantity of fuels used;
  - E. amount, nature and duration of all emissions of air contaminants;
  - F. plans and specifications for air pollution control equipment and facilities and their relationship to the production process;
  - G. estimated efficiency of air pollution control equipment;
  - H. any information on pollution prevention measures and cross-media impacts the person wants the Authority to consider in determining applicable control requirements and evaluating compliance methods;
  - I. where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Authority to establish operational and maintenance requirements under 32-007-1 and 2; and
  - J. other pertinent information required by the Authority.
3. Unless otherwise specified, within fifteen (15) days after receiving the permit application the Authority will review the application to determine the adequacy of the information submitted.
- A. If the Authority determines that additional information is needed, it will promptly request the needed information from the applicant. The permit application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within ninety (90) days of the request.
  - B. If, in the opinion of the Director, additional measures are necessary to gather facts regarding the permit application, the Director will notify the applicant of his intent to institute said measures and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed.
  - C. When the information in the permit application is deemed adequate, the applicant will be notified that the application is complete for processing.
  - D. Following determination that it is complete for processing, each permit application will be reviewed on its own merit, in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the Lane Regional Air Pollution Authority.

- E. If, upon review of the permit application, the Authority determines that a permit is not required, the Authority shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Authority on the permit application. *(NOTE: Upon notification by the Authority, a registered source may be required to obtain a permit.)*
4. In the event the Authority is unable to complete action on a permit application within forty-five (45) days of closing of the public comment period or hearing record under subsection 5 of this section, the applicant shall be deemed to have received a temporary or conditional permit. Caution should be exercised by the applicant under a temporary or conditional permit, since it will expire upon final action by the Authority to grant or deny the original application, and since such temporary or conditional permit does not authorize any construction activity, operation or discharge which will violate any of the laws, rules or regulations of the State of Oregon or the Lane Regional Air Pollution Authority.
  5. **Public Notice.** If the Authority proposes to issue a permit, public notice of proposed provisions prepared by the Authority will be forwarded to the applicant and other interested persons, at the discretion of the Authority, for comment. The public notice shall allow thirty (30) days for written comment from the applicant, the public and the interested local, state and federal agencies prior to issuance of the permit. Public notice shall include the names and quantities of new or increased emissions for which permit limits are proposed or new or increased emissions which exceed Significant Emission Rates established by the Authority. If, within fourteen (14) days after commencement of the public notice period; the Authority receives written requests from ten (10) persons, or from an organization or organizations representing at least ten persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the Authority shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Notice of such a hearing may be given, at the Authority's discretion, either in the notice accompanying the proposed provisions or in such other manner as is reasonably calculated to inform interested persons. The Authority shall take final action on the permit application within forty-five (45) days of the closing of the public comment period or the hearing record.
  6. The Authority may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the Authority shall consider the comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered.
  7. The Authority shall promptly notify the applicant in writing of the final action taken on the application. If the conditions of the permit issued are different from the proposed provisions forwarded to the applicant for review, the notification shall include the reasons for the changes made. A copy of the permit issued shall be attached to the notification.

8. If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Authority, the applicant may request a hearing before the Board of Directors or its authorized representative. Such a request for hearing shall be made in writing to the Director within twenty (20) days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the rules of the Authority.
9. If the Authority proposes to deny issuance of a permit, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the applicant request a hearing. Any hearing held shall be conducted pursuant to the rules of the Authority.
10. Permits issued by the Authority will specify those activities, operations, emissions and discharges which are permitted, as well as requirements, limitations and conditions which must be met.
11. No permit will be issued to an air contaminant source which is not in compliance with applicable rules, unless a compliance schedule is made a condition of the permit.
12. Each permit proposed to be issued or revised by the Authority shall be submitted to the Department of Environmental Quality at least thirty (30) days prior to the proposed issuance date.
13. A copy of each permit issued, modified or revoked by the Authority pursuant to this section shall be promptly submitted to the Department.
14. The Authority may waive the procedures prescribed in these rules and issue special permits of duration not to exceed sixty (60) days from the date of issuance for unexpected or emergency activities, operations, emissions or discharges. Said permits shall be properly conditioned to insure adequate protection of property and preservation of public health, welfare and resources and shall include provisions for compliance with applicable emissions standards of the Authority. Application for such permits shall be in writing and may be in the form of a letter which fully describes the emergency and the proposed activities, operations, emissions or discharges, as described in subsection 2 of this section.
15. The Authority may institute modification of a permit due to changing conditions or standards, receipt of additional information or other reason, by notifying the permittee by registered or certified mail of its intention to modify the permit. Such notification shall include the proposed modification and the reasons for modification. The modifications shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests a hearing. Such a request for hearing shall be made in writing, and the hearing shall be conducted pursuant to the rules of the Authority. A copy of the modified permit shall be forwarded to the permittee as soon as the modification becomes



effective. The existing permit shall remain in effect until the modified permit is issued.

16. The procedure for issuance of a permit shall apply to renewal of a permit. If a completed application for renewal of a permit is filed with the Authority in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until final action has been taken on the renewal application to issue or deny a permit.

#### Section 34-140 Permit Duration

1. The duration of permits may vary but shall not exceed ten (10) years. The expiration date will be recorded on each permit issued.
2. Air Contaminant Discharge Permits issued by the Authority shall be automatically terminated:
  - A. Within sixty (60) days after sale or exchange of the activity or facility which requires a permit;
  - B. Upon change in the nature of activities, operations, emissions or discharges from those of record in the last application;
  - C. Within one (1) year after a plant closure lasting continuously for one (1) or more years.
  - D. Upon issuance of a new, renewal or modified permit for the same operation;  
or
  - E. Upon written request of the permittee.
3. In the event that it becomes necessary to suspend or terminate a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application or any other cause, the Authority shall notify the permittee by registered or certified mail of its intent to suspend or revoke the permit. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests hearing. Such a request for hearing shall be made in writing and shall state the grounds for the request.
4. Termination of a permit resulting from continuous plant closure shall subject the source to review as a new non-permitted source upon application to operate the facility.
5. If the Authority finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may suspend or terminate a permit, effective immediately. Notice of such suspension or termination must

state the reasons for action and advise the permittee that he may request a hearing. Such a request for hearing shall be made in writing within ninety (90) days of the date of suspension and shall state the grounds for the request.

6. Any hearing requested under this Section shall be conducted pursuant to the rules of the Authority.

#### Section 34-150 ACDP Fees

1. All persons applying for a new ACD permit or a renewal of an existing ACDP shall at the time of application pay the following fees:

- A. A filing fee of \$75;
- B. An application processing fee; and
- C. An annual compliance determination fee.

Both the application processing fee and the annual compliance fee may be waived when applying for letter permits (see Section 34-100-6, Permit Categories).

2. All persons applying for a modification of an existing ACDP shall at the time of application pay the following fees:

- A. a filing fee of \$75; and
- B. an application processing fee.

The application processing fee may be waived when applying for letter permits (see Section 34-100-6, Permit Categories). Modifications subject to the requirements of Section 34-035, Requirements for Construction, may be subject to the fees of Table A Part I, in addition to the fees of Table A Part II.

3. All persons applying for a Synthetic Minor ACDP (34-120) shall at the time of application pay the following fees:

- A. a filing fee of \$75;
- B. an application processing fee;
- C. an annual compliance determination fee; and
- D. all of the applicable fees of Table A Part I.

4. The fee schedule contained in Table A Part II shall be applied to determine the ACDP fees on a standard industrial classification (SIC) basis.

5. Applications for multiple-source permits received pursuant to Section 34-100-4 (Permit Categories) shall be subject to a single \$75 filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual sources involved, as listed in Table A Part II.
6. In addition to the fees mentioned above, sources may be subject to the fees of Table A Part I. The fees for construction review shall be based on the definitions of review levels in Section 34-035-3.
7. Modifications of existing, unexpired permits, which are instituted by the Authority due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes and which do not require refileing or review of an application or plans and specifications, shall not require submittal of the filing fee or the application processing fee.
8. The annual compliance determination fee shall be paid at least thirty (30) days prior to the start of each subsequent permit year. Failure to remit the annual compliance determination fee on time shall be considered grounds for not issuing a permit or for terminating an existing permit. Also, such a failure is, in and of itself, a violation and may subject the permittee to enforcement procedures as defined in Title 15 of LRAPA Rules and Regulations.
9. If a permit is issued for a period of less than one year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than twelve (12) months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance fee by the number of months covered by the permit and dividing by twelve (12).
10. If a temporary or conditional permit is issued in accordance with adopted procedure, fees submitted with the application shall be applied to the regular permit when it is granted or denied.
11. All fees shall be made payable to the Authority.
12. Table A Part II of this Title lists all air contaminant sources required to have a permit and the associated fee schedule.

#### Section 34-160 New Source Review

New Source Review requirements are contained in LRAPA Title 38, Sections 38-001 through 38-050.

**RULES APPLICABLE TO SOURCES REQUIRED TO HAVE  
FEDERAL OPERATING PERMITS (FOP)****Section 34-170 Applicability**

Sections 34-180 through 34-200 apply to any stationary source defined under OAR 340-28-2110.

**Section 34-180 Authority to Implement**

In accordance with OAR 340-28-100 and OAR 340-32-110, the Authority is authorized to implement all Oregon Administrative Rules, Divisions 28 and 32, which apply to sources subject to the Title V Federal Operating Permit program in Lane County. LRAPA shall implement Division 28 and 32 rules as they pertain to Title V Federal Operating Permit Program sources until such time as it adopts its own Federal Operating Permit Program rules.

**Section 34-190 Definitions**

All definitions relevant to Federal Operating Permit Program rules are contained in OAR 340-28-110 and are adopted here by reference in their entirety.

**Section 34-200 Federal Operating Permitting Program Requirements and Procedures**

All rules pertaining to permitting of sources subject to Federal Operating Permit program are contained in OAR 340-28-2110 through 2740 and OAR Division 32, and shall be implemented by the Authority in accordance with Section 34-180.

TABLE A  
AIR CONTAMINANT SOURCES AND  
ASSOCIATED FEE SCHEDULE

PART I

NOTE: Fees in A-I are in addition to any other applicable fees.

<p>A. Late Payment</p> <p>(1) 8-30 days 10%</p> <p>(2) Greater than 30 days 25%</p> <p>B. Ambient Monitoring Network Review \$900</p> <p>C. Modeling Review \$2,000</p> <p>D. Alternative Emission Control Review \$1,500</p> <p>E. Non-technical permit modification (name change, ownership transfer, similar) \$50</p> <p>F. Construction Review (see Section 34-059.035 for definition of level of construction review)</p> <p>(1) Level I \$200</p> <p>(2) Level II \$2,000</p> <p>(3) Level III \$10,000</p> <p>(4) Level IV \$20,000</p>	<p>G. Elective Permits--Synthetic Minor Sources</p> <p>(1) Permit application or modification \$1,900 *(\$ 500)</p> <p>(2) Annual compliance assurance \$1,000 *(\$ 200)</p> <p>H. Emission Banking Review</p> <p>(1) Initial setup \$1,000</p> <p>(2) Annual review \$500</p> <p>I. Emission Offsetting Review \$1,000</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

\* These fees may apply where a source electing to be a synthetic minor would otherwise require a federal operating permit due to its potential to emit air contaminants above the major source threshold and the source has two or less equipment types. The applicability of these fees will be determined by the Director.

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in Part II, in addition to fee for other applicable category.

## MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY  
 BOARD OF DIRECTORS MEETING  
 TUESDAY--SEPTEMBER 9, 1997  
 SPRINGFIELD CITY COUNCIL CHAMBERS  
 225 North 5th Street  
 Springfield, Oregon

### ATTENDANCE:

**Board** Al Johnson, Chair--Eugene; Terry Callahan--Oakridge/Cottage Grove; Steve Cornacchia--Lane County; Steve Dodrill--Eugene; Maureen Maine--Springfield; Betty Taylor--Eugene  
 (ABSENT: Gary Whitney--At-Large)

**Staff** John Ruscigno--Interim Director; Craig Bressan; Merrie Dinteman; Tom Freeman; Ralph Johnston; Kim Metzler; Sharon Moody; John Morrissey

**OPENING:** Johnson called the meeting to order at 12:23 p.m.

**MINUTES:** **MSP(Maine/Dodrill)(Unanimous) approval of July 8, 1997 minutes, as submitted.**

**EXPENSE REPORTS:** Moody explained that the grant revenues appear to be low due to the way federal grant funds are paid. LRAPA submits requests for reimbursement as bills are paid for a particular grant. Revenues are also low at this time because annual dues from the local participants have not yet been received.

**\*\* MOTION \*\*** **MSP (Cornacchia/Maine)(Unanimous) approval of expense reports through June 30, July 31 and August 31, 1997, as submitted.**

**ADVISORY COMMITTEE:** Metzler reported that the committee began discussion of proposed asbestos rule amendments at its last meeting and will continue that at its next meeting. She also reported that Paul Kuhlmann, who has represented the general public on the committee for the last few years, resigned from the committee. Metzler will begin recruiting for a new general public representative.

Metzler showed the board the agency's new logo which will be used on letterhead, envelopes, business cards, brochures, etc. She said there was quite a bit of staff input into the final choice, adding that the logo can be used either vertically or horizontally, depending on the application.

**PUBLIC PARTICIPATION:** None.



PUBLIC  
HEARING--  
PROPOSED  
AMENDMENTS  
TO LRAPA  
TITLE 34  
(PERMIT RULES):

Ralph Johnston gave a brief overview of the proposed rule amendments. He added that staff is undertaking a very detailed review of the permitting rules and expects to bring proposed amendments to the board sometime in 1998. The current amendment proposal would take care of some "housekeeping" changes, as well as one substantive change which staff believes should receive immediate attention. There are times when a company submits a timely application for permit renewal but, for various reasons, staff is unable to issue the new permit before the old one expires. This has not been a problem in the past, because staff has traditionally allowed the company to operate under the conditions of the old permit until the new one is issued; however, it does technically put the company in violation of the rules. The proposed amendments would make the current administrative accommodation of this situation a formal part of the rules.

Public Hearing

Johnson opened the public hearing at 12:30 p.m. John Ruscigno entered into the hearing record affidavits of publication of hearing notice in four local Lane County newspapers, and also stated that notice was published in the Secretary of State's Oregon Bulletin. Johnson asked whether anyone present wished to comment on the proposed amendments. Receiving no response, he closed the hearing at 12:32 p.m.

**\*\* ACTION \*\***

**MSP (Dodrill/Callahan)(Unanimous) adoption of amendments to Title 34 as proposed.**

INFORMATION--  
PROPOSED  
AMENDMENTS  
TO LRAPA  
TITLE 43  
(ASBESTOS  
RULES):

Tom Freeman provided background on the proposed changes to LRAPA's asbestos rules. He said there are two significant changes.

1. **10-day notification will be required for demolition/remodel jobs involving non-friable asbestos-containing material (ACM) (as is currently required for friable ACM).**

This would affect contractors involved in remodeling and demolition--not with new construction. It would require contractors to submit a notice 10 days prior to doing abatement of non-friable ACM. These jobs have been considered exempt as long as the ACM stays non-friable; however, staff has found that too many contractors and workers handle the material too roughly and cause it to become friable. This will be a big change for flooring and demolition contractors and remodel contractors.

In response to questions from the board, Freeman said that:

- Anyone can remove non-friable ACM. It does not have to be a licensed abatement contractor.
- A homeowner (owner/occupant) can remove friable or non-friable asbestos from the home. There is no notice requirement for the removal. However, the homeowner is subject to storage, transportation and disposal requirements:

- Jobs involving less than 3 square feet or 3 linear feet of material are exempt for asbestos abatement requirements, as long as precautions are taken to minimize potential for release of fibers. This applies to situations such as a plumber or electrician who needs to cut a hole in a ceiling or floor.
  - Use of ACM in construction has been prohibited since the 1970's; however, the law did not prevent someone who had a stockpile of the material from using it up. Consequently, there has been ACM used in new construction up into the early 1990's, and there is a lot of ACM around.
2. **Major sources (subject to Title V) must perform a survey of any structures which will be demolished. If no ACM is found, the company must certify that fact to LRAPA. If ACM is found, the company must comply with 10-day advance notification and all asbestos abatement regulations.**

This is being added because federal rules say that Title V sources must comply with the federal NESHAP (hazardous air pollutant) rules. LRAPA's current rules do not address that requirement. In order for LRAPA to continue to be able to administer the Title V program in Lane County, this requirement must be placed into LRAPA's rules. The requirement applies only to demolition projects where a structural member is removed or changed. It does not apply to something like removal of pipe. The specific instances to which this requirement applies make it much less onerous than it sounds.

In response to questions from the board, Freeman noted that:

- The major source certification requirement does not specify who should make the certification. It applies to a responsible person in charge of the project.
- If the workers come across ACM that was not previously detected, they must stop work, notify LRAPA, and call in an asbestos abatement contractor to do the abatement. The 10-day notice requirement can be waived in emergency situations.

Cornacchia questioned the basis for the certification requirement for non-friable ACM at major sources. Freeman explained that the language in the proposed amendments is exactly like the state and federal rules. Cornacchia asked that the rulemaking package which is submitted to the board for authorization of hearing include citation of the specific federal and state rules requiring the major source certification for jobs involving non-friable ACM.



Board members expressed concern that this rulemaking receive adequate public notice to the people it would likely affect. Ruscigno said information regarding this proposal has already gone out to an extensive mailing list of interested parties twice and will probably be sent out again if the advisory committee's review results in further changes in the draft proposal.

The board would also like to have this package well in advance of the board meeting to allow time for thorough review prior to the meeting.

**INSURANCE  
MEMBERSHIP  
RENEWAL:**

**MSP (Cornacchia/Maine)(Unanimous) adoption of LRAPA Resolution Number 98-1, renewing LRAPA's membership in the City/County Insurance Services Trust.**

**DECISION--  
CONTESTED  
CASE #96-1211  
(INSULATION  
REMOVAL  
SPECIALISTS):**

Cornacchia said he still has issue with the definition of the term "flagrant." To him, the use of this term indicates that the subject action was the very worst violation that a person can commit, and he cannot equate that to this particular case. He has no problem with the facts of the case and the level of responsibility, but does have a problem with the way the rules define the three levels of responsibility. Cornacchia said he will try to present a more common-sense alternative for board discussion at a later date.

Maine agreed with Cornacchia but said that, until the process changes, the board must operate under the current rule.

Callahan said he also agreed with Cornacchia and could not support the hearings officer's conclusion in this case.

**\*\* MOTION \*\***

**MSP (MAINE/TAYLOR) affirmation of the hearings officer's decision in this case. VOTE: 4to 2 (Dodrill, Johnson, Maine, Taylor for; Callahan and Cornacchia against).**

**DIRECTOR'S  
REPORT:**

Ruscigno did not have anything to add to the written report but did say that he has drafted guidance for determining responsibility (flagrant, intentional, negligent) in asbestos enforcement actions that should result in determinations reflecting a more common understanding of these terms. He has the guidance undergoing staff review and will be running it by legal counsel and the hearings officers for review.

**OLD BUSINESS:**

**Transition  
Committee**

Maine announced that the search for a new director was concluded. She said the process involved the board, advisory committee, a DEQ representative, as well as the cities and the county. Five finalists were interviewed, after which the board discussed the candidates and their qualifications. Maine thanked the board for significant effort and also thanked John Ruscigno for his assistance during the process.

**\*\* MOTION \*\*** MSP (Maine/Taylor)(Unanimous) extend an offer to Barbara Cole for the position of LRAPA director, at an annual salary of \$59,616, with benefits equivalent to the normal benefits package that is offered to all regular LRAPA employees. Employment would begin October 1, 1997.

The board members thanked Maine for all the hard work she put into this process. They also all expressed support for the choice of Barbara Cole, indicating that they believe she has the leadership skills, technical knowledge, and people skills to bring stability and strong direction to the agency for the future.

Maine said that Cole has indicated acceptability of the terms of employment, and a draft employment agreement will be sent to Cole for her signature. Johnson will then sign the agreement, as LRAPA board chair. Cole will begin the first of October. Maine suggested a formal gathering to welcome Cole sometime in October.

**NEW BUSINESS:** All board members thanked John Ruscigno for the work he has done as interim director, providing leadership and continuity to the organization. Ruscigno said the job has been stressful at times but very enjoyable for him. Cornacchia asked Ruscigno to comment on the condition of the agency, present and future. Ruscigno said the staff has been through some turmoil and needed some guidance. LRAPA has a good staff who want to work hard and do a good job. He believes that LRAPA is very healthy and that, with a new director with a lot of energy, the outlook is very positive for the future.

**ADJOURNMENT:** The meeting adjourned at 1:17 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, October 14, 1997, 12:15 p.m. in the Springfield City Council Chambers.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary

# ATTACHMENT E

## Questions to Reveal Potential Justification for Differing from Federal Requirements

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

This document is prepared to comply with OAR Chapter 340, Division 11. This rulemaking pertains to the addition of regulations revised by the Lane Regional Air Pollution Authority to the State Implementation Plan through the amendment of OAR 340-020-0047. Because ORS 468A.135 authorizes regional air pollution authorities to regulate air quality within their jurisdictions, amendment of OAR 340-020-0047 to include LRAPA provisions does not present a substantive rulemaking issue. Therefore, questions posed by this form are not applicable.

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

Yes. Under Section 110 of the Clean Air Act, states are required to adopt and maintain State Implementation Plans (SIP), and submit those plans or plan revisions to EPA for approval. In Oregon, revisions of the SIP needed to accommodate rule changes of either state or regional authorities' regulations are accomplished through the amendment of OAR 340-020-0047.

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

Not applicable.

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

Not applicable.

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

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)**

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item   I    
June 12, 1998 Meeting

**Title:**

Oregon Title V Operating Permit Fee Increase

**Summary:**

The Department is proposing to increase the Title V Annual Base Fee and per ton Emission Fee by 2.29% through a new fee schedule to be issued in June 1998. The Federal Clean Air Act requires that the Oregon Title V Operating Permit Program be 100% self sufficient and includes a provision to increase fees consistent with the Consumer Price Index.

The Department is also proposing to increase the Title V special activities fees for permit revisions, ambient monitoring, and synthetic minor provisions. These fees have not increased with inflation in the past. The Department is proposing a "catch-up" increase in these fees of 11.07%, representing the cumulative CPI for 1993 through 1997.

**Department Recommendation:**

It is recommended that the Commission adopt the rule amendment regarding the proposed Title V operating permit fee increase as presented in Attachment A of the Department Staff Report.

*Terri Sylvester*  
Report Author

*Gregory A. De*  
Division Administrator

Director *[Signature]*

May 22, 1998

State of Oregon  
Department of Environmental Quality Memorandum

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**Date:** June 12, 1998  
**To:** Environmental Quality Commission  
**From:** Langdon Marsh  
**Subject:** Agenda Item I, Oregon Title V Operating Permit Fee Increase, EQC Meeting  
June 12, 1998

**Background**

On March 12, 1998, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would increase Title V Operating Permit fees.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on April 1, 1998. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on March 11, 1998.

A Public Hearing was held April 15, 1998, with Sarah Armitage serving as Presiding Officer. One written comment was received through April 22, 1998. The Presiding Officer's Report (Attachment C) summarizes the one written comment. There was no testimony presented at the hearing.

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

**Issue this Proposed Rulemaking Action is Intended to Address**

The cost of the Title V program has increased, primarily due to increases in personnel service costs approved by the 1997 Legislature. The proposed fee increase is intended to cover the increased cost of the program.

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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).

**Relationship to Federal and Adjacent State Rules**

The Federal Clean Air Act requires that the Oregon Title V Operating Permit Program be 100 percent self-sufficient, which may include an increase in fees consistent with the increase in the Consumer Price Index. Adjacent states are subject to the same requirement.

**Authority to Address the Issue**

The Environmental Quality Commission has the authority to address this proposed rule issue under ORS 468.020, 468A.025 and 468A.315.

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

Oregon Revised Statute (ORS) 468A.315 allows the Department to increase Title V fees by the amount of the increase in the Consumer Price Index (CPI). A CPI increase of 2.29 percent for 1997 was reported to the Department by the State Economist, and was used to calculate the new per ton Emission Fee and the Annual Base Fee; a CPI cumulative 11.07 percent for 1993 through 1997 was used for the Synthetic Minor fees, the Title V Modification and Ambient Monitoring fees which have not been increased since they were first adopted.

An Advisory Committee was not used to develop this proposed rule amendment; however, it was presented at a Stakeholders Meeting held March 4, 1998. No one at that meeting expressed any concerns. No alternatives were considered because of the statutory requirement for fees to cover the cost of the program.

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

The Title V Operating Permit Program is funded by three types of fees. The first type of fee is a base fee charged for each Title V source. This fee has been increased to keep up with inflation, but total revenue has declined because the number of Title V sources is lower than originally estimated. The second type of fee is an emission fee charged for each ton of emissions. This fee has also been increased to keep up with inflation but, again, total revenue has declined since sources have reduced their emissions in response to the Title V Operating Program. The third type of fee covers special activities including permit revisions, ambient monitoring and synthetic minor provisions. These fees have not been increased with inflation in the past.

Most of the fees are proposed to increase by the amount of inflation for the last year. However, the Department is proposing a "catch-up" increase for the specific activity fees since they have not been increased with inflation in the past. Now that many of the initial Title V Permits have been issued,



Memo To: Environmental Quality Commission

**Agenda Item I, Oregon Title V Operating Permit Fee Increase, EQC Meeting**

June 12, 1998

Page 3

the Department anticipates increased work in this area as sources request permit revisions. The Department is also proposing to add more sub-categories of permit revisions to better match the workload. This is expected to partially offset the impact of the catch-up fee increase.

### **Summary of Significant Public Comment and Changes Proposed in Response**

There were no comments at the public hearing, but the Department received one written comment on the proposed Title V Operating Permit Fees increase.

1. **Comment:** The commenter recognizes the Title V Operating Permit program has to be 100 percent self-supporting and that increases are allowed based on the annual CPI and indicated that she neither supports nor opposes the increase, but requested that the Department provide more information on the cost and status of the program. The Department has supplied the requested information, which is included in Attachment D. No changes were made to the proposal.

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

After adoption of this rule, major industrial facilities which have applied for an Oregon Title V Operating Permit will be billed at the new fee rate for the annual Base Fee and Per Ton Emissions Fee by the Department in June. This new fee rate must be effective before the Department's June 1998 invoicing so that adequate revenues are collected to maintain the program.

It is anticipated that the effective date of the new and increased Synthetic Minor, Title V Administrative Amendment, Title V permit revision, and Title V Ambient Air Monitoring Review fees will be July 1, 1998. The Synthetic Minor sources that have invoice due dates of July 1 and August 1 would have to be re-invoiced for the difference between the old and new annual fees (\$211 for sources having to renew their permit; \$111 for non-renewal sources).

In addition, guidance has been drafted for Department staff to use when determining which Title V Revision Fee to charge (see Attachment E).

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rule amendments regarding the Title V Operating Permit Fee increases as presented in Attachment A of the Department Staff Report.

**Attachments**

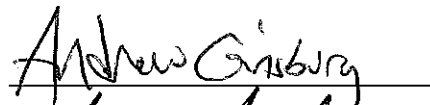
- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation:
  - 1. Legal Notice of Hearing
  - 2. Fiscal and Economic Impact Statement
  - 3. Land Use Evaluation Statement
  - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
  - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing
- D. Response to Comment
- E. Rule Implementation Plan

**Reference Documents (available upon request)**

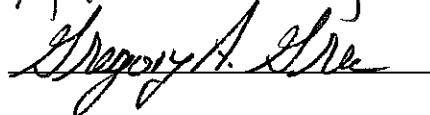
Written Comments Received (listed in Attachment C)  
(Other Documents supporting rule development process or proposal)

Approved:

Section:



Division:



Report Prepared By: Terri Sylvester

Phone: 229-5181

Date Prepared: May 8, 1998

Memo To: Environmental Quality Commission  
**Agenda Item I, Oregon Title V Operating Permit Fee Increase, EQC Meeting**  
June 12, 1998

Page 5

## Attachment A

<b>TABLE 4</b> <b>AIR CONTAMINANT SOURCES AND</b> <b>ASSOCIATED FEE SCHEDULE</b> <b>(340-028-1750)</b>		
<b>Part I.</b>		
Note: Fees in (A) through (H) are in addition to any other applicable fee.		
A.	Late Payment a) 8 - 30 days b) > 30 days	\$200 \$400
B.	Ambient Monitoring Network Review	\$1,170
C.	Modeling Review	\$2,600
D.	Alternative Emission Control Review	\$1,950
E.	Non-technical permit modification (name change, ownership transfer, and similar)	\$65
F.	Initial Permitting or Construction a) Complex b) Moderately Complex c) Simple	\$28,600 \$13,000 \$2,600
G.	Elective Permits - Synthetic Minor Sources a) Permit Application or Modification b) Annual Compliance Assurance	<del>[\$1,900]</del> <b>2,110</b> <del>[\$1,000]</del> <b>1,110</b>
H.	Filing	\$98

### Annual Base Fee

#### 340-028-2580

(1) The Department shall assess an annual base fee of ~~[\$2,714]~~ **2,777** for each major source subject to the Oregon Title V Operating Permit program.

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

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

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1992, f. & ef. 5-19-94; DEQ 22-1995, f. & ef. 10-6-95;

### Emission Fee

#### 340-028-2590

(1) Based on the Oregon Title V Operating Permit Program Budget, prepared by the Department and approved by the 1993 Oregon Legislature, the Commission determines that an emission fee of ~~[\$31.78]~~ **32.50** per ton is necessary to cover all reasonable direct and indirect costs of implementing the Oregon Title V operating permit program.

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

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

### Specific Activity Fees

**340-028-2600** Specific activity fees shall be assessed by the Department for a major source with any one of the following activities:

Specific Activity	Fee
1. Existing source permit [ <del>modifications</del> ]revisions	a. <u>Administrative*</u> <b>\$278</b> [a]b. Simple \$[ <del>1,000</del> ] <b>1,110</b> c. <u>Moderate</u> <b>\$8,330</b> [b]d. Complex \$[ <del>15,000</del> ] <b>16,660</b>
[ <del>2. Hazardous Air Pollutant</del> <del>permit modifications</del>	a. Simple <del>\$3,000</del> b. Complex <del>\$10,000</del>
[ <del>3</del> ]2. Ambient air monitoring review	a. \$[ <del>2,000</del> ] <b>2,221</b>

**\*Includes revisions specified in OAR 340-028-2230(1) (a) through (g). Other revisions specified in OAR 340-028-2230 are subject to simple, moderate or complex revision fees.**

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

ATTACHMENT B1

**Secretary of State**

NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

DEQ - Air Quality Division  
Agency and Division

Chapter 340 Divisions 028  
Administrative Rules Chapter Number

Susan M. Greco  
Rules Coordinator

(503) 229-5213  
Telephone

**811 SW 6th Avenue, Portland, OR 97213**

**Address**

<u>4/15/98</u>	<u>2:00 PM</u>	<u>811 SW Sixth Ave, Rm 3A, Portland</u>	<u>Sarah Armitage</u>
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request?

Yes  No

**RULEMAKING ACTION**

**AMEND:**

OAR 340-028-1750, OAR 340-028-2580, OAR 340-028-2590, OAR 340-028-2600

**AMEND: OAR 340-028-1750 ,Table 4, Part I**

Category Numbers G.a) and G.b)

Stat. Auth.: ORS 468.020, 468A.025 and 468A.315

Stats. Implemented: ORS 468.020, 468A.010, 468A.025, 468A.045 and 468A.315

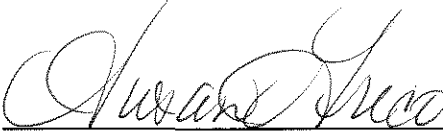
**RULE SUMMARY**

The Department of Environmental Quality is proposing to amend its rules by adopting an increase in the Title V Operating Permit Program fees. This increase includes sources that have Synthetic Minor permits.

April 22, 1998

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Last Day for Public Comment



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Authorized Signer and Date

## Attachment B2

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Oregon Title V Operating Permit Fee Increase

### Fiscal and Economic Impact Statement

#### Introduction

Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased as a result of increased costs for staff, services and supplies. The 1997 Legislature granted salary increases and funded only the amount that is paid out of the General Fund. The Title V Operating Permit Program must remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

As a result of the increase in fees, regulated facilities will pay more for each ton of air pollution released, and for annual compliance assurance work and permit modification work done by Department staff. The increase in emission fees may provide some incentive for reducing the quantities emitted. To the extent that a facility can avoid these higher fees by reducing emissions, they will enjoy a competitive advantage over other facilities with greater emissions.

In 1997 the Annual Base Fee and per ton Emission Fees were charged to 136 major industrial sources. The 136 sources will shrink to 129 in 1998 due to facility closures and several sources achieving true minor status, and because a few sources combined adjacent facilities into one Title V source. For the sources remaining in the program, the Base Fee will increase from \$2,714/year to \$2,777/year if the proposed rule amendment is made. The amendment will increase the fee paid per ton of pollution from \$31.78 to \$32.50.

There are currently 91 Synthetic Minor sources that will be charged an Annual Compliance Assurance Fee. These sources are major industrial sources that elected to have limits placed on their operation in order to avoid obtaining a more costly Title V permit. Even though these sources are not required to obtain Title V Operating Permits, the fees for their Synthetic Minor limits are subject to Title V rules. These fees have never been raised since they were adopted in 1993. The annual compliance assurance fee will increase from \$1,000 to \$1,111. During the time period July 1, 1998 through June 30, 1999, there are 13 Synthetic Minor sources that will



also have to pay the Synthetic Minor Application Processing Fee because their permits will be expiring. It is also estimated that there will be approximately five applications for modifications and five new applications, all requiring the payment of Application Processing Fees. This fee has also never been raised and will increase from \$1,900 to \$2,111.

During the same July 1, 1998 through June 30, 1999 time period, the Department anticipates charging for the following services for which the fees have never been raised: ten Simple Title V Modifications from \$1,000 to \$1,111; one or two Complex Title V Modifications from \$15,000 to \$16,665; and one Ambient Air Monitoring Review from \$2,000 to \$2,222.

The Department proposes to add two additional sub-categories of fees to provide a greater range of options for permit revisions. It is anticipated that in the July 1, 1998 through June 30, 1999 time period, the Department will charge fees for as many as twenty-five Administrative Amendments at \$278 each, and ten Moderate Title V Modifications at \$8,332. Without the new sub-categories, the Moderate Title V Revision would be subject to the higher fees for complex revisions.

Finally, the Department proposes eliminating two fee categories for Hazardous Air Pollutant modifications. These fee sub-categories have never been used and are not needed because the activities are subject to other fees.

### **General Public**

Higher regulatory costs are likely to affect consumers through higher costs of goods and services produced by Title V sources.

### **Small Business**

Some major industrial sources of air pollution by rule may be small businesses. In general, these companies tend to emit less than 100 tons per year of air pollutants but are considered "major" because of their potential to emit 100 or more tons per year. The fee increase proposed would raise the fees of a 100 ton/year source by a total of \$135 (from \$5,892 to \$6,027) as long as the source does not need any modifications to its permit, and does not need an ambient monitoring review done. This increase includes the increased base fee and the higher emission fee rate.

Most of the sources that received Synthetic Minor Permits are small businesses. The fee increase would be \$110 for the annual compliance assurance fee, and \$210 for the application processing fee which is paid for permit renewals and modifications.

Title V and Synthetic Minor Permits are based on amount of pollutants discharged. As such, there is no competitive advantages or disadvantages for small businesses over large businesses.

## **Large Business**

Most major sources of air pollution that are subject to Title V Operating Permits and the associated fees are large industrial manufacturing facilities. The largest source of air pollution in the state has approximately 8,600 tons/year of assessable emissions, and paid \$276,340 in 1997. With the increase in fees, this source will pay about \$282,602 in 1998 (depending on emission reports to be submitted in mid-March). The proposed fee increase would raise this by 2.29 percent (about \$6,262). The second largest source has emissions of approximately 4,400 tons per year. Of the sources that paid fees in 1997, 21 sources have 1,000 or more tons per year, 79 sources fall into the 100 to 1,000 tons per year range, and 36 sources have less than 100 tons per year.

## **Local Governments**

At this time, Coos County is the only local government agency required to have a Federal Operating Permit. Their annual fees would also increase by 2.29 percent. They would see an increase of 11.1 percent for any permit modifications or monitoring reviews. Coos County will pay annual fees in 1998 of approximately \$9,082 an increase of \$203 over 1997 fees.

The Lane Regional Air Pollution Authority is the only other air permitting agency in Oregon. They must also demonstrate to the EPA that their Title V Operating Permit Program is self-supporting, but they establish their own fee schedule and this rule amendment will not necessarily affect them.

## **State Agencies**

The Oregon State University and Oregon Health Sciences University are currently the only state agencies required to have Title V Operating Permits. Their annual fees would also increase 2.29 percent. They would also see an increase of 11.1 percent for any permit modifications or monitoring reviews. Oregon State University will pay estimated annual fees in 1998 of \$5,897, an increase of \$132 over 1997 fees. In 1998, the Oregon Health Sciences University will pay estimated annual fees of \$16,427, an increase of \$365 over 1997 fees.

### **Department of Environmental Quality**

Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased as a result of increased costs for staff, services and supplies. This program must remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. The proposed increase in fees is intended to offset the increased costs in order to maintain self-sufficiency without any increase in staff. Expenditures are projected to increase by three percent over 1997 levels.

## **Assumptions**

Estimated expenditures are based on the assumption that almost all facilities subject to this program have been identified. The original estimate of sources that would be subject to the program was 300; in reality, the number is currently 131 (126 with either issued permits, permits about to be issued or in process and five sources who have a later application call-in date that have not yet submitted their applications). Of the original 300 sources, 169 submitted proof they were true minor sources, elected to become Synthetic Minor sources, or have permanently closed.

Revenue forecasts are also based on the assumption that the number of sources subject to this program are known, and that air emissions did not change significantly in 1997. Each billing is based on the previous year's emissions and includes the base fee for the following year.

## **Residential Development**

The Department has determined that this rule making proposal will have no impact on the cost of developing a 6,000 square foot parcel and the construction of a 1,200 square foot single family detached dwelling on that parcel.

## Attachment B<sup>3</sup>

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

### Rulemaking Proposal for Annual Oregon Title V Operating Permit Fee Increase

## Land Use Evaluation Statement

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

Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased as a result of increased costs for staff, services and supplies. The 1997 Legislature granted salary increases and funded only the amount that is paid out of General Fund. The Title V Operating Permit Program must remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

The rule amendments will raise the Annual Base Fee from \$2,714 per year to \$2,777 per year and the Emissions Fee from \$31.78 per ton to \$32.50 per ton based on a 2.29 percent increase in the U.S. Consumer Price Index since the last rule adoption.

In addition, the rule amendments will raise the Synthetic Minor Permit Application or Modification Fee from \$1,900 to \$2,110; the Synthetic Minor Annual Compliance Assurance Fee from \$1,000 to \$1,110; the Title V Existing Source Simple Permit Modification Fee from \$1,000 to \$1,110; the Title V Existing Source Complex Permit Modification Fee from \$15,000 to \$16,660; and the Ambient Air Monitoring Review Fee from \$2,000 to \$2,221. These increases are based on the increase in the U.S. Consumer Price Index from the beginning of the program in 1993 through 1997 is 11.07 percent.

There are two fees being added to give the Department a wider range of choices when charging for Title V revisions. A Title V Administrative Amendment Fee, which will be \$250 plus 11.07 percent amounting to \$278; and a Title V Existing Source Moderate Permit Modification Fee, which will be \$7,500 plus the 11.07 percent increase, which totals \$8,330. Two fees are being eliminated because they are no longer needed: Hazardous Air Pollutant Permit Modifications, both Simple and Complex.

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

Yes  No

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

Oregon's Title V Operating Permit Program, which regulates air emissions from industrial sources.

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

Yes  No  (if no, explain):

The proposed rules would be implemented through the Department's existing stationary source permitting program.

Current procedures require local governments to determine land use compatibility before a Notice of Construction is approved or a Title V Operating Permit is issued.

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

Not applicable

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

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

Not applicable

Gregory A. Hill  
Division

Nyasia Taylor  
Intergovernmental Coord.

3/12/98  
Date

## Attachment B4

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

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

The Title V Operating Permit Program must remain 100 percent self-supporting through fees assessed on the regulated facilities in order for Oregon to retain its federal approval status. An increase in the fees charged is necessary to maintain this self-sufficiency.

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

Not applicable.

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

Both federal and Department rules require that the Title V Operating Permit Program be self-supporting.

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

No.

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

No.

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

The increase would help to ensure a continuing viable permitting program.

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

Yes. The fee increases would apply to all sources subject to the Title V Operating Permit Program equally.

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

No. The Title V Operating Permit Program must be self-supporting. Lower fees would result in a smaller program, not increased costs to others.

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

No.

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

Not applicable.

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

Not applicable.



**State of Oregon  
Department of Environmental Quality**

**Memorandum**

**Date:** March 11, 1998  
**To:** Interested Parties and Affected Public  
**Subject:** Rulemaking Proposal and Rulemaking Statements - Annual Oregon Title V Operating Permit Fee Increase

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt rule amendments regarding Title V Operating Permit Program fees. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would increase Title V Operating Permit Program fees by the amount allowed by ORS 468A.315.

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

**What's in this Package?**

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

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

**Hearing Process Details**

The Department is conducting a public hearing and you are invited to review these materials and present written or oral comment. The hearing will be held as follows:

**Date:** April 15, 1998  
**Time:** 2:00 p.m.  
**Place:** 811 SW 6<sup>th</sup> Avenue, Third Floor, Room 3A  
Portland, OR

**Deadline for submittal of Written Comments:** April 22, 1998 at 5:00 p.m.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Terri Sylvester, 811 S.W. 6th Avenue, Portland, Oregon 97204. Comments may also be hand delivered to the same address, 11<sup>th</sup> floor, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

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

Sarah Armitage will be the Presiding Officer at the hearing.

### **What Happens After the Public Comment Period Closes**

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

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is June 26, 1998.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding 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.

## **Background on Development of the Rulemaking Proposal**

### **Why is there a need for the rule?**

Costs of implementing and administering the Title V Operating Permit Program in Oregon have increased as a result of increased costs for staff, services and supplies. The 1997 Legislature granted salary increases that average 3 percent for FY98 and funded only the amount that is paid out of the General Fund. The Title V Operating Permit Program must remain 100 percent self-supporting through fees assessed on the facilities regulated in order for Oregon to retain its federal approval status. The proposed increase in fees is needed to offset the increased costs in order to maintain self-sufficiency. Because the salary increase was greater than the level of inflation, some reduction in staff in the Title V Operating Permit Program may be needed even with the proposed fee increase.

The Title V Operating Permit Program is funded by three types of fees. The first type of fee is a base fee charged for each Title V source. This fee has been increased to keep up with inflation, but total revenue has declined because the number of Title V sources is lower than originally estimated. The second type of fee is an emission fee charged for each ton of emissions. This fee has also been increased to keep up with inflation but, again, total revenue has declined since sources have reduced their emissions in response to the Title V Operating Program. The third type of fee covers special activities including permit revisions, ambient monitoring and synthetic minor provisions. These fees have not been increased with inflation in the past.

The Department has reduced Title V staff and instituted streamlining measures in reaction to the reduced number of sources and reduced revenue. In addition, the Department is undertaking a program efficiency review to identify further efficiencies in the point source program and establish performance measures for the program. However, the workload in the program remains high, and the proposed fee increase is needed to fund salary and other cost increases approved by the Legislature.

Most of the fees are proposed to increase by the amount of inflation for the last year. However, the Department is proposing a "catch-up" increase for the specific activity fees since they have not been increased with inflation in the past. Now that many of the initial Title V Permits have been issued, the Department anticipates increased work in this area as sources request permit revisions. The Department is also proposing to add more sub-categories of permit revisions to better match the workload. This is expected to partially offset the impact of the catch-up fee increase.

**How was the rule developed?**

Oregon Revised Statute (ORS) 468A.315 allows the Department to increase Title V fees by the amount of the increase in the Consumer Price Index (CPI). A CPI increase of 2.29 percent for 1997 was reported to the Department by the State Economist, and was used to calculate the new per ton Emission Fee and the Annual Base Fee; a CPI cumulative 11.07 percent for 1993 through 1997 was used for the Synthetic Minor fees, the Title V Modification and Ambient Monitoring fees. None of the fees receiving an 11.07 percent increase have been increased since they were first adopted.

The document relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Terri Sylvester at 503-229-5181 for times when the documents are available for review. In addition, it can be viewed at <http://www.oea.das.state.or.us/pdf/econ1297.pdf> and is located in Table A.1, December 97 - Other Economic Indicators, page 45, under CPI, Urban Consumers.

No advisory committee was utilized for the proposed rule change, because no policy decisions were needed. However, the Department presented the proposal to stakeholders on March 4, 1998. No one at that meeting voiced opposition to the proposal.

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

The revision will affect all Title V and Synthetic Minor sources.

**How will the rule be implemented?**

The Department will begin billing Synthetic Minor and Title V sources at the new rates starting July 1, 1998. There will be nine Synthetic Minor sources that will receive their annual billing prior to July 1 for due dates either July 1 or August 1. Upon adoption, these sources will receive a second invoice for the difference between the old and new rates.

**Are there time constraints?**

Yes. This rule must be adopted by July 1, 1998 to meet the billing deadline for the bulk of the sources.

**Contact for More Information**

Memo To: Interested and Affected Public  
Annual Oregon Title V Operating Permit Fee Increase  
Page 5

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

Terri Sylvester  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204  
(503) 229-5181

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*This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.*

State of Oregon  
Department of Environmental Quality

Memorandum

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**Date:** April 24, 1998

**To:** Environmental Quality Commission

**From:** Sarah Armitage

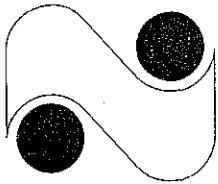
**Subject:** Presiding Officer's Report for Rulemaking Hearing  
Hearing Date and Time: April 15, 1998, beginning at 2:00 pm  
Hearing Location: DEQ Headquarters  
811 SW 6<sup>th</sup> Ave.  
Portland, OR  
Room 3A

Title of Proposal: Oregon Title V Operating Permit Fee Increase

The rulemaking hearing on the above titled proposal was convened at 2:00 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.

One person was in attendance, nobody signed up to give testimony.

The hearing was closed at 2:15 pm.



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PULP & PAPER**

NORTHWEST PULP & PAPER ASSOCIATION  
1300 114TH AVENUE SOUTHEAST, SUITE 110  
BELLEVUE, WASHINGTON 98004  
(425) 455-1323 FAX (425) 451-1349

VIA FAX

April 22, 1998

Ms. Terri Sylvester  
Air Quality Division  
Oregon Department of Environmental Quality  
811 S.W. Sixth Avenue  
Portland, Oregon 97204

**Re: Comments on the Annual Oregon Title V Operating Permit Fee Increase**

Ms. Sylvester:

The Northwest Pulp and Paper Association appreciates this opportunity to comment on behalf of our member companies on rule amendments regarding Title V Operating Permit Fee increases. Northwest Pulp and Paper (NWPPA) members are a majority of the pulp and/or paper mills in the Pacific Northwest and Oregon members include Boise Cascade, Fort James, Georgia Pacific, Pope & Talbot and Weyerhaeuser. NWPPA members are Title V air operating permit holders and are subject to the proposed fee increase, whether they have a current permit or a permit will soon be finalized. Our mills are large facilities and consequently they are some of the larger Title V sources in Oregon and pay a significant portion of the Title V fees.

NWPPA has commented on the Title V Operating Fee increase in prior years. NWPPA along with Associated Oregon Industries has asked for certain details regarding the program and its efficiency in the past. The details have not been formally supplied by the Department of Environmental Quality (DEQ). Specifically, in 1996, NWPPA requested a formal accounting of the program's activity levels and participants. (See attached March 22, 1996 letter to Benjamin Allen from Kathryn VanNatta regarding Oregon Title V Operating Permit Fee Increase.) As stakeholders and large fee payers, we believe that the courtesy of a response would be appropriate when faced with annual fee increases. Especially since this year's fee increase contains a retroactive fee increase for permit revisions, ambient monitoring and synthetic minor provisions.

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APR 24 1998

AIR QUALITY DIVISION  
Dept. Environmental Quality

Therefore NWPPA again requests from the DEQ a formal quantifiable accounting and description of Oregon's Title V Air Operating Permit program with respect to program performance, fiscal information and size with a report to stakeholders and the legislature. A review of the Department's *Memorandum to Interested Parties and Affected Public*, dated March 11, 1998, at page 3, reveals that a "program efficiency review" is underway, but no completion date or reporting/accountability mechanism to the legislature or stakeholders is provided. The rule package does not offer the option of quantifiable program "right sizing" or "down sizing" as an alternative to ever increasing fees, although it is noted that, "[T]he Department has reduced Title V staff and instituted streamlining measures in reaction to the reduced number of sources and reduced revenue." NWPPA also requests that the report be completed and distributed before the 1999 session of the Oregon Legislature.

NWPPA recognizes that the Title V Operating Permit program was designed to be a self-sufficient funded program through fees with fee increases allowed through the CPI inflation factor. We also recognize that the Title V program had fewer participants than expected at the program's inception. Within these parameters, NWPPA believes that the program should be sized according to the number of permit holders. Therefore, NWPPA neither opposes nor supports the proposed Title V Operating Permit fee increases.

NWPPA appreciates the opportunity to comment on proposed rulemaking package. NWPPA supports the Department's efforts on this subject and would appreciate the opportunity to work with the Department on our information request. I can be contacted at 503-393-0007 with any questions.

Sincerely,



Kathryn VanNatta  
Oregon Governmental Affairs  
Northwest Pulp and Paper

- c. NWPPA Membership  
J. Ledger, AOI  
D. Bartz, Schwabe, Williamson & Wyatt



NORTHWEST  
PULP & PAPER  
ASSOCIATION

By Fax

March 22, 1996

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

RE: Rule Making Comments: Oregon Title V Operating Permit Fee Increase

Dear Mr. Allen:

The Northwest Pulp and Paper Association appreciates the opportunity to comment on the proposed Oregon Title V Operating Permit Fee Increase. Please consider our comments as you evaluate the proposed rules.

The Northwest Pulp and Paper Association represents eight pulp and/or paper mills in Oregon including the following companies: Boise Cascade, Georgia Pacific, James River, Pope & Talbot, Simpson Paper and Weyerhaeuser. All NWPPA members are subject to Title V of the federal Clean Air Act and are in various stages of obtaining Title V air operating permits.

NWPPA neither opposes nor supports the proposed 2.845 percent increase in Title V air operating permit fees in OAR 340-28-2580(1) and OAR 340-28-2590(1).

In light of the supporting documentation on the proposed fee increase and the document titled, *Oregon Department of Environmental Quality Air Quality Program Title V Workload Analysis: Compiled by the Air Quality Division Program Operation Section September 1992*, NWPPA asks for the Department's

B. Allen  
DEQ  
March 22, 1996  
Page 2

Air Quality Division to provide a full accounting of the Department's Title V program including but not limited to:

- Title V Permit Program scope and budget,
- number of anticipated permits,
- number of permits in-work,
- amount of back-log if any,
- number of permits issued,
- number of permit writers and corresponding FTE writing permits by DEQ region,
- number of support personnel and corresponding FTE by DEQ region,
- a summary of the total Title V program staff, and
- a brief description of Oregon's progress on implementation of Title V of the federal Clean Air Act requirements as compared to other states.

NWPPA recognizes that Oregon is out-in-front of most other states in implementing Title V requirements and asks that the Department remain mindful of this fact with respect to Oregon businesses remaining competitive in a national and international marketplace.

NWPPA supports the Department's efforts on this subject and would appreciate the opportunity to work with the Department to explain our request for Title V Program information.

Sincerely,



Kathryn VanNatta  
Oregon Governmental Affairs  
Northwest Pulp and Paper Association

- c. NWPPA Membership  
R. Hess, PGE  
J. Whitty, AOI



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Environmental Quality

811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
TDD (503) 229-6993

May 14, 1998

Kathryn VanNatta  
Oregon Governmental Affairs  
Northwest Pulp and Paper Association  
1300 114<sup>th</sup> Avenue, SE, Suite 110  
Bellevue, WA 98004

RE: Response to Comments on the Annual Oregon Title V Operating Permit Fee Increase

Ms. VanNatta:

The Department received your comments on the Annual Oregon Title V Operating Permit Fee Increase on April 22, 1998. In your letter you asked the Department to respond to questions you submitted previously. Listed below are the questions and the Department's response to each.

- Title V Permit Program scope and budget: The projected income from base fees, emissions fees and annual and renewal synthetic minor fees outlined in the current Title V increase proposal for July 1, 1998 through June 30, 1999 is estimated at \$3.1 million. The amount that the Department is forecasting for income from permit revisions and new synthetic minor permits, for the same time period, is about \$0.2 million.
- Number of anticipated permits: 123 in the first round and 8 in the second round
- Number of permits in-work, number in backlog and number issued: Of the initial 123, there have been 85 permit issued; there are 12 currently being reviewed by EPA; 12 currently on public notice; and 14 in process.
- Number of Title V FTE in each region and headquarters: Headquarters, 10.79; Northwest Region, 9.54; Western Region, 9.09; and Eastern Region, 4.43.
- Number of support Title V FTE: 5.65.
- Total number of Title V FTE: 39.5.

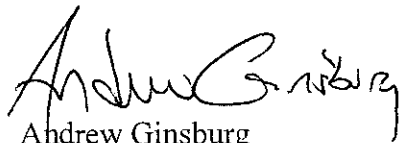
- A brief description of Oregon's progress on implementation of Title V of the federal Clean Air Act requirements as compared to other states:

Oregon has tried to meet the Clean Air Act deadline to issue all of the initial Title V permits within 3 years of the date EPA approved our program. While we have come closer to meeting the deadline than most other states, we still have about three dozen permits left to issue. We expect most of the remaining permits to be issued in the next few months.

We have worked closely with the Title V sources, EPA and the public to ensure that our permits meet all of the EPA requirements while providing the maximum operating flexibility to sources. Oregon has set the standard for establishing periodic monitoring which is one of the key elements of a Title V permit. Our approach, which focuses on ensuring that emission control equipment is operating properly, has been picked up by EPA in the recently promulgated Compliance Assurance Monitoring (CAM) rule. This will give Oregon sources an advantage in meeting the requirements of CAM.

I hope this answers all of your questions regarding the Oregon Title V program. If you have any further questions, please do not hesitate to let me know.

Sincerely,



Andrew Ginsburg

Manager, Air Quality Program Development

- A brief description of Oregon's progress on implementation of Title V of the federal Clean Air Act requirements as compared to other states:

Oregon has tried to meet the Clean Air Act deadline to issue all of the initial Title V permits within 3 years of the date EPA approved our program. While we have come closer to meeting the deadline than most other states, we still have about three dozen permits left to issue. We expect most of the remaining permits to be issued in the next few months.

We have worked closely with the Title V sources, EPA and the public to ensure that our permits meet all of the EPA requirements while providing the maximum operating flexibility to sources. Oregon has set the standard for establishing periodic monitoring which is one of the key elements of a Title V permit. Our approach, which focuses on ensuring that emission control equipment is operating properly, has been picked up by EPA in the recently promulgated Compliance Assurance Monitoring (CAM) rule. This will give Oregon sources an advantage in meeting the requirements of CAM.

I hope this answers all of your questions regarding the Oregon Title V program. If you have any further questions, please do not hesitate to let me know.

Sincerely,



Andrew Ginsburg  
Manager, Air Quality Program Development

Attachment E

**TITLE V PERMIT REVISION FEE GUIDANCE**

This guidance should be used to determine which permit revision fee to charge sources within the Title V program.

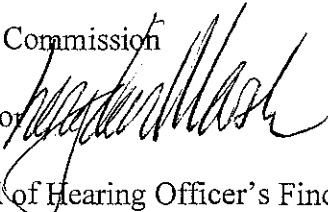
PERMIT ACTION	DESCRIPTION	Permit Revision Fee			
		Admini- strative (\$278)	Simple (\$1,110)	Moderate (\$8,330)	Complex (\$16,660)
Administrative Permit Amendments	<p>Administrative Permit Amendments are specified in OAR 340-028-2230(1)</p> <ul style="list-style-type: none"> <li>• Typographical corrections, responsible official changes, source name changes, ownership changes, more frequent monitoring, due date changes, relaxation for shutdown units and other changes listed in paragraphs (a) through (g) of the rule.</li> <li>• Incorporation of an enhanced NSR or PSD permit under paragraph (h) where ACDP fees were paid.</li> <li>• Incorporation of a Notice of Approval under paragraph (h) where the change would have been a significant permit modification if the external review procedures had not been used under the OAR 340-028-2270 approval process.</li> <li>• Corrections to baseline or the PSEL under paragraph (i) due to more accurate data that are considered by the Department to be simple.</li> <li>• All other administrative permit amendments.</li> </ul>	X			X
Minor Permit Modifications	<p>Minor permit modifications are specified in OAR 340-028-2250.</p> <ul style="list-style-type: none"> <li>• A minor permit modification that is done by addendum (e.g. an insignificant change to a monitoring condition or adding clarification to a permit condition).</li> <li>• All other minor permit modifications.</li> </ul>		X		X
Significant Permit Modifications	<p>Significant permit modifications are specified in OAR 340-028-2260.</p> <ul style="list-style-type: none"> <li>• A significant permit modification that can be made by a simple permit addendum and public involvement is considered by the Department to be minimal.</li> <li>• All other significant permit modifications.</li> </ul>			X	X

State of Oregon  
Department of Environmental Quality

Memorandum

Date: May 21, 1998

To: Environmental Quality Commission

From: Langdon Marsh, Director 

Subject: Agenda Item K, Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of the City of Coos Bay, Case No. WQMW-WR-96-277, EQC Meeting: June 11, 1998

**Statement of Purpose**

The Department of Environmental Quality (hereinafter "Department") and the City of Coos Bay (hereinafter "City") are both appealing from the Hearing Officer's Findings of Fact and Conclusions of Law, dated December 19, 1997. In that order, the City was found to be in violation of ORS 468B.025(1)(b) for discharging wastes that reduce the quality of state waters below the water quality standard established by the Environmental Quality Commission, and for violating 468B.025(2) for violating a condition of its National Pollutant Discharge Elimination System Permit. The City was held liable for a civil penalty in the amount of \$1,500.

**Background**

The City operates a facultative sludge lagoon as part of its treatment Plant #1. The treatment is operated pursuant to an NPDES permit. Partially treated sludge is pumped from Plant No. 1 to the lagoon through a pipeline located in a dike. On December 22, 1994, an elbow in the pipeline ruptured and approximately 5600 gallons of partially treated sewage was spilled into adjacent tidal wetlands. Temporary repairs were made to the pipeline immediately thereafter.

The Department inspected the facility on March 20, 1995, and noted that the permanent repairs had not been completed. A Notice of Noncompliance was issued to the City on April 17, 1995 based on various deficiencies and noted that the repairs should be given top priority.

In early 1996, the City became aware that there might be a problem with dike stabilization because the water level in an adjacent wetland had been raised considerably. Plans for the dike stabilization were completed and submitted to the City Planning Department on May 7, 1996. The Planning Department determined that a wetland fill permit would be required from the Corps of Engineers and the Division of State Lands. On August 6, 1996 a permit application was submitted to the Corps and the Division for the wetland fill permit.

Memo To: Environmental Quality Commission

**Agenda Item K**, Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of the City of Coos Bay, Case No. WQMW-WR-96-277, EQC Meeting:  
June 11, 1998

Page 2

On June 13, 1996, the Department conducted its regular inspection of the disposal facility. In the inspection report dated June 24, 1996, the Department noted that the permanent repairs had not been completed and needed to receive immediate attention.

On September 6, 1996, the pipeline ruptured at the same spot as the previous rupture and approximately 2000 to 5000 gallons of partially treated sludge spilled into the adjacent wetland. Due to this spill, the Department of Agriculture ordered a two day harvesting closure of three shellfish growing beds.

On September 26, 1996, the Department issued a Notice of Noncompliance to the City, alleging the pipeline rupture was a violation of the following statutes:

- 1) ORS 468B.050(1)(a) by discharging wastes into waters of the state without a permit allowing the discharge;
- 2) ORS 468B.025(1)(b) by discharging wastes that reduced the quality of state waters below the water quality standard established for the body of water; and
- 3) ORS 468B.025(2) by violating a condition of its NPDES permit by causing or allowing a sewage bypass of the treatment facility.

The Department assessed a civil penalty in the amount of \$3,900 for violation 1 and \$1,500 for violation 2. No civil penalty was assessed for violation 3.

On November 21, 1996, the City appealed the Notice of Noncompliance and a hearing was held on May 8, 1997. The hearing officer issued a final order on December 19, 1997. The Order held that (1) the City did not violate ORS 468B.050(1) since the City had a valid NPDES permit; (2) the City did violate ORS 468B.025(1)(b) since the discharge reduced the water quality below the standard set for the affected waterbody and (3) the City did violate ORS 468B.025(2) since it violated a condition in its permit that prohibited diversion of the waste stream within the facility. Since the City was held not to violate ORS 468B.050(1) (violation 1), the City would only be liable for a penalty of \$1,500. The hearing officer also held that the Department could not assess a penalty for two violations based on the same fact situation or circumstances.

On January 9, 1998, the Department appealed the Order; the City appealed on January 17, 1998. The Department takes exception to two aspects of the Order:

(1) That the City did not violate ORS 468B.050(1). The Department argues that, while the City did have a valid NPDES permit, that permit did not allow the discharge of partially treated sludge at the point of the break in the pipeline:

(2) That the Department cannot assess civil penalties for two violations based on the same fact situation or circumstances. There is no "statute, rule, or constitutional provision



Memo To: Environmental Quality Commission

**Agenda Item K**, Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of the City of Coos Bay, Case No. WQMW-WR-96-277, EQC Meeting:  
June 11, 1998

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prohibiting the Department from assessing a penalty for each documented violations arising out of the same facts and circumstances."

The City takes exception to the Order in that the hearing officer failed 'to make the distinction between "placement," "causing pollution" and "discharging" as used in ORS 468B.025 and 468B.050.' The City alleges that each sub-section in ORS 468B.025 requires a different mens rea, ranging from negligence, intentional and strict liability. The Department failed to plead and prove the necessary mental state.

### **Authority of the Commission with Respect to the Issue**

The Commission has the authority to hear this appeal under OAR 340-11-132.

### **Alternatives**

The Commission can:

- (1) Uphold the Order, finding the City liable for violations of ORS 468B.025(1)(b) and ORS 468B.025(2) and for a civil penalty in the amount of \$1500;
- (2) Accept the Department's exceptions to the order and find the City liable for violations of ORS 468B.050(1), ORS 468B.025(1)(b) and ORS 468B.025(2) and for a civil penalty in the amount of \$3,900 for the violation #1 and \$1,500 for violation #2; or
- (3) Accept the City's exceptions to the order and dismiss the assessment of civil penalty for failure to plead and prove the underlying violation.

### **Attachments**

- A. Letter dated May 4, 1998 to C. Randall Tosh and Jeff Bachman
- B. Reply to Respondent's Brief and Cross-Exceptions, dated April 2, 1998
- C. Reply to DEQ's Exceptions and Cross-Exceptions, dated March 12, 1998
- D. Department's Exceptions and Brief, dated February 9, 1998
- E. City's Notice of Appeal, dated January 14, 1998
- F. Department's Notice of Appeal, dated January 8, 1998
- G. Hearing Officer's Finding of Fact and Conclusion of Law, dated December 19, 1997
- H. Hearing Officer's Final Order, dated December 19, 1997
- I. City's Reply Memorandum, dated May 14, 1997
- J. Department's Memorandum of Law, dated May 12, 1997
- K. Department's Hearing Memorandum, dated May 7, 1997
- L. City's Memorandum of Law, dated May 7, 1997
- M. Exhibits from May 8, 1997 hearing, as follows:

Department's Exhibits:

- A. National Pollutant Discharge Elimination System Waste Discharge Permit No. 100699

Memo To: Environmental Quality Commission

**Agenda Item K**, Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of the City of Coos Bay, Case No. WQMW-WR-96-277, EQC Meeting:  
June 11, 1998

Page 4

- B. Letter from City to the Department, dated December 22, 1994
- C. Pictures, dated September 6, 1996 and September 9, 1996
- D. E-mail from Deb Cannon, ODA, dated September 6, 1996
- E. Resume of James R. Sheetz, P.E., DEE

City's Exhibits:

- 101. Letter from Ralph Dunham to Ruben Kretzschmar, dated December 22, 1994
- 102. Design for Proposed Dike Repair, dated May 7, 1996
- 103. Site Plan for Proposed Dike Repair, dated May 7, 1996
- 104. Permit Application Form
- 105. City/County Planning Department Affidavit, dated August 6, 1996
- 106. Letter from Kevin Cupples to John Craig, dated October 18, 1996
- 107. Letter from Kevin Cupples to John Craig, dated October 23, 1996
- 108. Letter from Mike McCabe to Ralph Dunham, dated October 29, 1996
- 109. Letter from Mike McDaniel to Ruben Kretzschmar, dated September 10, 1996
- 110. Laboratory Analysis from City of Coos Bay, dated September 10, 1996
- 111. Laboratory Analysis from City of Coos Bay, dated September 6, 1996
- 112. Letter from Ruben Kretzschmar to Bill Grile, dated September 26, 1996
- 113. Letter from Langdon Marsh to City of Coos Bay, , dated November 4, 1996

Other Exhibits:

- 1. Notice of Violation, Department Order, and Assessment of Civil Penalty, dated November 4, 1996
- 2. City's Request for a Hearing and Answer, dated November 21, 1996
- 3. Notice of Contested Case Hearing, dated April 16, 1997
- 4. Stipulations of Fact, dated May 6, 1997
- 5. Inspection Report, dated June 24, 1996

**Reference Documents (available upon request)**

OAR Chapter 340, Division 11 and 41; ORS 468B.025 and 468B.050

Report Prepared By: Susan M. Greco

Phone: (503) 229-5213

Date Prepared: May 21, 1998



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

(503) 229-5696

TDD (503) 229-6993

May 4, 1998

Via Certified Mail

C. Randall Tosh  
Ormsbee, Corrigan, McClintock & Tosh  
P.O. Box 1178  
Coos Bay, OR 97240-0390

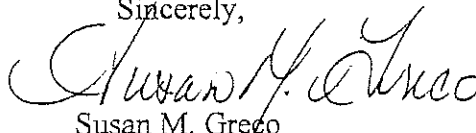
Jeff Bachman  
Department of Environmental Quality  
2020 S.W. 4th Avenue  
Portland OR 97201

RE: City of Coos Bay  
Case No. WQMW-WR-96-277

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Thursday, June 11, 1998. The meeting will convene at 10:00 a.m. and this matter will be heard in the regular course of the meeting. The meeting will be held at the Smullin Education Center, 2825 Barnett Road, Medford, Oregon. Once the agenda has been finalized and the record is available, I will forward the same to you.

If you should have any questions or should need special accommodations, please feel free to call me at (503) 229-5213 or (800) 452-4011 ex. 5213 within the state of Oregon.

Sincerely,

  
Susan M. Greco  
Rules Coordinator

DEQ-1

Attachment A. - 1 page

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

**Accepted**  
APR 02 1998

IN THE MATTER OF:  
CITY OF COOS BAY,

Respondent/Appellee.

REPLY TO RESPONDENT'S BRIEF  
AND CROSS-EXCEPTIONS  
FILED WITH THE DIRECTOR

No. WQMW-WR-96-277  
COOS COUNTY

The Department replies to Respondent City of Coos Bay's (the City's) Brief and Cross-Exceptions as follows.

A. ORS 468B.050(1)(a) Prohibits All Discharges to Public Waters Except Those Expressly Authorized by Permit

In its Reply to the Department's Exceptions and Brief in this case, the City argues that its discharge of sludge from a broken pipe to a marsh tidally connected to Coos Bay is a not a violation of Oregon Revised Statute (ORS) 468B.050(1)(a). The City's arguments fail because they are based on a fundamental misinterpretation of ORS 468B.050(1)(a), that 468.050(1)(a) only requires that a permit be obtained before operating a treatment system. This interpretation is incorrect as a matter of law for the reasons set forth below.

ORS 468B.050(1) states that: "Except as provided in ORS 468B.053 or 468B.215, without first obtaining a permit from the Director of the Department of Environmental Quality, which permit shall specify applicable effluent limitations, no person shall: (a) Discharge any wastes into waters of the state from any industrial or commercial establishment or activity or disposal system." ORS 468B.050(1)(a) is a blanket prohibition against any discharge of wastes to waters of the state. The "without first obtaining a permit" language of ORS 468B.050 is an affirmative defense to that blanket prohibition. The primary purpose of ORS 468B.050(1)(a) is not to ensure people obtain permits for their wastewater treatment systems, but to prohibit unpermitted discharge of wastes to waters of the state. The requirement to obtain a permit for a wastewater treatment system is found in ORS 468.050(1)(b), which states, in pertinent part: "...

*Attachment B - 6 pages*

1 without first obtaining a permit ... no person shall: ... (b) construct, install, modify or operate any  
2 disposal system or part thereof, or any extension or addition thereto."

3 The exception a permit provides to the rule against discharging wastes to public waters in  
4 ORS 468B.050(1)(a) is confined to the wastes specified in the permit's effluent limitations. The  
5 City's National Pollutant Discharge Elimination System Permit (Permit) limits it to discharges of  
6 wastewater containing biological oxygen demand, total suspended solids, and fecal coliform  
7 bacteria, which may only be discharged from its Outfall No. 1 (See Permitted Activities and  
8 Schedule A of the Permit). The City is not permitted to discharge sludge from a ruptured  
9 pressure line to the W Marsh. Because the City discharged sludge to waters of the state without a  
10 permit authorizing that discharge, it violated 468B.050(1)(a).

11 In its Reply Brief, the City mischaracterizes the Department's application of ORS  
12 468B.050(1)(a). According to the City, the Department's interpretation of the statute would  
13 require sources to anticipate accidental or unintentional discharges and obtain permits for those  
14 discharges before they occur. This is not the Department's position. Rather, ORS 468.050(1)(a),  
15 in keeping with its general prohibition against all waste discharges unless authorized by permit,  
16 *requires sources to prevent accidental and unintentional discharges*. ORS 468B.050(1)(a) did  
17 not require the City to obtain a permit for its sludge discharge, but to perform the needed  
18 maintenance that would have prevented the pipe from breaking in the first place.

19 Finally the City argues that the Department is bootstrapping a violation of the Permit's  
20 effluent limitations into a violation of ORS 468B.050(1)(a). This also mischaracterizes the  
21 Department's application of the statutes in this case. The Department has never alleged that the  
22 City violated the Permit's effluent limitations nor did such a violation occur. There is no effluent  
23 limitation for sludge in the City's Permit. The City is not permitted to discharge sludge in any  
24 quantity or concentration. If the City had exceeded its effluent limitations for biological oxygen  
25 demand, total suspended solids, or fecal coliform bacteria, then it would be in violation of one of  
26 its Permit conditions and not ORS 468B.050(1)(a) because its Permit allows it to discharge those  
27 wastes. The City, however, cannot violate a permit condition that does not exist.

1 B. ORS 468B.025(1)(b) is a Strict Liability Offense

2 In its Cross-Appeal, the City argues that the sludge discharge did not result in a violation  
3 of ORS 468B.025(1)(b), which prohibits discharges that result in violation of state water quality  
4 standards. According to the City, the sludge discharge cannot be a violation of 468B.025(1)(b)  
5 because the City did not intend to discharge the sludge. This is incorrect as a matter of law  
6 because violations of ORS 468B.025(1)(b) are strict liability. The cause of the violation is  
7 irrelevant to whether a violation has occurred. ORS 468B.025(1)(b) does not include a specific  
8 mental state as a constitute element of a violation nor does it require that a duty be violated. Violation  
9 of 468B.025(1)(b) is therefore a strict liability offense

10 The Oregon Legislature's intent that violation of the state's environmental laws, in general,  
11 and ORS 468B.025(1)(b), in particular, be strict liability is manifest in ORS 468.130 and 468.140.  
12 ORS 468.140(1)(b) states that any person who violates *any provision* of ORS 468B may be  
13 assessed a civil penalty calculated in the manner prescribed by ORS 468.130. ORS 468.130(1)  
14 directs the Environmental Quality Commission to adopt a formula for calculating penalties for  
15 violations of ORS 468B and other environmental statutes. ORS 468.130(2) makes, among other  
16 things, the cause of a violation, whether an unavoidable accident, negligence, or an intentional act,  
17 a factor to be considered *in the size of a penalty* for a violation of 468B. Because causation is  
18 only an aggravating or mitigating factor in the size of penalty for a ORS 468B.025(1)(b) violation,  
19 it is not a factor in determining whether the violation occurred. In ORS 468.140 and 468.130 the  
20 legislature gave the Commission, and its agent, the Department, the authority to assess penalties  
21 for 468.025(1)(b) violations caused not only by intentional acts, but also unavoidable accident or,  
22 in the City's case, negligence.

23 In support of its argument that violation of ORS 468B.025(1)(b) requires an intentional  
24 act, the City cites Oregon Administrative Rule 340-45-010(4), which defines "discharge" as "the  
25 placement of wastes into public waters, on land, or otherwise into the environment in a manner that  
26 does or may tend to affect the quality of public waters". The City contends that "placement" means  
27 that a person must intend to put waste into public waters for there to be a "discharge". "Placement",

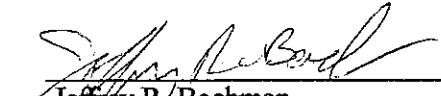
1 however, does not require that the City intend to cause the consequences of its actions, *only that its*  
2 *action be the cause* of waste entering public waters. The City pumped sludge into a pressure pipe it  
3 owned and controlled, on land it owned or controlled. That pipe broke, as it had once before at the  
4 exact same point, and sludge entered public waters. The City's act was the proximate cause of the  
5 sludge entering the W Marsh and Coos Bay, and proof of proximate causation is all that is required to  
6 show that the City "placed" wastes into "the environment in a manner that does or may tend to affect  
7 the quality of public waters". Thus the release of sludge from the ruptured pipe to the W Marsh and  
8 Coos Bay constituted a "discharge" for purposes of establishing a violation of ORS 468B.025(1)(b).

9 To further support its argument, the City contends that the intent of 468B.025 is to  
10 establish a statutory scheme prohibiting public nuisances, the components of which are  
11 distinguished by the three types of conduct giving rise to liability, intentional acts, negligent acts  
12 or omissions, and strict liability (or operation of an abnormally dangerous activity in the City's  
13 parlance). ORS 468.025 does not on the nature of people's conduct but on the different  
14 undesirable results of their conduct. The results prohibited by ORS 468B.025 are pollution of  
15 public waters [ORS 468B.025(1)(a)]; violating a water quality standard [ORS 468B.025(1)(b)],  
16 and violating a permit condition [468B.025(2)]. As discussed above, people may be assessed  
17 penalties for causing any of these prohibited results, regardless of whether the violation is caused  
18 by an intentional act, negligence, or an unavoidable accident.

19 The distinction between ORS 468B.025(1)(a) and (1)(b) is that water may be polluted  
20 without a water quality violation occurring. Pollution, as defined in ORS 468B.005(3), is any  
21 alteration of the natural characteristics of state waters that which will *or tends to*, alone or in  
22 combination with other pollutants, impair the use of that water for beneficial uses. Violation of a  
23 water quality standard, on the other hand, reflects a degree of pollution such that a beneficial use  
24 is in fact impaired. Permit conditions may be violated without any actual water pollution  
25 occurring. For example, permits commonly require permittees to sample their discharges and  
26  
27

1 report the results to the department. 468B.025(2) prohibits these violations as well as violations  
2 of effluent limitations that may result in water pollution or violation of water quality standards.  
3  
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5 11/2/98  
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Jeffrey R. Bachman  
Environmental Law Specialist



CERTIFICATE OF MAILING

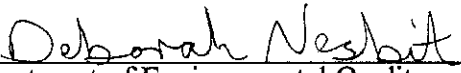
I hereby certify that I served Reply to Respondent's Brief and Cross-Exceptions in Case

No. WQMW-WR-96-277 upon

Susan Greco  
Environmental Quality Commission  
811 SW Sixth Avenue  
Portland, OR 97204

City of Coos Bay  
c/o C. Randall Tosh, City Attorney  
P.O. Box 1178  
Coos Bay, OR 97420

by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid at the  
U.S. Post Office in Portland, Oregon, on April 2, 1998.

  
\_\_\_\_\_  
Department of Environmental Quality

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 CITY OF COOS BAY,  
5 Respondent/Appellee.

Case No. WQMW-WR-96-277  
REPLY TO DEQ EXCEPTIONS  
AND CROSS-EXCEPTIONS

7 I.  
8 Response to DEQ's Exceptions to Hearings Officer's  
9 Findings of Fact and Conclusions of Law

9 Respondent City of Coos Bay (the City) responds to Appellant  
10 Department of Environmental Quality's (DEQ) exceptions to the  
11 Hearings Officer's Findings of Fact, Conclusions of Law, and Order  
12 in Case No. WQMW-WR-96-277:

13 A. The Definition of "Waste" in ORS 468B.050(1)(a) Includes  
14 Partially Treated Sludge.

15 ORS 468B.050(1)(a) provides that persons must obtain a permit  
16 before discharging "waste." ORS 468B.005(7) defines "waste" as:

17 "sewage, industrial wastes, and all other  
18 liquid, gaseous, solid, radioactive and other  
19 substances which will or may cause pollution  
or tend to cause pollution of any waters of  
the state."

20 This definition includes not only sewage, but sludge,  
21 effluent, and other byproducts of wastewater treatment as well.  
22 DEQ does not -- and cannot -- contest the fact the City has a valid  
23 NPDES permit to operate Wastewater Treatment Plant No. 1.  
24 Likewise, it does not -- and cannot -- argue that the permit does  
25 not contain applicable effluent limitations.

26 DEQ concedes the Hearings Officer's underlying legal  
27 conclusion that ORS 468B.050 is the section which imposes a duty to  
28 obtain a permit to operate a wastewater disposal system. However,

1 DEQ argues that Hearings Officer "permit does not authorize it to  
2 discharge partially treated sludge to waters of the state" and that  
3 the release of partially treated sludge was a violation of ORS  
4 468B.050(1)(a). DEQ also argues the language of the permit only  
5 allows the discharge of wastewater, and that since "sludge is not  
6 wastewater" the release which occurred "is not a permitted  
7 discharge."

8 The issue, therefore, as DEQ has itself framed it, is not  
9 whether the City violated ORS 468B.050(1)(a) by failing to obtain  
10 a permit to operate Wastewater Treatment Plant No. 1, but whether  
11 the City violated the terms of its NPDES permit, by the release of  
12 treated sludge.

13 Failure to comply with the applicable effluent standards in a  
14 permit are not violations of ORS 468B.050(1)(a), but violations of  
15 ORS 468B.025(2), which provides:

16 "No person shall violate the conditions of any  
17 waste discharge permit issued under ORS  
18 468B.050."

19 In other words, ORS 468B.050(1)(a) does not impose liability for  
20 discharges from a wastewater treatment system. Rather, ORS  
21 468B.050(1)(a) imposes liability for a discharge **from a system for**  
22 **which a permit has not been issued.** The permit establishes what  
23 and how much can be discharged into the environment under the  
24 applicable effluent standards stated in the permit. Failure to  
25 comply with those standards is a violation of the terms of the  
26 permit -- and ORS 468B.025(2) -- not ORS 468B.050(1)(a).

27 In addition, there is nothing the language of ORS  
28 468B.050(1)(a) which requires or implies that a permit must be  
required for accidental and unintentional releases from a

1 wastewater disposal system which is operating under the applicable  
2 effluent standards of a validly issued NPDES permit. ORS  
3 468B.050(1)(a) states that a permit must "first" be obtained before  
4 making a discharge.

5 Permits and the permitting process are the means whereby an  
6 entity obtains a right to do certain acts. Under DEQ's analysis of  
7 ORS 468B.050(1)(a), any discharge, intentional or unintentional,  
8 planned, unplanned, or accidental, even known or unknown, would  
9 require a permit prior to the time the discharge occurs. DEQ's  
10 interpretation of ORS 468B.050(1)(a) would lead to absurd results:  
11 a person would not only have to obtain a permit for an unexpected  
12 and unintended discharge, but the permit would have to be obtained  
13 before the unexpected discharge occurred, and would have to  
14 "specify applicable effluent limitations" for the discharge which  
15 could not have been anticipated.

16 Simply put, DEQ's position is that an entity must obtain a  
17 permit prior to an accidental release to avoid assessment of a  
18 civil penalty under ORS 468B.050(1)(a). McKean-Coffman v.  
19 Employment Div., 312 Or 543 (1992) (statutes must be construed so  
20 as not to lead to absurd result).

21 A violation of the terms of the NPDES permit does not  
22 establish a violation of ORS 468B.050. The pressure line which  
23 ruptured is a component of the City's wastewater disposal system,  
24 which the City operates under a valid NPDES permit. The NPDES  
25 permit complies with the requirements of ORS 468B.050: applicable  
26 effluent limitations are specified, and the permitting period is  
27 for a period of less than five years. DEQ conflates a violation  
28 of ORS 468B.050(1)(a) with a violation of ORS 468B.025(2).

1 Definitions contained in the permit itself are irrelevant for  
2 understanding the scope of ORS 468B.025(2). The definition which  
3 is at issue is the definition of "waste" under ORS 468B.005(7). If  
4 "sludge" falls within this definition, which it clearly does, and  
5 if an NPDES permit has been issued under ORS 468B.050(1)(a) to  
6 discharge waste, but which does not contain an applicable effluent  
7 standard for the discharge of sludge, then while there may be a  
8 violation of the effluent standards in the permit, there has been  
9 no violation of the requirement that a permit be obtained.

10 **B. DEQ's Objection to the Hearings Officer's Conclusion Regarding**  
11 **Imposition of Penalties under ORS 468B.025(2) is Moot.**

12 DEQ objects to the Hearings Officer's conclusion that "it was  
13 not appropriate" to assess a penalty for a violation of ORS  
14 468B.025(2), since he assessed a penalty for ORS 468B.025(1)(b).  
15 This issue is moot, and should not be addressed by the Commission,  
16 since DEQ did not seek a civil penalty for any alleged violation of  
17 ORS 468B.025(2). See attached "Exhibit A" Notice of Violation,  
18 Department Order and Assessment of Civil Penalty, No. WQMW-WR-96-  
19 277. DEQ only sought civil penalties for violations of ORS  
20 468B.025(1)(b) in an amount of \$3,900.00 and ORS 468B.050(1)(a), in  
21 the amount of \$1,500.00. DEQ did not change its position at the  
22 hearing, and only sought penalties for violations of ORS  
23 468B.025(1)(b) and ORS 468B.050(1)(a). See attached "Exhibit B,"  
24 DEQ Hearing Memorandum, No. WQMW-WR-96-277. For whatever reason,  
25 DEQ abandoned any assessment of the civil penalty under ORS  
26 468B.025(2), and if the Hearings Officer had assessed a penalty  
27 under this section, he would have erred.

1 Assuming, arguendo, that the Commission does address DEQ's  
2 second assignment of error, the City does not dispute that a single  
3 set of facts or circumstances may lead to more than one violation.  
4 This, in fact, has been the crux of the City's objection to DEQ's  
5 action in this case. The City has steadfastly maintained that ORS  
6 Chapter 468B is a carefully crafted statutory scheme, based on  
7 different types of activity -- negligent acts, intentional acts,  
8 and strict liability. The City has repeatedly objected that DEQ  
9 ignores the different elements for violations of the provisions of  
10 ORS 468B.025(1)(a) & (b), ORS 468B.025(2) and ORS 468B.050(1)(a),  
11 and treated all three sections indiscriminately.

12 It is a fundamental rule of statutory interpretation that  
13 statutes are to be construed to give effect to all provisions.  
14 Nolan v. Mt. Bachelor, Inc., 317 Or 328 (1993). For example, DEQ's  
15 interpretation of ORS 468B.025 and ORS 468B.050 would render ORS  
16 468B.025 mere surplusage, since both sections prevent discharges.  
17 In fact, the only way to interpret ORS 468B.025(1)(b) and ORS  
18 468B.050(1)(a) to give effect to both is to find ORS 468B.050(1)(a)  
19 prohibits discharges from a disposal system without first obtaining  
20 a permit, and ORS 468B.025(1)(b) to prohibit discharges from a  
21 properly permitted system which exceeds water quality standards  
22 specified in the NPDES permit.

## 23 II.

### 24 City of Coos Bay's 25 Cross-Exceptions to the Hearings Officer's 26 Findings of Fact and Conclusions of Law.

27 Respondent City of Coos Bay (the City) excepts to the Hearings  
28 Officer's Findings of Fact, Conclusions of Law, and Order in Case  
No. WQMW-WR-96-277 as follows:

1 A. The Hearings Officer Erred in Concluding the City's "Acts or  
2 Omissions" Were "Sufficient to Meet Any 'Placement,' 'Cause  
3 Pollution' or 'Discharge' Requirements of Statutes or Rules" and  
4 that Strict Liability Was the Standard Under ORS 468B.025(1)(b).

5 The Hearings Officer concluded that "notwithstanding the fact  
6 that [the City] did not intentionally direct the partially treated  
7 sewage into the bay, its acts and omissions were cause (sic) of the  
8 sewage entering the bay, and sufficient to meet any 'placement,'  
9 'cause pollution,' or 'discharge' requirements of statutes or  
10 rules." The Hearings Officer's conclusion, like DEQ's own view of  
11 the statutory scheme, violates the fundamental statutory scheme of  
12 ORS Chapter 468B.

13 Violations of ORS 468B.025 are public nuisances. ORS  
14 468B.025(3). ORS 468B.025 identifies three separate activities  
15 which are prohibited.

16 ORS 468B.025(1)(a) provides:

17 "[N]o person shall . . . cause pollution of any waters of  
18 the state or place or cause to be placed any wastes in a  
19 location where such wastes are likely to escape or be  
20 carried into the waters of the state by any means."

21 ORS 468B.025(1)(b) provides:

22 "[N]o person shall . . . discharge any wastes into the  
23 waters of the state if the discharge reduces the quality  
24 of such waters below the water quality standards  
25 established by rule for such waters by the commission."

26 ORS 468B.025(2) provides:

27 "No person shall violate the conditions of any waste  
28 discharge permit issued under ORS 468B.050."

There are three types of conduct which give rise to nuisance  
liability: negligent or reckless conduct, intentional acts, or  
the operation of an abnormally dangerous activity. Raymond v.  
Southern Pacific Co., 259 Or 629 (1971). The language of ORS

1 468B.025(1) (a) and (b) and ORS 468B.025(2) embodies each of these  
2 three types of conduct, and prohibits each. Thus, ORS  
3 468B.025(1) (a) uses the word "cause" which indicates negligent or  
4 reckless conduct is the subject of the prohibition. ORS  
5 468B.025(1) (b) prohibits "discharges," which is defined by DEQ  
6 itself as "the act of placing." See OAR 340-45-101(1) (4)  
7 (defining "discharge for the purposes of NPDES permits as "the  
8 placement of wastes into public waters, on land or otherwise into  
9 the environment in a manner that does or may tend to affect the  
10 quality of public waters"). ORS 468B.025(2) prohibits violations  
11 of the conditions of the NPDES permit, which implies liability  
12 resulting from the operation of an abnormally dangerous activity  
13 under permit -- a wastewater treatment facility.

14 In drafting ORS 468B.025, the legislature sought to thoroughly  
15 cover the three types of conduct which can give rise to a nuisance  
16 claim. The Hearings Officer simply glossed over the distinctions  
17 provided by the statute by failing to make the distinction between  
18 "placement," "causing pollution" and "discharging" as used in ORS  
19 468B.025 and 468B.050. To assess a penalty for a violation of ORS  
20 468B.025, the proper section must be pled and proved. See Ward v.  
21 Jarnport, 114 OR App 466 (1992).

22 The Hearings Officer concluded "The City is strictly liable  
23 for the operation of the disposal system and any adverse impact it  
24 may have on the health and welfare of the public." In so doing,  
25 the Hearings Officer incorrectly applied the strict liability  
26 standard to a violation of ORS 468B.025(1) (b). "Placement"  
27 requires an intentional act.



1           ORS 468.130(2) provides that the Commission must consider a  
2 number of facts in imposing a civil penalty. If strict liability  
3 were the standard to be applied in imposing civil penalties, then  
4 DEQ would not be required under 468.130(2) to consider these  
5 factors, since strict liability is by definition "liability without  
6 fault." In other words, the only thing which would have to be  
7 shown to impose a civil penalty for strict liability would be the  
8 fact the discharge occurred.

9           DATED: March 12, 1998



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C. RANDALL TOSH, OSB#94033  
Of Attorneys for the City of  
Coos Bay  
P.O. Box 1178  
Coos Bay, OR 97420  
Telephone: (541) 269-1123

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1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 CITY OF COOS BAY

5 Respondent.

) NOTICE OF VIOLATION,  
) DEPARTMENT ORDER AND  
) ASSESSMENT OF CIVIL  
) PENALTY  
) No. WQMW-WR-96-277  
) COOS COUNTY

7 I. AUTHORITY

8 This Notice of Violation, Department Order and Assessment of Civil Penalty (Notice and  
9 Order) is issued by the Department of Environmental Quality (Department or DEQ) pursuant to  
10 Oregon Revised Statutes (ORS) 468.100, ORS Chapter 183, and Oregon Administrative Rules  
11 (OAR) Chapter 340, Divisions 11 and 12.

12 II. FINDINGS

13 1. Respondent, City of Coos Bay (the City), operates a municipal wastewater  
14 collection, treatment, and disposal system in Coos Bay, Oregon.

15 2. On December 22, 1994, a pressure pipe transporting sewage sludge from the  
16 City's Treatment Plant No. 1 to the City's facultative sludge lagoon broke resulting in the  
17 discharge of approximately 5,600 gallons of sludge to adjacent tidal wetlands. The City made  
18 temporary repairs to the pipe and halted the discharge.

19 3. On December 22, 1994, the City sent the Department a letter in which it stated  
20 that it would make a permanent repair to the pressure pipe as soon as necessary materials were  
21 received by the City.

22 4. On September 6, 1996, no permanent repair of the pipe had been effected and the  
23 temporary repair to the pressure pipe failed resulting in a discharge of an estimated 2,000 to 5,000  
24 gallons of sewage sludge to adjacent tidal wetlands.

25 5. On September 6, 1996, Department Inspector Ruben Kretzschmar observed sludge  
26 from the break discharging to tidewaters constituting estuarine shellfish growing waters.

1 6. In response to the discharge, the Oregon Department of Agriculture prohibited  
2 harvesting from commercial shellfish beds in Coos Bay from September 6 through September 9,  
3 1996.

4 7. On September 9, 1996, Respondent made another temporary repair of the pressure  
5 pipe.

### 6 III. VIOLATIONS

7 Based upon the Findings above, Respondent has violated Oregon's laws and rules as  
8 follows:

9 1. On or about September 6, 1996, Respondent violated ORS 468B.050(1)(a) by  
10 discharging wastes into waters of the state without a permit authorizing such discharge.  
11 Specifically, Respondent caused or allowed sewage sludge from a broken pressure pipe to  
12 discharge to tidal wetlands in Coos Bay. This is a Class I violation pursuant to OAR 340-12-  
13 055(1)(b).

14 2. On or about September 6, 1996, Respondent violated ORS 468B.025(1)(b) by  
15 discharging wastes that reduce the quality of state waters below the water quality standard  
16 established the by Environmental Quality Commission. Specifically, Respondent caused or  
17 allowed a discharge that violated OAR 340-41-325(2)(f), which prohibits bacterial pollution  
18 deleterious to waters used for, among other things, shellfish propagation. This is a Class II  
19 violation pursuant to OAR 340-12-055(2)(f).

20 3. On or about September 6, 1996, Respondent violated ORS 468B.025(2) by  
21 violating a condition of its National Pollutant Discharge Elimination System Permit No. 100669.  
22 Specifically, Respondent violated General Condition B(3)(b) causing or allowing a sewage bypass  
23 of treatment facilities. This is a Class II violation pursuant to OAR 340-12-055(2)(f).

### 24 IV. DEPARTMENT ORDER

25 Based upon the foregoing FINDINGS AND VIOLATIONS, Respondent is hereby  
26 ORDERED TO:

1 1. Immediately initiate actions necessary to correct all of the above cited violations  
2 and come into full compliance with Oregon's laws and rules.

3 2. Within 15 days of receipt of this Notice and Order, prepare plans for 1) permanent  
4 repair of the pressure pipe and 2) a pressure pipe leak detection system, and submit plans to the  
5 Department.

6 3. Within 45 days of Receipt of this Notice and Order, complete the permanent repair  
7 to the pressure pipe and implement the leak detection system.

#### 8 V. ASSESSMENT OF CIVIL PENALTIES

9 The Director imposes civil penalties for the violations cited in Section II, paragraphs  
10 1 and 2 as follows:

11 <u>Violation</u>	12 <u>Penalty Amount</u>
13 1	\$3,900
14 2	\$1,500

15 Respondent's total civil penalty is \$5,400. The findings and determination of Respondent's  
16 civil penalty pursuant to OAR 340-12-045 are attached and incorporated as Exhibit Nos. 1 and 2.

#### 17 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

18 This Notice and Order shall become final unless Respondent requests, in writing, a hearing  
19 before the Environmental Quality Commission. **The request must be received by the**  
20 **Department's Rules Coordinator within 21 days after the date of issuance of this Notice**  
21 **and Order, and must be accompanied by a written "Answer" to the allegations contained**  
22 **in this Notice and Order.**

23 In the written Answer, Respondent shall admit or deny each allegation of fact contained in  
24 this notice, and shall affirmatively allege any and all affirmative claims or defenses to violations  
25 and assessment of any civil penalty that Respondent may have and the reasoning in support  
26 thereof. Except for good cause shown:

27 1. Factual matters not controverted shall be presumed admitted;

1           2.       Failure to raise a claim or defense shall be presumed to be a waiver of such claim  
2 or defense;

3           3.       New matters alleged in the Answer shall be presumed to be denied unless admitted  
4 in subsequent pleading or stipulation by the Department or Commission.

5           Send the request for hearing and Answer to: **DEQ Rules Coordinator, Office of the**  
6 **Director, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a request for  
7 hearing and an Answer, Respondent will be notified of the date, time and place of the hearing.

8           Failure to file a timely request for hearing and Answer may result in the entry of a Default  
9 Order for the relief sought in this Notice and Order.

10          Failure to appear at a scheduled hearing or meet a required deadline may result in a  
11 dismissal of the request for hearing and also an entry of a Default Order.

12          The Department's case file at the time the Notice and Order was issued may serve as the  
13 record for purposes of entering the Default Order.

14                               **VII. OPPORTUNITY FOR INFORMAL DISCUSSION**

15          In addition to filing a request for a contested case hearing, Respondent may also request  
16 an informal discussion with the Department by attaching a written request to the hearing request  
17 and Answer.

18                               **VIII. PAYMENT OF CIVIL PENALTY**

19          The civil penalty is due and payable ten (10) days after the Order imposing the civil  
20 penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before  
21 that time. Respondent's check or money order in the amount of \$6,200 should be made payable  
22 to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of**  
23 **Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

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25           11/4/96  
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27       Date

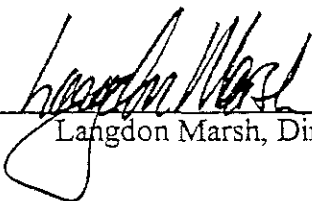
  
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Langdon Marsh, Director

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION No. 1: Discharge of wastes to waters of the state without a permit in violation of Oregon Revised Statute 468B.050(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-12-055(1)(b).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-12-045(1)(a) because there is no selected magnitude. In the absence of a selected magnitude the magnitude shall be moderate.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
 $BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$

"BP" is the base penalty, which is \$3,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior significant actions and receives a value of 5 pursuant to 340-12-045(1)(c)(A)(vi) because Respondent has prior significant actions totaling four Class I equivalent violations. The prior significant actions are:

- One Class I violation and one Class II violation in Case No. WQMW-WR-95-114
- One Class I violation in Case No. WQMW-WR-94-293
- One Class II violation in Case No. WQ-SWR-90-254
- One Class I violation in Case No. WQ-SWR-89-177

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant actions and receives a value of -2 because Respondent took all feasible steps or procedures necessary to correct any prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation was a single occurrence.

"R" is the cause of the violation and receives a value of 2 as Respondent was negligent in that it failed to exercise reasonable care to avoid the foreseeable risk of the violation occurring

"C" is Respondent's cooperativeness in correcting the violation and receives a value of -2 as Respondent took action to minimize the effects of the violation.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as there is insufficient information on which to base a finding.

EXHIBIT NO.     A      
PAGE NO.   5 of 8

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (5 + (-)2 + 0 + 2 + (-)2)] + \$0 \\ &= \$3,000 + [(\$300) \times (3)] + \$0 \\ &= \$3,000 + \$900 + \$0 \\ &= \$3,900 \end{aligned}$$

EXHIBIT NO.     A      
PAGE NO.     6 of 8

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION No. 2: Causing or allowing violation of a water quality standard in violation of Oregon Revised Statute 468B.025(1)(b).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-12-055(2)(f).

MAGNITUDE: The magnitude of the violation is moderate. Pursuant to OAR 340-12-045(1)(a)(ii), in the absence of a selected magnitude, the magnitude shall be moderate.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
 $BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$

"BP" is the base penalty, which is \$1,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior significant actions and receives a value of 5 pursuant to 340-12-045(1)(c)(A)(vi) because Respondent has prior significant actions totaling four Class I equivalent violations. The prior significant actions are:

- One Class I violation and one Class II violation in Case No. WQMW-WR-95-114
- One Class I violation in Case No. WQMW-WR-94-293
- One Class II violation in Case No. WQ-SWR-90-254
- One Class I violation in Case No. WQ-SWR-89-177

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant actions and receives a value of -2 as Respondent took all feasible steps or procedures necessary to correct any prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation was a single occurrence.

"R" is the cause of the violation and receives a value of 2 as Respondent was negligent in that it failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 as the violation could not be corrected once it had occurred.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as there is insufficient evidence on which to base a finding.

EXHIBIT NO.     A      
PAGE NO.     7 of 8



PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(0.1 \times \$1,000) \times (5 + (-)2 + 0 + 2 + 0)] + 0 \\ &= \$1,000 + [(\$100) \times (5)] + \$0 \\ &= \$1,000 + \$500 + \$0 \\ &= \$1,500 \end{aligned}$$

EXHIBIT NO.     A      
PAGE NO.     8 of 8

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY

HEARING MEMORANDUM

No. WQMW-WR-96-277  
COOS COUNTY

This Hearing Memorandum is offered in support of the Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice and Order) No. WQMW-WR-96-277, issued November 4, 1996 to the City of Coos Bay (the City) by the Department of Environmental Quality (the Department or DEQ).

I. APPLICABLE STATUTES AND ADMINISTRATIVE RULES

1. Oregon Revised Statute (ORS) 468B.050(1) states that:

"Except as provided in ORS 468B.215, without first obtaining a permit from the Director ... no person shall: (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

2. Oregon Administrative Rule (OAR) 340-45-010(11) states that:

" 'Person' means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity whatsoever."

3. OAR 340-45-010(4) states that:

" 'Discharge or Disposal' means the placement of wastes into public waters, on land, or otherwise into the environment in a manner that does or may tend to affect the quality of public waters."

4. ORS 468.005(7) states that:

" 'Waste' means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any waters of the state."

5. ORS 468B.005(3) states that:

" 'Pollution' or 'water pollution' means such alteration of the physical, chemical, or biological properties of any waters of the state ... which will or tends to, either by itself or in connection with any other substance, create a

1 public nuisance or which or tends to render such waters harmful, detrimental,  
2 or injurious to public health, safety or welfare, or to domestic, commercial,  
3 industrial, agricultural, recreational, or other legitimate beneficial uses or to  
4 livestock, wildlife, fish, or other aquatic life or the habitat thereof.”

5 6. ORS 468B.005(8) states that:

7 “ ‘Water’ or ‘the waters of the state’ include lakes, bays, ponds, impounding  
8 reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets,  
9 canals, the Pacific Ocean within the territorial limits of the State of Oregon ...  
10 which are wholly or partially within or bordering the state or within its  
11 jurisdiction.”

12 7. ORS 468B.005(1) states that:

13 “ ‘Disposal system’ means a system for the disposing of wastes, either by  
14 surface or underground methods, and includes municipal sewerage systems,  
15 domestic sewerage systems, treatment works, disposal wells, and other  
16 systems.”

17 8. ORS 468B.005(5) states that:

18 “ ‘Sewerage system’ means pipelines or conduits, pumping stations, and force  
19 mains, and all other structures, devices, and appurtenances and facilities used  
20 for collecting or conducting wastes to an ultimate point for treatment or  
21 disposal.”

22 9. ORS 468B.005(7) states that:

23 “ ‘Treatment works’ means any plant or other works used for the purpose of  
24 treating, stabilizing, or holding wastes.”

25 10. ORS 468B.025(1) states that:

26 “Except as provided in ORS 468B.050, no person shall: ... (b) Discharge any  
27 wastes into waters of the state if the discharge reduces the quality of such  
waters below the water quality standards established by rule for such waters by  
the [Environmental Quality Commission].”

28 11. OAR 340-41-322(2) states that:

29 “No wastes shall be discharged and no activities shall be conducted which  
30 either alone or in combination with other wastes or activities will cause  
31 violations of the following standards in the waters of the South Coast Basin:  
32 ... (f) Bacterial pollution or other conditions deleterious to waters used for  
33 domestic purposes, livestock watering, irrigation, bathing, shellfish  
34 propagation, or otherwise injurious to public health shall not be allowed.”

35 12. ORS 468B.025(2) states that:

36 “No person shall violate the conditions of any waste discharge permit issued  
37 under ORS 468B.050.”

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II. STIPULATED FACTS

The Stipulations entered into the Hearing Record at the outset of hearing are herein incorporated by reference.

III. CONTESTED QUESTION OF FACT

13. On September 6, 1996, sewage sludge released from the City's broken pressure line to the W Marsh on September 6, 1996, entered Coos Bay.

14. On September 6, 1996, in response to the release of sludge in Coos Bay, the Oregon Department of Agriculture closed three commercial shellfish beds in upper Coos Bay to harvesting because of public health concerns.

IV. VIOLATIONS

15. On or about September 6, 1996, the City violated ORS 468B.050(1)(a) by discharging wastes into waters of the state without a permit authorizing such discharge. Specifically, the City caused or allowed sewage sludge from a broken pressure pipe to discharge to tidal wetlands in Coos Bay.

16. On or about September 6, 1996, the City violated ORS 468B.025(1)(b) by discharging wastes that reduced the quality of state waters below the water quality standard established the by Environmental Quality Commission. Specifically, the City caused or allowed a discharge that violated the water quality standard in OAR 340-41-325(2)(f), which prohibits bacterial pollution deleterious to waters used for, among other things, shellfish propagation.

17. On or about September 6, 1996, the City violated ORS 468B.025(2) by violating a condition of its National Pollutant Discharge Elimination System Permit No. 100669. Specifically, the City violated General Condition B(3)(b) by causing or allowing a sewage bypass of treatment facilities.

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V. CASE ANALYSIS

18. Standard for Hearing Officer Review of Agency Interpretation of Administrative Rules and Statutes

In reviewing the appropriateness of the Department's actions, the Commission's Hearing Officer shall consider DEQ's decisions concerning the interpretation of agency rules and environmental statutes with deference. Please see Department's Memorandum of Authorities, attached. This standard of review requires the Hearing Officer to uphold the Department's statutory and rule interpretations so long as they are plausible and consistent with the wording of the statute or rule. See Department's Memorandum of Authorities.

19. In Violation No. 1 of the Notice and Order the Department, alleges that the City violated ORS 468B.050(1)(a), which prohibits, without first obtaining a permit, "Discharge [of] any wastes from any industrial or commercial establishment or activity or any disposal system". "Sewage" is expressly included within the definition of a "waste" set forth in ORS 468B.005(7) Sewage sludge consists of the human wastes and other solids separated from domestic wastewater as part of the treatment process and is thus a component of "sewage". "Marshes" and "bays" are expressly included in the definition of waters of the state set forth in ORS 468B.005(8). The W Marsh and Coos Bay are therefore waters of the state. There is no provision in the City's Permit authorizing it to discharge sewage sludge to the W Marsh, Coos Bay, or any other public waters.

A. The Release of Sludge from the Broken Pressure Line Constituted a "Discharge"

OAR 340-45-010(4) defines "discharge" as the "placement of wastes into public waters, on land, or otherwise into the environment in a manner that does or may tend to affect the quality of public waters". The City placed the sludge into a pressure line it owned and controlled, on land it owned or controlled. This overt act is the proximate cause of the sludge entering the W Marsh and Coos Bay.

ORS 468B.050(1)(a) does not include a specific mental state as a constitute element of a violation nor does it require that a duty be violated. Violation of 468B.050(1)(a) is therefore a strict liability offense,

1 and proof of proximate causation is all that is required to establish the City's liability for the release of  
2 sludge. The rupture of the pressure pipeline, owned or operated by the City of Coos Bay on land  
3 owned or controlled by the City, even if it were unforeseeable, is not a sufficient intervening or  
4 superseding cause to cut off the City's liability. Whether the City negligently or intentionally placed  
5 wastes into public waters is irrelevant as to whether a violation of 468B.050(1)(a) occurred.

6 The legislature's intent to make violations of the state water quality statute and administrative  
7 rules strict liability offenses is evidenced in ORS 468.130(f) and 468.140(1)(b). ORS 468.130(f)  
8 provides that the nature of causation, whether an unavoidable accident, negligent act or omission,  
9 intentional act, or flagrant act, is a factor to be considered in determining the amount of the civil  
10 penalty for an environmental violation, and is therefore not an element of a violation.

11 B. The Release of Sludge to Tidal Wetlands Constituted a Violation of ORS 468B.050(1)(a)

12 As discussed above, the release of partially treated sludge from the City's pressure pipeline to  
13 the W Marsh and Coos Bay did constitute a "discharge" of "waste" to "waters of the state". The City  
14 stipulates to the fact that the pressure line is part of a "disposal system". The discharge is not  
15 authorized by the City's permit. The Department submits that it has proven all the elements of a  
16 violation of 468B.050(1)(a).

17 The City argues that the September 6, 1996 sludge release to tidal wetlands did not violate  
18 ORS 468B.050(1)(a), but rather ORS 468B.025(1)(a), which prohibits "causing pollution of waters of  
19 the state" unless the person has a permit issued in accordance with ORS 468B.050. The Department  
20 expects the City to support this interpretation by arguing that "discharge" is an intentional act or that  
21 the statutory scheme indicates an intentional act is a required element of a 468B.050(1)(a) violation.  
22 The City's interpretation of "discharge" is refuted above. To reiterate, violation of 468B.050(1) is a  
23 strict liability offense. The nature of causation, whether an intentional act, negligent act or omission, or  
24 an unavoidable accident, is irrelevant to whether a violation occurred.

25 The City's second anticipated argument is that ORS 468B.050(1) is intended to address only  
26 those instances where the discharge would have been permitted, but the discharger failed to get a  
27 permit before doing so. According to the City, it is not the unpermitted discharge which is the

1 violation, but the failure to get a permit. Because the Department would never permit the accidental or  
2 negligent discharge of partially treated sludge to public waters, the City argues, the sludge discharge  
3 that occurred on September 6, 1996 is not a violation of ORS 468B.050(1)(a), but ORS  
4 468B.025(1)(a). This argument fails for the reasons set out below.

5 (i) ORS 468.050(1)(a) More Specifically Addresses the Facts at Issue

6 The rule of statutory construction holds that specific language controls over general language.  
7 The language of 468B.050(1), "without first obtaining a permit ... no person shall: (a) Discharge any  
8 wastes into waters of the state from ... any disposal system" more specifically addresses the facts in this  
9 case than the "causing pollution of waters of the state". As discussed above, the facts, and the legal  
10 conclusions reasonably drawn from them, are that the release of sludge was a discharge of a waste into  
11 waters of the state from a disposal system. The term disposal system is statutorily defined and  
12 therefore limited to the specific things described in the 468B.005(1). ORS 468B.025(1)(a) is a general  
13 prohibition.

14 (ii) ORS 468B.050(1)(a) is Not Solely Aimed at Failure to Obtain a Permit for an Otherwise  
15 Permissible Discharge

16 The City is expected to argue that the sole circumstance the legislature intended ORS  
17 468B.050(1)(a) to address is the failure to obtain a permit for an otherwise permissible discharge. That  
18 is, the discharge is of a type for which the Department normally issues permits. The City's position is  
19 that the purpose of the statutory prohibition is to ensure that people first apply for and receive a permit  
20 before they commence discharging.

21 The logical conclusion to this line of reasoning is that 468B.025(1)(a) is aimed at discharges  
22 the Department would never permit discharges which are accidental, negligent, or otherwise  
23 unacceptable. Because the Department would never permit the discharge of partially treated sewage  
24 sludge to public waters, the City argues, the release from the pressure pipeline to the W Marsh and  
25 Coos Bay is a violation of ORS 468B.025(1)(a). This interpretation of the statutory scheme is refuted  
26 by the plain language of ORS 468.025(1)(a). ORS 468B.025(1)(a) expressly states that causing  
27 pollution is prohibited "except as provided in ORS 468B.050" (emphasis added). ORS 468B.050

1 states that a discharge of a waste is not prohibited if a permit is first obtained. Therefore, a person can  
2 cause pollution of the waters of the state if that person first obtains a permit from the Department. The  
3 prohibition of 468B.025(1)(a) thus covers intentional as well as accidental and negligent discharges.

4 Because the primary rule of statutory construction is that no statutory language is superfluous  
5 and that every clause and word of a statute should be interpreted to give each its own effect,  
6 468B.025(1)(a) and 468.050(1)(a) must be intended to serve different regulatory purposes. The  
7 difference is not that the former is aimed at accidental and negligent discharges and the latter at failure  
8 to obtain a permit for intentional discharges. As noted above, both statutes, on their face, apply to  
9 intentional discharges, as well as accidental and negligent discharges. Rather the difference can be  
10 found in the statutory definition of "waste".

11 468B.005(7) states that waste is any substance "which will or may cause pollution or tend to  
12 cause pollution of any waters of the state". Under this definition, a person can discharge waste without  
13 causing pollution, but cannot cause pollution without first discharging a waste. Pollution is defined in  
14 ORS 468B.005(3) as "such alteration of the physical, chemical, or biological properties of any waters  
15 of the state ... which will or tends to ... create a public nuisance" harm public health, safety and  
16 welfare, or impair the beneficial uses of water. Causing pollution is therefore not merely discharging a  
17 waste but rather the discharge of wastes in sufficient quantify or sufficient concentration to result in  
18 pollution of waters of the state, as described in the statutory definition of pollution. In creating this  
19 statutory scheme, the legislature recognized that not every discharge of waste, by itself, results in  
20 pollution of waters of the state. Even individual non-polluting discharges, however, are of concern and  
21 subject to regulation because the cumulative or combined effect of unrelated discharges may, and often  
22 do, result in water pollution.

23 Finally, the "without first obtaining a permit" language at the beginning of 468.050(1) is not  
24 intended to limit the scope of to permitting only. Rather the purpose of the language is the same as the  
25 similar language at the beginning of 468.025(1), which is to provide an affirmative defense to the  
26 violations which follow.



1 E. Summary

2 For the reasons discussed above The Department's interpretation of the statutes and  
3 administrative rules at issue in Violation No. 1 are plausible and consistent with the wording of those  
4 statutes and rule, and is consistent with past agency interpretation and application of the statute.

5 20. In Violation No. 2 of the Notice and Order, the Department alleges that the City  
6 violated ORS 468B.025(1)(b) by discharging wastes that reduced the quality of the receiving waters  
7 below the water quality standard established for those waters by the Environmental Quality  
8 Commission. Specifically, the Department alleges that the discharge of sludge to Coos Bay, which is  
9 located in the South Coast Basin, violated OAR 340-41-325(2) which states that:

10 "No wastes shall be discharged and no activities shall be conducted which either alone in  
11 combination with other waste or activities will cause the violation of the following standards in  
12 the waters of the South Coast Basin: ... (f) Bacterial pollution or other conditions deleterious to  
13 waters used for domestic purposes, livestock watering, irrigation, bathing, or shellfish  
14 propagation, or otherwise injurious to public health shall not be allowed."

15 Pursuant to ORS 622.180, the Oregon Department of Agriculture (ODA) has the authority to  
16 close to harvesting commercial shellfish beds when it finds that the shellfish pose a threat to public  
17 health because of exposure to bacterial or other wastes. On September 6, 1996, Deborah Cannon,  
18 Shellfish Program Specialist in the ODA Food Safety Division, ordered the two-day closure of three  
19 commercial shellfish beds in upper Coos Bay as a result of the sludge discharge by the City. Ms.  
20 Cannon determined that potential consumption of shellfish exposed to the sludge posed an  
21 unacceptable public health risk. Ms. Cannon based her determination on the Department's estimate of  
22 the amount of sludge that entered Coos Bay, and her education, training, and experience related to the  
23 health risks posed by shellfish exposed to bacterial pollution, and her knowledge of the affected area.  
24 Based on Ms. Cannon's expert opinion and her decision to close the shellfish beds, the Department  
25 determined that the water quality standard set forth in OAR 340-41-325(2)(f) was violated as a result  
26 of the City's discharge of sewage sludge.

27 The City may argue that the narrative bacterial standard set forth in OAR 340-41-325(f) cannot  
be proven without demonstrating violation of one of the numerical bacterial standards in OAR 340-41-  
325(e). This argument is without merit. The legislature expressly, and without qualification, delegated

1 its authority to establish water quality standards to the Environmental Quality Commission. The  
2 authority of the state of Oregon to establish water quality standards is subject to the limitations of the  
3 federal Water Pollution Control Act (FWPCA). 33 U.S.C. 1313. FWPCA Section 1313(c)(2)(A)  
4 requires states that chose to adopt their own water quality standards to establish narrative standards  
5 based on the designated beneficial uses of the receiving waters. OAR 340-41-325(2)(f) fulfills this  
6 requirement for bacterial pollution in the waters of the South Coast Basin.

7 Furthermore, the structure of OAR 340-41-325(2) demonstrates that narrative and numerical  
8 standards are intended to be separate standards. OAR 340-41-325(2) essentially states that violations  
9 of the standards which follow are prohibited and then sets forth individual standards in succeeding  
10 paragraphs set apart by the use of sequential lower case letters. The numerical bacteria standards are  
11 in paragraph (e) and the narrative standard is paragraph (f). If the Commission intended the numerical  
12 standards to be the determinative factor in whether or not the narrative standard had been violated, it  
13 would not have put the narrative and numerical standards in separate paragraphs. The Commission  
14 would have instead put them in the same paragraphs and stated expressly that a violation of the  
15 narrative standard was to be determined by reference to the numerical standard. The Commission did  
16 not.

17 21. Violation No. 3 of the Notice and Order alleges that the City violated ORS  
18 468B.025(2) by violating a condition of its Permit. Specifically, the Department found that the  
19 discharge of sludge from the broken pipe to tidal wetlands constituted a bypass of treatment facilities,  
20 which is prohibited by General Condition B(3)(b) of the City's permit. The language of the Permit  
21 imposes a strict liability standard. When the pipe broke and sludge being transported to the facultative  
22 sludge lagoon discharged into the tidal wetlands, its treatment facility in the form of the sludge lagoon,  
23 was bypassed.

#### 24 VI. CIVIL PENALTY CALCULATION

25 22. Exhibit 1 of the Notice and Order sets forth the calculation of the \$3,900 civil  
26 penalty assessed against the City for Violation No. 1 of the Notice and Order, discharge of waste  
27 to waters of the state without a permit authorizing such discharge. The Exhibit identifies the

1 violation as a Class I violation pursuant to OAR 340-12-055(1)(b), which states that discharge of  
2 waste to waters of the state without a permit authorizing such discharge is a Class I violation.  
3 The magnitude of the penalty for Violation No. 1 is moderate pursuant to OAR 340-12-045(1)(a)  
4 because there is no selected magnitude for this violation. The base penalty for Violation No. 1, a  
5 Class I, moderate magnitude violation of a water quality statute is \$3,000 pursuant to OAR 340-  
6 12-042(1).

7 23. Pursuant to OAR 340-12-045, the civil penalty for Violation No. 1 was aggravated  
8 for two factors and mitigated for two factors.

9 The "P" or prior significant actions factor: OAR 340-12-030 states that prior significant  
10 action "means any violations established either with or without admission of a violation by  
11 payment of a civil penalty, or by a final order of the Commission or the Department. The  
12 Department found that the City had prior significant actions consisting of three Class I and two  
13 Class II violations and therefore applied an aggravating factor of 5, pursuant to OAR 340-12-  
14 045(1)(c)(A)(vi), to the civil penalty calculation. The City's three Class I and two Class II  
15 violations are established by payment of penalty or issuance of a final order in Case Nos.  
16 WQMW-WR-95-114, WQMW-WR-94-293, WQ-SWR-90-254, and WQ-SWR-89-177.

17 The "H" or history factor: The Department found that the City had taken all feasible steps  
18 or procedures necessary or appropriate to correct the violations constituting its prior significant  
19 actions and therefore applied a mitigation factor of -2, pursuant to OAR 340-12-045(1)(c)(B)(i),  
20 to the civil penalty calculation.

21 The "R" or causation factor: The Department found the cause of the violation to be the  
22 City's negligent conduct and therefore applied an aggravating factor of 2, pursuant to OAR 340-  
23 12-045(1)(c)(D)(ii), to the civil penalty calculation. OAR 340-12-030(11) states that  
24 " 'Negligence' or 'Negligent' means failure to take reasonable care to avoid a foreseeable risk of  
25 committing an act or omission constituting a violation." The first break of the sludge line  
26 occurred on December 22, 1994, and was repaired with a fix that the City admits was only  
27 temporary. Despite its knowledge that the shifting dike which caused the break had not been

1 stabilized, it took the City's engineering staff more than sixteen months, until May 7, 1996, to  
2 complete the plans for a permanent repair. These plans were forwarded on to the City's Planning  
3 Department for review. As part of this review the Planning Department advised that wetlands fill  
4 permits from the USACE and state DSL might be required. A joint permit application was filed  
5 on August 6, 1997. When the sludge line broke for the second time on September 6, 1996, again  
6 because of the shifting dike, approximately 20 months had passed since the first break occurred  
7 and the problem of the shifting dike had been identified.

8 In its Answer to the Notice and Order, the City defends its failure to make a timely  
9 permanent repair on the grounds that the project was held up because the design of a permanent  
10 repair was complex and by the need to apply for the fill permits. James Sheetz, P.E., is a Senior  
11 Environmental Engineer in the Department's Water Quality Section. Mr. Sheetz has over 30  
12 years experience as a professional engineer in private consulting and government. Mr. Sheetz has  
13 reviewed the dike stabilization design plans completed by the City's Public Works Department on  
14 May 7, 1996, as well as soils and geological information for the project area. It is Mr. Sheetz's  
15 opinion that a conservative estimate of the time required for a competent civil engineer to collect  
16 necessary information and design the plans he reviewed is three to eight weeks. The City has  
17 offered the Department no explanation of why it took over sixteen months to complete the design  
18 plans.

19 The City may have had limited staff resources and other projects to work on. The  
20 Department contends, however, that the proven threat of a release of potentially harmful  
21 pathogens to shellfish growing waters presented a known risk that should have received the City's  
22 immediate attention. The City chose, however, in the face of the known risk to public health and  
23 safety and welfare, to allocate its resources in a manner that a job which could have been  
24 completed in three to eight weeks, was not completed for over sixteen months. This does not  
25 constitute exercise of reasonable care to avoid a foreseeable risk of committing a violation.

26 The City may argue that even if it had completed the design in a more timely manner, the  
27 time required to obtain the fill permits would not have allowed it to complete the permanent

1 repair in time to prevent the second break. This argument is untenable. Because the City took so  
2 long to complete and review the design plans, approximately 19 months had passed before it even  
3 applied for the permits. Furthermore, it is standard practice in projects of this nature, according  
4 to Mr. Sheetz, for the design and permitting tasks to proceed concurrently. Complying with  
5 regulatory requirements is a task that should be identified during the project planning process and  
6 should commence at the outset. The need for fill permits should have been identified at the outset  
7 of the dike stabilization project, not after the design had been completed.

8 The "C" or cooperativeness factor: The Department found that the City was cooperative  
9 and took reasonable efforts to correct the violation by making a temporary repair to the pipe and  
10 so, pursuant to OAR 340-12-045(1)(c)(E)(i), applied a mitigating factor of -2 to the civil penalty  
11 calculation.

12 24. Exhibit 2 of the Notice and Order sets forth the calculation of the \$1,500 civil  
13 penalty assessed against the City for Violation No. 2 of the Notice and Order, causing or allowing  
14 violation of a water quality standard established by the Environmental Quality Commission. The  
15 Exhibit identifies this violation as a Class II violation pursuant to OAR 340-12-055(2)(f), which  
16 states that any violation not otherwise classified in OAR 340-12-055 is a Class II violation. The  
17 magnitude for Violation No. 2 is moderate pursuant to OAR 340-12-045(1)(a), because there is  
18 no selected magnitude for this violation. The base penalty for Violation No. 2, a Class II,  
19 moderate magnitude violation of a water quality administrative rule, is \$1,000 pursuant to OAR  
20 340-12-042(1).

21 25. The penalty for Violation No. 2 was aggravated for two factors and mitigated for  
22 one factor.

23 The "P" or prior significant actions and "H" or history factors: The basis for the  
24 Department's application of a value of 5 for the aggravating prior significant action factor and the  
25 value of -2 for the mitigating history factor to the civil penalty calculation is identical to that set  
26 forth in paragraph 37, above.  
27


1 The "R" or causation factor: The Department found the cause of Violation No. 2 to be  
2 the City's negligent conduct and therefore aggravated the penalty by a factor of 2. The City's  
3 negligent failure to timely complete a permanent repair to the pressure line by stabilizing the dike  
4 caused Violation No. 2 in addition to Violation No. 1.

5 VII. RELIEF SOUGHT

6 The Department seeks a Final Order for the civil penalties assessed and for the  
7 Department Order, with the deadlines set in the Department Order to be calculated from the date  
8 of the Hearing Officer's Final Order.

9  
10  
11  
12 Date

5/7/97

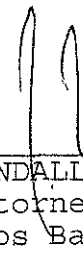
  
13 Jeff Bachman  
14 Environmental Law Specialist  
15 Department of Environmental Quality

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the foregoing REPLY  
TO DEQ EXCEPTIONS AND CROSS-EXCEPTIONS on the following:

Jeff Bachman  
Department of  
Environmental Quality  
2020 S.W. 4th Ave., #400  
Portland, OR 97201

by mailing to him a true and correct copy, certified by me, placed  
in a sealed envelope and addressed to him at the address set forth  
and mailed by overnight Express Mail via United Parcel Service on  
the 12th day of March, 1997, with the postage fully paid.



---

C. RANDALL TOSH, OSB #94033  
Of Attorneys for the City of  
Coos Bay  
P. O. Box 1178  
Coos Bay, OR 97420  
Telephone: (541) 269-1123

*Accepted*  
FEB 11 1998

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

FEB 11 1998

OF THE STATE OF OREGON

OFFICE OF THE DIRECTOR

IN THE MATTER OF:  
CITY OF COOS BAY,

Respondent/Appellee.

EXCEPTIONS AND BRIEF

No. WQMW-WR-96-277  
COOS COUNTY

Appellant, Department of Environmental Quality (the Department), excepts as follows to the findings and conclusions in the Hearing Officer's Findings of Fact, Conclusions of Law, and Order in Case No. WQMW-WR-96-277.

I. CASE HISTORY

On November 4, 1996, the Department issued Respondent, the City of Coos Bay, Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice) No. WQMW-WR-96-277. The Notice assessed Respondent a \$3,900 civil penalty for violation of Oregon Revised Statute (ORS) 468B.050(1)(a), which prohibits discharge of wastes to waters of the state without a permit authorizing such discharge, and a \$1,500 civil penalty for violation of ORS 468B.025(1)(b), which prohibits the discharge of any wastes into waters of the state if the discharge causes a violation of state water quality standards. Respondent appealed and requested a contested case hearing. On January 16, 1997, Respondent and the Department held an informal discussion, which failed to resolve the case. On May 8, 1997, a contested case hearing was held. On December 19, 1997, the Hearing Officer issued his decision, ruling that the City had violated ORS 468B.025(1)(b) and affirming the \$1,500 civil penalty, but had not violated ORS 468B.050(1)(a).

II. RELEVANT FACTS

At hearing Department and Respondent stipulated to the following facts: On September 6, 1996, a pressure line carrying partially treated sewage sludge at Respondent's Wastewater Treatment Plant No. 1 broke, allowing approximately 2,000 to 5,000 gallons of sludge to enter an adjacent tidal wetland area known as the "W Marsh". At the time of the break, the City operated Wastewater

*Attachment D - 5 pages*



1 Treatment Plant No. 1 pursuant to National Pollutant Discharge Elimination System Permit No.  
2 100699.

3 III. EXCEPTIONS

4 A. Respondent Violated ORS 468B.050(1)(a) Because Respondent's Permit Does Not Authorize  
5 it to Discharge Partially Treated Sewage Sludge to Waters of the State

6 On page 6 of his Findings of Fact and Conclusions of Law, the Hearing Officer ruled that the  
7 release of sludge from the pressure line to the W Marsh did not violate ORS 468B.50(1)(a) because  
8 "the waste that was in fact discharged was waste contemplated by the permit and its ultimate disposal  
9 contemplated by the permit". The Hearing Officer's ruling is in error because the City's permit does  
10 not authorize it to discharge partially treated sludge to waters of the state.

11 ORS 468B.050(1)(a) states that "Except as provided in ORS 468B.215, without first obtaining  
12 a permit from the Director, which permit shall specify applicable effluent limitations and shall not  
13 exceed five years in duration no person shall: (a) Discharge any wastes into the waters of the state from  
14 any industrial or commercial establishment or activity or any disposal system." Under the heading  
15 "Permitted Activities" the City's permit states "the permittee is authorized to ... operate a wastewater  
16 collection, treatment, control, and disposal system and to discharge to public waters adequately treated  
17 *wastewater* only from the authorized discharge point or points established in Schedule A..." (emphasis  
18 added). Sludge is not wastewater, but solids that settle out during wastewater treatment. The sludge  
19 was not, therefore, waste whose "ultimate disposal was contemplated by the permit".

20 Furthermore, the Hearing Officer's own express reasoning contradicts his ruling. On page 6, he  
21 states that "Respondent did not engage in any activity *outside the scope of the permit* other than the  
22 unintentional discharge of the partially treated sewage sludge in to the waters of the bay" (emphasis  
23 added). If, as the Hearing Officer stated, the sludge discharge to the bay is "outside the scope of the  
24 permit", it is not a permitted discharge. Because Respondent is not permitted to discharge sludge to  
25 waters of the state, the September 6, 1996 sludge release violated ORS 468B.050(1)(a).  
26  
27

1 B. The Department May Assess Separate Civil Penalties for Different Violations Arising Out of  
2 the Same Fact Situation and Circumstances

3 On page 8 of the Hearing Officer's Findings of Fact and Conclusions of Law he states that "it is  
4 not appropriate" to assess separate civil penalties for different violations of state law arising out of the  
5 same fact situation and circumstances. This is incorrect. Because the Department seeks an Order  
6 from the Commission upholding both civil penalties assessed in the Notice, and those violations arose  
7 from some of, although not entirely, the same facts and circumstances, it takes exception to the  
8 Hearing Officer's conclusion.

9 The Hearing Officer does not cite any legal authority for that proposition, but supports his  
10 assertion solely by stating that "it is not appropriate". Nor can he, because there is no statute, rule, or  
11 constitutional provision prohibiting the Department from assessing a penalty for each documented  
12 violation arising out of the same facts and circumstances. Please also see Department's Memorandum  
13 of Authority, attached.

14 Even if there were such a bar, however, it would not apply in this case because the violations  
15 for which the Department assessed penalties do not arise entirely out of the same facts and  
16 circumstances. The Notice assessed penalties for violation of ORS 468B.050(1)(a), discharge of waste  
17 to waters of the state without a permit, and ORS 468B.025(1)(b), violation of a water quality standard.

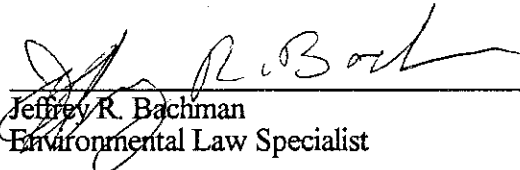
18 A person can discharge waste without a permit, without causing a violation of a water quality  
19 standard. The water quality standard violated by Respondent's is set forth in Oregon Administrative  
20 Rule 340-41-322(2)(f) which states "bacterial pollution or other conditions deleterious to waters used  
21 for domestic purposes, livestock watering, irrigation, bathing, shellfish propagation, or otherwise  
22 injurious to public health shall not be allowed." Violation of that specific water quality standard  
23 requires additional attendant circumstances than an unpermitted discharge, including discharge of a  
24 specific waste, bacteria, to shellfish waters, in a quantity that is deleterious to the propagation of  
25 shellfish.  
26  
27

1 IV. ALTERNATIVE CONCLUSION OF LAW AND ORDER

2 The Department requests that the Commission reverse the Hearing Officer's conclusion of  
3 law that Respondent was not liable for violating ORS 468B.050(1)(a) and enter a Final Order  
4 assessing Respondent a \$3,900 civil penalty, calculated in the manner set forth in the Notice of  
5 Assessment of Civil Penalty, for the violation.  
6

7  
8  
9 Date

2/9/98

  
Jeffrey R. Bachman  
Environmental Law Specialist

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY,

Respondent/Appellee.

MEMORANDUM OF AUTHORITIES  
IN SUPPORT OF DEQ'S EXCEPTIONS  
AND BRIEF  
No. WQMW-WR-96-277  
COOS COUNTY

There Is No Constitutional Bar to Dual Civil Violations Based upon the Same Facts

The double jeopardy clause of the Fifth Amendment has been a concern primarily when there are parallel criminal and civil proceedings. *U.S. v. Halper*, 490 U.S. 435 (1989). In a very recent decision, the U.S. Supreme Court even relaxed this concern, stating that "only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *U.S. v. Hudson*, 522 U.S. \_\_\_\_, 118 S.Ct 488, 493 (1997).

Thus, the Court made it clear that if the state says its penalties are civil, they do not count for purposes of the double jeopardy clause.

Beyond the double jeopardy clause, we cannot speculate as to what legal authority, if any, the Hearings Officer had for rejecting dual violations in this case.

Respectfully submitted,

HARDY MYERS  
Attorney General



Michael B. Huston #75189  
Assistant Attorney General  
Of Attorneys for DEQ  
Department of Justice  
1515 SW Fifth Avenue, Suite 410  
Portland, Oregon 97201  
Telephone: (503) 229-5725



MH:tb:tz/TB0065.MEM

ORMSBEE, CORRIGALL, McCLINTOCK & TOSH, LLP

ATTORNEYS AT LAW

936 Central State of Oregon  
P.O. Box 1178 Department of Environmental Quality  
Coos Bay, Oregon 97420-0309

RECEIVED

JAN 17 1998

Paralegal: Karen Hammer

Telephone: (541) 269-1123

Fax: (541) 269-1126

OFFICE OF THE DEPUTY DIRECTOR  
m&t@iceinternet.com

Orrin R Ormsbee  
Malcolm J. Corrigan  
Nathan B. McClintock  
C. Randall Tosh

January 14, 1998

Environmental Quality Commission  
811 S.W. Sixth Avenue  
Portland, OR 97204

Re: Notice of Appeal  
Case No. WQM-Q-WR-96-277

Dear sirs:

Enclosed for filing is Notice of Appeal in the above referenced matter.

Thank you.

Sincerely,



C. RANDALL TOSH  
City Attorney  
City of Coos Bay

rw  
enclosure

cc: Bill Grile, City of Coos Bay

Attachment E - 2 pages

1                   BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2                                           OF THE STATE OF OREGON

3           IN THE MATTER OF:  
4           CITY OF COOS BAY,

Case No. WQMW-WR-96-277

**NOTICE OF APPEAL**

5                                           Respondent.

6  
7           Pursuant to OAR 340-11-132(2) the City of Coos Bay, an  
8           Oregon municipal corporation, hereby provides notice that the City  
9           intends that the Environmental Quality Commission review the  
10          Hearings Officer's Findings of Fact, Conclusions of Law, and Final  
11          Order entered in Case No. WQMW-WR-96-277.

12                                           DATED this 14th day of January, 1998.

13  
14                                           

15                                           C. RANDALL TOSH, OSB No. 94033  
16                                           City Attorney, City of Coos Bay  
17                                           P.O. Box 1178  
18                                           Coos Bay, OR 97420  
19                                           Telephone: (541) 269-1123

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

8 IN THE MATTER OF:  
9 CITY OF COOS BAY

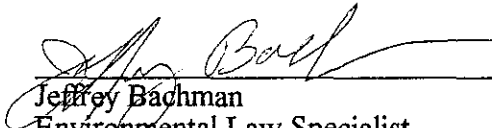
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NOTICE OF APPEAL OF  
HEARING OFFICER'S FINDINGS  
OF FACT, CONCLUSIONS OF  
LAW, AND FINAL ORDER

No. WQM-WR-96-277  
COOS COUNTY

8 Pursuant to Oregon Administrative Rule 340-11-132(2) the Department of Environmental  
9 Quality hereby provides notice that the Department intends that the Environmental Quality  
10 Commission review the Hearings Officer's Findings of Fact, Conclusions of Law, and Final Order  
11 in Case No. WQM-WR-96-277.

12 DATED this 8th Day of January, 1998

13  
14  
15   
16 Jeffrey Bachman  
17 Environmental Law Specialist  
18 Department of Environmental Quality  
19 Representative for Appellant

20 State of Oregon  
21 Department of Environmental Quality

22 RECEIVED

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23 OFFICE OF THE DEPUTY DIRECTOR  
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Ref No.: G50082

STATE OF OREGON

Dec Mailed: 12/19/97

Case No: 97-GAP-00028

Mailed by: BGS

Case Type: DEQ

**HEARING DECISION**

CITY OF COOS BAY  
C. RANDALL TOSH, CITY ATTORNEY  
PO BOX 1178  
COOS BAY OR 97420 0309

DEPART OF ENVIRONMENTAL QUALITY  
811 SW 6TH AVE  
  
PORTLAND OR 97204 1334

JEFF BACHMAN, DEQ ENFORCEMENT

2020 SW 4TH, SUITE 400  
PORTLAND OR 97201

JEFF BACHMAN, DEQ ENFORCEMENT

The following **HEARING DECISION** was served to the parties at their respective addresses.

Held by: Employment Department Hearings Section  
875 Union Street NE  
Salem, OR 97311



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

IN THE MATTER OF THE NOTICE OF )  
VIOLATION, DEPARTMENT ORDER, )  
AND ASSESSMENT OF CIVIL PENALTY )  
FOR DISCHARGING WASTES WITHOUT )  
A PERMIT AND FOR REDUCING WATER )  
QUALITY. )

HEARING OFFICER'S  
FINDING OF FACT AND  
CONCLUSION OF LAW  
No. WQMQ-WR-96-277  
Coos County, Oregon

CITY OF COOS BAY, )  
Respondent. )

**Background**

The City of Coos Bay, hereinafter called City, has appealed from a November 4, 1996 Notice of Violation, Department Order, and Assessment of Civil Penalty issued pursuant to Oregon Revised Statutes (ORS) Chapter 468, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. The Department of Environmental Quality (Department, DEQ) alleged that respondent violated OAR ORS 468B.050(1)(a) by discharging wastes into waters of the state without a permit; that respondent violated ORS 468B.025(1)(b) by discharging wastes that reduce the quality of state waters below water quality standard established by the Environmental Quality Commission; and that respondent violated a condition for its National Pollutant Discharge Elimination System Permit by allow sewage to bypass treatment facilities. The Department ordered respondent to immediately initiate actions necessary to correct the violation, prepare plans for permanent repair of the pressure pipe and a pressure pipe leak detection system, and to complete the permanent repair and implement a detection system within 45 days.

A civil penalty of \$5,400 was assessed pursuant to OAR 340-12-045.

Respondent requested a hearing on November 21, 1996.

A hearing was conducted by telephone on May 8, 1997. The respondent was represented by attorney C. Randall Tosh with two witnesses. Jeff Bachman represented the Department with three witnesses.

**FINDINGS OF FACT**

1. The City of Coos Bay, Oregon, hereinafter called City, is a municipal corporation of the State of Oregon.
2. The City operates a sewage disposal system for its residents and businesses as part of its corporate function.
3. The City has been granted National Pollutant Discharge Elimination System Permit No 100669 for the operation of its sewage disposal system.
4. The permits provides for provides for general and specific operating conditions for the system.
5. Part of the City system includes Treatment Plant No. 1, that partially treats sewage which is then pumped through a pressure pipeline located in an earthen dike, to a facultative sludge lagoon where the balance of the treatment takes place.

6. The treatment plant treats and digests the sewage to a sludge that is approximately 50% volatility.
7. Approximately every other day, for about 1/2 hour, the treated sewage is pumped through a pressure pipe line to an outflow in the center of the lagoon.
8. The sewage is aerated at that point and falls in to the lagoon with the heavier particles falling closest to the input pipe.
9. The settled sludge is capped with 3 to 5 feet of water.
10. The pressure pipeline is flushed after every use with primary effluent water that remains in the pipeline when it is not in use.
11. On December 22, 1994, an elbow in the pressure pipeline ruptured and approximately 5600 gallons of partially treated sewage was spilled.
12. The sewage spilled from the pipeline rupture which was located in a covered dike area and flowed into the marshlands that drain into the Marshfield Slough and into the rest of the bay.
13. The pipeline rupture was probably as a result of rodents burrowing under a thrust block upon which an elbow in the pipeline rested, the block dropping in to the burrows or weakened areas and away from its pipeline support position leaving the failed elbow without support and allowing it to separate from the rest of the pipeline.
14. As soon as the break was discovered corrective action was taken; the pump was shut down, the input pipe in the lagoon was capped so the water and sludge could not drain back from the lagoon, and then a sleeve was put over the break, thrust restricters placed on the pipe, and the support reestablished.
15. The pressure pipeline is a glued line with thrust restricters at elbows, and is buried in the top of a dike that separates a tidal wetlands known as the "W-Marsh" from a wetland area that is now used by the school district as wetland project area.
16. The spill was reported to the Department by letter of December 22, 1994, from Public Works Director, Ralph Dunham (Dunham), and the City at that time indicated that temporary repairs had been made and that the City was investigating the need for additional thrust restraint and/or material to be added to the dike to prevent settlement and that final repairs would include restraining glands to the pipe which would be added when the material was received by the City.
17. At the time of the temporary repair after the December 22, 1994 break, some concern was expressed because the elbow that had separated or failed was closer to the marshland edge of the dike because of the manner in which the bends or change of directions were made, but soil stabilization or dike extension was not a major consideration in the repair plan.
18. The sleeve, thrust restricters on the pipe and galvanized pipe behind the pipe, and clamps on the pipe to secure the sleeves, and a check valve at the lagoon end of the pressure pipe line was the extent of the temporary repair of the pipeline break.
19. Commercial shell fish beds located in the bay would be affected by a sludge spill in the area where the spill occurred because of the backflushing of the tidal waters over the shellfish beds.

20. On March 20, 1995, the Department conducted a regular annual inspection of the City's sewage facilities and noted in the inspection report that the permanent repairs had not been made because the wrong parts had been received by the City and that the correct parts had been reordered.
21. On April 17, 1995, a Notice of Noncompliance was issued to the City because of various system deficiencies, and the notice stated that the repairs to the sludge line had not been completed because of the problem in obtaining the correct parts, and that repairs to the sludge line were to be given top priority so that repair could be completed before another spill occurred.
22. Dunham, the public works director and later city engineer, understood that parts had been ordered and that permanent repairs would be made in the very near future and that repairs had not been completed because the wrong parts had initially been shipped.
23. In March or April 1996, the sewage treatment supervisor made the Dunham aware that there might be a problem with the stability of the dike in which the pressure pipeline was located because the school district wetlands project on that side of the dike had raised the water level considerably and the resulting additional water flow through the dike could cause it to destabilize.
24. The water level in the school district project had been raised gradually over the years but had recently been raised about three feet to flood a growth of non-indigenous grasses in the project.
25. At that time, the Dunham started the design process to stabilize the dike.
26. The City did not attach any urgency to the planning and design of the strengthened dike project that began in March or April of 1996, because they were approaching the summer months and the water levels would be lower.
27. The City did not request an extension of time within which to make permanent repair or consult with the Department regarding the time table of the proposed repair.
28. A geotechnical investigation was conducted or received and a structure was designed to resolve the problem of the additional wet land waters and to provide more stable support for the pressure pipeline.
29. Dunham completed the plans for the repair to the dike on or about May 7, 1996, and forwarded them to Kevin Cupples (Cupples), Planning Administrator for the City for further review and action pursuant to the City of Coos Bay Ordinance No. 93, the City of Coos Bay land development ordinance, and the Coos Bay Estuary Management Plan.
30. Cupples determined that wetland fill permits might be required from the Corps of Engineers and the Oregon Division of State Lands.
31. The Department conducted its regular inspection of the City's sewage disposal facilities on June 13, 1996 and then the Department inspector met with the City Administrator on June 19, 1996 and again expressed concern that permanent repairs to the pipeline had not been made.
32. A June 24, 1996 letter documenting inspection findings again set forth that the permanent repairs had not been made and that the permanent repair was to receive immediate attention.
33. When the City Engineer was made aware in June 1996, that the permanent repair had not been made, no sense of urgency attached, because City was in the permit process and would begin the work as soon as it received the proper authorization.

34. On or about August 6, 1996, Cupples submitted a joint fill permit to the Corps and the Division for repair and restoration mitigation required for permanent repair of the pressure line in the dike.
35. A permit application was prepared and dated August 6, 1996 and both Cupples and Dunham signed off on the permit as it conforming to the regulatory requirements set forth by the ordinances and Estuary Management Plan.
36. On September 6 1996, the pressure pipeline ruptured at or about the same spot and approximately 2000 to 5000 gallons of sludge was spilled into the marshlands adjacent to the dike upon which the pipeline was resting.
37. The City, upon becoming aware of the pipeline rupture, stopped pumping and made temporary repairs to the pipeline which included additional thrust restricters on the pipeline and additional galvanized pipe driven into the dike as additional thrust restriction, and then concrete was poured over the joint that had again failed.
38. The spill was immediately reported to the Department and to the Oregon Emergency Response System.
39. Based on the information that up to 5000 gallons of partially treated sewage spilled into the marshland, the Oregon Department of Agriculture ordered a two day harvesting closure of three shellfish growing beds because of the tidal action and the backwashing of the shellfish growing areas with the partially treated sewage.
40. The spill was considered a threat to the public safety in that the public could be harmed by consuming shellfish contaminated by the spill.
41. The City had not yet received final approval for any proposed dike stabilization repair work that it had proposed.
42. On or about September 26, 1996, the Department served the City with a Notice of Noncompliance, alleging the failure of the pressure line was a violation of ORS 164.785(1), 468B.025(1)(b), OAR 340-410-325(2)(e)(A)(ii) and NPDES Permit No 100699 General Condition, Section B(3).
43. On or about October 23, 1996, The Corps of Engineers informed Cupples that due to the second failure of the line, the repair to the dike and pressure line could be considered an emergency repair, thereby eliminating the requirement that the City obtain a wetland fill permit.
44. On or about October 29, 1996, the Division informed the City that a wetland fill permit would not be required by the Division due to the amount of fill material which was to be utilized by Dunham's plans.
45. The City does have prior significant actions in the following matters;
  - One Class I violation and one Class II violation in Case No. WQMW-WR-95-114
  - One Class I violation in Case No. WQMW-WR-94-293
  - One Class II violation in Case No. WQ-SWR-90-254
  - One Class I violation in Case No. WQ-SWR-89-177.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction.
2. The City of Coos Bay violated ORS 468B.025(1) and ORS 468B.025(2)(2).
3. The City of Coos Bay is subject to a civil penalty of \$1,500.

### OPINION

1. The Commission has jurisdiction.

The Environmental Quality Commission is directed by ORS Chapters 468 and 468B to adopt rules and policies to prevent pollution and to abate pollution and to assure that public health and safety is not compromised by unpermitted discharge of waste into the waters of the state. The Commission has jurisdiction to proceed with the notice of violation herein, enter the department order, and to assess of civil penalty.

2. Violations. The threshold question is whether the City incurs liability under the statute and rules because of violations due to its failure to effect permanent repairs to the pressure pipeline prior to the September 6, 1996 rupture and spill. It does. Respondent did review and evaluate the situation when the pipeline ruptured on December 22, 1994, and at that time proposed a permanent repair. Temporary repairs were effected at the time of the break, and then apparently nothing was done between the time of the initial break and temporary repair and the subsequent break, other than to prepare plans for dike stabilization prompted by the raised water level in the school district wetland project. Respondent had not revisited or addressed the temporary repairs, or effected the proposed permanent repairs.

The dike stabilization plans and project, while adding stabilization to the dike area and very probably to the pipeline as well, was to address a general problem of the additional water pressure on the school district side of the dike and the movement of water through the dike, and not the one that caused the earlier spill and which resulted in the temporary repair and the NON notation for not having it repaired. While Dunham may have thought that the permanent repair had been made, that does not relieve the respondent from the responsibility to in fact make the permanent repair.

The December 6, 1996 spill into the waters of the state resulted from respondent's failure to make permanent repairs to the December 22, 1994 pipeline break.

The parties have presented testimony and evidence on the length of time it would take to investigate a project, prepare a plan, and have it ready to permit, and the actual time that the respondent spent in its investigation, plan preparation, permit application, permit withdrawal and other processes.

The fact is, permanent repair did not require the proposed stabilization project, and the proposed stabilization project was not to address permanent repair of the December 22, 1994 pipeline break. The additional galvanized pipe thrust restricters, additional flanges, and the concrete used to repair the September 6, 1996 break may well have been an adequate permanent repair for the December 22, 1994 break, had respondent chosen to follow up and make that permanent repair.

The parties argued the application and effect of the statutes and rules, and whether there were actual violations for which penalties could be imposed or deficiencies for which repairs or avoidance steps could be ordered. The City operates a sewage disposal plant. The treatment and disposal of sewage is an operation that can be hazardous to the health and welfare of the public if there are deviations from requirement or rules. In this case partially treated sewage entered the waters of the state and was affected

by the tidal action of the estuary. The Department was required to take action to address the spill and where the Department of Agriculture was required to take immediate action to avoid potential harm. Notwithstanding the fact that respondent did not intentionally direct the partially treated sewage into the bay, its acts or omissions were cause of the sewage entering the bay, and sufficient to meet any "placement", "cause pollution" or "discharge" requirements of the statutes or rules.

Respondent's permit provides that there will be no diversion of waste streams from any portion of the conveyance system or treatment facility. Again, respondent is operating a sewage disposal system that is potentially hazardous to the health and welfare of the public, and is responsible for actions that would compromise that health or welfare. Respondent temporarily repaired the December 22, 1994 break, and could reasonably anticipate that a temporary repair is less likely to maintain the integrity of the system than a permanent repair. Respondent chose not to make a permanent repair and the diversion of the sewage sludge and effluent waters into the waters of the state is a violation of its permit.

It should be noted that the Department did not proceed to formal notice of violation and civil penalty on the December 22, 1994 break and discharge. In that instance, it appears that respondent had engineered the pipeline, prepared for reasonably expected eventualities, operated the pipeline as designed, and then had some unanticipated intervening force that caused or contributed to the failure. Respondent was given opportunity to address that failure and restore the system to its initial standards. It chose not to.

Respondent did not violate ORS 468B.050(1) by discharging wastes into the waters of the state without a permit authorizing such discharge.

ORS 468B.050(1) provides that no person shall discharge any wastes into the waters of the state without first obtaining a permit which shall specify applicable effluent limitations.

The above statute requires a permit to discharge wastes into the waters of the state. The City had obtained a National Pollutant Discharge Elimination System Permit and was operating its sewage disposal system according to that permit. While the Department argues that the City is in violation because untreated waste was discharged in to the waters of the state, the waste that was in fact discharged was waste contemplated by the permit and its ultimate disposal contemplated by the permit. Respondent did not engage in any activity outside the scope of the permit other than the unintentional discharge of the partially treated sewage sludge in to the waters of the bay. Respondent did not violate ORS 468B.050(1).

Respondent violated ORS 468B.025(1)(b) by discharging wastes that reduce the quality of state waters below the water quality standard established by the Environmental Quality Commission.

ORS 468B.025(1)(b) provides that no person shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the commission.

OAR 340-41-325(2)(f) provides that no wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause bacterial pollution or other conditions deleterious to waters used for domestic purposes, livestock watering, irrigation, bathing, or shellfish propagation, or otherwise injurious to public health.

2000 to 5000 gallons of partially treated sewage flowed into the waters of the state because of the September 6, 1996 rupture of the pressure line between the treatment plant and the sewage lagoon. The City, by and through the operation of the sewage disposal system, caused the sewage sludge to discharge into the bay. The City is strictly liable for the operation of the disposal system and any adverse impact it may have on the health and welfare of the public.

ORS 468B.015 sets forth that pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and declares that it is the public policy of the state to protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses.

Based on that policy statement, it is inappropriate to construe the specific provisions of OAR 340-41-325(2) to exclude the more general provisions of the rule. The purpose and intent of the rule is to protect the public health and welfare. OAR 340-41-325(2)(f) meets that test. It is applicable in this matter.

Respondent did violate ORS 468B.025(1)(b) in that sewage, deleterious to public health and welfare, was discharged into the waters of the state that would or could be ingested by shellfish in nearby growing areas, and ultimately consumed by the public, had harvesting been allowed to take place during the threat period.

Violation of ORS 468.025(1)(b) is a Class II violation of moderate magnitude.

Respondent violated ORS 468B.025(2) by violating a condition of its National Pollutant Discharge Elimination System Permit.

ORS 468B.025(2) provides that no person shall violation the conditions of any waste discharge permit issued under ORS 468B.050.

ORS 468B.050 provides that a permit issued by the director shall be obtained before a person can discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

Respondent's National Pollutant Discharge Elimination System Permit provides that respondent was authorized to operate a collection, treatment, control and disposal system and discharge to public waters adequately treated wastewaters only from the authorized discharge points. The permit further provides that diversion of waste streams from any portion of the conveyance system is prohibited except under certain emergency conditions. Respondent violated the conditions of that permit by allowing the sewage sludge from the pressure pipeline to enter the waters of the state at or about the area of the pipeline separation.

Violation of ORS 468B.025(2) is a Class II violation of moderate magnitude.

### 3. Respondent is subject to a civil penalty of \$1500.

Violation. Respondent discharged wastes that reduced the quality of state waters below the water quality standard established by the Environmental Quality Commission.

Penalty = BP + [(0.1 x BP) (P + H + O + R + C)] + BE.

"BP" is the base penalty which is \$1000 for a Class II, moderate magnitude violation. "P" is respondent's prior violations. "H" is the past history of the respondent in taking all feasible steps or procedures necessary to correct any prior violations. "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation. "R" is the cause of the violation. "C" is the respondent's cooperativeness. "EB" is the approximated dollar sum of the economic benefit that respondent gained through noncompliance.

OAR 340-12-090 provides that value of "P" shall be 5 if the respondent has had the equivalent of 4 class I violations. Respondent did have 3 class I violations and two class II violations.

The Department assigned a value of -2 to "H", because respondent had taken all feasible steps to correct the violations contained in the prior significant actions.

The Department assigned "O" a value of 0 because the violation was a single occurrence.

The Department assigned a value of 2 for "R" on the basis that violation was due to respondent's negligence. Respondent knew that permanent repair was required and did not complete that repair. Notwithstanding that fact, respondent did not intend that the pipeline would again rupture and the sewage spill in to the waters of the state. Respondent was negligent in that it failed to exercise reasonable care to avoid the foreseeable risk of the harm occurring.

The Department assigned "C" a value of 0 because the violation could not be corrected once it had occurred.

"EB" is assigned a value of \$0 because there is not sufficient evidence upon which to base a finding of whether respondent gained any economic benefits by noncompliance.

The rule is specific as to the values to be assigned under the varying circumstances and there is no provision for assigning values other than those set forth in the rule.

The civil penalty as calculated under the rule for violation of ORS 468B.025(1)(b) is \$1,500.

Penalties are not calculated or assessed for violation ORS 468.025(2), violation of the discharge permit, because that violation is based on the same fact situation and circumstances that resulted in the penalty assessment above, and it is not appropriate to assess further penalty in this matter.

The requirements for establishing a penalty have been met. The values assigned and the calculations are set forth above. Respondent is liable for a civil penalty of \$1,500.

#### 4. Department Order.

The November 4, 1996 Department Order required respondent to immediately initiate actions to correct the cited violations of failing to obtain a permit to discharge partially treated sewage into the waters of the state, discharging waste into the waters of the state reducing the water quality, and for bypassing the disposal system. Respondent, at the time of hearing had effected repairs to the system that responded to those immediate concerns, and is not specifically ordered to correct those deficiencies.

The Department order further provided that the respondent prepare plans for the permanent repair of the pressure pipe and a leak detection system and submit those plans to the Department. At the time of hearing respondent had prepared plans for stabilization of the dike and replacement of the dike materials washed away by the two spills, however, respondent had not specifically addressed the thrust restraint or support in the area where the elbow separated and the spill occurred. Again, repairs were made after the September 6, 1996 break which included additional thrust restraint in the form of additional galvanized pipe driven adjacent to the pipeline and concrete poured over the elbow that had separated in both of the breaks. While the dike stabilization and fill replacement may be a necessary element of permanent repair, what was or is actually necessary to permanently repair the pipeline was not established at hearing. Respondent shall be ordered to prepare a plan for permanent repair, or if repaired, an "as built" showing the permanent repair, and submit those plans to the Department. Respondent has been reviewing this matter since December 22, 1994 and it is reasonable to expect either the plan for permanent repair, or an "as built" plan to be submitted within 20 days of the date of this order.



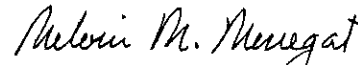
Respondent submitted an affidavit of an engineer stating that it is not practical to provide leak detection on the sludge pipeline. That affidavit is not persuasive from either the technical or practical standpoint. The pipeline failure could well affect the health and safety of the public, and respondent is strictly liable for breach of their responsibility for that protection. In this instance, however, the second spill occurred because respondent did not effect permanent repairs to the initial break, rather than the sludge transmission being an inherently dangerous activity. The pipeline was designed and engineered not to break or rupture and repair can be designed and engineered to prevent further ruptures and spills. Respondent will not be ordered to prepare plans for a leak detection system for the sludge pressure pipeline, or to implement a detection system.

Permanent repair of the pipeline break may well be completed by the date of this order. If permanent repair has not been completed, it is reasonable to require repair to be made within 45 days of the submission of the above referred to plans.

Based upon the above findings and violations and discussion, Respondent is hereby ordered to provide plans for the permanent repair of the pipeline, or "as built" plans as repaired, to the Department within 20 days of the date of this order, and further to effect permanent repair within 45 days after submission of those plans.

Dated this 19th day of December 1997.

Environmental Quality Commission



Melvin M. Menegat  
Hearings Officer.

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

IN THE MATTER OF THE NOTICE OF )  
VIOLATION, DEPARTMENT ORDER, )  
AND ASSESSMENT OF CIVIL PENALTY )  
FOR DISCHARGING WASTES WITHOUT )  
A PERMIT AND FOR REDUCING WATER )  
QUALITY. )

HEARING OFFICER'S  
ORDER

No. WQMQ-WR-96-277  
Coos County, Oregon

CITY OF COOS BAY, )  
Respondent. )

The Commission, through its hearing officer, finds that the Commission has subject matter and personal jurisdiction in this proceeding:

Final Order: The City of Coos Bay, Oregon violated ORS 468B.025(1)(b) by discharging wastes that reduce the quality of state waters below the water quality standard established by the Environmental Quality Commission and also violated ORS 468B.025(2) by violating a condition of its National Pollutant Discharge Elimination System Permit, and is liable for a civil penalty of \$1,500.

Proposed Order: The City of Coos Bay, Oregon is ordered to provide plans for the permanent repair of the pipeline, or "as built" plans, if repaired, within 20 days of the date of this order and further to effect permanent repair within 45 days after the submission of those plans.

Review of the Hearing Officer's Final Order is by appeal to the Environmental Quality Commission pursuant to OAR 340-11-132. A request for review must be filed within 30 days of the date of this order.

Exceptions to the Proposed Order must be filed with the Environmental Quality Commission, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

Dated this 19th day of December 1997.

Environmental Quality Commission

*Melvin M. Menegat*  
Melvin M. Menegat  
Hearings Officer.

Notice: If you disagree with this Order you may request review by the Environmental Quality Commission. Your request must be in writing directed to the Environmental Quality Commission, 811 S.W. Sixth Avenue, Portland, Oregon 97204. The request must be received by the Environmental Quality Commission within 30 days of the date of mailing or personal service of this Order. If you do not file a request for review within the time allowed, this order will become final and thereafter shall not be subject to review by any agency or court.

A full statement of what you must do to appeal a hearings officer's order is in Oregon Administrative Rule (OAR) 340-11-132.

*Attachment H - 1 page*

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY,

Case No. WQMW-WR-96-277

REPLY MEMORANDUM

Respondent.

I. OBJECTION TO DEQ'S STATEMENT OF FACTS

The City of Coos Bay objects to the inclusion in the record of DEQ's statement of facts. Additional allegations are contained in the statement which are not supported by testimony or other evidence in the record. These statements are simply the allegations by DEQ's attorney and are hearsay. The only fact in the DEQ's statement which is supported by evidence in the record is that between 2,000 and 5,000 gallons of partially treated sludge entered the W-marsh.

The City also moves to introduce as an additional exhibit the Affidavit of Greg Solarz, the City of Coos Bay's contract engineer for the Eastside pressure pipe and dike repair.

2. ANALYSIS

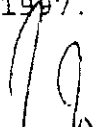
ORS 468B.020(2) provides that DEQ require the use of "all available and reasonable methods" necessary to prevent water quality violations. DEQ has not made a showing that the requested leak detection device is either available or reasonable. In fact, DEQ's own request for an order requires the City to "prepare plans" -- in other words, to design a device to detect leaks. The use of the term available in ORS 468B.020(2) means that the legislature intended those subject to water quality standard use existing

*Attachment I - 4 pages*

1 technology: there is no requirement that a regulated entity engage  
2 in costly and speculative design engineering. The use of the term  
3 reasonable means that the legislature did not give DEQ a carte  
4 blanche to demand any method: there must be a relationship between  
5 the costs and the benefits.

6 Testimony by Ralph Dunham at the hearing established the  
7 fact the pressure line is only used for a few minutes each day.  
8 The attached affidavit by Greg Solarz, the City's contract engineer  
9 for the pressure pipe and dike repair indicate the cost may well be  
10 prohibitive, and that any device installed to detect leaks of  
11 sewage sludge might well be compromised by the wetland location of  
12 the pressure line. Consequently, there has been no showing that  
13 the requested relief in any way conforms to or is allowed under the  
14 provisions of ORS 468B.020(2).

15 DATED this 14th day of May, 1997.

16  
17  
18   
19 C. RANDALL TOSH, OSB #94033  
20 Of Attorneys for the City of  
Coos Bay  
P. O. Box 1178  
Coos Bay, OR 97420  
Telephone: (541) 269-1123

21 D:\RANDY\COOSBAY\DEQ-REP.MEM  
22 May 14, 1997  
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY,

Case No. WQMW-WR-96-277

Respondent.

I, Greg Solarz, after being first duly sworn, do depose and say:

1.

I am the City of Coos Bay contract engineer for the repair of the pressure line which is a part of the City of Coos Bay's Wastewater Treatment Plant No. 1 and located in the dike running to the facultative sludge lagoon in Eastside, Oregon.

2.

I received my civil engineering license from the State of Oregon in 1977. A significant component of my practice is roadway and underground utility infrastructure.

3.

Based on my knowledge as a civil engineer and experience in underground utility infrastructure, there is currently available no technology to outfit a sewage sludge pressure pipe with a leak detection device. All the leak detection devices of which I am aware are used for the detection of underground leaks from petroleum storage tanks. Sewage sludge is water-born, and the accuracy of any leak detection device for sewage sludge would, in my opinion, be compromised by other water sources, including groundwater in the vicinity.

4.

The pressure pipe is not charged with sewage sludge on a continuous basis.

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5.

My estimate for the final project cost of repairing the dike is \$51,580.00.

6.

If a design for a leak detection device were even feasible in light of the particular circumstances, in my opinion such a system would be very expensive, and would far outweigh any benefit which would be derived for the installation of such a device.

*J. Gregory Splatz*

J. Gregory Splatz, P.E.  
Contract Engineer  
for the City of Coos Bay

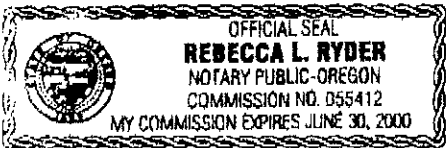
*5-13-97*

Date

State of Oregon )  
for ) cc:  
Coos County )

Subscribed and sworn before me this 13th of May, 1997.

*Rebecca L. Ryder 6/30/2000*  
Notary Republic for Oregon



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY

DEPARTMENT OF  
ENVIRONMENTAL QUALITY'S  
MEMORANDUM OF LAW

CASE NO. WQMW-WR-96-277

This Memorandum of Law is offered in support of the Department of Environmental Quality's authority to issue a Department Order requiring the City of Coos Bay (the City) to install a leak detection system for the pressure line used to transport partially treated sewage sludge from the City's Sewage Treatment Plant No. 1 to its facultative sludge lagoon.

I. FACTS

On December 22, 1994, hikers using a nature trail discovered that the City's pressure line had broken releasing an estimated 5,600 gallons of sludge from the City's sludge lagoon to wetlands adjoining the pipeline. The City estimated that the break occurred after 12 p.m. on December 21, 1994 and before the spill was discovered by the hikers. City employees were able to shut off the line and stop the flow of sludge within 15 minutes of arriving at the location of the break.

On or before September 6, 1996, a school teacher visiting a school-owned natural area near the sludge line observed that the pressure line had broken and that sludge was discharging to adjacent wetlands. City staff shut off the release, but not before an estimated 2,000 to 5,000 gallons of sludge discharged to public waters. The City was unable to make a more precise estimate of the amount of sludge released because it unsure when the break occurred.

II. APPLICATION OF LAW TO FACTS

Oregon Administrative Rule 340-12-041(4)(a) states that the Department issues orders pursuant to, among other statutes, Oregon Revised Statute (ORS) 468B, the water quality statute. ORS 468B.020(2) states that:

"...The Department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by: (b) Requiring the use of all

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available and reasonable methods necessary to achieve the purposes of ORS 468B.015 and to conform to the standards of water quality and purity established under ORS 468B.048."

On two separate occasions within a 20-month period, the City's pressure line broke releasing waste into public waters. On both occasions, the break went undetected by the City and was instead discovered by private citizens. The breaks resulted in the discharge of sludge to public waters for indeterminate periods of time. The City's failure to discover the breaks resulted in larger releases than would have occurred if it had a system that would alert City staff to a break, and thus in greater environmental harm and potential risk to public health.

The City has demonstrated that when it discovers a break, it can shut off a release within a matter of minutes. Given the fact that the line has broken twice within 20 months, the Department is appropriately concerned that another break may occur. A leak detection system would substantially minimize the size of the release in the event of another line break and likely would prevent water quality standard or other violations.

ORS 468B.020 requires the Department to take all necessary action to prevent new pollution. To fulfill that mandate, the Department has been authorized by the legislature to require the use of available and reasonable methods to prevent or abate pollution by pollution sources. Twice the City has released sludge into public waters, with these releases going undetected until discovered by private citizens who notified the City. In each case the longevity and severity of these releases were exacerbated by the City's failure to detect the releases when they first occurred. A leak detection system is an available and reasonable method which the Department may require the City to use to prevent any future pressure line breaks from polluting public waters.

5/12/97  
Date

*Jeffrey R. Bachman*  
Jeffrey R. Bachman  
Environmental Law Specialist



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY

HEARING MEMORANDUM

No. WQM-WR-96-277  
COOS COUNTY

This Hearing Memorandum is offered in support of the Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice and Order) No. WQM-WR-96-277, issued November 4, 1996 to the City of Coos Bay (the City) by the Department of Environmental Quality (the Department or DEQ).

I. APPLICABLE STATUTES AND ADMINISTRATIVE RULES

1. Oregon Revised Statute (ORS) 468B.050(1) states that:

“Except as provided in ORS 468B.215, without first obtaining a permit from the Director ... no person shall: (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

2. Oregon Administrative Rule (OAR) 340-45-010(11) states that:

“ ‘Person’ means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity whatsoever.”

3. OAR 340-45-010(4) states that:

“ ‘Discharge or Disposal’ means the placement of wastes into public waters, on land, or otherwise into the environment in a manner that does or may tend to affect the quality of public waters.”

4. ORS 468.005(7) states that:

“ ‘Waste’ means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.”

5. ORS 468B.005(3) states that:

“ ‘Pollution’ or ‘water pollution’ means such alteration of the physical, chemical, or biological properties of any waters of the state ... which will or tends to, either by itself or in connection with any other substance, create a

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1 public nuisance or which or tends to render such waters harmful, detrimental,  
2 or injurious to public health, safety or welfare, or to domestic, commercial,  
3 industrial, agricultural, recreational, or other legitimate beneficial uses or to  
4 livestock, wildlife, fish, or other aquatic life or the habitat thereof.”

5 6. ORS 468B.005(8) states that:

6 “Water” or “the waters of the state” include lakes, bays, ponds, impounding  
7 reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets,  
8 canals, the Pacific Ocean within the territorial limits of the State of Oregon ...  
9 which are wholly or partially within or bordering the state or within its  
10 jurisdiction.”

11 7. ORS 468B.005(1) states that:

12 “Disposal system” means a system for the disposing of wastes, either by  
13 surface or underground methods, and includes municipal sewerage systems,  
14 domestic sewerage systems, treatment works, disposal wells, and other  
15 systems.”

16 8. ORS 468B.005(5) states that:

17 “Sewerage system” means pipelines or conduits, pumping stations, and force  
18 mains, and all other structures, devices, and appurtenances and facilities used  
19 for collecting or conducting wastes to an ultimate point for treatment or  
20 disposal.

21 9. ORS 468B.005(7) states that:

22 “Treatment works” means any plant or other works used for the purpose of  
23 treating, stabilizing, or holding wastes.

24 10. ORS 468B.025(1) states that:

25 “Except as provided in ORS 468B.050, no person shall: ... (b) Discharge any  
26 wastes into waters of the state if the discharge reduces the quality of such  
27 waters below the water quality standards established by rule for such waters by  
the [Environmental Quality C]ommission.

11. OAR 340-41-322(2) states that:

“No wastes shall be discharged and no activities shall be conducted which  
either alone or in combination with other wastes or activities will cause  
violations of the following standards in the waters of the South Coast Basin:  
... (f) Bacterial pollution or other conditions deleterious to waters used for  
domestic purposes, livestock watering, irrigation, bathing, shellfish  
propagation, or otherwise injurious to public health shall not be allowed.”

12. ORS 468B.025(2) states that:

“No person shall violate the conditions of any waste discharge permit issued  
under ORS 468B.050.”

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II STIPULATED FACTS

The Stipulations entered into the Hearing Record at the outset of hearing are herein incorporated by reference.

III. CONTESTED QUESTION OF FACT

13. On September 6, 1996, sewage sludge released from the City's broken pressure line to the W Marsh on September 6, 1996, entered Coos Bay.

14. On September 6, 1996, in response to the release of sludge in Coos Bay, the Oregon Department of Agriculture closed three commercial shellfish beds in upper Coos Bay to harvesting because of public health concerns.

IV. VIOLATIONS

15. On or about September 6, 1996, the City violated ORS 468B.050(1)(a) by discharging wastes into waters of the state without a permit authorizing such discharge. Specifically, the City caused or allowed sewage sludge from a broken pressure pipe to discharge to tidal wetlands in Coos Bay.

16. On or about September 6, 1996, the City violated ORS 468B.025(1)(b) by discharging wastes that reduced the quality of state waters below the water quality standard established the by Environmental Quality Commission. Specifically, the City caused or allowed a discharge that violated the water quality standard in OAR 340-41-325(2)(f), which prohibits bacterial pollution deleterious to waters used for, among other things, shellfish propagation.

17. On or about September 6, 1996, the City violated ORS 468B.025(2) by violating a condition of its National Pollutant Discharge Elimination System Permit No. 100669. Specifically, the City violated General Condition B(3)(b) by causing or allowing a sewage bypass of treatment facilities.

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V. CASE ANALYSIS

18. Standard for Hearing Officer Review of Agency Interpretation of Administrative Rules and Statutes

In reviewing the appropriateness of the Department's actions, the Commission's Hearing Officer shall consider DEQ's decisions concerning the interpretation of agency rules and environmental statutes with deference. Please see Department's Memorandum of Authorities, attached. This standard of review requires the Hearing Officer to uphold the Department's statutory and rule interpretations so long as they are plausible and consistent with the wording of the statute or rule. See Department's Memorandum of Authorities.

19. In Violation No. 1 of the Notice and Order the Department, alleges that the City violated ORS 468B.050(1)(a), which prohibits, without first obtaining a permit, "Discharge [of] any wastes from any industrial or commercial establishment or activity or any disposal system". "Sewage" is expressly included within the definition of a "waste" set forth in ORS 468B.005(7) Sewage sludge consists of the human wastes and other solids separated from domestic wastewater as part of the treatment process and is thus a component of "sewage". "Marshes" and "bays" are expressly included in the definition of waters of the state set forth in ORS 468B.005(8). The W Marsh and Coos Bay are therefore waters of the state. There is no provision in the City's Permit authorizing it to discharge sewage sludge to the W Marsh, Coos Bay, or any other public waters.

A. The Release of Sludge from the Broken Pressure Line Constituted a "Discharge"

OAR 340-45-010(4) defines "discharge" as the "placement of wastes into public waters, on land, or otherwise into the environment in a manner that does or may tend to affect the quality of public waters". The City placed the sludge into a pressure line it owned and controlled, on land it owned or controlled. This overt act is the proximate cause of the sludge entering the W Marsh and Coos Bay. ORS 468B.050(1)(a) does not include a specific mental state as a constitute element of a violation nor does it require that a duty be violated. Violation of 468B.050(1)(a) is therefore a strict liability offense,

1 and proof of proximate causation is all that is required to establish the City's liability for the release of  
2 sludge. The rupture of the pressure pipeline, owned or operated by the City of Coos Bay on land  
3 owned or controlled by the City, even if it were unforeseeable, is not a sufficient intervening or  
4 superseding cause to cut off the City's liability. Whether the City negligently or intentionally placed  
5 wastes into public waters is irrelevant as to whether a violation of 468B.050(1)(a) occurred.

6 The legislature's intent to make violations of the state water quality statute and administrative  
7 rules strict liability offenses is evidenced in ORS 468.130(f) and 468.140(1)(b). ORS 468.130(f)  
8 provides that the nature of causation, whether an unavoidable accident, negligent act or omission,  
9 intentional act, or flagrant act, is a factor to be considered in determining the amount of the civil  
10 penalty for an environmental violation, and is therefore not an element of a violation.

11 B. The Release of Sludge to Tidal Wetlands Constituted a Violation of ORS 468B.050(1)(a)

12 As discussed above, the release of partially treated sludge from the City's pressure pipeline to  
13 the W Marsh and Coos Bay did constitute a "discharge" of "waste" to "waters of the state". The City  
14 stipulates to the fact that the pressure line is part of a "disposal system". The discharge is not  
15 authorized by the City's permit. The Department submits that it has proven all the elements of a  
16 violation of 468B.050(1)(a).

17 The City argues that the September 6, 1996 sludge release to tidal wetlands did not violate  
18 ORS 468B.050(1)(a), but rather ORS 468B.025(1)(a), which prohibits "causing pollution of waters of  
19 the state" unless the person has a permit issued in accordance with ORS 468B.050. The Department  
20 expects the City to support this interpretation by arguing that "discharge" is an intentional act or that  
21 the statutory scheme indicates an intentional act is a required element of a 468B.050(1)(a) violation.  
22 The City's interpretation of "discharge" is refuted above. To reiterate, violation of 468B.050(1) is a  
23 strict liability offense. The nature of causation, whether an intentional act, negligent act or omission, or  
24 an unavoidable accident, is irrelevant to whether a violation occurred.

25 The City's second anticipated argument is that ORS 468B.050(1) is intended to address only  
26 those instances where the discharge would have been permitted, but the discharger failed to get a  
27 permit before doing so. According to the City, it is not the unpermitted discharge which is the

1 violation, but the failure to get a permit. Because the Department would never permit the accidental or  
2 negligent discharge of partially treated sludge to public waters, the City argues, the sludge discharge  
3 that occurred on September 6, 1996 is not a violation of ORS 468B.050(1)(a), but ORS  
4 468B.025(1)(a). This argument fails for the reasons set out below.

5 (i) ORS 468.050(1)(a) More Specifically Addresses the Facts at Issue

6 The rule of statutory construction holds that specific language controls over general language.  
7 The language of 468B.050(1), "without first obtaining a permit ... no person shall: (a) Discharge any  
8 wastes into waters of the state from ... any disposal system" more specifically addresses the facts in this  
9 case than the "causing pollution of waters of the state". As discussed above, the facts, and the legal  
10 conclusions reasonably drawn from them, are that the release of sludge was a discharge of a waste into  
11 waters of the state from a disposal system. The term disposal system is statutorily defined and  
12 therefore limited to the specific things described in the 468B.005(1). ORS 468B.025(1)(a) is a general  
13 prohibition.

14 (ii) ORS 468B.050(1)(a) is Not Solely Aimed at Failure to Obtain a Permit for an Otherwise  
15 Permissible Discharge

16 The City is expected to argue that the sole circumstance the legislature intended ORS  
17 468B.050(1)(a) to address is the failure to obtain a permit for an otherwise permissible discharge. That  
18 is, the discharge is of a type for which the Department normally issues permits. The City's position is  
19 that the purpose of the statutory prohibition is to ensure that people first apply for and receive a permit  
20 before they commence discharging.

21 The logical conclusion to this line of reasoning is that 468B.025(1)(a) is aimed at discharges  
22 the Department would never permit discharges which are accidental, negligent, or otherwise  
23 unacceptable. Because the Department would never permit the discharge of partially treated sewage  
24 sludge to public waters, the City argues, the release from the pressure pipeline to the W Marsh and  
25 Coos Bay is a violation of ORS 468B.025(1)(a). This interpretation of the statutory scheme is refuted  
26 by the plain language of ORS 468.025(1)(a). ORS 468B.025(1)(a) expressly states that causing  
27 pollution is prohibited "*except as provided in ORS 468B.050*" (emphasis added). ORS 468B.050

1 states that a discharge of a waste is not prohibited if a permit is first obtained. Therefore, a person can  
2 cause pollution of the waters of the state if that person first obtains a permit from the Department. The  
3 prohibition of 468B.025(1)(a) thus covers intentional as well as accidental and negligent discharges.

4 Because the primary rule of statutory construction is that no statutory language is superfluous  
5 and that every clause and word of a statute should be interpreted to give each its own effect,  
6 468B.025(1)(a) and 468.050(1)(a) must be intended to serve different regulatory purposes. The  
7 difference is not that the former is aimed at accidental and negligent discharges and the latter at failure  
8 to obtain a permit for intentional discharges. As noted above, both statutes, on their face, apply to  
9 intentional discharges, as well as accidental and negligent discharges. Rather the difference can be  
10 found in the statutory definition of "waste".

11 468B.005(7) states that waste is any substance "which will or may cause pollution or tend to  
12 cause pollution of any waters of the state". Under this definition, a person can discharge waste without  
13 causing pollution, but cannot cause pollution without first discharging a waste. Pollution is defined in  
14 ORS 468B.005(3) as "such alteration of the physical, chemical, or biological properties of any waters  
15 of the state ... which will or tends to ... create a public nuisance" harm public health, safety and  
16 welfare, or impair the beneficial uses of water. Causing pollution is therefore not merely discharging a  
17 waste, but rather the discharge of wastes in sufficient quantify or sufficient concentration to result in  
18 pollution of waters of the state, as described in the statutory definition of pollution. In creating this  
19 statutory scheme, the legislature recognized that not every discharge of waste, by itself, results in  
20 pollution of waters of the state. Even individual non-polluting discharges, however, are of concern and  
21 subject to regulation because the cumulative or combined effect of unrelated discharges may, and often  
22 do, result in water pollution.

23 Finally, the "without first obtaining a permit" language at the beginning of 468.050(1) is not  
24 intended to limit the scope of to permitting only. Rather the purpose of the language is the same as the  
25 similar language at the beginning of 468.025(1), which is to provide an affirmative defense to the  
26 violations which follow.  
27

1 E. Summary

2 For the reasons discussed above The Department's interpretation of the statutes and  
3 administrative rules at issue in Violation No. 1 are plausible and consistent with the wording of those  
4 statutes and rule, and is consistent with past agency interpretation and application of the statute.

5 20. In Violation No. 2 of the Notice and Order, the Department alleges that the City  
6 violated ORS 468B.025(1)(b) by discharging wastes that reduced the quality of the receiving waters  
7 below the water quality standard established for those waters by the Environmental Quality  
8 Commission. Specifically, the Department alleges that the discharge of sludge to Coos Bay, which is  
9 located in the South Coast Basin, violated OAR 340-41-325(2) which states that:

10 "No wastes shall be discharged and no activities shall be conducted which either alone in  
11 combination with other waste or activities will cause the violation of the following standards in  
12 the waters of the South Coast Basin: ... (f) Bacterial pollution or other conditions deleterious to  
13 waters used for domestic purposes, livestock watering, irrigation, bathing, or shellfish  
14 propagation, or otherwise injurious to public health shall not be allowed."

15 Pursuant to ORS 622.180, the Oregon Department of Agriculture (ODA) has the authority to  
16 close to harvesting commercial shellfish beds when it finds that the shellfish pose a threat to public  
17 health because of exposure to bacterial or other wastes. On September 6, 1996, Deborah Cannon,  
18 Shellfish Program Specialist in the ODA Food Safety Division, ordered the two-day closure of three  
19 commercial shellfish beds in upper Coos Bay as a result of the sludge discharge by the City. Ms.  
20 Cannon determined that potential consumption of shellfish exposed to the sludge posed an  
21 unacceptable public health risk. Ms. Cannon based her determination on the Department's estimate of  
22 the amount of sludge that entered Coos Bay, and her education, training, and experience related to the  
23 health risks posed by shellfish exposed to bacterial pollution, and her knowledge of the affected area.  
24 Based on Ms. Cannon's expert opinion and her decision to close the shellfish beds, the Department  
25 determined that the water quality standard set forth in OAR 340-41-325(2)(f) was violated as a result  
26 of the City's discharge of sewage sludge.

27 The City may argue that the narrative bacterial standard set forth in OAR 340-41-325(f) cannot  
be proven without demonstrating violation of one of the numerical bacterial standards in OAR 340-41-  
325(e). This argument is without merit. The legislature expressly, and without qualification, delegated



1 its authority to establish water quality standards to the Environmental Quality Commission. The  
2 authority of the state of Oregon to establish water quality standards is subject to the limitations of the  
3 federal Water Pollution Control Act (FWPCA). 33 U.S.C. 1313. FWPCA Section 1313(c)(2)(A)  
4 requires states that chose to adopt their own water quality standards to establish narrative standards  
5 based on the designated beneficial uses of the receiving waters. OAR 340-41-325(2)(f) fulfills this  
6 requirement for bacterial pollution in the waters of the South Coast Basin.

7 Furthermore, the structure of OAR 340-41-325(2) demonstrates that narrative and numerical  
8 standards are intended to be separate standards. OAR 340-41-325(2) essentially states that violations  
9 of the standards which follow are prohibited and then sets forth individual standards in succeeding  
10 paragraphs set apart by the use of sequential lower case letters. The numerical bacteria standards are  
11 in paragraph (e) and the narrative standard is paragraph (f). If the Commission intended the numerical  
12 standards to be the determinative factor in whether or not the narrative standard had been violated, it  
13 would not have put the narrative and numerical standards in separate paragraphs. The Commission  
14 would have instead put them in the same paragraphs and stated expressly that a violation of the  
15 narrative standard was to be determined by reference to the numerical standard. The Commission did  
16 not.

17 21. Violation No. 3 of the Notice and Order alleges that the City violated ORS  
18 468B.025(2) by violating a condition of its Permit. Specifically, the Department found that the  
19 discharge of sludge from the broken pipe to tidal wetlands constituted a bypass of treatment facilities,  
20 which is prohibited by General Condition B(3)(b) of the City's permit. The language of the Permit  
21 imposes a strict liability standard. When the pipe broke and sludge being transported to the facultative  
22 sludge lagoon discharged into the tidal wetlands, its treatment facility in the form of the sludge lagoon,  
23 was bypassed.

#### 24 VI. CIVIL PENALTY CALCULATION

25 22. Exhibit 1 of the Notice and Order sets forth the calculation of the \$3,900 civil  
26 penalty assessed against the City for Violation No. 1 of the Notice and Order, discharge of waste  
27 to waters of the state without a permit authorizing such discharge. The Exhibit identifies the

1 violation as a Class I violation pursuant to OAR 340-12-055(1)(b), which states that discharge of  
2 waste to waters of the state without a permit authorizing such discharge is a Class I violation.  
3 The magnitude of the penalty for Violation No. 1 is moderate pursuant to OAR 340-12-045(1)(a)  
4 because there is no selected magnitude for this violation. The base penalty for Violation No. 1, a  
5 Class I, moderate magnitude violation of a water quality statute is \$3,000 pursuant to OAR 340-  
6 12-042(1).

7 23. Pursuant to OAR 340-12-045, the civil penalty for Violation No. 1 was aggravated  
8 for two factors and mitigated for two factors.

9 The "P" or prior significant actions factor: OAR 340-12-030 states that prior significant  
10 action "means any violations established either with or without admission of a violation by  
11 payment of a civil penalty, or by a final order of the Commission or the Department. The  
12 Department found that the City had prior significant actions consisting of three Class I and two  
13 Class II violations and therefore applied an aggravating factor of 5, pursuant to OAR 340-12-  
14 045(1)(c)(A)(vi), to the civil penalty calculation. The City's three Class I and two Class II  
15 violations are established by payment of penalty or issuance of a final order in Case Nos.  
16 WQMW-WR-95-114, WQMW-WR-94-293, WQ-SWR-90-254, and WQ-SWR-89-177.

17 The "H" or history factor: The Department found that the City had taken all feasible steps  
18 or procedures necessary or appropriate to correct the violations constituting its prior significant  
19 actions and therefore applied a mitigation factor of -2, pursuant to OAR 340-12-045(1)(c)(B)(i),  
20 to the civil penalty calculation.

21 The "R" or causation factor: The Department found the cause of the violation to be the  
22 City's negligent conduct and therefore applied an aggravating factor of 2, pursuant to OAR 340-  
23 12-045(1)(c)(D)(ii), to the civil penalty calculation. OAR 340-12-030(11) states that  
24 " 'Negligence' or 'Negligent' means failure to take reasonable care to avoid a foreseeable risk of  
25 committing an act or omission constituting a violation." The first break of the sludge line  
26 occurred on December 22, 1994, and was repaired with a fix that the City admits was only  
27 temporary. Despite its knowledge that the shifting dike which caused the break had not been

1 stabilized, it took the City's engineering staff more than sixteen months, until May 7, 1996, to  
2 complete the plans for a permanent repair. These plans were forwarded on to the City's Planning  
3 Department for review. As part of this review the Planning Department advised that wetlands fill  
4 permits from the USACE and state DSL might be required. A joint permit application was filed  
5 on August 6, 1997. When the sludge line broke for the second time on September 6, 1996, again  
6 because of the shifting dike, approximately 20 months had passed since the first break occurred  
7 and the problem of the shifting dike had been identified.

8 In its Answer to the Notice and Order, the City defends its failure to make a timely  
9 permanent repair on the grounds that the project was held up because the design of a permanent  
10 repair was complex and by the need to apply for the fill permits. James Sheetz, P.E., is a Senior  
11 Environmental Engineer in the Department's Water Quality Section. Mr. Sheetz has over 30  
12 years experience as a professional engineer in private consulting and government. Mr. Sheetz has  
13 reviewed the dike stabilization design plans completed by the City's Public Works Department on  
14 May 7, 1996, as well as soils and geological information for the project area. It is Mr. Sheetz's  
15 opinion that a conservative estimate of the time required for a competent civil engineer to collect  
16 necessary information and design the plans he reviewed is three to eight weeks. The City has  
17 offered the Department no explanation of why it took over sixteen months to complete the design  
18 plans.

19 The City may have had limited staff resources and other projects to work on. The  
20 Department contends, however, that the proven threat of a release of potentially harmful  
21 pathogens to shellfish growing waters presented a known risk that should have received the City's  
22 immediate attention. The City chose, however, in the face of the known risk to public health and  
23 safety and welfare, to allocate its resources in a manner that a job which could have been  
24 completed in three to eight weeks, was not completed for over sixteen months. This does not  
25 constitute exercise of reasonable care to avoid a foreseeable risk of committing a violation.

26 The City may argue that even if it had completed the design in a more timely manner, the  
27 time required to obtain the fill permits would not have allowed it to complete the permanent

1 repair in time to prevent the second break. This argument is untenable. Because the City took so  
2 long to complete and review the design plans, approximately 19 months had passed before it even  
3 applied for the permits. Furthermore, it is standard practice in projects of this nature, according  
4 to Mr. Sheetz, for the design and permitting tasks to proceed concurrently. Complying with  
5 regulatory requirements is a task that should be identified during the project planning process and  
6 should commence at the outset. The need for fill permits should have been identified at the outset  
7 of the dike stabilization project, not after the design had been completed.

8 The "C" or cooperativeness factor: The Department found that the City was cooperative  
9 and took reasonable efforts to correct the violation by making a temporary repair to the pipe and  
10 so, pursuant to OAR 340-12-045(1)(c)(E)(i), applied a mitigating factor of -2 to the civil penalty  
11 calculation.

12 24. Exhibit 2 of the Notice and Order sets forth the calculation of the \$1,500 civil  
13 penalty assessed against the City for Violation No. 2 of the Notice and Order, causing or allowing  
14 violation of a water quality standard established by the Environmental Quality Commission. The  
15 Exhibit identifies this violation as a Class II violation pursuant to OAR 340-12-055(2)(f), which  
16 states that any violation not otherwise classified in OAR 340-12-055 is a Class II violation. The  
17 magnitude for Violation No. 2 is moderate pursuant to OAR 340-12-045(1)(a), because there is  
18 no selected magnitude for this violation. The base penalty for Violation No. 2, a Class II,  
19 moderate magnitude violation of a water quality administrative rule, is \$1,000 pursuant to OAR  
20 340-12-042(1).

21 25. The penalty for Violation No. 2 was aggravated for two factors and mitigated for  
22 one factor.

23 The "P" or prior significant actions and "H" or history factors: The basis for the  
24 Department's application of a value of 5 for the aggravating prior significant action factor and the  
25 value of -2 for the mitigating history factor to the civil penalty calculation is identical to that set  
26 forth in paragraph 37, above.

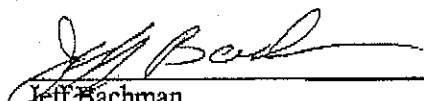
27

1 The "R" or causation factor: The Department found the cause of Violation No. 2 to be  
 2 the City's negligent conduct and therefore aggravated the penalty by a factor of 2. The City's  
 3 negligent failure to timely complete a permanent repair to the pressure line by stabilizing the dike  
 4 caused Violation No. 2 in addition to Violation No. 1.

5 VII. RELIEF SOUGHT

6 The Department seeks a Final Order for the civil penalties assessed and for the  
 7 Department Order, with the deadlines set in the Department Order to be calculated from the date  
 8 of the Hearing Officer's Final Order.

9  
 10  
 11 5/7/97  
 12 Date

13   
 14 Jeff Bachman  
 15 Environmental Law Specialist  
 16 Department of Environmental Quality  
 17  
 18  
 19  
 20  
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 27

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:

City of Coos Bay

) Case No. WQ MW-WR-96-277  
)

Generally, an agency has "considerable leeway \* \* \* to interpret its own rules, especially when the legislature has given it a broad mandate to promulgate the rules necessary to carry out its duties and powers." *Martin v. Dept. of Transportation*, 122 Or App 271, 274-75 (1993). When agency experts are involved in the interpretation of statutes or rules, the courts will consider agency decisions with deference. *1000 Friends of Oregon v. LCDC (Lane Co.)*, 305 Or 384, 390-91, 752 P2d 271 (1988). Agency interpretations are not erroneous as long as they are plausible and consistent with the wording of the statute or rule. *City of Klamath Falls v. EQC*, 318 Or 532, 870 P2d 825 (1994).

DATED this 30<sup>th</sup> day of April, 1997.

Respectfully submitted,

HARDY MYERS  
Attorney General



Larry H. Edelman #89158  
Assistant Attorney General  
Of Attorneys for DEQ  
Department of Justice  
1515 SW Fifth Avenue, Suite 410  
Portland, Oregon 97201  
Telephone: (503) 229-5725

LE:kt/LHE0343.PLE

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 CITY OF COOS BAY,

Case No. WQMW-WR-96-277

MEMORANDUM OF LAW

5 Respondent.

6 **Facts**

7 On December 22, 1994, a pressure pipe used to conduct partially-  
8 treated sewage sludge to the City of Coos Bay's (the City)  
9 treatment lagoon in the Eastside district of Coos Bay ruptured,  
10 allowing approximately 5,600 gallons of sludge to enter tidal  
11 wetlands. The pressure pipe is located inside a dike owned by the  
12 Port of Coos Bay which runs along the south side of the wetlands.  
13 The break occurred as a result of shifting of dike material.

14 The City reported the break to the Oregon Department of  
15 Environmental Quality (DEQ), and undertook remedial action. In a  
16 letter dated December 22, 1994, City of Coos Bay Engineer Ralph  
17 Dunham (Dunham), identified the nature of the break and remedial  
18 action which had been taken. Dunham's letter stated that a  
19 temporary repair had be performed, that there might be additional  
20 engineering needed to prevent future breaks due to dike settlement,  
21 and that final repairs would include restraining glands. There was  
22 no time line indicated for final repairs. DEQ did not assess a  
23 civil penalty for release.

24 On May 7, 1996, Dunham completed plans for dike repair. Dunham's  
25 final plans included fill of the dike to stabilize and prevent  
26 future breaks. Due to the location of the dike next to a tidal  
27 wetland inside City limits, the plans were forwarded to City of  
28 Coos Bay Planning Administrator Kevin Cupples (Cupples) for review.  
As a result of the review, it was decided that a wetlands fill  
permit would be required from the United States Army Corps of  
Engineers (the Corps) and the Oregon Division of State Lands (the  
Division) to perform the final repair. In addition, Cupples  
determined the proposed fill needed land use approval under the  
Coos Bay Estuary Management Plan. The site was reviewed by John  
Craig of the Corps, who concurred with the conclusion wetland fill  
permits were needed.

A joint permit for wetland fill was submitted to the Corps and the  
Division on August 6, 1996.

On September 6, 1996, a second break occurred in the pressure line  
at or near the location of the December 22, 1994 break. Somewhere  
between 2,000 and 5,000 gallons of sludge were released into the  
adjacent wetland. The cause of the second break was again the  
shifting of dike material.

1 DEQ assessed civil penalties under ORS 468B.050(1)(a), ORS  
2 468B.025(1)(b) and ORS 468B.025(2), and related administrative  
rules.

3 **A. 468B.050 Does Not Provide a Basis for an Enforcement Action for**  
4 **Accidental or Unintentional Releases**

5 ORS 468B.050(1)(a) provides:

6 ". . . [W]ithout first obtaining a permit from the  
7 director, which permit shall specify applicable effluent  
limitations and shall not exceed five years in duration,  
no person shall:

8 (a) Discharge any wastes into the waters of the state  
9 from any industrial or commercial establishment or  
activity or any disposal system."

10 "Disposal system" includes municipal wastewater treatment systems.  
11 ORS 468B.050(1).

12 Contrary to DEQ's position, ORS 468B.050(1) does not impose  
13 liability for releases or discharges from a wastewater treatment  
14 system. Rather, ORS 468B.050(1) is a "permitting" section, and  
15 simply established the need for a permit if a disposal system is  
16 going to be in operation. ORS 468B.050(1)(a) simply provides that  
a permit is required to operate a disposal system discharging waste  
into the waters of the state. There is nothing in the language of  
ORS 468B.050(1)(a) which implies that a permit must be required for  
a single, accidental release from a disposal system.

17 The City concedes the release might have been a violation of the  
18 terms of the City's NPDES permit. However, a violation of the  
19 terms of the NPDES permit does not establish a violation of ORS  
20 468B.050. The pressure line is a component of the City's  
wastewater disposal system, for which the City has an NPDES  
permit. The NPDES permit complies with the requirements of ORS  
468B.050: applicable effluent limitations are specified, and the  
permitting period is for a period of less than five years.

21 It is a fundamental rule of statutory interpretation that statutes  
22 are to be construed to give effect to all provisions. Nolan v. Mt.  
23 Bachelor, Inc., 317 Or 328 (1993). DEQ's interpretation of ORS  
24 468B.050(1)(a) renders ORS 468B.025(1)(b) mere surplusage, since  
25 both sections prevent discharges. The only way to interpret the  
26 two sections of ORS Chapt. 468B to give effect to both is to find  
27 ORS 468B.050(1)(a) prohibits discharges from a disposal system  
without first obtaining a permit, and ORS 468B.025(1)(b) to  
prohibit discharges from a properly permitted system which exceed  
water quality standards. Finally, to give full effect to the  
provisions of ORS 468B.025 and 468B.050, ORS 468B.025(2) prohibits  
violations of permit conditions, and ORS 468B.025(1)(a) prohibits  
any negligent releases which cause pollution.



1 B. "Discharges" Under ORS 468B.050 Require Intentional Acts By the  
2 Entity Subject to Its Terms.

3 Permits and the permitting process are the means whereby an entity  
4 obtains a right to do certain act. Under DEQ's analysis of ORS  
5 468B.050(1)(a), any discharge, intentional or unintentional,  
6 planned, unplanned, or accidental, even known or unknown, would  
7 require a permit prior to the time the discharge occurs. In other  
8 words, DEQ's position is that an entity must obtain a permit prior  
9 to an accidental release to avoid assessment of a civil penalty  
10 under ORS 468B.050(1)(a). This is simply an absurd result, and  
11 one which must be avoided in construing a statute. McKean-Coffman  
12 v. Employment Div., 312 Or 543 (1992).

13 Assuming, arguendo, DEQ is correct that ORS 468B.050(1)(a) provides  
14 an additional basis for enforcement for releases into the  
15 environment, "discharge" under the terms of this section must refer  
16 to intentional acts.

17 Discharge is not defined in ORS Chapt. 468B. However, OAR 340-45-  
18 101(1)(4) defines discharge in the context of NPDES permits as:

19 "the placement of wastes into public waters, on land or  
20 otherwise into the environment in a manner that does or  
21 may tend to affect the quality of public waters."  
22 (emphasis added).

23 "Placement" is not defined in OAR 340-45-101. The American  
24 Heritage Dictionary defines placement as:

25 "the act of placing or arranging . . . the state of being  
26 placed or arranged . . ." American Heritage  
27 Dictionary, 1001 (1971) (emphasis added).

28 As this definition makes clear, to have "placement" there must be  
more than an accidental or unintentional placement. The  
requirement that there be an act implies intentionality by the  
person making the discharge. Consequently, "discharges" under ORS  
468B.050(1)(a) require affirmative action by the permittee:  
unintentional or accidental discharges are not within the  
contemplation of the definition.

29 C. No "Discharge" Within the Meaning of ORS 468B.025(1)(b)  
30 Occurred When the Pressure Pipe Broke on September 6, 1996

31 Violations of ORS 468B.025 are public nuisances. ORS 468B.025(3).  
32 ORS 468B.025 identifies three separate activities which are  
33 prohibited.

34 ORS 468B.025(1)(a) provides:

35 "[N]o person shall . . . cause pollution of any waters of  
36 the state or place or cause to be placed any wastes in a  
37 location where such wastes are likely to escape or be  
38 carried into the waters of the state by any means."

1 ORS 468B.025(1)(b) provides:

2 "[N]o person shall . . . discharge any wastes into the  
3 waters of the state if the discharge reduces the quality  
4 of such waters below the water quality standards  
5 established by rule for such waters by the commission."

6 ORS 468B.025(2) provides:

7 "No person shall violate the conditions of any waste  
8 discharge permit issued under ORS 468B.050."

9 There are three types of conduct which give rise to nuisance  
10 liability: negligent or reckless conduct, intentional acts, or  
11 the operation of an abnormally dangerous activity. Raymond v.  
12 Southern Pacific Co., 259 Or 629 (1971). The language of ORS  
13 468B.025(1)(a) and (b) and ORS 468B.025(2) embodies each of these  
14 three types of conduct, and prohibits each. Thus, ORS  
15 468B.025(1)(a) uses the word "cause" which indicates negligent or  
16 reckless conduct is the subject of the prohibition. ORS  
17 468B.025(1)(b) prohibits "discharges," which, as defined by DEQ  
18 itself, involves the act of placing. ORS 468B.025(2) prohibits  
19 violations of the conditions of the NPDES permit, which implies  
20 strict liability resulting from the operation of an abnormally  
21 dangerous activity under permit -- a wastewater treatment facility.

22 In drafting ORS 468B.025, the legislature sought to thoroughly  
23 cover the three types of conduct which can give rise to a nuisance  
24 claim. Consequently, to assess a penalty for a violation of ORS  
25 468B.025, the proper section must be pled and proved. See Ward v.  
26 Jarnport, 114 OR App 466 (1992). DEQ assessed a penalty under ORS  
27 468B.025(1)(b). This section would only be proper if the  
28 "discharge" were the result of an intentional act.

29 **D. Penalty Assessed for a Violation of OAR 349-041-325(2)(f) Is  
30 Improper**

31 DEQ alleges the release of wastes from the pressure pipe violated  
32 OAR 349-041-325(2)(f), which provides:

33 "(2) No wastes shall be discharged and no activities  
34 shall be conducted which either alone or in combination  
35 with other wastes or activities will cause violation of  
36 the following standards in the waters of the South Coast  
37 Basin:

38 (f) Bacterial pollution or other conditions deleterious  
39 to waters used for domestic purposes, livestock watering,  
40 irrigation, bathing, or shellfish propagation, or  
41 otherwise injurious to public health shall not be  
42 allowed."

1 Specific bacterial standards applicable to estuarine shellfish  
2 growing waters are set forth in OAR 349-041-325(2)(e)(B)(ii) and  
(ii):

3 "(i) Marine waters and estuarine shellfish growing  
4 waters: A fecal coliform median concentration of 14  
5 organisms per 100 milliliters, with not more than ten  
percent of the samples exceeding 43 organisms per 100 ml;

6 "(ii) Estuarine waters other than shellfish growing  
7 waters: A geometric means of 35 enterococci per 100  
8 milliliters based on no fewer than five samples,  
representative of seasonal conditions, collected over a  
period of at least 30 days. No single sample should  
exceed 104 enterococci per 100 ml."

9 The rules of statutory interpretation provide that the specific  
10 controls the general. See State v. Tucker, 28 Or App 29  
11 (1977) (general terms may be limited by enumeration of specific  
12 examples). In adopting OAR 349-041-325, DEQ chose to establish  
13 basic standards for certain types of bacterial contamination.  
14 Those standards differ if the water is estuarine shellfish growing  
15 water or estuarine water other than shellfish growing water. In  
16 establishing these standards, DEQ limited the application of OAR  
17 349-041-325(2)(f), its "narrative standard"<sup>1</sup> relating to bacterial  
18 pollution to only those types of bacterial pollution not specified  
19 in OAR 349-041-325(2)(e). There is nothing in the record which  
20 establishes any bacterial release other than those types specified  
21 in OAR 349-041-325(2)(e). If other bacterial pollution occurred,  
22 it has not been established by testing. Likewise, testing of the  
23 shellfish beds for bacterial pollution under OAR 349-041-  
24 325(2)(e)(B)(i) & (ii) did not occur. Consequently, there is no  
25 evidence that bacterial pollution, as prohibited by DEQ's own  
26 administrative rules, occurred.

27 **E. The City Did Not Violate ORS 468B.025(2), in That No Violation  
28 of General Condition B(3)(b) of the City's NPDES Permit Occurred**

"Bypass" is defined in General Condition B(3)(b) of the City of  
Coos Bay's NPDES permit as:

"diversion of waste streams from any portion of the  
conveyance system or treatment facility"

"Diversion" is not defined anywhere in the permit. The American  
Heritage Dictionary defines diversion as:

"an act or instance of diverting." id., at 385.

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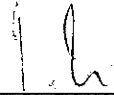
<sup>1</sup>DEQ's "narrative standards" provide no clear statement of what is and is not prohibited  
under the rules, and suffer from unconstitutional vagueness.

1 As with "discharges" under ORS 468B.025(1)(b), diversion requires  
2 an act. Consequently, accidental releases are not included, and no  
violation of General Condition B(3)(b) occurred.

3 Conclusion

4 The Oregon legislature carefully crafted a statutory scheme which  
5 addresses the different types of actions which compromise water  
6 quality. DEQ has ignored this scheme, and indiscriminately  
7 assessed penalties without a careful application of law to facts.  
8 The City may have violated other provisions of ORS Chapt. 468B and  
other terms and conditions of its NPDES permit. The City has not,  
however, violated ORS 468B.050(1)(a), ORS 468B.025(1)(b), or  
General Condition B(3)(b) of its NPDES permit. DEQ's assessment of  
civil penalties against the City should be dismissed.

9 DATED this 7th day of May, 1997.

10  
11   
12 \_\_\_\_\_  
13 C. RANDALL TOSH, OSB #94033  
14 Of Attorneys for the City of  
Coos Bay  
15 P. O. Box 1178  
16 Coos Bay, OR 97420  
17 Telephone: (541) 269-1123  
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Expiration Date: 9/30/95  
 Permit Number: 100699  
 File Number: 19802  
 Page 1 of 11 Pages

File Number 19802  
 Page 2 of 11 Pages

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
 WASTE DISCHARGE PERMIT

Department of Environmental Quality  
 811 S.W. Sixth Avenue  
 Portland, OR 97204  
 Telephone: (503) 229-5696

Issued pursuant to ORS 468.740 and The Federal Clean Water Act

SCHEDULE A

ISSUED TO:	SOURCES COVERED BY THIS PERMIT:		
City of Coos Bay 500 Central Avenue Coos Bay, OR 97420	Type of Waste	Outfall Number	Outfall Location
	Treated Domestic Sewage	001	13.2

PLANT TYPE AND LOCATION:	RECEIVING SYSTEM INFORMATION:
Coos Bay #1 Activated Sludge	Basin: South Coast Sub-Basin: Coos Bay Receiving Stream: Coos Bay
Treatment System Class: IV Collection System Class: IV	Hydro Code: 14A*COOS 13.2 D County: Coos

EPA REFERENCE NO: OR 002357-4

Issued in response to Application No. 998658 received 7/24/89.

This permit is issued based on the land use findings in the permit record.

Lydia B. Taylor SEP 26 1990  
 Lydia B. Taylor, Administrator Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated wastewaters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	Page
Schedule A - Waste Disposal Limitations not to be Exceeded...	2
Schedule B - Minimum Monitoring and Reporting Requirements...	3
Schedule C - Compliance Conditions and Schedules...	6
Schedule D - Special Conditions.....	8
General Conditions.....	Attached

Each other direct and indirect discharge to public waters is prohibited.

This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

1. Waste Discharge Limitations not to be Exceeded After Permit Issuance.
  - a. Outfall Number 001 (Sewage Treatment Plant Discharge)

(1) May 1 - October 31:

Parameter	Average Effluent Concentrations		Monthly* Average	Weekly* Average	Daily* Maximum
	Monthly	Weekly	lb/day	lb/day	lbs
a. BOD-5	20 mg/l	30 mg/l	484	726	967
b. TSS	20 mg/l	30 mg/l	484	726	967
c. FC/100ml	200	400			

(2) November 1 - April 30:

Parameter	Average Effluent Concentrations		Monthly* Average	Weekly* Average	Daily* Maximum
	Monthly	Weekly	lb/day	lb/day	lbs
a. BOD-5	30 mg/l	45 mg/l	726	1,088	1,451
b. TSS	30 mg/l	45 mg/l	726	1,088	1,451
d. FC/100ml	200	400			

\*Based on average dry weather design flow to the facility equaling 2.9 MGD.

(3) Other parameters

- a. pH (year-round) Shall be within the range 6.0 - 9.0
- b. BOD and TSS Removal Efficiency Shall not be less than 85% monthly average

(4) Notwithstanding the effluent limitations established by this permit, no wastes shall be discharged and no activities shall be conducted which violate Water Quality Standards as adopted in OAR 340-41-325 except in the defined mixing zone:

The allowable mixing zone shall not extend beyond a radius of 100 feet from the point of discharge.

State of Oregon  
 DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED  
 OCT - 3 1990

GOOS BAY BRANCH OFFICE

EXHIBIT A

Attachment M

SCHEDULE B

1. Minimum Monitoring and Reporting Requirements.  
(unless otherwise approved in writing by the Department)

a. Influent

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annual	Verification
BOD-5	2/week	24 hr Composite
TSS	2/week	24 hr Composite
pH	3/week	Grab

TOXICS:

Metals: (Ag, As, Cd, Cr, Cu, Hg, Ni, Pb, Zn) and Cyanide (CN), measured as total in mg/l (See Note 1/)	Semi-annual using 3-consecutive days between Monday and Friday	24-hr daily composite (See Note 2/)
Total Phenols (See Note 1/)	Semi-annual using 3-consecutive days between Monday and Friday	24-hr daily composite

b. Outfall Number 001 (Sewage treatment plant outfall)

Item or Parameter	Minimum Frequency	Type of Sample
BOD-5	2/week	24 hr Composite
TSS	2/week	24 hr Composite
pH	3/week	Grab
Fecal Coliform	2/week	Grab
Quantity Chlorine Used	Daily	Measurement
Total Chlorine Residual	Daily	Grab
Average Percent Removed (BOD and TSS)	Monthly	Calculation
Nutrients: NH <sub>3</sub> -N, and NO <sub>2</sub> +NO <sub>3</sub> -N,	2/Week	Grab
TOXICS: Metals: (Ag, As, Cd, Cr, Cu, Hg, Ni, Pb, Zn) and Cyanide (CN), measured as total in mg/l (See Note 1/)	Semi-annual using 3-consecutive days between Monday and Friday	24-hr daily composite (See Note 2/)
Total Phenols (See Note 1/)	Semi-annual using 3-consecutive days between Monday and Friday	24-hr daily composite

Toxics Removal  
Biomonitoring

Annually  
Bioassay of  
effluent  
from Outfall 001  
once between  
June 1 and Oct.  
31 each year  
and once between  
Nov. 1 and May 31  
each year.

Calculation 3/  
Acute and  
chronic  
bioassay.

c. Sludge Management

Item or Parameter	Minimum Frequency	Type of Sample
Sludge analysis including: Total solids (% dry wt.) Volatile solids (% dry wt.) Volatile Suspended Solids (% Dry Wt.) Sludge nitrogen NH <sub>3</sub> -N; NO <sub>3</sub> -N; & TKN (% dry wt.) Sludge metals content for Ag; As; Cr; Hg; Pb; Zn; Cu; Ni; & Cd (mg/kg) Phosphorus (% dry wt.) Potassium (% dry wt.) pH (standard units)	Semi-Annual	Composite sample to be representative of the product to be land from Facultative Lagoon (See Note 2/).
Record of % volatile solids reduction accomplished through digestion	Monthly when land applying sludge from the facultative lagoon.	Calculation (See Note 4/)
Record of locations where sludge is applied on land (Site location map to be maintained at treatment facility for review upon request by DEQ)	Each Occurrence	Date, volume & locations where sludges were applied recorded on site location map.

Notes:

- 1/ For influent and effluent cyanide and phenol samples, at least eight (8) discrete grab samples shall be collected over the operating day. Each aliquot shall not be less than 100 ml and shall be collected and composited into a larger container which has been preserved with sodium hydroxide for cyanide samples, and sulfuric acid for total phenols samples.
- 2/ Daily 24-hour composite samples shall be analyzed and reported separately.
- 3/ Total plant removal rates shall be calculated by first averaging all influent concentrations for a parameter obtained over the year; second averaging all effluent concentrations for a parameter obtained over the year; and finally using these two average concentrations to calculate the parameter's total plant removal.
- 4/ Calculation of the % volatile solids reduction is to be based on comparison of a representative grab sample of total and volatile solids entering each digester (a weighted blend of the primary and secondary clarifier solids) and a representative composite sample of sludge solids removed from the facultative lagoon for land application (as defined in note 5/).
- 5/ Composite samples from the Facultative Sludge Lagoon shall consist of blending equal fractions of grab samples taken from the center of 9 or more like-sized units resulting from an imaginary grid of each section of the lagoon being harvested. The grab samples taken from the center of each grid section shall include the entire depth of sludge in the area sampled. Samples shall be composited and mixed in equal portions. The sampling locations should be spaced to get samples from all parts of the lagoon being harvested.

Monitoring reports (DMRs) shall include a record of the location, quantity and method of use of all sludge removed from the treatment facility, a record of all applicable equipment breakdowns and bypassing, and a record of all treatment units or equipment out of service, in accordance with the attached General Conditions.

2. Reporting Procedures

Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department by the 15th day of the following month.

SCHEDULE C

Compliance Schedules and Conditions

1. The permittee shall maintain in place a program to identify and reduce inflow and infiltration into the sewage collection system. An annual report shall be submitted to the Department by June 1 each year which details infiltration and inflow control activities that have been done in the previous year, evaluates the effectiveness of those activities, and outlines activities planned for the following year.
2. No later than 3 months after permit issuance, the permittee shall submit a study plan and schedule for conducting and reporting on a mixing zone analysis. The study and report shall be completed by no later than six months after issuance. It shall include a characterization of the zone of initial dilution and mixing zone boundary to also enable biomonitoring results on various effluent dilutions and effluent toxic data to be related to actual mixing characteristics and available dilution.

Dilution within the mixing zone and at its boundary will be expressed using dilution factors determined through preferably a dye study or through an approved verified mathematical model.

Dilution will be evaluated in terms of conditions at low slack tide, as extrapolated to the peak daily design flowrate.

Should the results of the dilution analysis indicate a potential for acute chlorine toxicity within the mixing zone and/or chronic chlorine toxicity outside of the mixing zone as defined in Schedule A, Condition 1.a.(4) of this permit, the Department will modify Schedule A of the permit to incorporate appropriate total residual chlorine effluent limits.

3. Bioassay

- a. No later than 6 months after permit issuance, the permittee shall submit proposed bioassay procedures for the Department's review and approval. The proposal shall include at least the following:

- (1) All bioassays shall be conducted on 24-hour composite samples of the dechlorinated effluent diluted by appropriate control water.

SCHEDULE D

- (2) A chronic bioassay conducted in 100, 30, 10, 3, and 1 percent of the final effluent and control water sample using two appropriate test species as specified in the most recent edition of EPA's manual; Short-Term method for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms.
  - (3) An acute bioassay conducted in 100 percent of the final effluent using two appropriate test species as specified in the most recent edition of EPA's manual; Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms.
  - (4) A minimum of three replicates will be used in each of the tests.
- b. Following agreement between the permittee and the Department on appropriate test procedures, the permittee shall initiate bioassays on Outfall 001 in accordance with Schedule B and the approved test procedures. Any change in bioassay procedures must be approved by the Department.
- c. Bioassays shall be conducted semi-annually using the approved chronic and acute tests on the selected species. After the first year and for the duration of the permit, acute and chronic testing shall be conducted using the most appropriate test species as approved by the Department.
4. The permittee is expected to meet the compliance dates which have been established in this schedule. Either prior to or no later than 14 days following any lapsed compliance date, the permittee shall submit to the Department a notice of compliance or noncompliance with the established schedule. The Director may revise a schedule of compliance if he determines good and valid cause resulting from events over which the permittee has little or no control.

Special Conditions

1. The permittee shall comply with Oregon Administrative Rules (OAR) Chapter 340, Division 52, "Review of Plans and Specifications." In accordance with these rules, all proposed piping, treatment process, instrument, and equipment modifications other than repairs shall be submitted to the Department for prior review and approval.
2. All sludge shall be managed in accordance with a sludge management plan approved by the Department of Environmental Quality. No substantial changes shall be made in sludge management activities which significantly differ from operations specified under the approved plan without the prior written approval of the Department.
3. The permittee shall implement the bioassay toxicity testing program specified in Schedules B and C of this NPDES permit. If these tests confirm toxicity of the effluent, the permittee will evaluate methods and develop a plan to eliminate the toxicity. Upon approval by the Department, the permittee will implement the plan and the process will be continued until the toxicity is eliminated.
4. The permittee shall comply with Oregon Administrative Rules (OAR) Chapter 340, Division 49, "Regulations Pertaining to Certification of Wastewater System Operator Personnel." In accordance with these rules, the permittee shall:
  - a. Have its wastewater collection system supervised by one or more operators certified at a grade level equal to or higher than the system classification shown on page 1 of this permit. The designated supervisor(s) shall be available to the system owner and any other operator of the facility.
  - b. Have its wastewater treatment system supervised by one or more operators certified at a grade level equal to or higher than the system classification shown on page 1 of this permit. The supervisor(s) shall be available to the system owner and any other operator of the facility.



- c. When the designated supervisor(s) are not available, have an operator available who is certified no less than one grade level below the system classification. This condition applies to system owners who designate supervisors to be fully responsible for system operation in lieu of the designated supervisor (if any are designated by the permittee) and any temporary supervisor so designated by the permittee. A system shall not be without an individual certified at the classification of the system for more than 30 days.
- d. Notify the Department in writing within 30 days of replacement or redesignation of operators identified as responsible for supervising the operation of the wastewater systems.
- e. File with the Department at the time of permit renewal the name of the properly certified operator(s) designated the responsibility of supervising the operation of the wastewater treatment and collection systems.

SCHEDULE E

Pretreatment Activities

The permittee shall implement the following pretreatment activities:

1. The permittee shall conduct and enforce the industrial waste pretreatment program as approved by the Department and the General Pretreatment Regulations (40 CFR 403). The following shall be implemented or submitted by the permittee:
  - a. Enforce federal pretreatment regulations as promulgated by EPA or local limitations, whichever are more stringent. Locally derived limitations shall be defined as pretreatment standards under Section 307(d) of the Clean Water Act.
  - b. Issue wastewater discharge permits to all significant industrial users. These shall, at a minimum, contain limitations, sampling protocols, compliance schedule (if appropriate), and reporting requirements. Except as provided in 40 CFR, part 403.3(c)(2), A significant industrial user means:
    - (1) All industrial users subject to Categorical Pretreatment Standards under 40 CFR, part 403.6 and 40 CFR, Chapter I, Subchapter N; and
    - (2) Any other industrial user that
      - (i) Discharges an average of 25,000 gallons per day or more of process wastewater to the permittee's sewerage facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
      - (ii) Contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the permittee's sewage treatment plant; or
      - (iii) Is designated as such by the Control Authority as defined in 40 CFR, part 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the permittee's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR, part 403.8(F)(6)).

- c. As appropriate, update the industrial user survey. At a minimum, this shall include maintaining and updating records identifying the nature, character, and volume of pollutants contributed by significant industrial users. Records shall be maintained for a 3-year period.
  - d. Carry out inspections and monitoring activities on significant industrial users to determine compliance with applicable pretreatment standards. Sampling of significant industrial users shall be commensurate with the discharge but shall not be less than semi-annually.
  - e. Provide to the Department by March 1 of each year, a report (2 copies) that describes the permittee's pretreatment program activities over the previous calendar year. The content of this report shall be as established by the Department.
2. Require accidental spill and prevention programs from industrial users having a history of, or possessing the potential for, accidental discharges or spills that could upset the treatment process or cause a violation of this NPDES permit.
  3. The permittee shall require appropriate and timely corrective action should it be determined that an industrial user violates federal, state, or local pretreatment standards and requirements.
  4. The permittee shall perform at a minimum, semi-annual (wet and dry season), chemical analyses of its influent, effluent, and final sludge for specific toxic pollutants. However, more frequent sampling may be required by the Department. The list of toxics, the exact sampling frequency, and protocol shall be as described by the Department in Schedule B of this NPDES permit.
  5. The permittee shall request and obtain approval from the Department before implementing any significant changes to the approved local pretreatment program.

NFDES  
GENERAL CONDITIONS

SECTION A. STANDARD CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Oregon Revised Statutes (ORS) 468.720 and is grounds for enforcement action; for permit termination; suspension, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Oregon Law (ORS 468.990) classifies a willful or negligent violation of the terms of a permit or failure to get a permit as a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than \$25,000 or by imprisonment for not more than one year, or by both. Each day of violation constitutes a separate offense.

In addition to the criminal penalties specified above, Oregon Law (ORS 468.140) also allows the Director to impose civil penalties up to \$10,000 per day for violation of the terms or conditions of a permit.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application should be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

5. Permit Actions

This permit may be modified, suspended, or terminated for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit, rule, or statute;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

The filing of a request by the permittee for a permit modification or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

#### 6. Toxic Pollutants

The permittee shall comply with any applicable effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

#### 7. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any violation of federal, state or local laws or regulations.

### SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

#### 1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

#### 2. Duty to Halt or Reduce Activity

Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### 3. Bypass of Treatment Facilities

#### a. Definitions

- (1) "Bypass" means diversion of waste streams from any portion of the conveyance system or treatment facility.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### b. Prohibition of bypass.

- (1) Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary pumping, conveyance, or treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (c) The permittee submitted notices and requests as required under paragraph c of this section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, when the Director determines that it will meet the three conditions listed above in paragraph b(1) of this section.

#### c. Notice and request for bypass.

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D-5 (24-hour notice).

- d. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs b and c of this section.

4. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner as to prevent any pollutant from such materials from entering public waters, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and shall be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Director.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than  $\pm 10\%$  from true discharge rates throughout the range of expected discharge volumes.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties of Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

5. Reporting of Monitoring Results

Monitoring results shall be summarized each month on a Discharge Monitoring Report form approved by the Department. The reports shall be submitted monthly and are to be postmarked by the 14th day of the following month unless specifically approved otherwise in Schedule B of this permit.

6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

7. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean, except for coliform and fecal coliform bacteria which shall be averaged based on a geometric or log mean.

8. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records of all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, or report of application. This period may be extended by request of the Director at any time.

9. Records Contents

Records of monitoring information shall include:

- a. The date, exact place, time and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

10. Inspection and Entry

The permittee shall allow the Director, or an authorized representative upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility which will result in a change in the character of pollutants to be discharged or which will result in a new or increased discharge of pollutants.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit shall be transferred to a third party without prior written approval from the Director. The permittee shall notify the Department when a transfer of property interest takes place.

4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.



5. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally (by telephone) within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

- a. Any unanticipated bypass which exceeds any effluent limitation in the permit.
- b. Any upset which exceeds any effluent limitation in the permit.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Section D, Paragraphs D-4 and D-5, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D-5.

7. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information.

8. Signatory Requirements

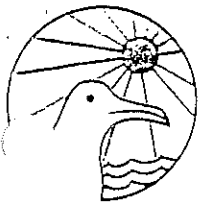
All applications, reports or information submitted to the Department shall be signed and certified in accordance with 40 CFR 122.22.

9. Falsification of Reports

State law provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$1,000 per violation, or by imprisonment for not more than six months per violation, or by both.

SECTION E. DEFINITIONS AND ACRONYMS

1. BOD means five-day biochemical oxygen demand.
2. TSS means total suspended solids (non-filterable residue).
3. mg/l means milligrams per liter.
4. kg means kilograms.
5. m<sup>3</sup>/d means cubic meters per day.
4. MGD means million gallons per day.
5. Composite sample means a combination of samples collected, generally at equal intervals over a 24-hour period, and apportioned according to the volume of the flow at the time of the sampling.
6. FC means fecal coliform bacteria.



# CITY OF COOS BAY

JA  
CF#1

December 22, 1994

Public Works Department  
Dept. of Environmental Quality  
340 N. Front  
Coos Bay, Oregon 97420

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
**RECEIVED**  
DEC 23 1994

COOS BAY BRANCH OFFICE

## **RE: SLUDGE PRESSURE LINE FAILURE 12-22-94**

Dear Mr. Kretzschmar;

On December 22, 1994 at 10:30 AM School District No. 9 contacted the City of Coos Bay to report waste draining from our sludge line along a nature trail the school district maintains. This was evidently reported to them by walkers which daily utilize this trail. Our wastewater crews responded by 10:45 AM and found the sludge transfer line located in a diked area which has the nature trail on top of it to be separated and draining the City's Facultative Sludge lagoon. The valve on the lagoon was closed and by 11:00 AM all discharge had been stopped.

The adjoining wetland to the north east of the location had evidence of sewage sludge being discharged over an area approximately 30 feet wide by 300 feet long by 1 inch deep on the upper reaches of this property owned by the Port of Coos Bay and City of Coos Bay. The lagoon had receded 6.5 inches from its full level which equates to 728,000 gallons of primarily the water cap lost. The City originally reported 1,120,000 gallons based upon an estimate. Evidence on the property indicated that approximately 5,600 gallons of digested domestic sludge had spilled and the rest of the spill consisted of the water cap on the sludge lagoon. When the line was excavated for repair, it was found that the line had pulled a joint at an elbow, evidently caused by settlement of the thrust block due to the closeness to the edge of the dike and rodents which had been digging in the immediate area.

The event most likely took place between 12:00 pm on 12/21/94 and when reported based upon the following information. Walkers daily use the trail primarily in the morning and nothing was reported until today. Daily inspection of pump station No. 19 at 9:00 AM on 12/21/94 indicated the lagoon was at full level. A sludge transfer (the line was under pressure and vibration) took place between 7:40 AM and 8:10 AM and the line was partially flushed at 12:01 PM to 12:11 PM on 12/21/94 which was the only uses of the line in the last 3 days. The elevation difference between the lagoon level and the separated line indicated that the flow rate in the line should have been

EXHIBIT B

approximately 500 gpm which equates to approximately 24 hours for the occurrence.

City crews have sampled the lagoon water cap for background information and sampled the most probable access to the estuary in 3 locations for fecal contaminants and information regarding public health risk. The City has also barricaded the walking trail and signed it indicated that digested sewage sludge is adjacent to the trail and it is to be avoided. The crews attempted to pump sludge out of the property it had been spilled on however met with little success due to the minimal depth of the material in most locations. The area with evidence of sludge has been coated with lime to sweeten the waste and aid in breakdown.

At this time the line has been temporarily repaired and the City is investigating need for additional thrust restraint and or material to be added to the dike to prevent settlement. Final repairs will include restraining glands to the pipe when material can be shipped to the City.

If you have any questions, please contact either Mike McDaniels or myself at (503) 269-8917 and (503) 269-8916 respectively.

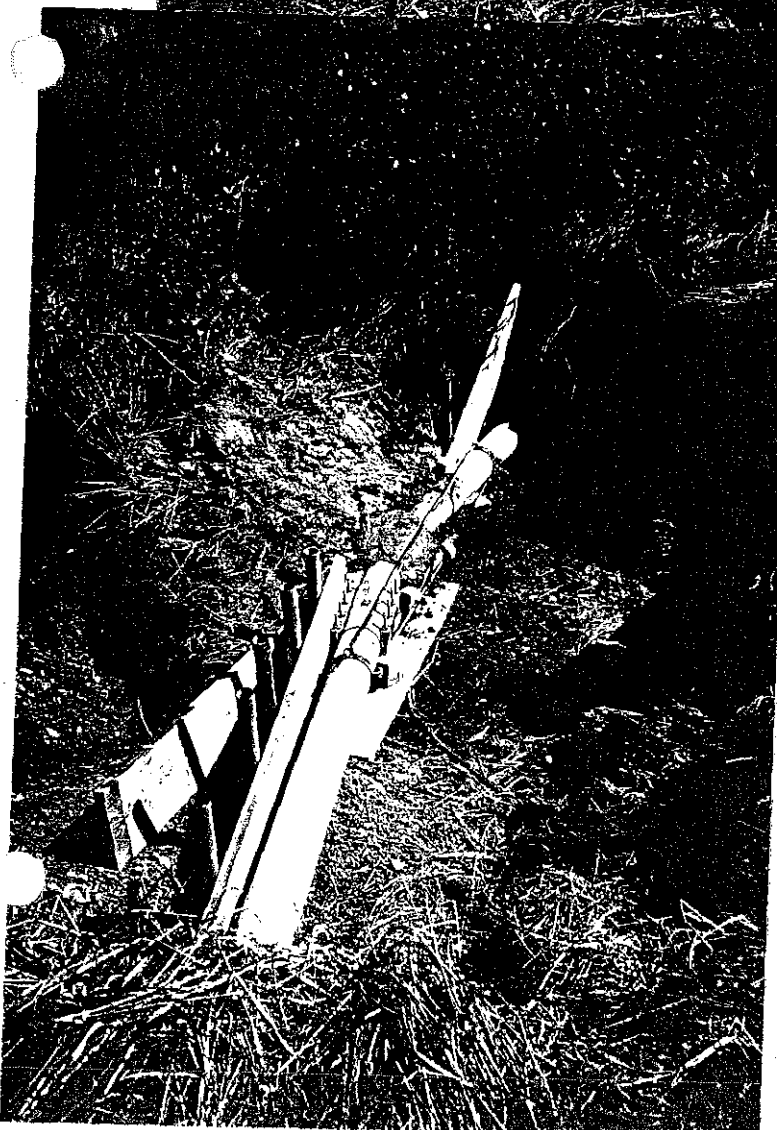
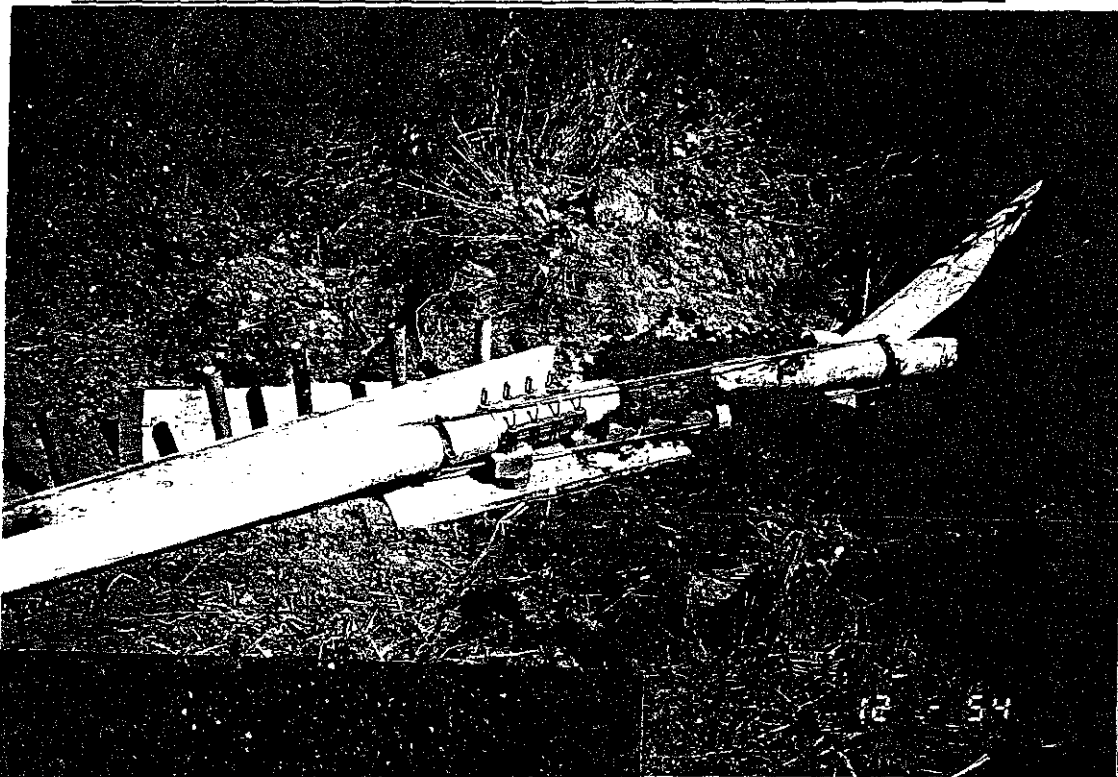
Sincerely;



Ralph Dunham, PE  
Public Works Director

cc:  
Medford DEQ

SITE NAME: City of Coos Bay  
DATE: 9/19/96 TIME: \_\_\_\_\_ PHOTOGRAPHER: JK  
COMMENT: - Temp. Repairs

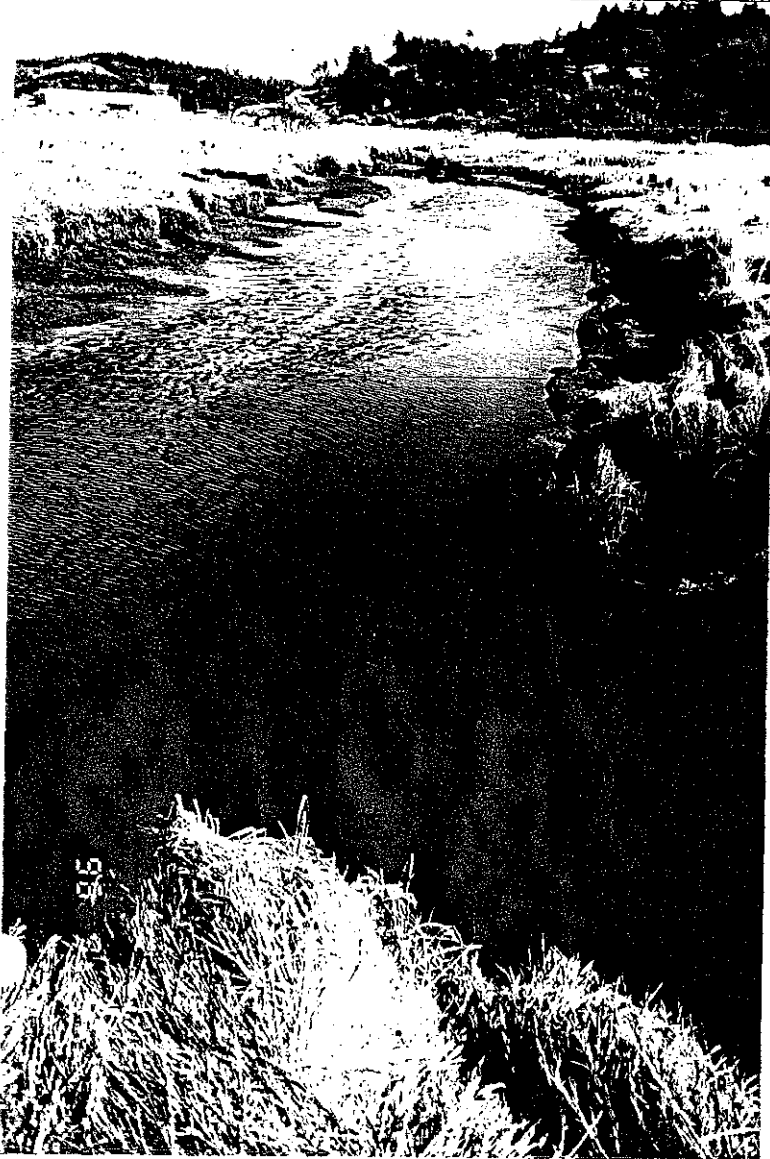


PHOTOGRAPHER \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SITE NAME: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ PHOTOGRAPHER \_\_\_\_\_

COMMENT: \_\_\_\_\_



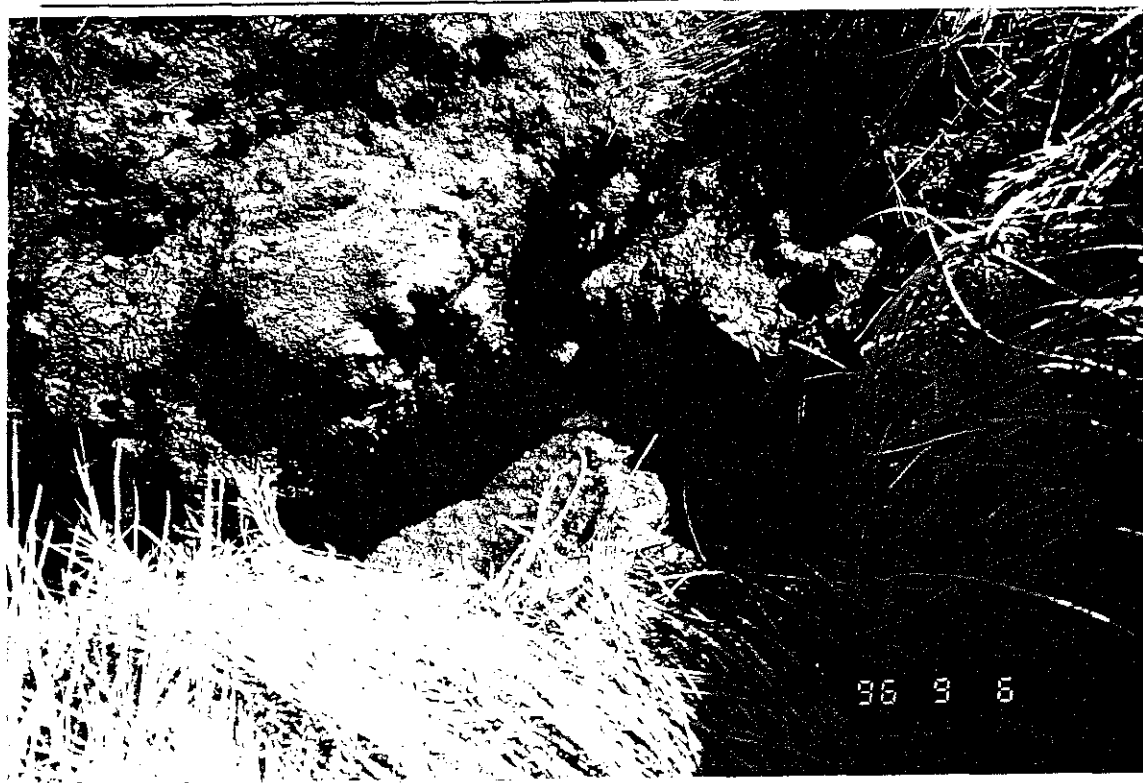
PHOTOGRAPHER \_\_\_\_\_

*Ditch entering  
tidal water.*

SITE NAME: C1 OF COO9 RAJ#1

DATE: 9/6/96 TIME: \_\_\_\_\_ PHOTOGRAPHER: TL

COMMENT: - Gludex in drainage ditch



SITE NAME: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ PHOTOGRAPHER: \_\_\_\_\_

COMMENT: \_\_\_\_\_



EXHIBIT C

RonMc,9/6/96 6:00 PM, City of Coos Bay treated sludge spill

1

To: RonMc  
From: dcannon@oda.state.or.us (Deb Cannon)  
Subject: City of Coos Bay treated sludge spill  
Cc: me  
Bcc:  
X-Attachments:

---

Ron

City of Coos Bay stp operator reports a treated sludge spill in the upper Coos Bay, prohibited area. Amount spilled is estimated at 2000 - 5000gal. The spill is being contained and limed. Appears this line may have been leaking intermittently for sometime ??.

I am recommending a 2 day, precautionary, commercial, closure, but, no public notice based on the following:

- 1) the material is treated..the line which broke is from INLET side of the sludge lagoons that treat the sewage for land application..so this sludge was NOT COMPLETELY conditioned for application;
- 2) the amount is minor compared with the volume and flo of the receiving waters of the upper bay;

The question that this spill may have been going on for a long time doesn't help in the decision to open or close right now...if that's true we have sent up the closure zones in the upper bay based on that input...

I am not recommending closing the lower bay, below the 101 bridge as the dilution by this point would be more than adequate.

I've called the 3 affected growers

I will remain in touch with the City and DEQ for a more detailed report when Rueben gets back to his office.

EXHIBIT D



# JAMES R. SHEETZ, P.E., DEE

Sr. Project/Program Manager  
Sr. Environmental Engineer

815 S.E. River Forest Ct.  
Milwaukie, Oregon 97267  
Day: (503) 229-5740  
Eve: (503) 654-2341

## EDUCATION

- BS—Civil Engineering, Iowa State University, Ames, Iowa, 1963
- MS—Sanitary Engineering, University of Illinois, Urbana, Illinois, 1964
- U.S. Army Command and Staff College (Honor Graduate), Ft. Leavenworth, Kansas, 1980
- National Security Management Course, National Defense University, Washington, DC, 1988
- Air War College (Honor Graduate), Air University, Maxwell Air Force Base, Alabama, 1990

### *Short Courses:*

- "Cold Regions Engineering," University of Washington, Seattle, Washington, 1982
- "Management of Construction in the Superfund Program", US EPA, Hazardous Site Control Division, Kansas City, Kansas, July 1987

## REGISTRATION AND CERTIFICATIONS

- Registered Civil and Environmental Engineer—Oregon
- Diplomate, American Academy of Environmental Engineers—Certified in Water Supply and Wastewater Engineer and Hazardous Waste Management Engineer specialities

## PROFESSIONAL AFFILIATIONS

Member, Water Environment Federation  
Director, Oregon Chapter, American Public Works Association, 1983-1985

## PUBLICATIONS

Master's Degree, "Evaluation of Pollution Abatement Benefits from Low-Flow Augmentation," Department of Sanitary Engineering, University of Illinois, July, 1964

## INTERNATIONAL EXPERIENCE

- Saudi Arabia (Dhahran), 1975 - Preparation of master utility (water supply and sewerage) plans for Five Towns Project, Arabian-American Oil Company (ARAMCO), 3 months duration
- Argentina (Buenos Aires), 1978 - Preparation of predesign and bid tender documents for three 1000 tpd solid waste transfer stations

and a 5,000 acre sanitary landfill and land reclamation project, SUPERCEMENTO, 3 months duration

- Papua New Guinea (Port Moresby), 1988 - Assessment of engineering feasibility of civic action projects involving construction of roads, bridges, port facilities, and water systems for U.S. State Department, 2 weeks duration

## TEACHING EXPERIENCE

- Instructor, *Unit Operations of Sanitary Engineering*, Department of Civil Engineering, Portland State University, Portland, Oregon
- Instructor, *Solid Waste Management Engineering*, Department of Civil Engineering, Portland State University, Portland, Oregon
- Instructor, *Sanitary Engineering Part of Professional Engineering Review Course*, Department of Civil Engineering, Portland State University, Portland, Oregon
- Developed Course Materials and Facilitated, *Native American Cultural Resources Seminar*, Department of Defense Legacy Program, Naval Facilities Engineering Command, 1995
- Developed Course Materials and Facilitated, *Environmental Laws and Regulations Course*, U.S. Army Corps of Engineers, 1992-1997

## PROFESSIONAL EXPERIENCE

### *OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY - January, 1991 - Present*

Senior Environmental Engineer Municipal and Industrial Wastewater Facilities	Oregon Department of Environmental Quality Northwest Region, Water Quality 2020 SW Fourth Avenue, Suite 950 Portland, OR 97201 (503) 229-5740
------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------

- January 1991 - February 1994: Responsible for engineering plan review of wastewater treatment facilities, collection systems, pumping facilities, and land application facilities for municipal projects statewide funded by the State Revolving Fund.
- March 1994 - Present: Responsible for engineering plan review, permit writing, and compliance inspections of major industrial facilities in six county Portland metropolitan area.

James R. Sheetz, P.E., DEE  
Page 3

*ROBERT E. MEYER CONSULTANTS, INC. - August, 1991 - December, 1991*

Operations Manager	Robert E. Meyer Consultants, Inc.
Sanitary Engineer	4915 S.W. Griffith Park Drive, Suite 300 Beaverton, Oregon 97005 (503) 643-7531

- Responsible for management of corporate operations and discipline lead of sanitary engineering (water supply, wastewater, and solid/hazardous wastes) services to public and private clients in Oregon and Washington; performed quality control and contract administration of engineering projects.

*COOPER CONSULTANTS, INC. - May, 1981 - August, 1991*

Vice President	Cooper Consultants, Inc.
Sanitary Engineering	11675 SW 66th Avenue Portland, Oregon 97223 (503) 639-4914

- Responsible for corporate management and discipline lead of sanitary engineering services (water supply, wastewater, and solid/hazardous wastes) to public and private entities and Indian tribes in the western states, including marketing of services; supervision of cost control and performance effectiveness; quality control of technical work; and contract administration.
- Discipline lead and Senior Project Manager on major projects and project review of smaller projects. Prepared contracts and budgets; controlled expenditures; supervised project team; developed design concepts; prepared bid documents and cost estimates; prepared studies and reports; reviewed work products; and directed construction management activities.

*CRS SIRRINE (Formerly STRAAM Engineers and Stevens, Thompson & Runyan) - April, 1973 - May, 1981*

Senior Sanitary Engineer	CRS SIRRINE, INC.
Project Manager	5000 Meadows, Suite 400 Lake Oswego, Oregon 97035 (503) 624-3000

- Senior Sanitary Engineer and Project Manager for sanitary engineering projects involving public and private clients in the western states and internationally. Experience included studies and design of water supply, wastewater, and solid waste management systems for a wide variety of project sizes and complexity.

*OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY - June, 1968 - April, 1973*

District Engineer  
(Pendleton and Roseburg  
Districts)

Oregon State Department  
of Environmental Quality  
811 SW 6th Avenue  
Portland, Oregon 97204  
(503) 229-5696

- District Engineer in the Pendleton (June, 1968 - April, 1972) and Roseburg (May, 1972 - April, 1973) District offices of the Department of Environmental Quality (DEQ). Responsible for enforcement and field implementation of the various programs of the DEQ in 11 counties in the Pendleton District and 5 counties in the Roseburg District. Supervised district employees; coordinated field activities; and implemented DEQ policies and programs.
- Reviewed engineering plans; performed sanitary engineering evaluations of water supply systems, sewerage works, industrial processes, and solid waste facilities; drafted permit conditions; and performed operation and construction inspections for compliance with regulatory standards.

*OREGON STATE HEALTH DIVISION (FORMERLY BOARD OF HEALTH) - September, 1967 - June, 1968*

Assistant District Engineer  
Medford District

Oregon State Health Division  
800 NE Oregon, #21  
Portland, Oregon 97232  
(503)731-4000

- Performed duties similar to subsequent assignment as District Engineer under supervision of Medford District Engineer. Environmental regulatory activities of the State Sanitary Authority (now the Department of Environmental Quality) were combined with water supply and sanitation activities of the State Board of Health (now the State Health Division) at the district office level.

*OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY (FORMERLY OREGON STATE SANITARY AUTHORITY) - September, 1966 - September, 1967*

Assistant Sanitary Engineer  
Portland Headquarters Office

Oregon State Department  
of Environmental Quality  
811 SW 6th Avenue  
Portland, Oregon 97204  
(503) 229-5696

- Performed public health surveys and evaluated industrial and municipal waste treatment processes for assigned activities throughout the state. Prepared analyses of the performance of

regulated facilities and reports for staff evaluation and presentation to the State Sanitary Authority (now the Environmental Quality Commission). Conducted investigations to detect health and environmental hazards, performed water quality surveys, and prepared recommendations for corrective action. Evaluated unit processes of sanitary engineering, trained facility operators, and presented agency positions to the public and local officials.

*US ARMY CORPS OF ENGINEERS - September, 1964 - September, 1966*

Active Duty	US Army Corps of Engineers
Company Commander	554th Engineer Company
Platoon Leader	Ft. Lewis, Washington

- Active duty with combat engineer company at Ft. Lewis, Washington. Duties included military applications of civil engineering, primarily bridge and road construction. Supervised up to 217 personnel.

*US ARMY CORPS OF ENGINEERS - July, 1964 - September, 1964*

Civil Engineer, GS-7	US Army Corps of Engineers
	Rock Island District
	Rock Island, Illinois

- Participated in formal civil engineering training program by rotating among the various branches of the District to assist professional engineers with design and construction projects.

**OTHER**

- Lieutenant Colonel, Corps of Engineers, U.S. Army Reserve, Retired 1992

## **Selected Projects for Coos Bay Contested Case Hearing**

**Oglala Dam Safety, Pine Ridge Indian Reservation, South Dakota** - Analysis of safety of Oglala and White Clay Dams under maximum flood conditions; final design of improvements to embankment, spillway, and outlet structures to comply with federal dam safety program; preparation of two environmental assessments; and construction management for the Oglala Sioux Tribe and the Bureau of Indian Affairs. (CCI)

**Transmission Pipeline Design, Eugene, Oregon** - Final design and construction management of four miles of 60-inch steel water transmission pipeline for the Eugene Water and Electric Board. (CRS)

**Water Supply Facilities, Warm Springs, Oregon** - Feasibility planning, final design, and construction management of a new 3.5 mgd water treatment plant, a 4,000 gpm high-pressure pump station, three steel standpipes totaling 4.3 MG, and 16 miles of water transmission pipelines for the Confederated Tribes of the Warm Springs Reservation. (CRS)

**Water Facilities Design, Oregon City, Oregon** - Final design and construction management of the expansion from 8 to 20 mgd of an intake pumping station, water treatment plant, and booster pump station for the South Fork Water Works, a special service district. (CRS)

**Water and Sewer Improvements, Ft. Columbia State Park, Washington** - Design and construction management of improvements to water supply and sewage treatment facilities including: new water transmission pipeline; booster pump station; distribution mains; infiltration/inflow corrections; and replacement of sewage outfall for the Washington State Parks and Recreation Commission. (CCI)

**Lake Youngs Dam Improvements, Seattle, Washington** - Studies and preliminary design of twin 84-inch steel pipelines to replace 78-inch wood stave water supply lines that provide the main water supply to the City of Seattle; design of control valves and valve house; investigation of hydraulic transients and pressure control devices; and evaluation of water quality effects for Ebasco Services and the Seattle Water Department. (CCI)

**Lake Restoration Project, Vancouver, Washington** - Environmental (water quality) analysis, habitat mitigation assessment, hydrographic surveys, and construction management for restoration of Vancouver Lake through construction of 4000-foot long new flushing channel and dredging of 9 million cubic yards of lake sediments for the Port of Vancouver and the Washington Department of Ecology. (CCI)

**Irrigation System Improvements, Ft. Belknap Indian Reservation, Harlem, Montana** - Study of water resources and design of complete development of irrigation system, including available supply, diversion and delivery improvements, storage potential, on-farm delivery system, and agricultural economics for the Billings Area Office, Bureau of Indian Affairs. (CCI)

**Wastewater Treatment Lagoons, Ontario, Oregon** - Review of predesign report and construction documents for expansion of municipal sewage lagoons and wastewater reuse system to increase capacity and meet new regulatory requirements. (DEQ)

**Landfill Closures, Hill Air Force Base, Utah** - Final design and preparation of construction documents for remedial action measures for closure of 40-acre landfill and hazardous waste disposal site (1983) and 30-acre landfill and chemical and petroleum waste disposal sites (1985), including sealing, methane gas control, slurry cutoff wall, drainage control, groundwater monitoring wells, and other facilities for the Ogden Air Logistics Center. (CCI)

**Sanitary Landfill, Vancouver, Washington** - Planning, design, and operational assistance, including preparation of operations plans, closure plans, environmental impact assessments, and rate studies, and design of infrastructure improvements for the private operator of a 400 tpd sanitary landfill. (CCI)

**Transfer Station and Recycling Center, Oregon City, Oregon** - Final design and construction management of site development, including water, sewage, drainage, streets, and access roads for a 400 tpd solid waste transfer station and recycling center for Black & Veatch and the Metropolitan Service District. (CCI)

**Landfill Siting and Design, Portland, Oregon** - Feasibility level engineering design of development and infrastructure of proposed 2000 tpd Bacona Road landfill, including access, soils, site filling, operations, environmental protection measures, and environmental impact mitigation, and environmental analysis of two additional sites considered by the Environmental Quality Commission to provide a regional landfill site for CH2M Hill and the Department of Environmental Quality. (CCI)

**Sanitary Landfill, Lane County, Oregon** - Preliminary engineering and final design of development of a new 580-acre sanitary landfill, including access roads, surface drainage control, leachate collection and treatment, excavation and phased fill plans, and preparation of operating plans and an environmental assessment for the Lane County Solid Waste Division. (CRS)

**Sanitary Landfill, Portland, Oregon** - Preliminary engineering for particular portions for development of a 1000 tpd, 180-acre sanitary landfill for the City of Portland, Bureau of Sanitary Engineering. (CRS)

**Transfer Stations and Landfill, Buenos Aires, Argentina** - Preparation of predesign and bid tender documents for three 1000 tpd solid waste transfer stations and a 5,000 acre sanitary landfill and land reclamation project for SUPERCEMENTO, a local contractor. (CRS)

**Site Development Design, Light Rail Vehicle Maintenance Facility, Tri-Met, Portland, Oregon** - Preparation of construction documents and construction management for site development of water lines, sanitary and storm sewers, parking and street improvements for Vehicle Maintenance Facility for Tri-Met Eastside Light Rail Project. (CCI)



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY,

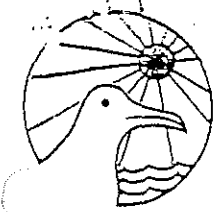
Respondent.

Case No. WQMW-WR-96-277

LIST OF STIPULATED  
EXHIBITS

NO.	EXHIBIT	OFFERED	ADMITTED
101	LETTER FROM RALPH DUNHAM TO RUBEN KRETZSCHMAR - DECEMBER 22, 1994		
102	DESIGN FOR PROPOSED DIKE REPAIR DIKE MAINTENANCE RESTORATION MITIGATION MAY 7, 1996		
103	DESIGN FOR PROPOSED DIKE REPAIR SITE PLAN MAY 7, 1996		
104	JOINT PERMIT APPLICATION FORM		
105	CITY/COUNTY PLANNING DEPARTMENT AFFIDAVIT AUGUST 6, 1996		
106	LETTER FROM KEVIN CUPPLES TO JOHN CRAIG, U.S. ARMY CORPS OF ENGINEERS OCTOBER 18, 1996		
107	LETTER FROM KEVIN CUPPLES TO JOHN CRAIG OCTOBER 23, 1996		
108	LETTER FROM MIKE McCABE TO RALPH DUNHAM OCTOBER 29, 1996		

NO.	EXHIBIT	OFFERED	ADMITTED
109	LETTER FROM MIKE McDANIEL TO RUBEN KRETZSCHMAR SEPTEMBER 10, 1996		
110	LABORATORY ANALYSIS FROM CITY OF COOS BAY SEPTEMBER 10, 1996		
111	LABORATORY ANALYSIS FROM CITY OF COOS BAY SEPTEMBER 6, 1997		
112	LETTER FROM RUBEN KRETZSCHMAR TO BILL GRILE SEPTEMBER 26, 1996		
113	LETTER FROM LANGDON MARSH TO CITY OF COOS BAY		



# CITY OF COOS BAY

December 22, 1994

Public Works Department

Dept. of Environmental Quality

340 N. Front

Coos Bay, Oregon 97420

## **RE: SLUDGE PRESSURE LINE FAILURE 12-22-94**

Dear Mr. Kretzschmar;

On December 22, 1994 at 10:30 AM School District No. 9 contacted the City of Coos Bay to report waste draining from our sludge line along a nature trail the school district maintains. This was evidently reported to them by walkers which daily utilize this trail. Our wastewater crews responded by 10:45 AM and found the sludge transfer line located in a diked area which has the nature trail on top of it to be separated and draining the City's Facultative Sludge lagoon. The valve on the lagoon was closed and by 11:00 AM all discharge had been stopped.

The adjoining wetland to the north east of the location had evidence of sewage sludge being discharged over an area approximately 30 feet wide by 300 feet long by 1 inch deep on the upper reaches of this property owned by the Port of Coos Bay and City of Coos Bay. The lagoon had receded 6.5 inches from its full level which equates to 728,000 gallons of primarily the water cap lost. The City originally reported 1,120,000 gallons based upon an estimate. Evidence on the property indicated that approximately 5,600 gallons of digested domestic sludge had spilled and the rest of the spill consisted of the water cap on the sludge lagoon. When the line was excavated for repair, it was found that the line had pulled a joint at an elbow, evidently caused by settlement of the thrust block due to the closeness to the edge of the dike and rodents which had been digging in the immediate area.

The event most likely took place between 12:00 pm on 12/21/94 and when reported based upon the following information. Walkers daily use the trail primarily in the morning and nothing was reported until today. Daily inspection of pump station No. 19 at 9:00 AM on 12/21/94 indicated the lagoon was at full level. A sludge transfer (the line was under pressure and vibration) took place between 7:40 AM and 8:10 AM and the line was partially flushed at 12:01 PM to 12:11 PM on 12/21/94 which was the only uses of the line in the last 3 days. The elevation difference between the lagoon level and the separated line indicated that the flow rate in the line should have been

EXHIBIT NO. 101

PAGE NO. 1 of 2

approximately 500 gpm which equates to approximately 24 hours for the occurrence.

City crews have sampled the lagoon water cap for background information and sampled the most probable access to the estuary in 3 locations for fecal contaminants and information regarding public health risk. The City has also barricaded the walking trail and signed it indicated that digested sewage sludge is adjacent to the trail and it is to be avoided. The crews attempted to pump sludge out of the property it had been spilled on however met with little success due to the minimal depth of the material in most locations. The area with evidence of sludge has been coated with lime to sweeten the waste and aid in breakdown.

At this time the line has been temporarily repaired and the City is investigating need for additional thrust restraint and or material to be added to the dike to prevent settlement. Final repairs will include restraining glands to the pipe when material can be shipped to the City.

If you have any questions, please contact either Mike McDaniels or myself at (503) 269-8917 and (503) 269-8916 respectively.

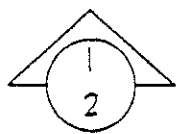
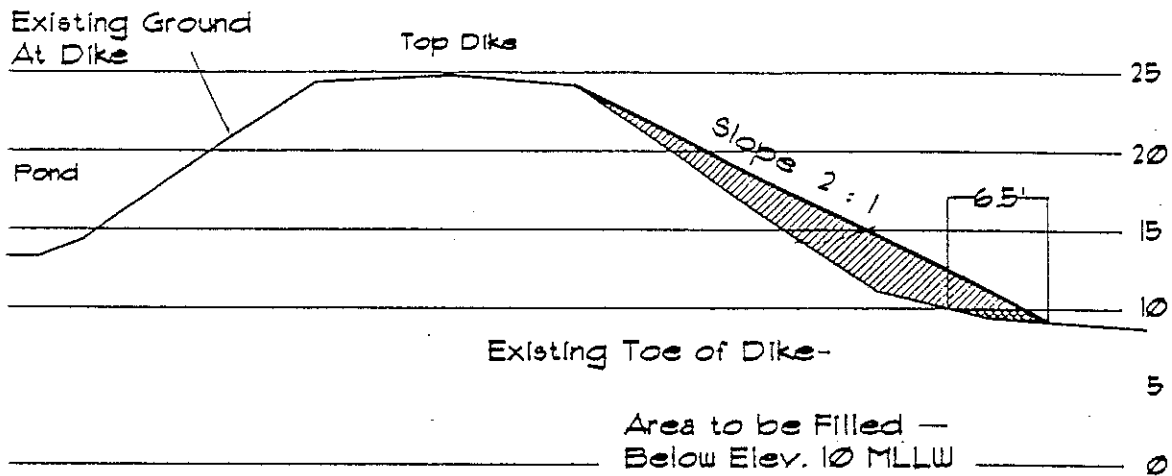
Sincerely;



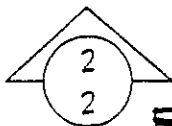
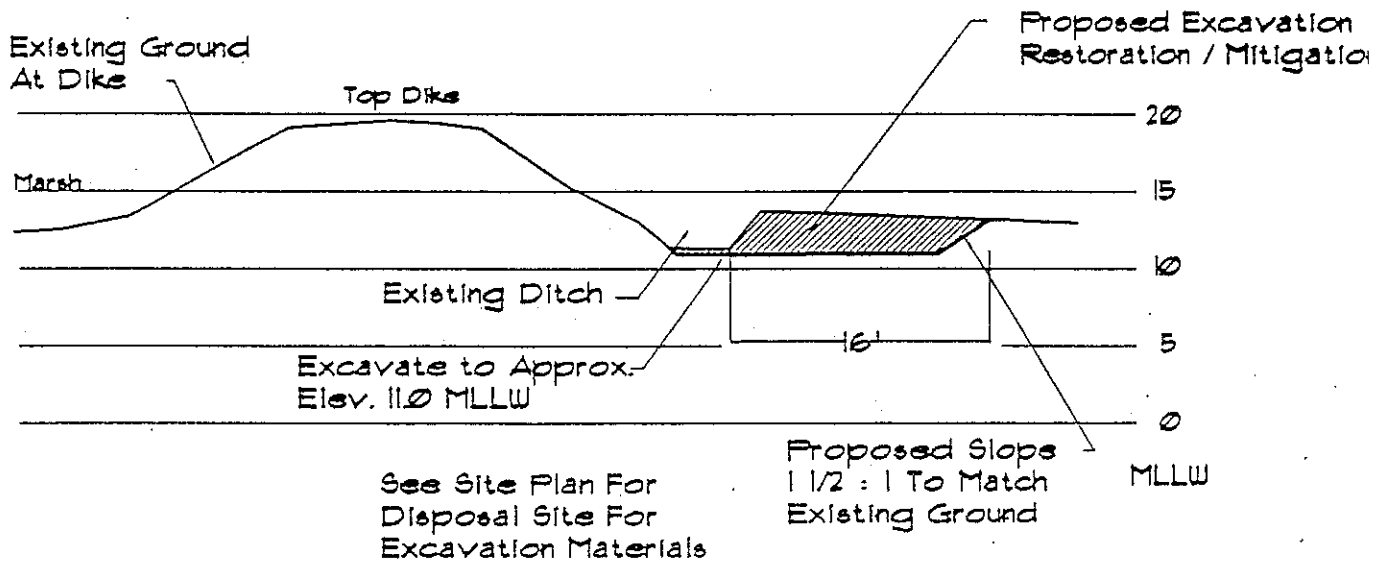
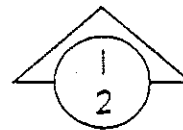
Ralph Dunham, PE  
Public Works Director

cc:  
Medford DEQ

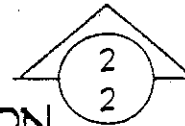
EXHIBIT NO. 101  
PAGE NO. 2 of 2



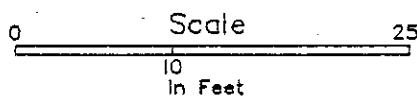
SECTION  
DIKE MAINTENANCE



SECTION  
RESTORATION / MITIGATION

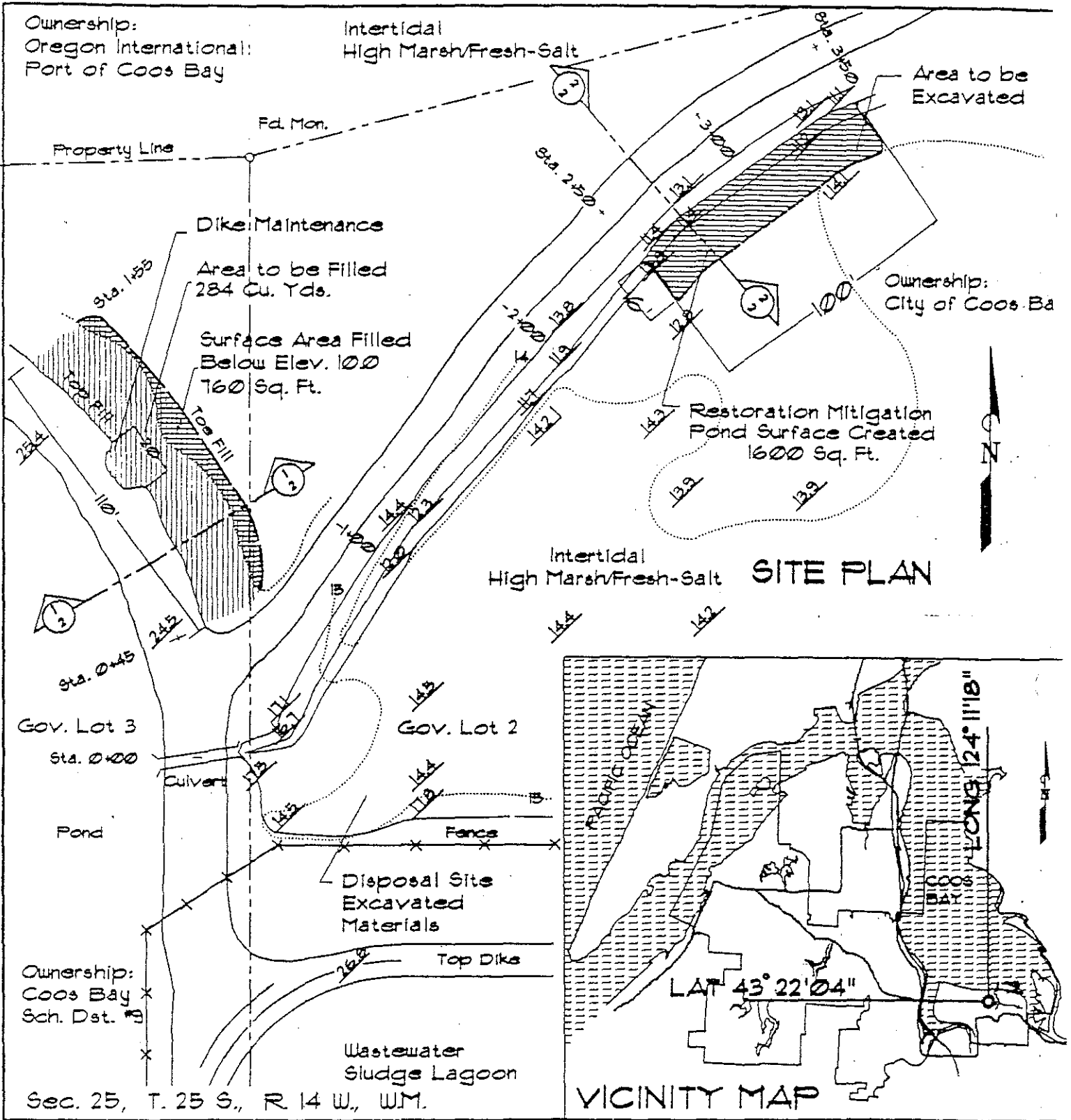


PURPOSE: Dike Repair  
 DATUM: Mean Lower Low Water  
 ADJACENT PROPERTY OWNER:  
 Oregon Intn'l Port of Coos Bay  
 Coos Bay School District No. 9



CITY OF COOS BAY  
 500 CENTRAL AVENUE  
 COOS BAY, OR 97420

PROPOSED DIKE REPAIR  
 IN: Coos Bay  
 COUNTY: Coos STATE: Oregon  
 SUBMITTED BY: City of Coos Bay  
 SHT. 1 of 2 DATE: May 7, 1996



**PURPOSE:** Dike Repair

**DATUM:** Mean Lower Low Water

**ADJACENT PROPERTY OWNER:**  
Oregon Intn'l Port of Coos Bay  
Coos Bay School District No. 9

0 Scale 50  
25  
In Feet

CITY OF COOS BAY  
500 CENTRAL AVENUE  
COOS BAY, OR 97420

**PROPOSED DIKE REPAIR**

IN: Coos Bay

COUNTY: Coos STATE: Oregon

SUBMITTED BY: City of Coos Bay

SHT. 1 of 2 DATE: May 7, 1996



US Army Corps  
of Engineers  
Portland District

JOINT

# PERMIT APPLICATION FORM

THIS APPLICATION WILL MEET THE REQUIREMENTS OF BOTH AGENCIES



Corps Action ID Number 10-1150

Oregon Division of State Lands Number \_\_\_\_\_

## SEND ONE SIGNED COPY OF YOUR APPLICATION TO EACH AGENCY

District Engineer  
ATTN: CENPP-OP-GP  
P O Box 2946  
Portland, OR 97208-2946  
503-326-7730

State of Oregon  
Division of State Lands  
775 Summer Street NE  
Salem OR 97310  
503-378-3805

① Applicant Name and Address: City of Coos Bay, 500 Central Ave., Coos Bay, OR 97420  
business phone #: (541) 269-8918  
home phone #: \_\_\_\_\_  
FAX #: (541) 267-5615

Co-Applicant  
 Authorized Agent  
 Contractor  
Name and Address: \_\_\_\_\_  
business phone #: \_\_\_\_\_  
home phone #: \_\_\_\_\_  
FAX #: \_\_\_\_\_

Property Owner (if different than applicant) Name and Address: Coos Bay School District No. 9, (Note: City easement to maintain dike), P.O. Box 509, Coos Bay, OR 97420  
business phone #: (541) 267-3104  
home phone #: \_\_\_\_\_  
FAX #: \_\_\_\_\_

### ② PROJECT LOCATION

Street, Road or other descriptive location GOV LOT 2 & 3 North of Waste Lagoon N. of 9th Ave. Eastside District		Legal Description			
		Quarter	Section	Township	Range
		SE & SW	25	T25 S.,	R.14W
In or Near (City or Town) Coos Bay	County Coos	Tax Map # 25	Tax Lot # 100, 200, 300		
Waterway Coos Bay	River Mile N/A	Latitude 43°22'04"	Longitude 124°11'18"		

Is consent to enter property granted to the Corps and the Division of State Lands?  Yes  No

### ③ PROPOSED PROJECT INFORMATION

Activity Type:  Fill  Excavation (removal)  In-Water Structure  Maintain/Repair an Existing Structure

Brief Description: Failed dike repair & 2:1 restoration mitigation.

Fill will involve \_\_\_\_\_ cubic yards annually and/or 284 cubic yards for the total project  
2.6 cubic yards in a wetland or below the ordinary high water or high tide line

Fill will be  Riprap  Rock  Gravel  Sand  Silt  Clay  Organics  Other \_\_\_\_\_

Fill Impact Area is .08 Acres: 110' length; 30' width; <5.5' depth

Removal will involve \_\_\_\_\_ cubic yards annually and/or 152 cubic yards for the total project  
0 cubic yards below the ordinary high water ~~dry~~ dry ~~high~~ high ~~tideline~~ tideline

Removal will be  Riprap  Rock  Gravel  Sand  Silt  Clay  Organics  Other \_\_\_\_\_

Removal Impact Area is .04 Acres: 100' length; 16' width; 3' depth

Is the Disposal area: Upland?  Yes  No Wetland / Waterway?  Yes  No

Are you aware of any Endangered Species on the project site?  Yes  No

Are you aware of any Cultural Resources on the project site?  Yes  No

If Yes, please explain in the project description (on page 2, block 4).

Is the project site near a Wild and Scenic River?  Yes  No

EXHIBIT No. 104

**CITY / COUNTY PLANNING DEPARTMENT AFFIDAVIT**  
(to be completed by local planning official)

- This project is not regulated by the local comprehensive plan and zoning ordinance.
- This project has been reviewed and is consistent with the local comprehensive plan and zoning ordinance.
- This project has been reviewed and is **not** consistent with the local comprehensive plan and zoning ordinance.
- Consistency of this project with the local planning ordinance cannot be determined until the following local approval(s) are obtained:

- Conditional Use Approval
- Plan Amendment
- Other Estuary Use Permit - Pending
- Development Permit
- Zone Change

An application  has  has not been made for local approvals checked above.

Kevin S. Cupples Planning Administrator Cosco Bay 8-6-96  
Signature (of local planning official) Title City / County Date

**⑧ COASTAL ZONE CERTIFICATION**

If the proposed activity described in your permit application is within the Oregon coastal zone, the following certification is required before your application can be processed. A public notice will be issued with the certification statement which will be forwarded to the Oregon Department of Land Conservation and Development (DLCD) for its concurrence or objection. For additional information on the Oregon Coastal Zone Management Program, contact the department at 1175 Court Street NE, Salem, Oregon 97310 or call 503-373-0050.

**CERTIFICATION STATEMENT**

I certify that, to the best of my knowledge and belief, the proposed activity described in this application complies with the approved Oregon Coastal Zone Management Program and will be completed in a manner consistent with the program.

Kevin S. Cupples Planning Administrator  
Print/Type Name Title  
Kevin S. Cupples 8-6-96  
Applicant Signature Date

**⑨ SIGNATURE FOR JOINT APPLICATION (REQUIRED)**

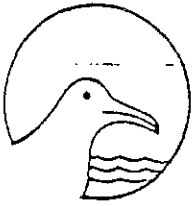
Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority including the necessary requisite property interests to undertake the proposed activities. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the permits requested before commencing the project. I understand that local permits may be required before the state removal-fill permit is issued. I understand that payment of the required state processing fee does not guarantee permit issuance.

RALPH E. DUNHAM CITY ENGINEER  
Print/Type Name (coapplicant) Title  
Ralph Dunham 8/6/96  
Applicant Signature (coapplicant) Date

I certify that I may act as the duly authorized agent of the applicant.

RALPH E. DUNHAM CITY ENGINEER  
Print/Type Name Title  
Ralph Dunham 8/6/96  
Authorized Agent Signature Date





# CITY OF COOS BAY

Department of Community Services

October 18, 1996

John Craig, U.S. Army Corp. of Engineers  
1460 N. Bayshore Drive  
Coos Bay, OR 97420

**SUBJECT: EASTSIDE SLUDGE LINE AND SLOPE REPAIR**

Dear Mr. Craig:

This letter is a follow-up to our discussions concerning the withdrawal of the City of Coos Bay's joint permit application (Permit #96-1190).

Pursuant to our discussion, the proposed slope repairs and vegetative bank stabilization proposed in our permit application could be made without review of a standard fill permit request. During our discussion, you indicated a willingness to authorize the action indicated in the permit request even if some of the bedding plain for the vegetative stabilization is located within the fresh water area at the base of the berm. Furthermore, if this repair was authorized without a permit, you could not require mitigation.

During our discussions, I indicated the Coos Bay Estuary Management Plan was very restrictive in this area and significantly limits what activities and uses are allowed. You then stated that our primary concern should be the protection of the salt marsh adjacent to the bank and that failure to stabilize the bank could cause major impacts to the salt marsh. This concern is in line with the management objective for the applicable estuary segments in the Coos Bay Estuary Management Plan. Segment 24 CS in part states, "this shoreland segment shall be managed as a barrier strip between the W-shaped marsh and the dredged material disposal sites to the south and west." The neighboring aquatic segment (Segment 24 NA) states, "this aquatic segment which contains a large productive marsh known as the "W-shaped marsh" shall be managed to protect its natural resource productivity. Therefore, I believe the vegetative bank

EXHIBIT NO. 106  
PAGE NO. 1 of 2

stabilization can be approved in order to protect the berm and line from a major failure.

In looking over the request, we discovered the amount of material that would be needed to complete the work would not exceed 50 cubic yards. This was significant because it would negate the need for the Division of State Lands to require a permit. You then discussed this with Mr. McCabe who agreed that a permit would not be needed if this amount was not exceeded. He further indicated he should receive a copy of any correspondence concerning withdrawal of the original permit.

The City indicated their willingness to expand the water influenced area adjacent to one of the existing drainage ditches in their permit request. This was intended to mitigate any losses from the efforts to re-stabilize the bank next to the sludge line. If the permit and mitigation is not required for the bank work, the City is still willing to excavate the area adjacent to the ditch.

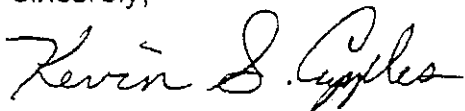
We did not fully discuss whether or not the proposed excavation would require a permit by itself; however, we will need to discuss this matter further with you and the DSL representative to make sure a separate permit is not required for the proposed excavation. Although we do plan to complete the excavation, it may not coincide with the timing of the bank repair due to concerns that it might delay the stabilization.

If the excavation indicated in the original permit application can be done without a formal permit review, please let me know as soon as possible.

Based on our discussions, we are formally requesting withdrawal of our permit request and we will be proceeding with the final engineering to repair the bank unless I hear from you within five days.

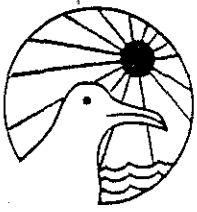
If you have any questions or disagree with the statements in this letter, please contact me at (541) 269-8918.

Sincerely,



Kevin S. Cupples, Planning Administrator

cc: Mike McCabe, DSL  
file



# CITY OF COOS BAY

Public Works Department

October 23, 1996

John Craig, U.S. Army Corp. of Engineers  
1460 N. Bayshore Drive  
Coos Bay, OR 97420

**SUBJECT: EASTSIDE SLUDGE LINE AND SLOPE REPAIR**

Dear Mr. Craig:

Thank you for promptly responding to my October 18th letter to clear up my misunderstandings about our discussion. Apparently, my letter did not correctly explain how our discussion related to the Corp's permit requirements. Instead, it went into details that related to my planning requirements under the Coos Bay Estuary Management Plan. Hopefully, this letter will clear up my misunderstandings about the Eastside sludge line and slope repair.

During our prior discussion, I explained the Eastside sludge line had suffered an additional failure. This failure occurred in the same location that you previously reviewed with city staff when the original permit application was initiated. I stated that without immediate actions to stabilize the bank and repair the line, additional failures would likely occur. I further stated that any additional failures could result in major damage to the aquatic area (both in material deposition and water quality) adjacent to the existing slope.

In light of the additional failure of the line and the instability of the slope, you indicated the repair could be considered an emergency repair under the Corp's provisions. You further indicated that as an emergency repair, our original permit (96-1190) could be withdrawn.

Based on this information, we are withdrawing our permit request and we will proceed with the final engineering to make the emergency repairs to the slope.

If you have any questions or disagree with the statements in this letter, please contact me within five working days at (541) 269-8918.

Sincerely,

Kevin S. Cupples, Planning Administrator

*your copy*

cc: Mike McCabe, DSL  
file

G:\USERS\KEVIN\CORP.LTZ

EXHIBIT No. 107

RECEIVED

OCT 30 1996

Oregon



October 29, 1996

MR RALPH DUNHAM  
CITY OF COOS BAY  
500 CENTRAL AVE  
COOS BAY OR 97420

DIVISION OF  
STATE LAND

STATE LAND BOARD

JOHN A. KITZHABER  
Governor

PHIL KEISLING  
Secretary of State

JIM HILL  
State Treasurer

775 Summer Street NE  
Salem, OR 97310-1337  
(503) 378-3805  
FAX (503) 378-4844  
TTY (503) 378-4615

RE: State Project No. RF 12012

Dear Mr. Dunham:

We have received your joint application for a permit to place for dike repair and mitigation restoration on Coos Bay in Coos County to remove, fill or alter material within waters of the state.

Under the Removal/Fill Law, a permit is required if you plan to remove, fill, or alter 50 cubic yards or more of material within the banks of a waterway. Based on your application, your project involves no removing or filling of material. Therefore, a State Removal/Fill Permit is not required.

However, you must receive authorization, when required, from the U.S. Army Corps of Engineers and local planning department before beginning construction.

Thank you for your cooperation. If you have any questions, please call me at 378-3805.

Sincerely,

Mike McCabe  
Natural Resource Coordinator  
South Coast Field Operations

mas:126

c: Ron Marg, U. S. Army Corps of Engineers

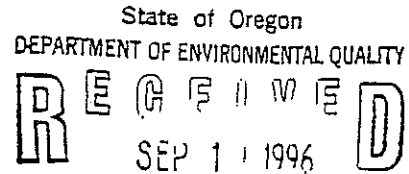
EXHIBIT No. 108

# OPERATIONS MANAGEMENT INTERNATIONAL, INC.

## COOS BAY PROJECT

267-3699

Ruben Kretzschmar  
Southwest Region  
Department of Environmental Quality  
490 North 2nd Street  
Coos Bay, Oregon 97420



**COOS BAY BRANCH OFFICE**

September 10, 1996

Ruben:

This is to inform you of a digested sludge spill next to the City of Coos Bay's FSL, in the Eastside area. On September 6, 1996, I received a phone call from Mr. Jamie Farady that the city's sludge line was broken and allowing digested sludge to enter into the tidal wetlands. The break occurred at a previous repair spot in the sludge line. Approximately 2,000 to 5,000 gallons of sludge entered the tidal wetlands flowing through the wetland ditches to the Marshfield Channel at Coos River Mile 15.

Listed are the events as they happened:

September 6, 1996

1510 hrs. I received a telephone call from Mr. Jamie Faraday that the sludge line to the lagoon in the Eastside area was leaking sludge.

1522 hrs. I arrived at the spill site, and called Plant One to have them call your office to let you know of the discharge.

1524 hrs. Checked the valve that would allow digested sludge to flow from the lagoon through the break, to make sure it was closed.

1524 hrs. You arrived at the spill site, assisting with us with recommendations on where and when to sample, and clean up methods.

1528 hrs. Called in OMI employees to start with clean-up, repairs, and take fecal-samples to determine the extent of the spill.

1528 hrs. Project manager called shellfish director with the Department of Agriculture.

1535hrs. Took fecal samples in three different locations per your instructions, will take another set of samples on September 9, 1996.

1540 hrs. Slurried 300 pounds of Hydrated Lime into the tidal ditches.

1649 hrs. Project manager called ORS to report the spill. Incident number 96-2574

September 9, 1996

Temporary repairs made to the sludge line.

1435 hrs. Fecal samples taken in two locations.

To prevent this from happening again, OMI employees will shut off the valves that feed and discharge to the FSL when not pumping sludge. Also the temporary repair will be physical

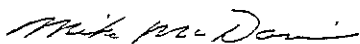
EXHIBIT NO. 109  
PAGE NO. 1 of 2

inspected each time the sludge line is being used.

The City of Coos Bay is waiting for a permit from the Corps of Engineers in order make a permanent repair of this break. Kevin Cupples, the acting Community Service Director, told me that the City has considered this a high priority for repair.

If you have any questions please call me at 267-3966.

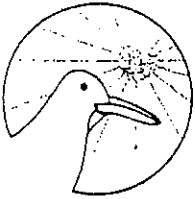
Mike Mc Daniel



Assistant Project Manager

cc: Gary Young  
OMI files  
Bruce Meithof

EXHIBIT NO. 109  
PAGE NO. 2 of 2



# CITY OF COOS BAY

500 CENTRAL — COOS BAY, OREGON 97420

CITY MANAGER 269-1181 — POLICE ADMINISTRATION 269-8914

## LABORATORY ANALYSIS

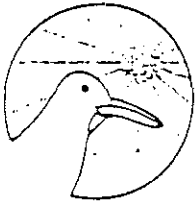
SAMPLE SOURCE FSL LINE BREAK 9/6/96  
DATE SAMPLED SEP 10 1996  
DATE RUN SEP 10 1996  
ANALYST Gregg

SAMPLE I.D.	TSS mg/l	BOD <sup>5</sup> mg/l	FECAL COLI Colonies/100ml		
N. OF CHANNEL END	/	/	72		
END OF CHANNEL	/	/	0		

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT No. 110

11-48



# CITY OF COOS BAY

500 CENTRAL — COOS BAY, OREGON 97420

CITY MANAGER 269-1181 — POLICE ADMINISTRATION 269-8914

## LABORATORY ANALYSIS

SAMPLE SOURCE LINE BREAK @ FSL  
DATE SAMPLED 9/6/97  
DATE RUN 9/6/97  
ANALYST Ricki/Karl

SAMPLE I.D.	TSS mg/l	BOD <sup>5</sup> mg/l	FECAL COLI Col. / 100ml		
PIPE BREAK			71600		
N. OF DRAIN DITCH			6450		
END OF DRAIN DITCH			2250		

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT No. 111

W-48



September 26, 1996

Bill Grile, City Administrator  
City of Coos Bay  
500 Central Ave.  
Coos Bay, OR 97420



DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

Western Region  
Coos Bay Branch Office

RE: WQ-Coos County  
Coos Bay STP #1  
NPDES Permit #100699  
File #19802  
NOTICE OF NONCOMPLIANCE  
ENF-WQ-WR/CB-96-27

On September 6, 1996, this Department received a report that the sludge line going to the sludge lagoon in Eastside had broken and sludge was discharging into adjacent wetlands.

Operations Management International, Inc. (OMI) personnel responded to the spill and closed the valve at the lagoon to prevent sludge from draining to the break. Inspection of the spill site revealed that sludge was discharging to tidewater approximately 1/2 mile from the break. Samples were obtained to determine fecal bacterial levels.

This letter is to serve as a Notice of Noncompliance for violation of the following Oregon Revised Statutes (ORS's) and Oregon Administrative Rules (OAR's):

1. ORS 164.785(1): It is unlawful for any person, including a person in the possession or control of any land, to discard any . . . deleterious or offensive substance into or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water.
2. ORS 468B.025(1)(b): No person shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below water quality standards established by rule for such waters by the commission.
3. OAR 340-410325(2)(e)(A)(ii): No wastes shall be discharged and no activities shall be conducted which either alone or in combination with other wastes or activities will cause violation of the following standards in the waters of the South Coast Basin:

Marine Waters and Estuarine Shellfish Growing water: A fecal coliform median concentration of 14 organisms per 100 milliliters, with not more than ten percent of the samples exceeding 43 organisms per 100 milliliters.



340 North Front St.  
Coos Bay, OR 97420  
(503) 269-2721  
DEQ/SWR-101

EXHIBIT NO. 112  
PAGE NO. 1 of 2

City of Coos Bay NON

Page 2

September 26, 1996

4. NPDES permit, General Condition Section B(3).

We note that this is the same location as a spill which occurred on December 22, 1994, in which 5,600 gallons of sludge was discharged to waters of the state. This is a Class I violation of your permit and is considered to be a serious violation of Oregon environmental law. Because you received a Notice of Permit Violation, Case No. WQMW-WR-94-293, within the last 36 months, we are referring this violation to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

Please contact me if you have any questions pertaining to this Notice.

Sincerely,



Ruben Kretzschmar  
Environmental Specialist IV

RK:gs

c: Dennis Belsky, Medford  
Water Quality  
Enforcement  
Environmental Protection Agency  
Gary Young, OMI

CB#1NON

EXHIBIT NO. 112  
PAGE NO. 2 of 2

NOV 4 1996

Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

CERTIFIED MAIL Z 076 234 298

City of Coos Bay  
500 Central Avenue  
Coos Bay, OR 97420

RECEIVED  
NOV 08 1996

Re: Notice of Violation,  
Department Order, and  
Assessment of Civil Penalty  
No. WQMW-WR-96-277  
Coos County

On September 6, 1996, a pressure pipeline that transports digested sewage sludge from the City of Coos Bay's (the City's) Treatment Plant No. 1 to the City's Facultative Sludge Lagoon ruptured. Sludge discharged from the rupture into surrounding wetlands and eventually flowed into Coos Bay. The rupture occurred at the same location in the pipe that broke on December 22, 1994, an event that also resulted in a discharge of sludge to waters of the state. At that time a temporary repair was made to the pipe and the City assured the Department that the pipe would be permanently repaired as soon as was possible. No permanent repair was made, however, resulting in the failure of the temporary repair on September 6.

The September 6 pipe rupture of the pipe resulted in the following violations of Oregon environmental law: 1) discharge of wastes to waters of the state without a permit authorizing such discharge, 2) violation of the water quality standard for bacteria established for Coos Bay, and 3) violation of the City's National Pollutant Discharge Elimination System Permit condition prohibiting the bypass of sewage treatment facilities. Violation 1 is a Class I violation while Violations 2 and 3 are Class II violations.

The City's illegal discharge created a risk of harm to public health and the environment. Sewage sludge presents a potential public health threat through direct contact, through contact with pets or insects that have been in contact with the sludge, or through consumption of shellfish contaminated by the sludge. In addition, sludge is a significant water pollutant that can harm aquatic life and render public waters unfit for recreational, commercial, or agricultural uses. As a result of the City's sludge discharge, the Department of Agriculture prohibited commercial shellfish producers from harvesting their beds located in Coos Bay from September 6 through September 9.

In addition to these most recent violations, the Department has, over the past seven years, taken four separate formal enforcement actions against the City for water quality violations related to operation of the City's wastewater collection, treatment, and disposal system. Several of these past violations involved bypass



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
TDD (503) 229-6993  
DEQ-1

EXHIBIT NO. 113  
PAGE NO. 1 of 3



of sewage treatment facilities and discharge of untreated or partially treated sewage to public waters. The Department also issued a Notice of Permit Violation on August 2, 1993 for violations of the National Pollutant Discharge Elimination System Permit for Sewage Treatment Plant No. 1.

Because the City violated Oregon law, I have enclosed a Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice and Order). The Notice and Order formally cites the violations and orders the City to take prompt action to permanently repair the pipeline.

In the enclosed Notice, I have also assessed a civil penalty of \$3,900 for discharging wastes to waters of the state not authorized by the City's permit, and \$1,500 for a discharge of waste that resulted in a violation of the water quality standard for bacteria, for a total civil penalty of \$5,400. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule (OAR) 340-12-045. The Department's findings and civil penalty determinations are attached to the Notice as Exhibit Nos. 1 and 2.

Appeal procedures are outlined in Section VI of the Notice. If the City fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against it.

If the City wishes to discuss this matter, or it believes there are mitigating factors the Department might not have considered in assessing the civil penalty, the City request an informal discussion by attaching a request to its appeal. The City's request to discuss this matter with the Department will not waive its right to a contested case hearing.

I look forward to the City's cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, the City may be assessed additional civil penalties.

Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If you have any questions about this action, please contact Jeff Bachman with the Department's Enforcement Section in Portland at (503) 229-5950 or toll-free at 1-800-452-4011, Enforcement extension 5950.

Sincerely



Langdon Marsh  
Director

e:\winword\letters\coosltr.doc  
Enclosures

EXHIBIT NO. 113  
PAGE NO. 2 of 3

cc: Western Region, Coos Bay Office, DEQ  
Western Region, Medford Office, DEQ  
Water Quality Division, DEQ  
Department of Justice  
Environmental Protection Agency  
Environmental Quality Commission  
Coos County District Attorney

NOV 4 1996

Oregon

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

CERTIFIED MAIL Z 076 234 298

City of Coos Bay  
500 Central Avenue  
Coos Bay, OR 97420

Re: Notice of Violation,  
Department Order, and  
Assessment of Civil Penalty  
No. WQMW-WR-96-277  
Coos County

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811 SW Sixth Avenue  
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DEQ-1



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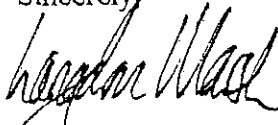
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Sincerely,



Langdon Marsh  
Director

City of Coos Bay

Case No. WQMW-WR-97-277

Page 3

cc: Western Region, Coos Bay Office, DEQ  
Western Region, Medford Office, DEQ  
Water Quality Division, DEQ  
Department of Justice  
Environmental Protection Agency  
Environmental Quality Commission  
Coos County District Attorney



1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:  
4 CITY OF COOS BAY

5 Respondent.

) NOTICE OF VIOLATION,  
) DEPARTMENT ORDER AND  
) ASSESSMENT OF CIVIL  
) PENALTY  
) No. WQMW-WR-96-277  
) COOS COUNTY

7 I. AUTHORITY

8 This Notice of Violation, Department Order and Assessment of Civil Penalty (Notice and  
9 Order) is issued by the Department of Environmental Quality (Department or DEQ) pursuant to  
10 Oregon Revised Statutes (ORS) 468.100, ORS Chapter 183, and Oregon Administrative Rules  
11 (OAR) Chapter 340, Divisions 11 and 12.

12 II. FINDINGS

13 1. Respondent, City of Coos Bay (the City), operates a municipal wastewater  
14 collection, treatment, and disposal system in Coos Bay, Oregon.

15 2. On December 22, 1994, a pressure pipe transporting sewage sludge from the  
16 City's Treatment Plant No. 1 to the City's facultative sludge lagoon broke resulting in the  
17 discharge of approximately 5,600 gallons of sludge to adjacent tidal wetlands. The City made  
18 temporary repairs to the pipe and halted the discharge.

19 3. On December 22, 1994, the City sent the Department a letter in which it stated  
20 that it would make a permanent repair to the pressure pipe as soon as necessary materials were  
21 received by the City.

22 4. On September 6, 1996, no permanent repair of the pipe had been effected and the  
23 temporary repair to the pressure pipe failed resulting in a discharge of an estimated 2,000 to 5,000  
24 gallons of sewage sludge to adjacent tidal wetlands.

25 5. On September 6, 1996, Department Inspector Ruben Kretzschmar observed sludge  
26 from the break discharging to tidewaters constituting estuarine shellfish growing waters.  
27

1           6.     In response to the discharge, the Oregon Department of Agriculture prohibited  
2 harvesting from commercial shellfish beds in Coos Bay from September 6 through September 9,  
3 1996.

4           7.     On September 9, 1996, Respondent made another temporary repair of the pressure  
5 pipe.

### 6                                                           III. VIOLATIONS

7           Based upon the Findings above, Respondent has violated Oregon's laws and rules as  
8 follows:

9           1.     On or about September 6, 1996, Respondent violated ORS 468B.050(1)(a) by  
10 discharging wastes into waters of the state without a permit authorizing such discharge.  
11 Specifically, Respondent caused or allowed sewage sludge from a broken pressure pipe to  
12 discharge to tidal wetlands in Coos Bay. This is a Class I violation pursuant to OAR 340-12-  
13 055(1)(b).

14           2.     On or about September 6, 1996, Respondent violated ORS 468B.025(1)(b) by  
15 discharging wastes that reduce the quality of state waters below the water quality standard  
16 established the by Environmental Quality Commission. Specifically, Respondent caused or  
17 allowed a discharge that violated OAR 340-41-325(2)(f), which prohibits bacterial pollution  
18 deleterious to waters used for, among other things, shellfish propagation. This is a Class II  
19 violation pursuant to OAR 340-12-055(2)(f).

20           3.     On or about September 6, 1996, Respondent violated ORS 468B.025(2) by  
21 violating a condition of its National Pollutant Discharge Elimination System Permit No. 100669.  
22 Specifically, Respondent violated General Condition B(3)(b) causing or allowing a sewage bypass  
23 of treatment facilities. This is a Class II violation pursuant to OAR 340-12-055(2)(f).

### 24                                                           IV. DEPARTMENT ORDER

25           Based upon the foregoing FINDINGS AND VIOLATIONS, Respondent is hereby  
26 ORDERED TO:  
27

1 1. Immediately initiate actions necessary to correct all of the above cited violations  
2 and come into full compliance with Oregon's laws and rules.

3 2. Within 15 days of receipt of this Notice and Order, prepare plans for 1) permanent  
4 repair of the pressure pipe and 2) a pressure pipe leak detection system, and submit plans to the  
5 Department.

6 3. Within 45 days of Receipt of this Notice and Order, complete the permanent repair  
7 to the pressure pipe and implement the leak detection system.

8 V. ASSESSMENT OF CIVIL PENALTIES

9 The Director imposes civil penalties for the violations cited in Section II, paragraphs  
10 1 and 2 as follows:

11	<u>Violation</u>	<u>Penalty Amount</u>
12	1	\$3,900
13	2	\$1,500

14 Respondent's total civil penalty is \$5,400. The findings and determination of Respondent's  
15 civil penalty pursuant to OAR 340-12-045 are attached and incorporated as Exhibit Nos. 1 and 2.

16 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

17 This Notice and Order shall become final unless Respondent requests, in writing, a hearing  
18 before the Environmental Quality Commission. **The request must be received by the**  
19 **Department's Rules Coordinator within 21 days after the date of issuance of this Notice**  
20 **and Order, and must be accompanied by a written "Answer" to the allegations contained**  
21 **in this Notice and Order.**

22 In the written Answer, Respondent shall admit or deny each allegation of fact contained in  
23 this notice, and shall affirmatively allege any and all affirmative claims or defenses to violations  
24 and assessment of any civil penalty that Respondent may have and the reasoning in support  
25 thereof. Except for good cause shown:

26 1. Factual matters not controverted shall be presumed admitted;  
27

1           2.     Failure to raise a claim or defense shall be presumed to be a waiver of such claim  
2 or defense;

3           3.     New matters alleged in the Answer shall be presumed to be denied unless admitted  
4 in subsequent pleading or stipulation by the Department or Commission.

5           Send the request for hearing and Answer to: **DEQ Rules Coordinator, Office of the**  
6 **Director, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Following receipt of a request for  
7 hearing and an Answer, Respondent will be notified of the date, time and place of the hearing.

8           Failure to file a timely request for hearing and Answer may result in the entry of a Default  
9 Order for the relief sought in this Notice and Order.

10          Failure to appear at a scheduled hearing or meet a required deadline may result in a  
11 dismissal of the request for hearing and also an entry of a Default Order.

12          The Department's case file at the time the Notice and Order was issued may serve as the  
13 record for purposes of entering the Default Order.

14                               **VII. OPPORTUNITY FOR INFORMAL DISCUSSION**

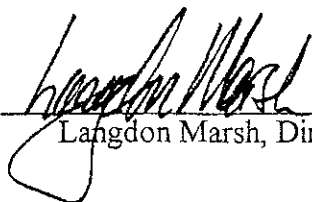
15          In addition to filing a request for a contested case hearing, Respondent may also request  
16 an informal discussion with the Department by attaching a written request to the hearing request  
17 and Answer.

18                               **VIII. PAYMENT OF CIVIL PENALTY**

19          The civil penalty is due and payable ten (10) days after the Order imposing the civil  
20 penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before  
21 that time. Respondent's check or money order in the amount of \$6,200 should be made payable  
22 to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of**  
23 **Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

24  
25  
26 Date

11/4/96

  
Langdon Marsh, Director

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION No. 1: Discharge of wastes to waters of the state without a permit in violation of Oregon Revised Statute 468B.050(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-12-055(1)(b).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-12-045(1)(a) because there is no selected magnitude. In the absence of a selected magnitude the magnitude shall be moderate.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

"BP" is the base penalty, which is \$3,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior significant actions and receives a value of 5 pursuant to 340-12-045(1)(c)(A)(vi) because Respondent has prior significant actions totaling four Class I equivalent violations. The prior significant actions are:

- One Class I violation and one Class II violation in Case No. WQMW-WR-95-114
- One Class I violation in Case No. WQMW-WR-94-293
- One Class II violation in Case No. WQ-SWR-90-254
- One Class I violation in Case No. WQ-SWR-89-177

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant actions and receives a value of -2 because Respondent took all feasible steps or procedures necessary to correct any prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation was a single occurrence.

"R" is the cause of the violation and receives a value of 2 as Respondent was negligent in that it failed to exercise reasonable care to avoid the foreseeable risk of the violation occurring

"C" is Respondent's cooperativeness in correcting the violation and receives a value of -2 as Respondent took action to minimize the effects of the violation.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as there is insufficient information on which to base a finding.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (5 + (-)2 + 0 + 2 + (-)2)] + \$0 \\ &= \$3,000 + [(\$300) \times (3)] + \$0 \\ &= \$3,000 + \$900 + \$0 \\ &= \$3,900 \end{aligned}$$

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION No. 2: Causing or allowing violation of a water quality standard in violation of Oregon Revised Statute 468B.025(1)(b).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-12-055(2)(f).

MAGNITUDE: The magnitude of the violation is moderate. Pursuant to OAR 340-12-045(1)(a)(ii), in the absence of a selected magnitude, the magnitude shall be moderate.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  
$$BP + [(0.1 \times BP) \times (P + H + O + R + C)] + EB$$

"BP" is the base penalty, which is \$1,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-12-042(1).

"P" is Respondent's prior significant actions and receives a value of 5 pursuant to 340-12-045(1)(c)(A)(vi) because Respondent has prior significant actions totaling four Class I equivalent violations. The prior significant actions are:

- One Class I violation and one Class II violation in Case No. WQMW-WR-95-114
- One Class I violation in Case No. WQMW-WR-94-293
- One Class II violation in Case No. WQ-SWR-90-254
- One Class I violation in Case No. WQ-SWR-89-177

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant actions and receives a value of -2 as Respondent took all feasible steps or procedures necessary to correct any prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation was a single occurrence.

"R" is the cause of the violation and receives a value of 2 as Respondent was negligent in that it failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 as the violation could not be corrected once it had occurred.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as there is insufficient evidence on which to base a finding.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$1,000 + [(0.1 \times \$1,000) \times (5 + (-)2 + 0 + 2 + 0)] + 0 \\ &= \$1,000 + [(\$100) \times (5)] + \$0 \\ &= \$1,000 + \$500 + \$0 \\ &= \$1,500 \end{aligned}$$



RECEIVED

NOV 25 1996

ORMSBEE, CORRIGALL, McCLINTOCK & TOSH, LLP

Attorneys at Law  
936 Central  
P.O. Box 1178  
Coos Bay, Oregon 97420-0309

OFFICE OF THE DEPUTY DIRL

Orrin R Ormsbee  
Malcolm J. Corrigan  
Nathan B. McClintock  
C. Randall Tosh

Paralegal: Karen Hammer

Telephone: (541) 269-1123  
FAX No. (541) 269-1126

November 21, 1996

~~REGIONAL OPERATION DIVISION~~  
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED

NOV 26 1996

DEQ Rules Coordinator  
Management Services Division  
811 SW Sixth Avenue  
Portland, OR 97204

RE: Assessment of Civil Penalty in Case No.  
WQMW-WR-96-277 / Request for Informal Discussion

Dear DEQ Rules Coordinator:

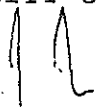
Enclosed you will find the City of Coos Bay's Answer to the Notice of Assessment of Civil Penalty in Case No. WQMW-WR-96-277.

The City also requests that a resolution of the issues presented in this case be addressed in an informal discussion.

Should you have any questions, or would like to schedule the informal discussion, feel free to contact me at any time. I am at Coos Bay City Hall on Tuesdays, (541) 269-8920, or at my law office on all other days, (541) 269-1123.

Yours,

CITY OF COOS BAY

  
C. Randall Tosh  
City Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY,  
  
Respondent.

Case No. WQMW-WR-96-277  
  
REQUEST FOR HEARING AND  
ANSWER

1.

Respondent, City of Coos Bay, requests a hearing on the Assessment of Civil Penalty in Case No. WQMW-WR-96-277.

In Answer to the Notice of Violation, Department Order and Assessment of Civil Penalty, the City of Coos Bay admits, denies and alleges:

2.

Respondent admits paragraphs II (1), II (3), III (7), III (1), III (2) and III (3).

3.

Respondent admits that portion of paragraph II (2) which states that on December 22, 1994, a pressure pipe transporting sewage sludge from the City's Treatment Plant No. 1 to the City's facultative sludge lagoon broke. Respondent also admits that approximately 5,600 gallons of sludge flowed into adjacent tidal lands, and that the City made temporary repairs to the pipe to stop the flow. Respondent denies this was a discharge within the meaning of ORS 468B.050, ORS 468B.025, and OAR 340-12-055.

4.

Respondent admits that portion of paragraph II (4) which states that on September 6, 1996, no permanent repair of the pipe had been effected and the temporary repair to the pressure pipe

1 failed. Respondent also admits that an estimated 2,000 to 5,000  
2 gallons of sewage sludge flowed to adjacent tidal wetlands.  
3 Respondent denies this was a discharge within the meaning of ORS  
4 468B.050, ORS 468B.025, and OAR 340-12-055.

5 5.

6 Respondent denies paragraphs 5 and 6 on lack of  
7 information or belief.

8 AS AN AFFIRMATIVE DEFENSE, Respondent alleges:

9 6.

10 The pressure pipe transporting sewage sludge from the  
11 City's treatment plant is located in a earthen berm dike  
12 immediately adjacent to a large saltwater marsh which is a  
13 component of the Coos Bay estuary ecosystem. This saltwater marsh  
14 is classified as a wetland under the federal Clean Water Act.

15 7.

16 Permanent repair pressure pipe was more complex than  
17 initially indicated in December 1994. Permanent repair also  
18 required extending the foot of the earthen berm dike an estimated  
19 6.5 feet into this wetland.

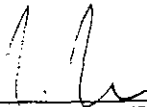
20 8.

21 Because permanent repair required extension of fill into  
22 a wetland, the Respondent was required to file an application for  
23 a Department of State Lands/Army Corp of Engineers fill permit.

24 9.

25 At the time of the second break, action on the fill  
26 permit was still pending, and the Respondent could not effect a  
27 permanent repair. Effecting permanent repair would have required  
28 Respondent violate the Clean Water Act by filling a wetland.

DATED this \_\_\_\_\_ day of November, 1996.

  
\_\_\_\_\_  
C. RANDALL TOSH, OSB #94033  
Attorney for the City of Coos Bay  
P. O. Box 1178  
Coos Bay, OR 97420  
Telephone: (541) 269-1123

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File

# Oregon

EMPLOYMENT  
DEPARTMENT

April 16, 1997

C. Randall Tosh  
City Attorney, City of Coos Bay  
P.O. Box 1178  
Coos Bay, Oregon 97420-0309

Jeff Bachman  
DEQ Enforcement Section  
2020 S.W. 4th, Suite 400  
Portland, Oregon 97201

Re: Notice of Violation, Department Order, and  
Assessment of Civil Penalty  
Case No. WQMW-WR-96-277  
Coos County

The contested case hearing scheduled for Wednesday, April 23, 1997 is postponed and rescheduled as follows:

Date: Thursday, May 8, 1997  
Time: 8:30 a.m. PDT  
Location: The hearing will be conducted by telephone.

The parties will be called at the time of hearing and conferenced together. All participants will be able to speak to and hear each other. The parties will be called at the telephone number following their name.

C. Randall Tosh (541) 269-8920  
Jeff Bachman, DEQ (503) 229-5950

The issues to be addressed are:

Whether the City of Coos Bay, Oregon violated ORS 468B.050(1)(a) by discharging wastes into waters of the state without a permit authorizing such discharge; whether the City of Coos Bay violated ORS 468B.025(1)(b) by discharging wastes that reduce the quality of state waters below the water quality standard established by the Environmental Quality commission; and whether the City of Coos Bay violated ORS 468B.025(2) by violating a condition of its National Pollutant Discharge Elimination System Permit No. 100669.

John A. Kitzhaber  
Governor



Whether the City of Coos Bay, Oregon should be ordered to correct all of the above violations and implement a leak detection system within the times set forth in the order,

875 Union St. NE  
Salem, OR 97311  
(503) 378-8420

EXHIBIT 3

and whether the City of Coos Bay should be liable for a civil penalty of \$5400. The specific acts and violations are set forth in Department Order dated November 4, 1996.

If the parties have additional witnesses for the hearing, the names and telephone numbers of the witnesses can be furnished to the hearings office prior to or at the time of hearing.

Documents to be relied upon at hearing should be sent both to the hearings officer and to the other party before the hearing.

If you have questions, please call me at (541) 686-7960.

*Melvin M. Menegat*  
MELVIN M. MENEGAT  
Hearings Officer

mm/d7004cit

April 14, 1997

C. Randall Tosh  
City Attorney, City of Coos Bay  
P.O. Box 1178  
Coos Bay, Oregon 97420-0309

Jeff Bachman  
DEQ Enforcement Section  
2020 S.W. 4th, Suite 400  
Portland, Oregon 97201

Re: Notice of Violation, Department Order, and  
Assessment of Civil Penalty  
Case No. WQMW-WR-96-277  
Coos County

The contested case hearing in the above matter has been scheduled as follows:

Date: Wednesday, April 23, 1997  
Time: 8:30 a.m. PDT  
Location: The hearing will be conducted by telephone.

A telephone prehearing conference has been scheduled as follows:

Date: Wednesday, April 16, 1997  
Time: 8:30 a.m. PDT

The parties will be called at the time of hearing and conferenced together. All participants will be able to speak to and hear each other. The parties will be called at the telephone number following their name.

C. Randall Tosh	(541) 269-8920
Jeff Bachman, DEQ	(503) 229-5950

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John A. Kitzhaber  
Governor



Whether the City of Coos Bay, Oregon should be ordered to correct all of the above violations and implement a leak detection system within the times set forth in the order, and whether the City of

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CITY OF COOS BAY,

Respondent.

Case No. WQMW-WR-96-277

STIPULATIONS OF FACT

1. The City of Coos Bay Wastewater Treatment Plant No. 1 (Plant No. 1) operates a facultative sludge lagoon (the lagoon) north of 9th Avenue in Eastside, Oregon.

2. Partially treated sludge is pumped from Plant No. 1 to the lagoon through a pressure line located in a dike located in the vicinity of the lagoon on certain real property owned by the Port of Coos Bay (the pressure line).

3. On or about December 22, 1994, the pressure line broke, allowing approximately 5,600 gallons of partially treated sludge to enter adjacent tidal wetlands known as the "W-Marsh" (the marsh). The break occurred when dike material supporting the pressure line shifted.

4. On or about December 22, 1994, Ralph Dunham (Dunham), City of Coos Bay Public Works Director, sent a letter to Ruben Kretzschmar (Kretzschmar), Enforcement Officer for the Oregon Department of Environmental Quality (the Department), notifying Kretzschmar of the break and of remedial action undertaken in response to the break.

5. In informing Kretzschmar of the break and remedial action, Dunham's letter of December 22, 1994 stated as follows:

"At this time the line has been temporarily repaired and the City is investigating need for additional thrust restraint and or material to be added to the dike to prevent settlement. Final repairs will include



1           restraining glands to the pipe when material  
2           can be shipped to the City."

3           6. No civil penalty was assessed by the Department based  
4           on the December 22, 1994 break.

5           7. On or about May 7, 1996, Dunham completed plans for  
6           repair to the dike containing the pressure line.

7           8. On or about May 7, 1996, the plans were forwarded to  
8           Kevin Cupples (Cupples), Planning Administrator for the City of  
9           Coos Bay, for further review and action pursuant to the City of  
10          Coos Bay Ordinance No. 93, the City of Coos Bay land development  
11          ordinance, and the Coos Bay Estuary Management Plan.

12          9. In reviewing the plans, Cupples determined that  
13          wetland fill permits might be required from the United States Corps  
14          of Engineers (the Corps) and the Oregon Division of State Lands  
15          (the Division).

16          10. In early summer, 1996, John Craig (Craig), engineer  
17          with the Corps informed Cupples that a Section 404 wetland fill  
18          permit would be required to perform the dike repair.

19          11. On or about August 6, 1996, Cupples submitted a joint  
20          fill permit to the Corps and the Division for repair and  
21          restoration mitigation required for permanent repair of the  
22          pressure line in the dike.

23          12. On September 1, 1996, OMI, Inc. assumed control of  
24          the City of Coos Bay wastewater treatment system under a management  
25          agreement, and began operation of the system for the City of Coos  
26          Bay.

27          13. On or about September 6, 1996, the pressure line  
28          broke at or near the location of the break of December 22, 1994.

1 allowing approximately 2,000-5,000 gallons of partially treated  
2 sludge to enter the marsh. The break occurred when dike material  
3 supporting the pressure line shifted.

4 14. On September 10, 1996, Mike McDaniel, Assistant  
5 Project Manager for OMI, notified Kretzschmar, by mail, of the  
6 break in the pressure line and of the subsequent remedial measures  
7 undertaken.

8 15. On or about September 26, 1996, Kretzschmar served  
9 the City with a notice of noncompliance, alleging the failure of  
10 the pressure line was a violation of ORS 164.785(1),  
11 468B.025(1)(b), OAR 340-410-325(2)(e)(A)(ii) and NPDES Permit No.  
12 100699 General Condition, Section B(3).

13 16. On or about October 23, 1996, Craig informed Cupples  
14 that due to the second failure of the line, the repair to the dike  
15 and pressure line could be considered an emergency repair, thereby  
16 eliminating the requirement that the City obtain a wetland fill  
17 permit.

18 17. Acting on Craig's statements, Cupples withdrew the  
19 City of Coos Bay permit application on October 23, 1996.

20 18. On or about October 29, 1996, the Division informed  
21 the City that a wetland fill permit would not be required by the  
22 Division due to the amount of fill material which was to be  
23 utilized by Dunham's plans.

24 19. On or about November 7, 1996, the City of Coos Bay  
25 received a notice of violation, department order and assessment of  
26 civil penalty in Case No. WQMW-WR-96-277.

27 20. The pressure line is a component of the Coos Bay  
28 Wastewater Treatment Plant #1 disposal system.

1           21. On September 26, 1990, the City of Coos Bay was  
2 issued NPDES Permit No. 100699, authorizing the discharge of waste  
3 from the City of Coos Bay Wastewater Treatment Plant No. 1 into the  
4 waters of the State of Oregon.

5           22. The expiration date for NPDES Permit No. 100699 was  
6 September 30, 1995.


7           23. NPDES Permit No. 100699 specifies applicable  
8 effluent limitations and was issued for a period not to exceed five  
9 years.

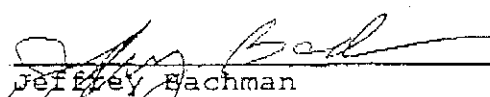
10           24. At the time of second pressure line break, the City  
11 of Coos Bay was in the process of application, administrative  
12 review and comment on proposed NPDES Permit No. 19802, the  
13 successor permit to NPDES Permit No. 100699.

14           25. Pursuant to OAR 340-045-0040, at the time of the  
15 second pressure line break, NPDES Permit No. 100699 was in force  
16 and effect, and was the NPDES permit for Wastewater Treatment Plant  
17 No. 1.

18           DATED this 6th day of May, 1997.

19 IT IS SO STIPULATED:

20   
21 \_\_\_\_\_  
22 C. RANDALL TOSH, OSB #94033  
23 Attorney for the City of Coos Bay  
24 P. O. Box 1178  
25 Coos Bay, OR 97420  
26 Telephone: (541) 269-1123

27   
28 \_\_\_\_\_  
29 Jeffrey Bachman  
30 Environmental Law Specialist  
31 2020 SW 4th Avenue, Suite 400  
32 Portland, OR 97201  
33 Telephone: (503) 229-5950

# Oregon

June 24, 1996

Bill Grile, City Administrator  
City of Coos Bay  
500 Central Ave.  
Coos Bay, Or. 97420

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

RE: WQ-Coos County  
Coos Bay STP #1  
NPDES Permit #100699  
File #19802  
EPA #OR-0023574

Western Region  
Coos Bay Branch Office

On June 13, 1996, a representative of this Department and the Environmental Protection Agency conducted a comprehensive compliance inspection audit/sampling survey of the wastewater treatment facility (plant #1) which serves the City of Coos Bay and the Bunker Hill Sanitary District. The purpose of this inspection was to determine the extent of compliance with the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit issued for this facility. The report prepared as a result of this inspection is enclosed for your information.

## NPDES Permit

The NPDES permit for this facility was issued on September 26, 1990, and will expire on September 30, 1995. A renewal application has been received by the Department and a draft permit prepared. Discharge limitations are based upon an average dry weather design flow of 2.9 MGD. The permit also requires 85% removal of BOD and TSS on monthly average. This current permit does not list the locations of all discharge points. The draft permit will address all discharge points.

## Reports/Records

An audit of the WTP records management system reveals this facility is in compliance with current NPDES requirements in this area. Overall, in-plant records pertaining to daily activities, NPDES required testing, DMR's, and operations and maintenance have been and continue to be excellent. The Operations and Maintenance (O&M) manual for this facility has been approved by the Department.



340 North Front St.  
Coos Bay, OR 97420  
(503) 269-2721  
DEQ/SWR-101

**EXHIBIT 5**

City of Coos Bay #1 Annual Inspection

Page 2

June 24, 1996

Facility Site Review/Operations

Construction of new facility completed and on-line on February 9, 1990. This inspection shows that the scum skimmer blade needs to be replaced. Also, the low pressure/high volume water line at the headworks needs to be replaced. This pipe has rapidly corroded and the replacement should be of non-corrosive material. Problems continue with clogging of spray nozzles at the head works and automatic flow differential at high flows.

All equipment was in operation at time of inspection.

Flow Measurement

Facility has an average dry weather flow capacity of 2.9 MGD and peak flow of 13 MGD. Flow is measured by a Series 5 OUS 3000 Ultrasonic Flow/Level Meter. Flows were 1.51 MGD during the period of this inspection.

Laboratory

All required NPDES permit analyses are done at this laboratory for plants 1 & 2 with the exception of heavy metals and bio-assays. These are done at different commercial labs.

Mr. Charles Gregory, Chemist, has been found to be very knowledgeable and well organized concerning QA/QC practices and analytical methodology. This lab participates in EPA-Bionetics annual check.

Effluent/Receiving water

Effluent and Influent samples were not obtained during this inspection. Split samples will be obtained at a later date.

Review of the Discharge Monitoring Reports indicates facility has been producing an effluent in compliance with current NPDES permit limitations. The City acknowledged Noncompliance in December 1995 when a permanent plug blew out at pump station #1. A Notice of Noncompliance was not sent since it appeared that City personnel took all appropriate steps necessary to prevent damage to the collection system. On February 18, 1996, the secondary split flow gate failed in the open position causing primary effluent to be discharged to the

City of Coos Bay #1 Annual Inspection

Page 3

June 24, 1996

chlorine contact chamber and then to the bay. This closed the bay for a week for shellfish harvesting.

### Self Monitoring

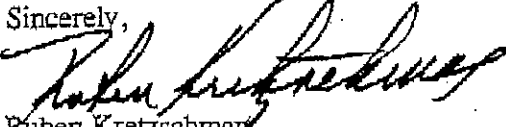
The City's self monitoring program including NPDES sampling, analysis and DMR's is considered as satisfactory. Overall, the monitoring program at this facility is considered as reliable, accurate and is consistent with actual conditions. It was learned that the connection for telemetering at pump station #20 has not been made nor the final repairs on the sludge pressure line. A meeting was held on June 19, 1996, with Mr. Bruce Meithoff, yourself and this writer. It was agreed by the City that these two items will receive immediate action.

### Summary

Based upon the findings during this evaluation and results of the sampling, it appears that this facility is in compliance with the NPDES permit conditions. There have been a number of discharges to the Bay from failure of control equipment and pump failure which resulted in closure of the bay for shellfish harvesting.

We wish to thank Mr. Mike Mc Daniel, Operations Supervisor, and his staff for their time and cooperation during this inspection. If you have any questions pertaining to this report or inspection, please call this office for clarification and assistance.

Sincerely,

  
Ruben Kretzschmar  
Environmental Specialist IV

RK:gs

Enclosure

c: Southwest Region  
Water Quality, w/enclosures  
EPA, w/enclosures  
Mike Mc Daniel

CB#1ANNL

# Oregon

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DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

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Western Region  
Coos Bay Branch Office

April 17, 1995

William B. Elliott, City Manager  
City of Coos Bay  
500 Central Ave.  
Coos Bay, OR 97420

RE: WQ-Coos County  
Coos Bay STP #1  
NPDES Permit #100699  
File #19802  
EPA #OR-0023574  
NOTICE OF NONCOMPLIANCE  
ENF-WQ-WR/CB-95-018

On March 20, 1995, a representative of this Department conducted a comprehensive compliance inspection audit/sampling survey of the wastewater treatment facility (plant #1) which serves the City of Coos Bay and the Bunker Hill Sanitary District. The purpose of this inspection was to determine the extent of compliance with the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit issued for this facility. The report prepared as a result of this inspection is enclosed for your information.

### NPDES Permit

The NPDES permit for this facility was issued on September 26, 1990, and will expire on September 30, 1995. Discharge limitations are based upon an average dry weather design flow of 2.9 MGD and are 20/20 BOD-5 and TSS from May 1-October 31 and 30/30 BOD-5 and TSS from November 1-April 30. The permit also requires 85% removal of BOD-5 and TSS on a monthly average. This permit accurately covers the facility and number and locations of all discharge points.

### Reports/Records

An audit of the facility's records management system reveals that records pertaining to daily activities, NPDES required testing, DMR's, laboratory testing and quality assurance, and operations and maintenance have been and continue to be excellent. The Operations and



---

340 North Front St.  
Coos Bay, OR 97420  
(503) 269-2721  
DEQ/5WR-101

**EXHIBIT 6**

City of Coos Bay #1 NON  
Page 2  
April 17, 1995

Maintenance Manual (O&M) for this facility has been approved by the Department and is kept current.

Facility Site Review/Operations

Construction on updated facility was completed on February 9, 1990. Inspection shows that clogging of spray nozzles at the head works continues to be a problem and has not been adequately addressed. The automatic bar screen has been down for over a month and cleaning has been done manually. Parts have been ordered, but are hard to get due to the fact they are made in a foreign country and are now outdated. Both aeration basins are in operation due to high flows which were at 5.02 MGD at inspection. A new line has been constructed to circulate sludge from the contact chamber to the head works.

Pump station #20 is still not connected into the telemetering system. A Notice of Assessment of Civil Penalty was issued to the City on November 30, 1994, for a spill at this site. The City's response, on December 4, 1994, was that all auto dialers and associated equipment had been purchased and would be installed. This delay is inexcusable and will be referred to the Department's Enforcement Section for appropriate action.

Inspection also revealed that repairs of the pressure sludge line to the lagoon have not been completed. We understand that parts were ordered, wrong parts sent, and parts had to be re-ordered. Repairs to this line must also be given top priority before another spill occurs.

Effluent/Receiving Waters

Influent and effluent samples were obtained and split on January 18, 1995. The results are as follows:

	Influent BOD-5	TSS	Effluent BOD-5	TSS	Fecal
Source	41	65	5.0	8.4	68
DEQ	42	66	4.0	10.0	75



City of Coos Bay #1 NON

Page 3

April 17, 1995

A copy of the lab report is attached for your information.

A review of our file shows that a Notice of Permit Violation (NPV) was issued on August 2, 1993, primarily for unauthorized discharges from the collection system. Since the last audit inspection, we find the following:

1. A spill on August 29, 1994, on 16th Street;
2. September 28, 1994, spill at pump station #20 for which a \$4,800 civil penalty was assessed;
3. A Notice of Noncompliance on October 18, 1994, for an illegal connection by the City of an R.V. into a septic system when sewer was available;
4. December 2, 1994, a break in a sewer line off 10th Street;
5. December 22, 1994, the main sludge pressure line broke in Eastside spilling approximately 728,000 gallons into Coos River;
6. Overflows of manholes on January 9, 1995, due to high rainfall;
7. January 21, 1995, plugged sanitary line on Cottonwood Street;
8. Noncompliance at facility for TSS and BOD during month of January, 1995.

#### Summary

The overall maintenance and appearance of this facility is satisfactory although it appears that replacement of parts for some of the equipment may become a problem; i.e., the bar screen.

The problem that is becoming more prevalent is the collection system and apparent lack of sufficient personnel to routinely maintain and repair the collection sewer lines and pumps based upon recent history as recounted above.

This letter is to serve as a Notice of Noncompliance for failure to comply with the Mutual Agreement and Order, No. WQMW-WR-94-293, issued on November 30, 1994 and modified on January 12, 1995 in that corrective action has not taken place to correct the violations. Further, this failure to correct the pump station and improper staffing is in violation of General Conditions, Section B, Paragraph 1. This states: "The permittee shall at all times properly

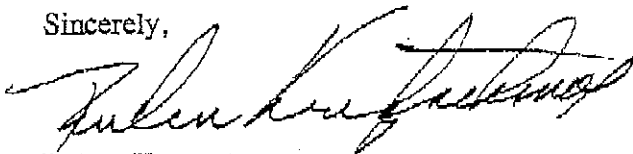
City of Coos Bay #1 NON  
Page 4  
April 17, 1995

operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

In response to the Notice of Permit Violation, Case No. WQMW-WR-94-293, you provided the Department with a plan to come into compliance with the terms of your permit. This plan was accepted by the Department contingent upon meeting the schedule contained within. The compliance date described above has not been met. Because you failed to meet the compliance schedule in the approved plan, we are referring this violation to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

Please contact me if you have any questions regarding this Notice.

Sincerely,



Ruben Kretzschmar  
Environmental Specialist IV

RK:gs

Enclosures

c: Dennis Belsky, Medford  
Water Quality, Portland  
Environmental Protection Agency  
Mike McDaniel, City of Coos Bay #1

CB#1NON

## A MESSAGE TO THE PUBLIC FROM THE FRIENDS OF THE CREEK

The city of Ashland plans to sprinkle sewage effluent on the hillside, pump semi solid bio-mass to the top of the hill into sludge lagoons and drying beds, stockpile the dried biosolids, then apply them on the hilltop. This site is over 800 acres, and lies adjacent to Interstate 5 above the truck weigh station between Mountain Avenue and Butler Creek Road. There are many concerns with this plan and its location. This sewage byproduct is high in Phosphates which increase plant growth. Some feel this is harmful to fish in Bear Creek. Increased plant growth in the Talent Irrigation Canal restricts adequate flow of water. Moss needs to be controlled to prevent clogging sprinklers and drip irrigation systems used on farms, vineyards and orchards. There is already a serious management problem controlling this growth. The problem with this site is the high potential of leakage into the Talent Irrigation system, Butler Creek, and eventually Bear Creek. Phosphates could be distributed throughout the Valley effecting over 4000 different properties.

**This location has the following disadvantages;**

- Lies above and below the East Talent Irrigation Canal, above the middle ditch below Eagle Mill, and the siphon that supplies water to the West Canal.
- The shallow and clay type soils and rock formations will make runoff a problem.
- Any runoff will flow into the East Canal and/or Butler Creek.
- Butler Creek and other Creeks flow into Bear Creek.
- Steep slopes and unstable areas add to erosion problems, and unstable landslide conditions exist in the immediate area.
- Odors may affect the area.

**Many other problems need to be considered:**

- The affect on water wells
- Odor
- Effect on marketing products such as Pears, Wine grapes, Produce
- Effect on growing organic crops
- Effect on Tourism with such a prominent visual location along I-5
- Loss of Real Estate values for nearby properties

The Friends of the Creek believe there are many matters that are not being considered. We also believe that the public might be better served by connecting to BCVSA (Bear Creek Valley Sanitary Authority). At the very least, a full fledged Environmental Impact Study should be conducted, and Public hearings involving all the people and industries affected should be held.

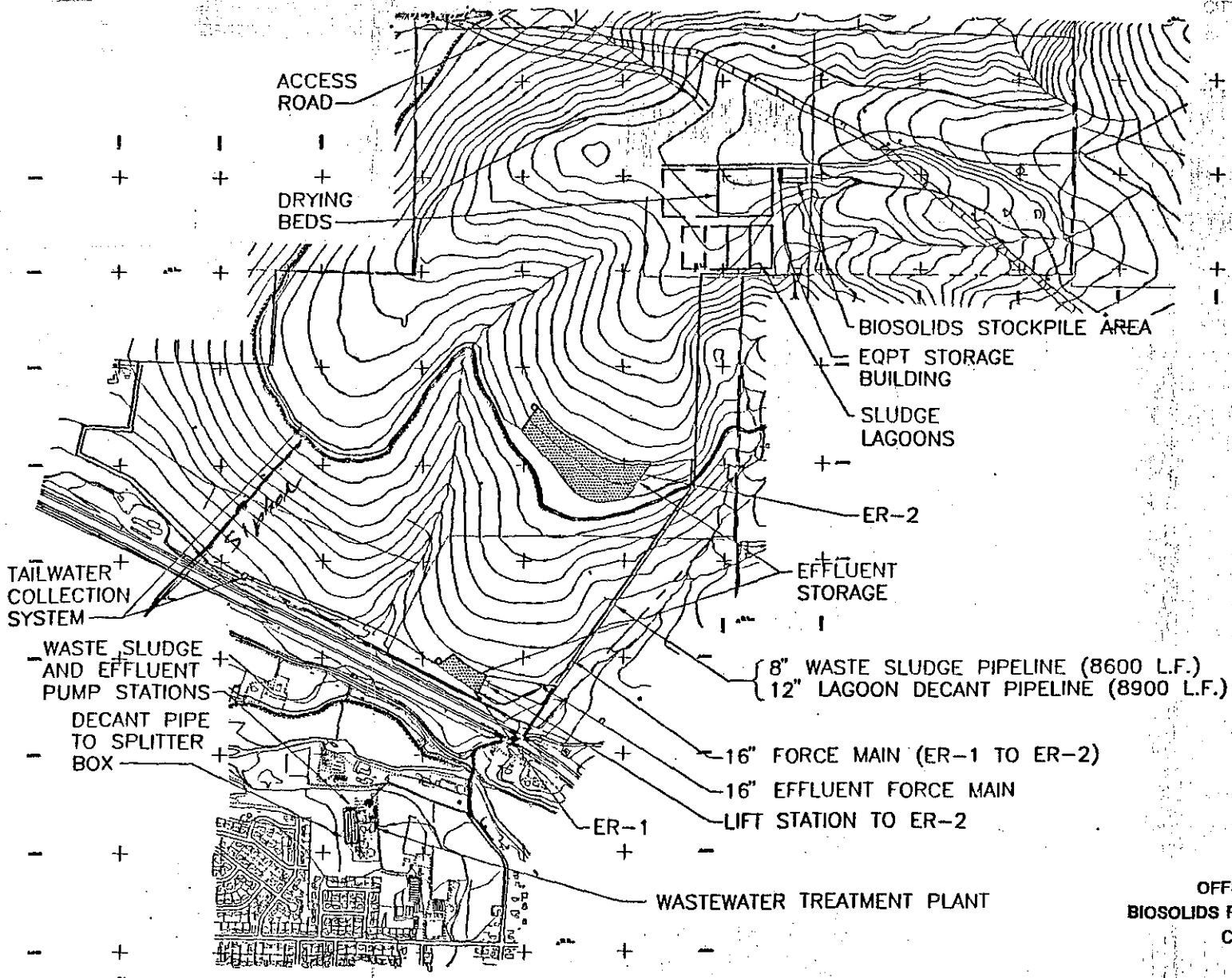
**If you have any questions please feel free to contact any of the following persons,**

**Ann Parlier (541) 482-8903;  
Rebecca Pierce (541) 488-8844;  
Jim Elliott (541) 488-1051.**

LIFT STATION TO ER-2

WASTEWATER TREATMENT PLANT

OFFSITE EFFLUENT AND  
BIOSOLIDS REUSE HANDLING FACILITIES  
CITY OF ASHLAND



DEPARTMENT OF PUBLIC WORKS  
 1" = 1000'  
 CONTOUR INTERVAL: 25'  
 PHOTO DATE: FEB 12, 1996




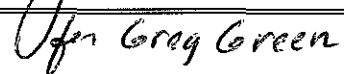



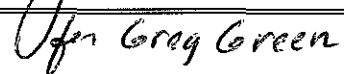



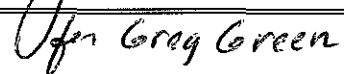
Figure No. 10  
 OFFSITE EFFLUENT AND  
 BIOSOLIDS REUSE HANDLING FACILITIES  
 CITY OF ASHLAND

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# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item L  
June 11/12, 1998 Meeting

<b>Title:</b> Informational Report: Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan Status						
<b>Summary:</b> The purpose of this report is to provide the Commission with an update of the Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan, including the plan development process, key proposed strategy elements, issues of remaining controversy, and an evaluation of strategy/policy alternatives as background for the Commission to take initial testimony on the plan. The plan provides for maintenance of carbon monoxide National Ambient Air Quality Standards through 2015. Key strategy elements include continuation of the existing motor vehicle inspection program and the wintertime oxygenated fuel program. A formal public hearing is scheduled for June 16, 1998, to take additional testimony on the plan. The Department expects the Commission to consider adoption of the plan at its August 6/7, 1998, meeting.						
<b>Department Recommendation:</b> It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.						
<table style="width: 100%; border: none;"><tr><td style="width: 33%; vertical-align: bottom;"> Report Author</td><td style="width: 33%; vertical-align: bottom;"> Division Administrator</td><td style="width: 33%; vertical-align: bottom;"> Director</td></tr><tr><td colspan="3" style="text-align: center; vertical-align: bottom;"></td></tr></table>	 Report Author	 Division Administrator	 Director			
 Report Author	 Division Administrator	 Director				
						

Date: May 28, 1998

**To:** Environmental Quality Commission  
**From:** Langdon Marsh, Director  
**Subject:** Agenda Item L, EQC Meeting 6/11/98—Informational Report: Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan Status

**Statement of Purpose**

The purpose of this report is to provide the Commission with an update of the Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan, including the plan development process, key proposed strategy elements, issues of remaining controversy, and an evaluation of strategy/policy alternatives as background for Commission adoption of the plan scheduled for August 1998.

**Background**

**What is Carbon Monoxide?**

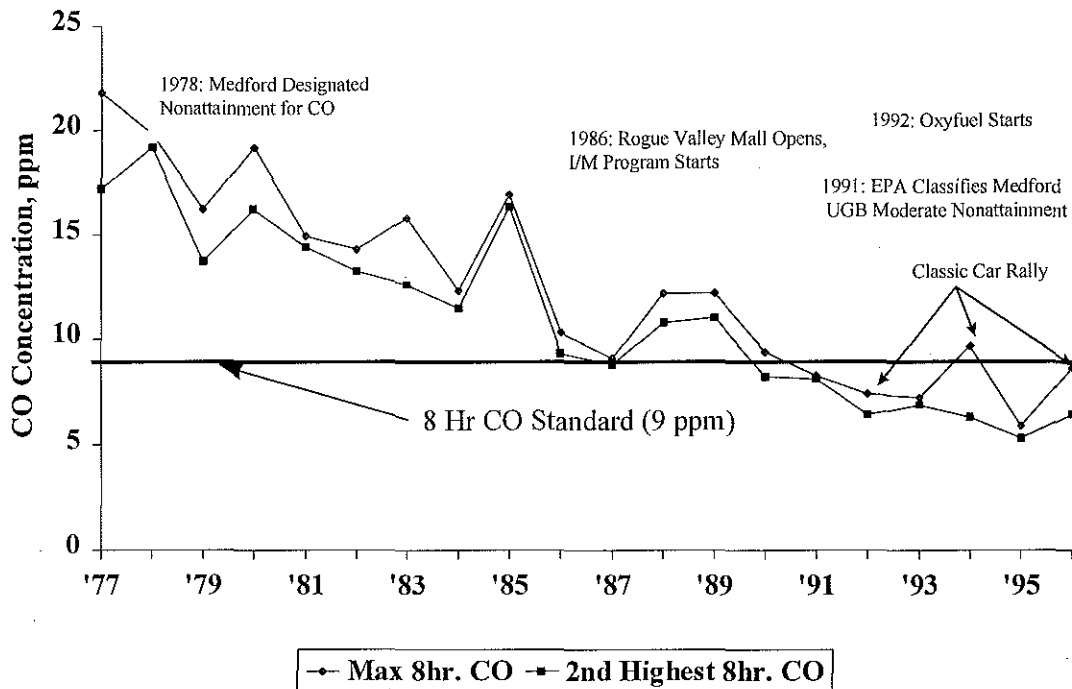
Carbon monoxide (CO) is a colorless, odorless, highly toxic gas. It decreases the oxygen carrying capacity of the blood. High concentrations can severely impair the function of oxygen-dependent tissues, including the brain, heart and muscles. Prolonged exposure to even relatively low levels of CO can aggravate existing conditions in people with heart disease or circulatory disorders. Motor vehicles are the predominate source of CO in Oregon, but another significant source includes wood stoves.

**Past CO Problem**

The Medford area exceeded the federal 8-hour CO standard of 9 parts per million almost every other day in the late 1970's. Maximum 8-hour CO levels were more than twice the standard level. By the 1980's the frequency of exceedances had dramatically declined; maximum levels were about 50 percent above the standard level. The trend in CO from the long-term, Brophy CO monitor in downtown Medford is shown below in Figure 1.

Figure 1: Medford Downtown CO Trend

Medford CO Data (Brophy Building) Max 8-Hr and 2nd High 8-Hr Avg. 1977-96



Success in Controlling CO

Carbon monoxide control strategies have been successful in bringing Medford into attainment with the 8-hour CO standard. Attainment was achieved at the Brophy Building site by 1990. Full compliance for the area was achieved in 1992 with no exceedances recorded at the Rogue Valley Mall CO monitor. These strategies relied primarily on:

Federal new car emission standards, DEQ vehicle inspection program, the Medford Parking and Traffic Circulation Plan, including the Bicycle Transportation Element and oxygenated gasoline (additional emission reductions from implementation of a wintertime oxygenated fuel program, starting in 1992).

## **Need for Maintenance Plan**

### Environmental Protection Agency Redesignation Requirements

In order for the Environmental Protection Agency (EPA) to redesignate the Medford area from nonattainment to attainment, EPA requires an enforceable plan demonstrating how the area will continue to meet the CO standard for a minimum of ten years. The plan must show that future CO emissions will not exceed the attainment year level and also demonstrate that localized concentrations of CO at high-volume traffic intersections will continue to meet CO National Ambient Air Quality Standards.

### Benefits of Maintenance Plan

An EPA-approved CO maintenance plan and redesignation to attainment will provide the following benefits:

Assurance that public health will be protected from adverse impacts of CO;

Assurance that regulatory limits, expectations and conditions will be known for at least the next ten years;

Removal of industrial growth impediments (Lowest Achievable Emission Rate—LAER control technology);

Protection against Federal Clean Air Act sanctions on federal transportation funds.

## **Maintenance Plan Development Process**

The DEQ primarily relied on the Rogue Valley Council of Governments long-range Regional Transportation Plan (RTP) forecast for the Medford area and the deliberations of the Medford-Ashland Air Quality Plan Advisory Committee to develop the CO maintenance plan provisions. The Committee endorsed the growth forecast contained in the RTP. Since the area covered by the RTP is larger than the area encompassed by the Medford UGB, the RTP growth projections were scaled to the UGB on the basis of land use and zoning data. The Medford UGB was estimated to have a population of 55,845 in 1993. Based on the long-range forecast, the Medford UGB population is expected to grow to approximately 82,100 by 2015 (2.1 percent per year). By contrast, travel growth (at 2.9 percent per year) is projected to be significantly higher than the rate of population growth. The population and travel growth trends are shown graphically in Attachment 1.



The Medford-Ashland Air Quality Plan Advisory Committee (AQPAC) recommended the following key provisions:

- Continue the existing motor vehicle inspection program
- Continue the wintertime oxygenated fuel program<sup>1</sup>
- Implement a Plant Site Emissions Limit management program
- Amend existing New Source Review regulations
- Utilize a contingency plan that calls for implementation of additional measures to reduce CO, if necessitated by future elevated levels of the pollutant.

In addition, RVCOG reviewed and made recommendations on the plan and the transportation emissions budget reflected by the plan. The emissions budget will be the benchmark for future transportation conformity determinations.

### **Maintenance Plan Summary**

#### Projections of Future CO Levels

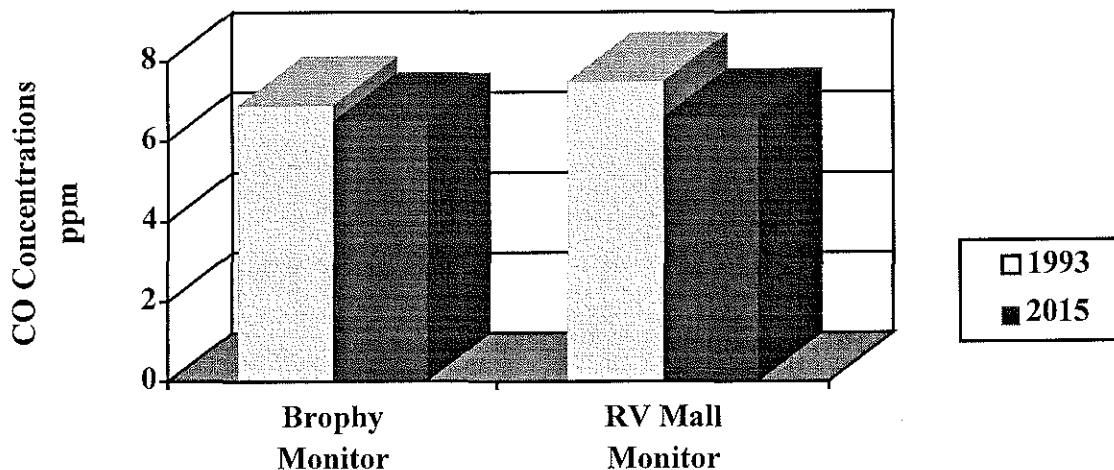
Motor vehicle CO emission controls are projected to be increasingly effective in future years. The fleet average emission rate is expected to *decrease* by 37 percent from 1993 to 2015. However, the expected travel growth will largely overtake the improvement in motor vehicles, so motor vehicle emissions are projected to stay at nearly the same level through 2015. The combined effect of the Committee-recommended strategies is to keep total CO emissions in 2015 below the 1993 attainment level, thus, meeting one of the EPA maintenance plan tests. Total CO emissions between 1993 and 2015 are shown in Attachment 2.

The Department projected continued compliance with the 8-hour CO standard through the winter of 2014/15. The existing and projected 8-hour CO concentrations at the DEQ CO monitoring sites at high-volume traffic intersections are shown in Figure 2.

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<sup>1</sup> The Committee recommended continuation of oxygenated fuel until the Environmental Protection Agency's new Mobile 6 motor vehicle emissions model could be analyzed and the emission inventory reevaluated. The reevaluation was expected to occur in 1999 with review by the RVCOG policy board to decide whether the oxygenated fuel program should be continued.

Figure 2: 8-Hour CO Concentrations for Monitored Hot Spots



#### Federal New Car Program

The federal new car program has been and will continue to be the most effective CO emission reduction strategy. In contrast to other pollutants, vehicle CO emission controls have not experienced much deterioration of performance with increased age and mileage. An additional 37 percent reduction in the fleet average emission rate is expected between 1993 and 2015. Expected improvements in CO emission control technology include heated catalysts which will help reduce the higher emissions from cold starts.

#### Motor Vehicle Inspection Program

The basic vehicle inspection program will continue to operate. Gasoline powered and light duty diesel vehicles up to 20 years old and registered within the boundaries of the Medford-Ashland Air Quality Maintenance Area are subject to emissions testing and inspection at the time of registration renewal. This program, operating since 1986, has been effective in reducing CO pollution by promoting proper maintenance. The standards used in the program were selected on the basis of identifying high emitting vehicles that are operating outside their design limits. The standards and associated enforcement tolerances take into account a limited amount of engine wear and tear, but are not so lenient that "gross emitting" vehicles would pass an emissions test.

### Oxygenated Fuels

The 1990 Federal Clean Air Act Amendments required the Medford area to implement an oxygenated fuel program to control CO, because the area was still designated nonattainment for the standard. The program was first implemented in 1992. The Department projected that oxygenated fuels accounted for a reduction of 3,300 tons of CO per day in 2015. With oxygenated fuel required through 2015, total CO emissions in 2015 would meet the EPA emissions test by a three percent margin. In order for the Medford area to have flexibility to eliminate the oxygenated fuel program, an additional reduction in motor vehicle emissions of approximately 20 percent would be needed.

### PSEL Management Program

Recent EPA guidance allowed for demonstration of maintenance of the CO standard using point source projections of actual emissions, rather than maximum allowable emission limits. Based on this guidance, this control strategy will require the Department to annually review point source emissions reports to determine that total emissions in that year have not exceeded projected actual emissions in 2015, the maintenance year. If the allocation is exceeded the Department is committed to convene a process to identify whether additional control strategies are needed.

### CO Emissions Budget

Transportation conformity regulations, required by the 1990 Federal Clean Air Act Amendments, provide for the creation/identification of motor vehicle emissions budgets in the State Implementation Plan (SIP). Emissions budgets establish a cap on emissions that may not be exceeded by predicted motor vehicle emissions. In the Medford area, RVCOG forecasts motor vehicle emissions as part of periodically updating the long-range, regional transportation plan (RTP) and the Transportation Improvement Program (TIP). RVCOG's emission forecast must be equal to or less than the SIP emissions budget(s).

### Contingency Plan Elements

The maintenance plan must contain contingency measures that would be implemented either to prevent or correct a violation of the CO standard after the area has been redesignated to attainment. The Clean Air Act requires that measures in the original attainment plan be reinstated if a violation occurs. Under the contingency plan, adopted by the Advisory Committee, the DEQ would convene a planning group if the validated second highest (within one calendar year) 8-hour CO concentration equals or exceeds 8.1 ppm (90 percent of the 8-hour CO standard). A range of actions would be considered for implementation, each one designed to preserve air quality. However, if a violation of the 8-hour CO standard were to

occur, control measures that would be restored include Lowest Achievable Emission Rate (LAER) requirements plus offsets for major new and modified industrial sources and oxygenated fuels, if they are eliminated in the future.

### **Authority of the Commission with Respect to the Issue**

The Commission's authority for action on this issue is contained in Oregon Revised Statutes (ORS) chapter 468A which gives the Commission the power to adopt plans and programs to achieve and maintain federal and state ambient air quality health standards.

### **Alternatives and Evaluation**

The wintertime oxygenated fuel program has been somewhat controversial, generating letters from southern Oregon elected officials in opposition to the program. The letters have specifically cited health concerns stemming from the use of an EPA-approved oxygenate, methyl tertiary butyl ether (MTBE). The governor and the Department have responded by acknowledging the health concern, but also informing the officials that MTBE is not dispensed in the oxygenated fuel control areas in Oregon during the wintertime. None of the fuel blenders in the State registered for MTBE, and the service station sampling conducted by the Department has not found any MTBE in gasoline for the last two winter seasons. Ethanol is the oxygenate of choice in Oregon for blending with clear gasoline, primarily due to its superior economics. This situation is not likely to change, unless the price of ethanol were to increase substantially.

The Department does not routinely test for MTBE in the Leaking Underground Storage Test (LUST) program, but has reported findings of MTBE (through voluntary testing) at LUST sites in the Western Region (none in the Medford area). These findings are probably the result of past refinery blending practices in making gasoline. As lead began to be phased out of gasoline in the early 1980s, refiners began to use MTBE to enhance octane. Based on this fact and the fact that two of the LUST sites predated the oxygenated fuel program, MTBE contamination most likely resulted from its past use as an octane booster.

The Clean Air Act limits the ability of states to control fuels and fuel additives. In general, states are not able to prohibit a fuel additive otherwise approved for use by the EPA. In order for a state (where oxygenated fuel is required by the Clean Air Act) to ban MTBE, EPA would have to promulgate a ban on its use. MTBE has become a health concern in California, because some municipal water supplies have been contaminated from leaking storage tanks. Also, MTBE has been detected in some recreational bodies of water in California. MTBE is widely used by California refiners to meet the California reformulated gasoline requirements on a year-round basis. The State of California is investigating the possible health impacts involved with the use of

MTBE. A comprehensive report to the California State Legislature is expected to be made by the end of 1998. EPA is also conducting research related to the impact of MTBE on ground/drinking water, assessing the occurrence and distribution of MTBE in twelve northeastern states. The Department intends to monitor closely EPA's and California's deliberations on MTBE.

During the plan development, the Department examined alternative emission reduction strategies to provide the Medford-Ashland AQPAC options on whether to continue the wintertime oxygenated fuel program. The Department determined that the implementation of an enhanced motor vehicle inspection program would make up for reductions from the oxygenated fuel program. However, this measure was not supported by the Committee.

The Department informed the Committee of another possible route for flexibility on oxygenated fuel related to EPA's release of the new Mobile6 motor vehicle emission factor program. Preliminary indications were that the new model could show significantly less CO emissions for future years, due to better than expected emissions durability of the latest generation of light duty vehicles. The difference in forecast CO emission levels between the new Mobile6 and the current Mobile5 could be of sufficient magnitude to keep 2015 CO emissions below the 1993 attainment level without oxygenated fuel. When this information was presented to the Committee in November 1997, the Mobile6 model appeared to be headed toward release in 1998, allowing for reevaluation during the early stage of EPA's completeness review. The Committee, therefore, recommended continuation of oxygenated fuel in the CO maintenance plan until the new Mobile6 program could be analyzed and the Medford CO emission inventory reevaluated. The Committee directed the Department to provide the results of the evaluation to the Rogue Valley Council of Governments Policy Board. The Board was then expected to make a recommendation back to the Department on whether to continue the oxygenated fuel program. The Department recently learned that the time table for release of the Mobile6 model has been delayed until Fall 1999. The release now will likely occur in the latter stages of EPA's review and approval of a plan submittal.

### **Summary of Public Input Opportunity**

The CO maintenance plan was developed over an extended period of time, starting with the February 26, 1997, Medford-Ashland AQPAC meeting. After the initial February 1997 meeting there were seven additional meetings with CO related agenda items. All the AQPAC meetings were publicly advertised. A public workshop (open house format) was held on April 8, 1998. Following the workshop, the Committee endorsed the draft CO maintenance plan and the revised particulate plan, considered together, on a vote of seven to three at the Committee's April 9, 1998, meeting. The dissent appeared to be directed at the particulate plan, with some members wanting more time to include additional measures in that plan.

### **Conclusions**

The Medford area has the necessary attainment monitoring data, and the Department has assembled the necessary maintenance plan documentation to allow the Medford area to be redesignated as an attainment area for CO by EPA. The proposed control strategies will provide for attainment through the winter season of 2014/2015. The continuation of the oxygenated fuel program has been the major issue. After examining alternative courses of action, the Medford-Ashland Air Quality Plan Advisory Committee recommended continuation of the program until such time as the Department could reevaluate the need for the program using EPA's updated Mobile6 emission factor program, expected to be released in 1999.

### **Intended Future Actions**

The Air Quality Division will take public testimony on the CO maintenance plan at the June 11, 1998, Commission meeting after 6:00 P.M. There will also be a chance for the public to comment at an evening hearing in Medford on June 16, 1998. This would allow for the CO maintenance plan State Implementation Plan revision to be considered for adoption at the August 6/7, 1998, Commission meeting.

### **Department Recommendation**

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

### **Attachments**

- 1) Medford Traffic Grows Faster than Population 1990-2015
- 2) Medford CO Emission Growth from 1993 to 2015

Memo To: Environmental Quality Commission  
Agenda Item L, EQC Meeting Page 10

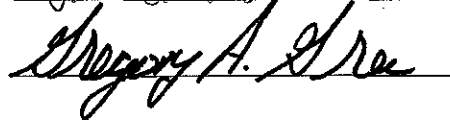
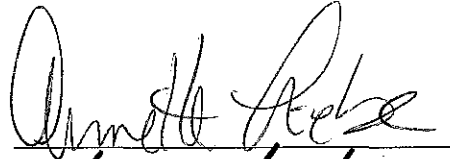
Reference Documents (available upon request)

RVCOG Regional Transportation Plan  
Medford-Ashland Air Quality Advisory Committee Meeting Agendas

Approved:

Section:

Division:

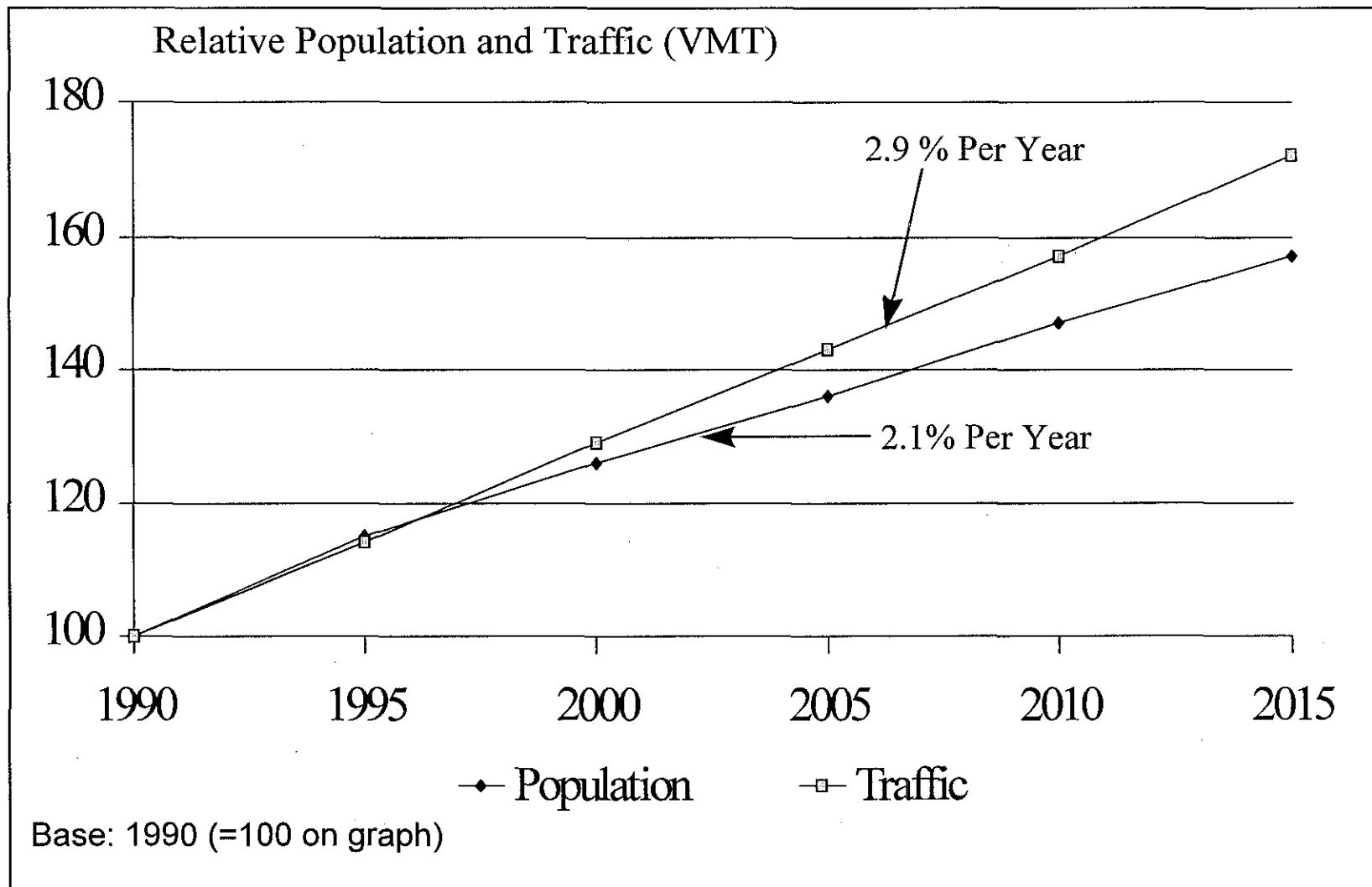


Report Prepared By: Howard Harris

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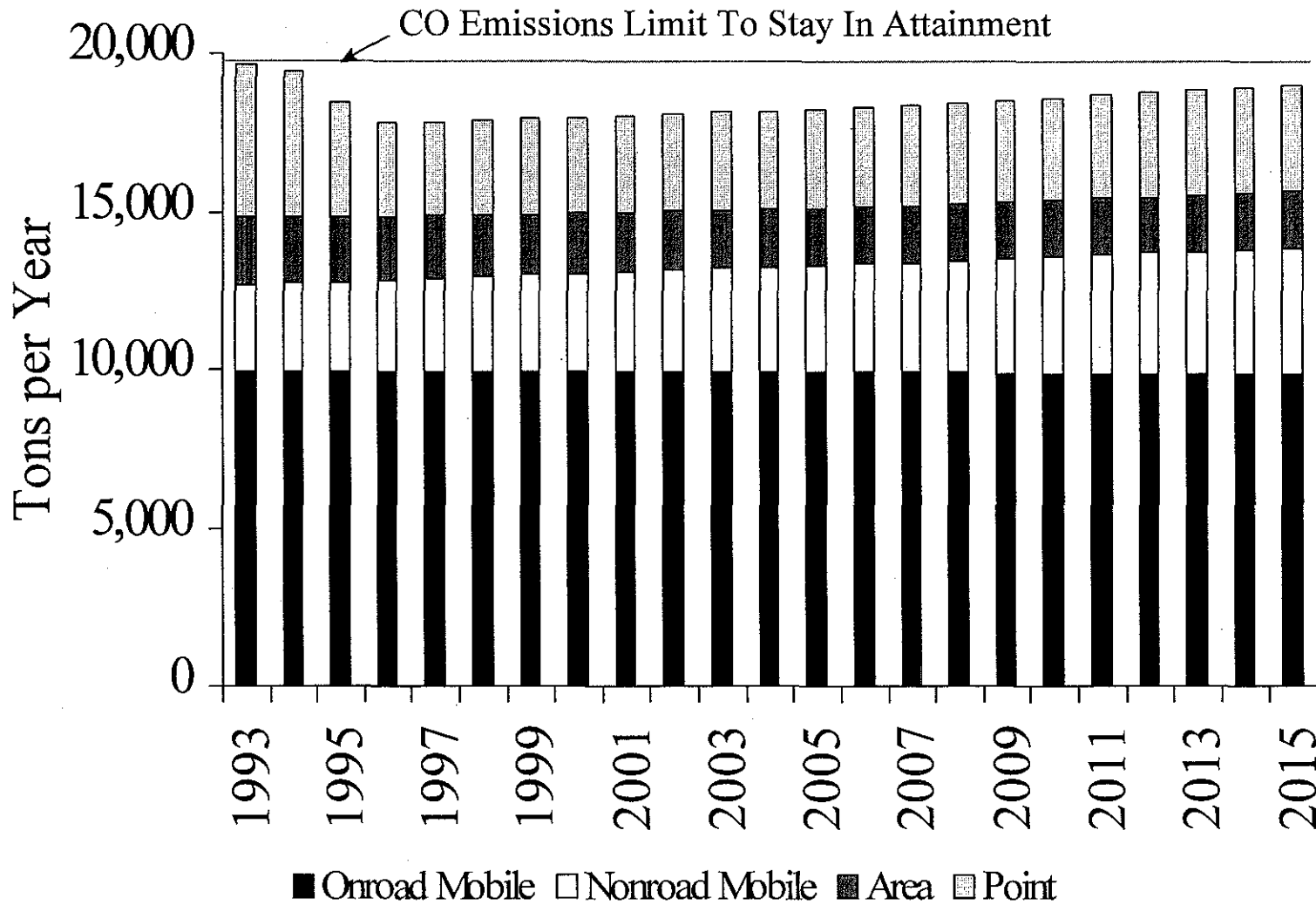
Date Prepared: May 28, 1998

# Medford Traffic Grows Faster Than Population 1990-2015






# Medford CO Emission Growth from 1993 to 2015



State of Oregon  
Department of Environmental Quality

Memorandum

Date: 5/28/98

To: Environmental Quality Commission  
From: Langdon Marsh, Director   
Subject: Agenda Item m, June 12, 1998, EQC Meeting

**Statement of Purpose**

In July of 1995, the EQC adopted a modified compliance schedule as a way to meet nonpoint source Total Maximum Daily Loads (TMDL) requirements in the Bear Creek watershed. This schedule set out tasks for Designated Management Agencies (DMA's)\* to accomplish and a timeline for completion. This informational update is a report to the commission on what progress has occurred, and what future steps are contemplated.

\* DMA's are:

Oregon Department of Agriculture, Oregon Department of Forestry, Jackson County, City of Ashland, City of Central Point, City of Jacksonville, City of Medford, City of Phoenix, and the City of Talent

**Background**

In 1989 TMDL limits were set for Bear Creek. The documented water quality limitations were dissolved oxygen, ph and toxicity which resulted in both point and nonpoint TMDL's for total phosphate, five-day biological oxygen demand, ammonia and chlorine. A compliance schedule for dealing with nonpoint sources of these pollution parameters was adopted by the commission in 1992. The schedule was amended by the commission in 1995.

The 1995 compliance schedule predates the 1994/96 Clean Water Act 303(d) list updates, federal endangered species listings for Coho throughout the Rogue River basin and the movement of state agencies towards watershed management under the Oregon Plan for Salmon and Watersheds. Even though "times have changed", the work done under the Bear Creek nonpoint source plan serves as a solid foundation for these additional challenges. The DMAs have demonstrated that strategy and action can be coordinated and administered at a local level to deal with water quality problems. They have also demonstrated that they can work together to develop cooperative approaches to improve water quality.

**Authority of the Commission with Respect to the Issue**

The commission adopted a compliance schedule in 1992 and readopted a modified schedule in 1995 which required action by local DMA's to reduce nonpoint source within the Bear Creek valley.

**Intended Future Actions**

It is intended for future nonpoint source work in Bear Creek to be coordinated under an EPA approved Water Quality Management Plan (WQMP) that meets the requirements of a TMDL. The WQMP will fold in subsequent 303(d) listings, as well as provide for effectiveness monitoring to measure progress towards improved water quality and support of beneficial uses in the basin. Local stakeholders will be involved through the core DMA group, the Bear Creek Watershed Council and the Rogue Valley Council of Governments. The department will be involved through the Healthy Streams Partnership staff, and will insure that the Bear Creek basin WQMP will be acceptable as a TMDL, and that plan elements relate to measurable improvements to water quality.

**Department Recommendation**

The Bear Creek DMAs have made excellent overall progress towards meeting the requirements of the 1994 compliance schedule. The department recommends that the DMAs be recognized on their progress so far, and offered encouragement to continue their efforts

Additional 303(d) listings and federal requirements under the endangered species act now need to be addressed within the Bear Creek watershed. The department further recommends that these water quality planning and future task implementations be met through a basin-wide water quality management planning process.

**Attachments**

- 1) 1995 Bear Creek Nonpoint Source Compliance Schedule (Adopted by EQC, July 1995)
- 2) Executive Summary of progress in meeting the 1994 Compliance Schedule.

\*\*\*\*\*

**The Rogue Valley Council of Governments is preparing this document for the Bear Creek DMAs - I will forward as soon as it is complete.**

\*\*\*\*\*

- 3) Notebook with detailed documentation on DMA activities per the 1994 Compliance Schedule (This will be formally presented to the Commission from the DMAs during the Nonpoint Source presentation on Friday June 12, 1998).

**Reference Documents (available upon request)**

- 1) "Guidance for Developing Water Quality Management Plans that will Function as TMDL's for Nonpoint Sources" (DEQ Water Quality Division, 11/1/1997)

Approved:

Section: \_\_\_\_\_

Division: \_\_\_\_\_

Report Prepared By: Gary Arnold

Phone: 541-686-7838 Ex 247

Date Prepared: 5/11/98

Bear Creek Basin Nonpoint Source Management  
Implementation and Compliance Schedule for  
Designated Management Agencies (DMAs)

Urban DMAs:

City of Ashland  
City of Central Point  
City of Jacksonville  
City of Medford  
City of Phoenix  
City of Talent

Rural DMAs:

Oregon Dept. of Agriculture  
Oregon Dept. of Forestry  
Jackson County

The dates specified below assume adoption of the compliance schedule by the EQC at the July 7, 1995 Commission meeting. Dates were established to allow for necessary consultation with the respective Councils of the DMAs. Any delays in EQC action or changes in dates will be communicated to the DMAs in writing. The dates are due dates by which the specified action and/or report is to be completed and, if required, submitted to the Department. All due dates are the last day of the month specified in the schedule below.

**TASKS FOR ALL DMAs**

**DATE**

**TASK**

**MONITORING**

Complete

Submit to DEQ an acceptable ambient monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, and quality assurance mechanisms. The ambient effort is intended to characterize the conditions in Bear Creek and its tributaries.

Complete

Submit a draft plan to DEQ for comment and begin implementation. Identify budgets necessary to carry out the plan and document availability of resources. There should be at least a sub-set of sites at which each of the following parameters are measured on at least a quarterly basis (preferably more frequently to provide sufficient data for assessing trends): phosphorus, dissolved oxygen, pH, bacteria, and temperature.

6/30/97 \*\*\*

Continue to implement monitoring efforts while finalizing monitoring plan. After the final plan is submitted, monitoring will be on-going but the monitoring program is expected to evolve over time. Data should be evaluated on an annual basis. Results of data evaluation may be used to justify changes to the monitoring plan. Implementation of the monitoring plan may occur in phases so long as there is at least a sub-set of sites that are sampled regularly for the parameters listed above and that can be used for trending. DEQ staff will be available to assist with development of the plan and with data evaluation. DEQ may also assist with implementation by providing partial funding and/or laboratory services. But the responsibility to insure that the minimum monitoring requirements are met lies with the DMAs.

9/30/95

Submit to DEQ an acceptable stormwater monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, and quality assurance mechanisms. The stormwater monitoring effort is intended to characterize the nature of effluent discharging from storm sewers to Bear Creek and its tributaries. At a minimum this effort should include a representative sampling of effluent from flowing storm sewers during wet weather and during dry weather from any storm sewers found to have dry season flows. Parameters analyzed for should include phosphorus, BOD, pH, and bacteria.

#### **PUBLIC AWARENESS**

Complete

Develop and submit to DEQ draft, detailed, written public awareness plan. The plan should reflect a coordinated, basin-wide effort that includes activities for all DMAs. The plan should identify specific activities/products and schedules which will be implemented prior to 12/94. The strategy should include such things as: developing exhibits that can be placed in shopping malls, colleges, area banks, etc., media involvement -- participation in local talk shows, generation of news stories, a series of well publicized public seminars, a system for receiving public feed-back. Identify budgets and schedules, document availability of resources. In addition, identify any optional activities/products to be implemented prior to 12/94 and activities/products which will be on-going.

11/30/95 Submit a final acceptable public awareness plan.

6/30/97 \*\*\* Implement the accepted public awareness plan. Submit copies of all printed public awareness/education materials to DEQ as they are produced.

### STREAM INVENTORIES

6/30/96 Conduct a problem inventory of high priority sections of Bear Creek and its tributaries within the jurisdiction. This can be done using streamwalk methods, aerial evaluation, or other methods. Submit a report to DEQ which identifies and sets priorities for problems/locations identified that need attention/resolution. The report should include recommended course of action and schedule for action. Include such items as streambank erosion sites, pipes of unknown origin discharging to stream, illegal dump sites, sites where re-vegetation is needed, etc.

Complete Identify areas of responsibility for each DMA.

11/30/95 Prioritize stream segments for inventorying.

6/30/96 Complete streamwalk/inventory for high priority segments. Submit report described above to DEQ.

1/31/97 Begin addressing problems identified and complete inventories for remaining segments. Submit report to DEQ identifying problems that have been addressed and schedule for addressing remaining problem sites.

6/30/97 \*\*\* Continue addressing problem sites identified. Periodically update DEQ on progress towards addressing problem sites.

### LOCAL ORDINANCES

1/31/97 Review existing ordinances and, if necessary, revise or adopt new ordinances to minimize the movement off site of soil, sediment, and contaminated runoff from development sites, building sites, agricultural operations, road building sites, or other sites where soils

have been disturbed. Emphasis should be on prevention of erosion, rather than on control after the fact. Encourage the installation of permanent runoff treatment systems for new development.

Complete Compile existing ordinances and provide to DEQ for comment. DEQ will comment on existing ordinances by June 30, 1995.

Conduct public hearings on new or modified local ordinances. Report to DEQ.

1/31/97 Adopt and enact new or modified local ordinances as necessary. Report to DEQ.

#### **ADDITIONAL PRACTICES**

11/30/96 Identify any other options, alternatives or BMPs and select those to be implemented. Develop implementation schedules for meeting TMDL requirements and maintenance of water quality. This may include, but is not limited to: selection of practices, sites and schedules for construction of treatment facilities (including pilot projects), selection and implementation schedules for flow augmentation options or irrigation conversions, or other options or BMPS.

Final decision for large capital improvement projects/construction of treatment facilities may be delayed until the impact on Bear Creek of the construction of modifications to the Ashland sewage treatment plant have been evaluated and TMDLs adjusted accordingly. However, an acceptable and firm schedule for making decisions should be identified and submitted to DEQ.

#### **TASKS FOR URBAN DMAs**

##### **DATE**

##### **TASK**

#### **STORM SEWER SYSTEMS**

11/30/96 Investigate design and conditions of storm sewer system. Identify problems, develop a plan to address the identified problems, and implement the plan. Report to DEQ.

Complete Develop and refine storm sewer maps. Submit copies to DEQ.



- 1/31/96 Survey storm sewers for dry weather flows. If such flows are found, identify the sources and determine whether corrective actions are necessary. Set priorities and begin implementation of corrective actions. Report status to DEQ.
- Complete Develop and/or refine an inspection and maintenance program for the storm sewer system. Include regular cleaning of drains and catch basins.
- 11/30/96 Complete implementation of necessary corrective actions. Report on actions taken.

Note: Federal guidance for NPDES stormwater requirements (including monitoring requirements) for municipalities under 100,000 in population has not yet been developed. When the rules are promulgated, the above tasks will be re-evaluated by the Department, and any conflicts between the above tasks and the federal regulations will be rectified.

**TASKS FOR AGRICULTURE DMAs**

<u>DATE</u>	<u>TASK</u>
	<b>CAFO</b>
6/30/96	Complete inspections of all permitted CAFOs and, if needed, develop enforceable schedules that will result in all CAFOs being in compliance with permit conditions. Report to DEQ identifying all permitted CAFOs, their compliance status, and all actions taken or to be taken.
Complete	Conduct aerial surveys. Report to DEQ.
8/95	Conduct on-ground follow-up inspections.
11/30/95	Submit report to DEQ identifying all permitted CAFOs and their compliance status, and all actions taken or to be taken.
6/30/96	Develop enforceable schedules for all permitted CAFOs not in compliance with permit conditions or water quality rules that will result in compliance.

## AGRICULTURAL WATER QUALITY MANAGEMENT PLAN

9/30/96                      Develop an Agricultural Water Quality Management Plan for the Bear Creek basin to prevent and control water pollution from agricultural activities and soil erosion, and to achieve the water quality goals (e.g. TMDLs) and standards needed to protect the beneficial uses of Bear Creek and its tributaries (ORS 568.900-933, OAR Chapter 603, Div. 90). The plan shall include a schedule for implementation. The plan shall address non-permitted CAFOs and other agricultural activities causing or contributing to water quality problems in Bear Creek or its tributaries.

### NURSERIES

Complete                      All containerized nurseries inspected, during the irrigation season, to determine compliance with container nursery requirements. Report to DEQ identifying status of all container nurseries.

### TASKS FOR JACKSON COUNTY

DATE                              TASK

#### SEPTIC SYSTEMS

6/30/96                      Develop and begin implementation of a program to identify and correct failing septic systems. Submit a report to DEQ identifying the program elements, schedule, budget requirements, and documentation of availability of resources.

#### COUNTY ROAD DITCHES

1/31/96                      Develop and begin implementation of a program to maintain county roadside ditches in such a way to minimize transport of sediment, nutrients, and other pollutants to waters of the state. Include provisions for testing of effective vegetative cover(s) to be planted on county road right-of-ways. Where possible, convert ditches to vegetated swales and direct road ditch discharges into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) prior to entering waters of the state. Examine whether current

herbicide application can be minimized. Submit an acceptable report to DEQ identifying the program elements, schedule, budget requirements and documentation of availability of resources.

1/31/97

Report to DEQ on the effectiveness of program implementation to date, and additional ditch maintenance practices developed.

\*\*\* These tasks are expected to be ongoing beyond June 30, 1997, but progress will be evaluated at this time. The tasks are expected to continue until the TMDLs and water quality standards are achieved and beyond, at some level, in order to maintain that achievement.

# BEAR CREEK BASIN TMDL

## Executive Summary.

May 22, 1998

In 1995 the Environmental Quality Commission adopted a modified implementation and compliance schedule which required action by local DMAs to reduce nonpoint source pollution within the Bear Creek Valley. Listed below is the 1995 implementation and compliance schedule with a brief summary of projects completed by the DMAs to meet the requirements of the schedule. Full descriptions of the summary project results will be available in an expanded document to be distributed at the June 12, 1998 meeting with the Environmental Quality Commission.

### 1) MONITORING:

a) Submit to DEQ an acceptable ambient monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, methods of reporting results to DEQ, and quality assurance mechanisms. The ambient effort is intended to characterize the conditions of Bear Creek and its tributaries.

#### Completed:

Water quality monitoring program has 462 regularly scheduled samples per year plus hotspot monitoring upon request. (*9 ambient monitoring sites (1/month), 17 TMDL monitoring sites (2x/month), 16 storm drain sites (3x/year).*)

DEQ approved procedures for water quality monitoring are used.

Quality Assurance - Quality Control plan established and currently under review with DEQ.

Established yearly calendar to report analysis results to DEQ.

b) Submit a draft plan to DEQ for comment and begin implementation. Identify budgets necessary to carry out the plan and document availability of resources. There should be at least a sub-set of sites at which each of the following parameters are measured on at least a quarterly basis (preferably more frequently to provide sufficient data for assessing trends): Phosphorus, dissolved oxygen, pH, bacteria, and temperature.

#### Completed:

Budgets for testing program administered by RVCOG have been identified and met. Program currently has full participation from all DMAs which collectively contribute \$32,000 /yr. Additional matching funds are generated from other sources.

Lab space has been provided free of charge by the City of Medford.

Current analytical capacity of the program includes: pH, Dissolved Oxygen, Conductivity, Continuous Temperature Monitoring, Total Phosphorous, Ammonia-nitrogen, Turbidity, Fecal Coliform, Total Suspended Sediment, biological Oxygen Demand (BOD5), Flow.

c) Continue to implement monitoring efforts while finalizing monitoring plan. After the final plan is submitted, monitoring will be on-going but the monitoring program is expected to evolve over time. Data should be evaluated on an annual basis. Results of data evaluation may be used to justify changes to the monitoring plan. Implementation of the monitoring plan may occur in phases so long as there is at least a sub-set of sites that are sampled regularly for the parameters listed above and can be used for trending. DEQ staff will be available to assist with development of the plan and with data evaluation. DEQ may also assist with the implementation by providing partial funding and/or laboratory services. But the responsibility to insure that the minimum monitoring requirements are met lies with the DMA's.

**Completed:**

Program has grown yearly in both the types of and sophistication of analysis and the number of sites. Water quality monitoring program has 462 regularly scheduled samples as per above. DEQ works with RVCOG to analyze the data and present the results. Hot spot monitoring upon request to investigate water quality problems on behalf of the DMAs. DEQ and RVCOG annually evaluate the results of the water quality monitoring program. Adjustments are made to the program as needed.

d) Submit to DEQ an acceptable storm water monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, and quality assurance mechanisms. The storm water monitoring effort is intended to characterize the nature of effluent discharging from storm sewers to Bear Creek and its tributaries. At a minimum, this effort should include a representative sampling of effluent from flowing storm sewers during wet weather and during dry weather from any storm sewers found to have dry season flows. Parameters analyzed for should include phosphorus, BOD, pH, and bacteria.

**Completed:**

Storm drain sampling plan approved by DEQ.  
Summary Storm drain report for 1997/1998 water years completed and submitted to DEQ and DMAs. An annual reporting calendar has been formalized with DEQ.  
2 wet seasons and two dry seasons have been monitored as part of the storm drain sampling program; 16 sites, 3 times per year (2-4 sites per DMA).  
Storm Sewer maps have been received from each DMA (see *Storm Drain Systems* on page 4).  
Parameters analyzed for storm drain studies include: pH, conductivity, turbidity, BOD5, temp, flow, PO4-P, fecal coliform.

**2) PUBLIC AWARENESS**

a) Develop and submit to DEQ draft, detailed, written public awareness plan. The plan should reflect a coordinated basin-wide effort that includes activities for all DMAs. The plan should identify specific activities/products and schedules which will be implemented prior to 12/94. The strategy should include such things as: developing exhibits that can be placed in shopping malls, colleges, area banks, etc., media involvement -- participation in local talk shows, generation of news stories, a series of well publicized seminars, a system for receiving public feedback. Identify budgets and schedules, document availability of resources. In addition, identify any optional activities/products to be implemented prior to 12/94 and activities/products which will be on-going. b) Submit a final acceptable awareness plan c) Implement the accepted public awareness plan. Submit copies of all printed public awareness/education materials to DEQ as they are produced.

**Completed:**

Public awareness plans completed with input from all DMAs and submitted to DEQ in 1995 and 1998. Awaiting review and approval of plans.  
\$93,000 received in competitive grants in support of education program 1997-98 (\$69K grant EPA, \$24K GWEB).  
Governor Kitzhaber presented an award to program for Bear Creek, May 1998: *best government agency organized cleanup project 1997 from SOLV (Stop Oregon Litter and Violence)*.  
Governor Kitzhaber visited the our education program in the Rogue Valley in February 1998.  
2 educational videos currently in production: Storm Drain Stenciling & Bear Creek Stewardship overview.

Training Workshops being held for watershed groups in conjunction with DEQ: 1 in 1997, 4 in 1998. All DMAs participating in the education effort. The education program included over 20 schools and 100 teachers and students. Many schools have adopted a creek or creek segment and do annual cleanups, water quality monitoring and other education activities. DEQ receives copies of all education materials as part of our reporting.

### **3) STREAM INVENTORIES**

**a)** Conduct a problem inventory of high priority sections of Bear Creek and its tributaries within the jurisdiction. This can be done using streamwalk methods, aerial evaluation, or other methods. Submit a report to DEQ which identifies and sets priorities for problems/locations identified that need attention/resolution. The report should include recommended course of action and schedule for action. Include such items as streambank erosion sites, pipes of unknown origin dumping into the stream, illegal dump sites, sites where re-vegetation is needed.

**Completed:**

Jackson and Griffin Creeks identified as priorities by DEQ & TMDL Committee.  
Larson Creek identified as priority creek by RVCOG and North Medford High School.  
Roca Creek identified as priority creek by the city of Ashland.  
Creeks in agricultural zone prioritized by RVCOG using an air photo interpretation method.  
Flow study currently being completed to identify flows and pollutant loadings.  
Agriculture has identified 4 tributaries for water quality studies in 1998 & 1999.

**b)** Identify areas of responsibility for each DMA.

**Completed:**

RVCOG performs initial investigation, hotspot checking to establish the presence and type of problem that exists.  
Each DMA is individually responsible for acting on information gained and taking corrective measures.

**c)** Prioritize stream segments for inventory.

**Completed:**

Current priority streams identified by DEQ for urban DMAs.  
Priorities for the agricultural zone identified in SB1010 plan and determined by Local Agricultural Committee through results of an air photo study.  
Additional priorities will be set using the results of flow/loadings study.  
Through the TMDL committee we will be addressing a minimum of two streams per year.

**d)** Complete streamwalk/inventory of high priority segments. Submit report described above to DEQ.

**Completed:**

Griffin Creek inventory nearing completion.  
Jackson Creek has been begun and is partially completed.  
The urban DMAs have inventoried areas within city limits.

**e)** Begin addressing problems identified and complete inventories for remaining segments. Submit report to DEQ identifying problems that have been addressed and schedule for addressing remaining problem sites.

**Completed:**

27 miles of Bear Creek trash/debris removed (217 cubic yards), larger debris location recorded, report issued to DMAs/DEQ.

Yearly or twice yearly public cleanup events on Bear Creek.

Coho and Steelhead plans established for Southwest Oregon.

Bureau of Reclamation and US Forest Service projects to promote wetlands treatment.

Restoration/hazard mitigation work on Roca Creek funded by the city of Ashland and 319 grant.

Wetlands Park project in City of Talent and North Mountain Park in the City of Ashland.

f) Continue addressing problem sites identified. Periodically update DEQ on progress towards addressing problem sites.

**Completed:**

A team of Oregon State University students is currently being interviewed to continue the stream inventory program.

Ongoing meetings and reports issued to DEQ.

**4) LOCAL ORDINANCES**

a) Review existing ordinances and, if necessary, revise or adopt new ordinances to minimize the movement off site of soil, sediment, and contaminated runoff from development sites, or other sites where soils have been disturbed. Emphasis should be on prevention of erosion, rather than on control after the fact. Encourage the installation of permanent runoff treatment systems for new development) Compile existing ordinances and provide to DEQ for comment. DEQ will comment on existing ordinances by June 30, 1995. c) *1998-99 project* Conduct public hearings on new or modified local ordinances. Report to DEQ.

d) *1998-99 project* Adopt and enact new or modified local ordinances as necessary. Report to DEQ.

**Completed:**

Ordinance review performed and sent to DEQ 1995.

Ordinance review repeated February 1998. Results presented in February 1998 at a public meeting which included planning commissioners, city council members, commissioners, planning staff and public works staff for all jurisdictions.

Working with DEQ staff and DMAs to develop model track-out ordinances which addresses both air and water quality concerns.

**5) ADDITIONAL PRACTICES**

a) Identify any other options, alternatives or BMP's and select those to be implemented. Develop implementation schedules for meeting TMDL requirements and maintenance of water quality. This may include but is not limited to: selection of practices, sites and schedules for construction of treatment facilities (including pilot projects), selection and implementation schedules for flow augmentation options or irrigation conversions, or other options or BMP's.

**Completed Report Items:**

Through the TMDL and the Bear Creek Watershed Council a number of projects have been facilitated: Roca Creek project, PL566 program identified irrigation projects, Jackson Street Dam Removal, flow study 1994 & 1998, 319 projects that have targeted 303d listed parameters with DMAs, wetlands project at the Forest Service nursery, wetlands in the city of Phoenix, North Mountain park in Ashland and others (additional projects listed in public awareness plan).

## Tasks for Urban DMAs

### 6) STORM SEWER SYSTEMS

a) Investigate design and conditions of storm sewer system. Identify problems, develop a plan to address the identified problems, and implement the plan. Report to DEQ.

**Completed:**

Storm sewer maintenance programs have been provided by each DMA.

b) Develop and refine storm sewer maps. Submit copies to DEQ.

**Completed:**

Storm drain maps have been provided to RVCOG and DEQ.

c) Survey storm sewers for dry weather flows. If such flows are found, identify the sources and determine whether corrective actions are necessary. Set priorities and begin implementation of corrective actions. Report status to DEQ.

**Completed:**

RVCOG performs storm drain testing. Each DMA is individually responsible for acting on information and taking corrective measures.

Storm drain report provided to DEQ.

d) Develop and/or refine an inspection and maintenance program for the storm sewer system. Include regular cleaning of drains and catch basins.

**Completed:**

Storm sewer maintenance programs have been provided by each DMA (see table below).

e) Complete implementation of necessary corrective actions. Report on actions taken.

**Completed:**

Extensive storm drain stenciling program undertaken annually.

Storm drain testing program began in October 1996. 1997/98 Report will aid in identifying potential problem sites.

#### Summary of storm sewer information by jurisdiction.

DMA	Maps	Plan*	Expected Completion Date	COMMENTS
Ashland	Y	No	1999	The 1985 storm drain master plan does not address many areas of current concern. An extensive update is required and will be budgeted in the future. A contractor has been selected and an updated plan will begin in November 1998.
Central Point	Y	No	Unlikely before 2000	The City of Central Point is presently in the process of revisiting how storm runoff is handled throughout the city. Intent is to perform storm drain master plan in-house within the next two years.
Jacksonville	Y	Yes	Completed 1994	1994 Storm Drainage Study (KAS Engineering). Projects identified and priorities for improvements set. System development charges used to fund improvements.
Medford	Y	Yes	Completed 1997	Master plan 1997 is completed. Annually 1/5 of piped system cleaned. Roadside ditches are cleaned 1/3 per year.
Phoenix	Y	No	FY 98/99	Presently working on drainage master plan. First step of process identified drainage basins (3/21/97) RFP for master plan will be put out soon.
Talent	Y	No	unknown	Currently trying to get storm drain planning into budget. Engineers have been working on updating storm drain maps in FY98.

\* Plans should include flood protection and address water quality and natural resources as well.



## TASKS FOR AGRICULTURE

### **7) Confined Animal Feeding Operations (CAFO)**

**a)** Complete inspections of all permitted CAFO's and, if needed, develop enforceable schedules that will result in all CAFO's being in compliance with permit conditions. Report to DEQ identifying all permitted CAFO's and their compliance status, and all actions taken or to be taken. **b)** Conduct aerial surveys. Report to DEQ. **c)** Conduct on-ground follow-up inspections. (To aerial surveys) **d)** Submit report to DEQ identifying all permitted CAFO's and their compliance status, and all actions taken or to be taken. **e)** Develop enforcement schedules for all permitted CAFO's not in compliance with permit conditions or water quality rules that will result in compliance.

#### **Completed**

ODA has performed surveys and reported to DEQ on items a-e above. Mike Wolf will speak further regarding this topic at the EQC meeting in June 1998.

### **8) AGRICULTURAL WATER QUALITY MANAGEMENT PLAN**

**a)** Develop an Agricultural Water Quality Management Plan for the Bear Creek basin to prevent and control water pollution from agricultural activities and soil erosion, and to achieve the water quality goals (e.g. TMDL's) and standards needed to protect the beneficial uses of Bear Creek and its tributaries ORS 568.900-933, OAR Chapter 603, Div. 90). The plan shall include a schedule for implementation. The plan shall address non-permitted CAFO's and other agricultural activities causing or contributing to water problems in Bear Creek or its tributaries.

#### **Completed:**

Agricultural plan for the Bear Creek basin has been completed and is currently under review with ODA. Mike Wolf will speak further regarding this topic at the EQC meeting in June 1998. A new plan is currently underway to deal with subsequent 303d listed parameters.

### **9) NURSERIES**

**a)** All containerized nurseries inspected, during the irrigation season, to determine compliance with container nursery requirements. Report to DEQ identifying status of all container nurseries.

#### **Completed:**

ODA has performed survey and reported to DEQ. Mike Wolf will speak further regarding this topic at the EQC meeting in June 1998.

## TASKS FOR JACKSON COUNTY

### **10) SEPTIC SYSTEMS**

**a.)** Develop and begin implementation of a program to identify and correct failing septic systems. Submit a report to DEQ identifying the program elements, schedule, budget requirements, and documentation of availability of resources.

#### **Completed:**

Griffin, Bear & Larson Creeks stream walks 1997/1998 included a visual inspection for septic system inputs. RVCOG is available for hotspot testing to establish the presence of fecal coliform problem. Fecal coliform reporting through local media provides resource to public for septic system related questions.

GIS maps provided by Jackson County identify septic systems county wide to allow for prioritization of inspections.

Septic system inspection plan has been compiled by Jackson County and reported to DEQ.

## **11) COUNTY ROAD DITCHES**

**a)** Develop and begin implementation of a program to maintain county roadside ditches in such a way to minimize transport of sediment, nutrients and other pollutants to waters of the state. Include provisions for testing of effective vegetative cover(s) to be planted on county road right-of-ways. Where possible, convert ditches to vegetated swales and direct road discharge into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) Prior to entering waters of the state. Examine whether current herbicide application can be minimized. Submit an acceptable report to DEQ identifying the program elements, schedule, budget requirements and documentation of available resources. **b)** Report to DEQ on the effectiveness of program implementation to date, and additional ditch maintenance practices developed.

### **Completed:**

Integrated vegetation management program has been funded at \$100K and is currently in progress. Funding was obtained through a combination of state and federal sources to implement the program on a county-wide basis.

Reports have been submitted to DEQ.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: June 1, 1998

To: Environmental Quality Commission  
From: Langdon Marsh, Director *Langdon Marsh*  
Subject: Attachment to Agenda Item M, EQC Meeting June 12, 1998

**Statement of Purpose**

This informational update is to report to the Commission on what progress has occurred on Log Pond discharges under Bear Creek TMDL and what future steps are contemplated.

**Background**

In 1989 the Environmental Quality Commission adopted OAR 340-41-385 which set instream water quality criteria within the Bear Creek subbasin (Middle Rogue) and set a deadline of December 31, 1994, to meet these instream criteria. These instream criteria are also known as the Total Daily Maximum Load (TMDL). In this section of the rules, industries permitted for log pond discharge were required to submit a program plan describing how and when they will modify their operations to comply with these instream criteria by May 25, 1998. At that time, these facilities included Boise Cascade Corporation, Kogap Manufacturing Company, and Medford Corporation. Currently, the only log pond discharge to Bear Creek is from Boise Cascade Corporation.

Boise Cascade Corporation (Boise) operates a sawmill and plywood manufacturing facility in Medford Oregon. The facility first opened in 1956. The first Waste Discharge Permit was issued in 1968. The facility currently operates under NPDES permit # 100438 issued on March 18, 1988. On May 22, 1998, Boise submitted the required program plan. This plan provided additional data and proposed amended TMDL waste load allocations (WLAs) for the log pond discharge.

In 1995, the Commission issued an Order to Boise allowing continued discharge to Bear Creek provided that:

1. Boise meets the limits and conditions in their existing permit or their renewed permit when that permit becomes effective; OR, if necessary,
2. Boise enters into a Mutual Agreement and Order (MAO) with the Department, that they meet the limits and conditions of their renewed permit as modified by the MAO, and that they comply with all provisions and schedules of the MAO.

This Order also required the Department to review the program plan and respond in writing to Boise. In 1995, the Department reviewed the program plan and agreed that the additional information justified modification to the WLAs. In 1997, the Department updated the Bear Creek computer model and modified the Bear Creek TMDL WLAs. The Department is currently in the process of incorporating the Bear Creek TMDL WLAs into the Boise Cascade NPDES permit renewal.

### **Authority of the Commission with Respect to the Issue**

The commission approved the instream criteria for Bear Creek under OAR 340-41-385 which required industries permitted for log pond discharges to submit a program plan by May 25, 1991.

### **Summary of Public Input Opportunity**

Public input will be solicited through the NPDES permit process.

### **Intended Future Actions**

The Department is drafting a NPDES permit for the Boise Cascade North Medford facility which will incorporate the program plan and therefore the instream criteria for Bear Creek.

### **Department Recommendation**

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

### **Reference Documents (available upon request)**

- 1) "Program Plan for TMDL's Bear Creek; Boise Cascade Medford Wood Products Facility", Boise Cascade, May 22, 1991
- 2) "Program Plan Review, Boise Cascade Log Pond, Medford", ODEQ, May 27, 1995
- 3) "Technical Memorandum revising TMDL for Bear Creek", ODEQ, December 18, 1997

Bear Creek Basin Nonpoint Source Management  
Implementation and Compliance Schedule for  
Designated Management Agencies (DMAs)

Urban DMAs:

City of Ashland  
City of Central Point  
City of Jacksonville  
City of Medford  
City of Phoenix  
City of Talent

Rural DMAs:

Oregon Dept. of Agriculture  
Oregon Dept. of Forestry  
Jackson County

The dates specified below assume adoption of the compliance schedule by the EQC at the July 7, 1995 Commission meeting. Dates were established to allow for necessary consultation with the respective Councils of the DMAs. Any delays in EQC action or changes in dates will be communicated to the DMAs in writing. The dates are due dates by which the specified action and/or report is to be completed and, if required, submitted to the Department. All due dates are the last day of the month specified in the schedule below.

**TASKS FOR ALL DMAs**

DATE

TASK

**MONITORING**

Complete

Submit to DEQ an acceptable ambient monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, and quality assurance mechanisms. The ambient effort is intended to characterize the conditions in Bear Creek and its tributaries.

Complete

Submit a draft plan to DEQ for comment and begin implementation. Identify budgets necessary to carry out the plan and document availability of resources. There should be at least a sub-set of sites at which each of the following parameters are measured on at least a quarterly basis (preferably more frequently to provide sufficient data for assessing trends): phosphorus, dissolved oxygen, pH, bacteria, and temperature.

6/30/97 \*\*\*

Continue to implement monitoring efforts while finalizing monitoring plan. After the final plan is submitted, monitoring will be on-going but the monitoring program is expected to evolve over time. Data should be evaluated on an annual basis. Results of data evaluation may be used to justify changes to the monitoring plan. Implementation of the monitoring plan may occur in phases so long as there is at least a sub-set of sites that are sampled regularly for the parameters listed above and that can be used for trending. DEQ staff will be available to assist with development of the plan and with data evaluation. DEQ may also assist with implementation by providing partial funding and/or laboratory services. But the responsibility to insure that the minimum monitoring requirements are met lies with the DMAs.

9/30/95

Submit to DEQ an acceptable stormwater monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, and quality assurance mechanisms. The stormwater monitoring effort is intended to characterize the nature of effluent discharging from storm sewers to Bear Creek and its tributaries. At a minimum this effort should include a representative sampling of effluent from flowing storm sewers during wet weather and during dry weather from any storm sewers found to have dry season flows. Parameters analyzed for should include phosphorus, BOD, pH, and bacteria.

#### **PUBLIC AWARENESS**

Complete

Develop and submit to DEQ draft, detailed, written public awareness plan. The plan should reflect a coordinated, basin-wide effort that includes activities for all DMAs. The plan should identify specific activities/products and schedules which will be implemented prior to 12/94. The strategy should include such things as: developing exhibits that can be placed in shopping malls, colleges, area banks, etc., media involvement -- participation in local talk shows, generation of news stories, a series of well publicized public seminars, a system for receiving public feed-back. Identify budgets and schedules, document availability of resources. In addition, identify any optional activities/products to be implemented prior to 12/94 and activities/products which will be on-going.

11/30/95 Submit a final acceptable public awareness plan.

6/30/97 \*\*\* Implement the accepted public awareness plan. Submit copies of all printed public awareness/education materials to DEQ as they are produced.

### **STREAM INVENTORIES**

6/30/96 Conduct a problem inventory of high priority sections of Bear Creek and its tributaries within the jurisdiction. This can be done using streamwalk methods, aerial evaluation, or other methods. Submit a report to DEQ which identifies and sets priorities for problems/locations identified that need attention/resolution. The report should include recommended course of action and schedule for action. Include such items as streambank erosion sites, pipes of unknown origin discharging to stream, illegal dump sites, sites where re-vegetation is needed, etc.

Complete Identify areas of responsibility for each DMA.

11/30/95 Prioritize stream segments for inventorying.

6/30/96 Complete streamwalk/inventory for high priority segments. Submit report described above to DEQ.

1/31/97 Begin addressing problems identified and complete inventories for remaining segments. Submit report to DEQ identifying problems that have been addressed and schedule for addressing remaining problem sites.

6/30/97 \*\*\* Continue addressing problem sites identified. Periodically update DEQ on progress towards addressing problem sites.

### **LOCAL ORDINANCES**

1/31/97 Review existing ordinances and, if necessary, revise or adopt new ordinances to minimize the movement off site of soil, sediment, and contaminated runoff from development sites, building sites, agricultural operations, road building sites, or other sites where soils

have been disturbed. Emphasis should be on prevention of erosion, rather than on control after the fact. Encourage the installation of permanent runoff treatment systems for new development.

Complete            Compile existing ordinances and provide to DEQ for comment. DEQ will comment on existing ordinances by June 30, 1995.

Conduct public hearings on new or modified local ordinances. Report to DEQ.

1/31/97            Adopt and enact new or modified local ordinances as necessary. Report to DEQ.

#### **ADDITIONAL PRACTICES**

11/30/96            Identify any other options, alternatives or BMPs and select those to be implemented. Develop implementation schedules for meeting TMDL requirements and maintenance of water quality. This may include, but is not limited to: selection of practices, sites and schedules for construction of treatment facilities (including pilot projects), selection and implementation schedules for flow augmentation options or irrigation conversions, or other options or BMPS.

Final decision for large capital improvement projects/construction of treatment facilities may be delayed until the impact on Bear Creek of the construction of modifications to the Ashland sewage treatment plant have been evaluated and TMDLs adjusted accordingly. However, an acceptable and firm schedule for making decisions should be identified and submitted to DEQ.

#### **TASKS FOR URBAN DMAs**

DATE                    TASK

#### **STORM SEWER SYSTEMS**

11/30/96            Investigate design and conditions of storm sewer system. Identify problems, develop a plan to address the identified problems, and implement the plan. Report to DEQ.

Complete            Develop and refine storm sewer maps. Submit copies to DEQ.



- 1/31/96 Survey storm sewers for dry weather flows. If such flows are found, identify the sources and determine whether corrective actions are necessary. Set priorities and begin implementation of corrective actions. Report status to DEQ.
- Complete Develop and/or refine an inspection and maintenance program for the storm sewer system. Include regular cleaning of drains and catch basins.
- 11/30/96 Complete implementation of necessary corrective actions. Report on actions taken.

Note: Federal guidance for NPDES stormwater requirements (including monitoring requirements) for municipalities under 100,000 in population has not yet been developed. When the rules are promulgated, the above tasks will be re-evaluated by the Department, and any conflicts between the above tasks and the federal regulations will be rectified.

#### TASKS FOR AGRICULTURE DMAs

<u>DATE</u>	<u>TASK</u>
	<b>CAFO</b>
6/30/96	Complete inspections of all permitted CAFOs and, if needed, develop enforceable schedules that will result in all CAFOs being in compliance with permit conditions. Report to DEQ identifying all permitted CAFOs, their compliance status, and all actions taken or to be taken.
Complete	Conduct aerial surveys. Report to DEQ.
8/95	Conduct on-ground follow-up inspections.
11/30/95	Submit report to DEQ identifying all permitted CAFOs and their compliance status, and all actions taken or to be taken.
6/30/96	Develop enforceable schedules for all permitted CAFOs not in compliance with permit conditions or water quality rules that will result in compliance.

## AGRICULTURAL WATER QUALITY MANAGEMENT PLAN

9/30/96                      Develop an Agricultural Water Quality Management Plan for the Bear Creek basin to prevent and control water pollution from agricultural activities and soil erosion, and to achieve the water quality goals (e.g. TMDLs) and standards needed to protect the beneficial uses of Bear Creek and its tributaries (ORS 568.900-933, OAR Chapter 603, Div. 90). The plan shall include a schedule for implementation. The plan shall address non-permitted CAFOs and other agricultural activities causing or contributing to water quality problems in Bear Creek or its tributaries.

### NURSERIES

Complete                      All containerized nurseries inspected, during the irrigation season, to determine compliance with container nursery requirements. Report to DEQ identifying status of all container nurseries.

## TASKS FOR JACKSON COUNTY

DATE                      TASK

### SEPTIC SYSTEMS

6/30/96                      Develop and begin implementation of a program to identify and correct failing septic systems. Submit a report to DEQ identifying the program elements, schedule, budget requirements, and documentation of availability of resources.

### COUNTY ROAD DITCHES

1/31/96                      Develop and begin implementation of a program to maintain county roadside ditches in such a way to minimize transport of sediment, nutrients, and other pollutants to waters of the state. Include provisions for testing of effective vegetative cover(s) to be planted on county road right-of-ways. Where possible, convert ditches to vegetated swales and direct road ditch discharges into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) prior to entering waters of the state. Examine whether current

herbicide application can be minimized. Submit an acceptable report to DEQ identifying the program elements, schedule, budget requirements and documentation of availability of resources.

1/31/97

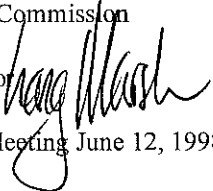
Report to DEQ on the effectiveness of program implementation to date, and additional ditch maintenance practices developed.

\*\*\* These tasks are expected to be ongoing beyond June 30, 1997, but progress will be evaluated at this time. The tasks are expected to continue until the TMDLs and water quality standards are achieved and beyond, at some level, in order to maintain that achievement.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: June 1, 1998

To: Environmental Quality Commission  
From: Langdon Marsh, Director   
Subject: Agenda Item N, EQC Meeting June 12, 1998

Statement of Purpose

The City of Ashland has requested a waiver to OAR 340-41-375 (c) [“Dilution Rule”].

Background

The City of Ashland operates a secondary wastewater treatment facility (WWTF) that serves the City of Ashland in Jackson County. Ashland WWTF discharges to Ashland Creek approximately one quarter mile upstream of the confluence with Bear Creek.

In 1995, the Department and the City of Ashland entered into a Mutual Agreement and Order (MAO) which requires the City to upgrade the wastewater treatment facilities (WWTF) to meet the requirements of the Bear Creek Total Maximum Daily Loads (TMDLs). This upgrade is considered a modification and therefore the minimum design criteria of OAR 340-41-375 apply. One of the minimum design criteria for new or modified sewage treatment facilities is OAR 340-41-375 (c), also known as the “dilution rule”:

(c) Effluent BOD concentrations in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) shall not exceed one unless otherwise approved by the EQC;

Ashland has selected a preferred treatment option to meet Bear Creek TMDL requirements that is a combination of inplant upgrades, and dry season irrigation. Discharge would occur during the winter when flows in Ashland and Bear Creeks is adequate to assimilate the treated sewage and protect beneficial uses. The Department has reviewed the treatment concept and is satisfied that the winter period instream TMDL requirements set for Bear Creek for ammonia and BOD will be met.

However, during statistically derived low flows in Bear Creek during the winter period (ie 7Q10 meaning seven day average minimum flow at a 10 year reoccurrence) Ashland projects that their effluent flows, with secondary treatment, will not always meet the dilution requirement of OAR 340-41-375(c). Adding tertiary treatment would be additional expense to Ashland and likely would not be enough to always meet the dilution requirement. Discharged BOD would have to be less than 3 mg/L or less. In practice, well designed and operated sewage plants cannot reliably meet treatment levels approaching 5 mg/L, particularly in winter when ambient temperatures and inflow/infiltration cause process performance fluctuations. Requiring Ashland to meet the dilution rule during expected winter discharge periods would be setting the stage for permit violations.

The dilution rule was a component of the 1975 basin management plan for the Rogue Basin, including Bear Creek. The intent of the Commission when adopting this rule is described in the basin plan:

“The intent of this section [dilution rule] is to assure that following a high degree of treatment, effluents are adequately diluted to protect the public health, aesthetics, aquatic life and beneficial uses of the waterway. It is further intended that this section be one of the primary mechanisms to insure protection of water quality in headwater streams.”

The intent is for the design criteria to be applied to the dilution of waste, not necessarily dissolved oxygen criteria. As a design criteria it is applied to design conditions of the WWTF. The facility plan states that the upgraded WWTF will be able to meet all of the minimum design criteria of OAR 340-41-375 except for the dilution criteria.

While the WWTF discharges to Ashland Creek, seasonal flow data for Ashland Creek is unavailable. Department efforts in modeling water quality has focused on Bear Creek because the time of travel from the outfall to Bear Creek is minimal. Therefore the biochemical oxygen demand from the WWTF has a much greater effect on Bear Creek than on Ashland Creek. The proposed NPDES renewal permit requires the City to monitor flows in Ashland Creek and perform semi-annual intergravel dissolved oxygen (IGDO) studies in the gravels in Ashland Creek downstream of the discharge. Also, while the proposed permit will require the discharge to meet all water quality standards prior to discharge to Ashland Creek, the Department had concerns about the effluent causing a fish passage barrier due to temperature gradient, salinity gradient, odor, or other parameters not covered by the water quality standards. Mr. Mike Evanson, ODFW Regional Fisheries Biologist, has stated that provided the water quality standards are met, the discharge should not cause a fish passage barrier in Ashland Creek.

As stated above, water quality modeling has focused on impacts to Bear Creek. A comparison of the critical low flows in Bear Creek to the treatment facility effluent flow at critical conditions is summarized in the following table:

Season	7Q10 Stream Flow + Plant flow	Design Year Average Flow	Ratio
Summer	1.4 cfs + 3.4 cfs = 4.8 cfs	2.2 MGD = 3.4 cfs	1.4
Winter	7.6 cfs + 3.7 cfs = 11.0 cfs	2.4 MGD = 3.7 cfs	3.0

This would indicate that the WWTF would have to produce an effluent of less than 1.4 mg/l during the low flow season and less than 3.0 mg/l during the high flow season in order to meet the minimum design criteria of OAR 340-41-375 (c) in Bear Creek. Since flows in Ashland Creek are less than flows in Bear Creek, the pollutant concentration would have to be less than that for Bear Creek discharge to meet this criteria.

The EQC has reviewed similar requests for relief from municipalities in the Portland area (Tualatin, McMinnville, Dallas, Rickreall Creek). It is not uncommon when TMDLs are established and waste load allocations set that the necessity for minimum dilution rule requirement is obviated when beneficial uses and water quality is otherwise fully protected. Circumstances for the request made by the City of Ashland appear to meet this threshold of acceptance.

#### **Authority of the Commission with Respect to the Issue**

Per OAR 340-41-375(c), the Commission has the authority to waive the dilution criteria.

#### **Alternatives and Evaluation**

The City of Ashland has reviewed several alternatives to meeting the requirements of the Bear Creek TMDLs. The primary alternatives and estimated long term (20 year) costs are as follows:

- 1) Eliminate the WWTF and connect the City's sewage collection system to the Regional Facility which discharges to the Rogue River in White City. (\$31 million)
- 2) Upgrade the WWTF to allow irrigation of the effluent on land for reuse during the low flow season and discharge during the high flow season. (\$30 million)

- 3) Upgrade the WWTF to utilize wetlands technology for phosphorus polishing and discharge year round. (\$35 million)
- 4) Upgrade the WWTF to remove phosphorus chemically and physically and discharge year around. (\$49 million)

Of the above options, only option 1 would meet the design criteria of the dilution rule for both low flow and high flow seasons because there would be no discharge to Ashland or Bear Creeks. Option 2 would meet the dilution rule criteria during the low flow season, again because there would be no discharge to Ashland or Bear Creeks. Options 3 and 4 would not meet the dilution rule criteria. It is currently beyond the means of conventional technology to meet the requirements of dilution rule for a discharge at Ashland's current outfall location because of the relatively high flows from the WWTF with respect to the stream flows.

In 1995, the City held several public meetings to discuss these options and variations of these options. For various reasons, the City has initially chosen spray irrigation on city owned property during the low flow season as a preferred option and have constructed a demonstration wetlands/soil filtration project to evaluate the possibility of using a natural system.

The City has completed engineering plans and specifications for the facility upgrades required for option 2. The Department has performed computer modeling which shows that, during the winter months, the higher pollutant concentrations produced by this proposed WWTF may be discharged to Ashland and Bear Creeks while maintaining water quality standards.

#### **Summary of Public Input Opportunity**

A discussion of the request for waiver was included in the NPDES renewal evaluation report [1] which was submitted for public comment on March 23, 1998. A public hearing was held on April 29, 1998 and the public comment period ended on May 8, 1998.

The Department received both oral statements during the public hearing and written comments during the public comment period. No comments were received regarding possible waiver of minimum dilution requirement of OAR 340-41-375(c) for Ashland.

Comments received addressed: 1) a concern that the preferred option of land application of effluent during the low flow season would further reduce instream water flows to a point that would be detrimental to aquatic life and 2) a concern that placing the effluent and the biosolids on land would create a health and environmental problem in the area of application.

With regard to the first concern, the Department believes that it is better to have less water in the stream than to pollute the stream to a point where the instream criteria for dissolved oxygen, pH, temperature, and toxics are not being met. Also, the flows in Bear Creek are largely influenced by irrigation practices. During the irrigation season (roughly May through September), the creek is used to transfer water from Howard Prairie, Hyatt, Emigrant Reservoirs to agricultural property in the Bear Creek Valley. The flows in the upper stretches of the creek commonly exceed 100 cfs, while the flows in the lower stretches are often below 1 cfs. The lowest flows in Bear Creek near Ashland occur immediately after the irrigation season and before the rains begin. During this time, flows of less than 4 cfs are not uncommon. The proposed NPDES permit contains a requirement for the City to submit an instream water quantity management plan. The Department expects this plan to contain provisions for increasing the flows in Bear Creek during the critical low flow time after the irrigation season.

#### **Conclusions**

Typically, the Department has supported waiver of minimum dilution criteria when it is found that the waiver will not cause a water quality standard violation and/or there is adequate economic justification. As stated above, computer modeling has shown that a waiver of the dilution criteria for the high flow season will not cause a water quality standard violation. As importantly, beneficial uses in Ashland and Bear Creeks below Ashland treatment plan outfall will remain protected through enhanced efficiency and treatment plant upgrade.

However, the Department believes that the City's preferred option with maintaining low flow season instream flows at or above current levels provides the best overall environmental option. The condition for maintain instream flows is in the draft NPDES permit.

Therefore, the Department supports the request for waiver during the high flow season provided that the instream flows are maintained. A permit condition for an instream water management plan is included in the draft permit. Because the City's preferred option (option 2) would not require a waiver during the low flow season, the Department does not support the request for waiver of OAR 340-41-375 (c) during the low flow period.

#### **Intended Future Actions**

Should the Commission approve the waiver, the Department will issue the proposed NPDES renewal permit to the City of Ashland. Should the Commission deny the waiver, the Department will revise the proposed NPDES renewal permit to include the conditions of the dilution rule criteria.

#### **Department Recommendation**

It is recommended that the Commission approve the City of Ashland's request for waiver of the dilution rule during the high flow season provided that the instream flows are maintained as detailed in the attached draft Commission Order. It is further recommended that the Commission deny the City of Ashland's request for waiver of the dilution rule during the low flow season.

#### **Attachments**

- 1) Draft Commission Order approving waiver of the dilution rule during the high flow season and denying the waiver during the low flow season.

#### **Reference Documents (available upon request)**

1. "FACT SHEET and NPDES WASTEWATER DISCHARGE PERMIT RENEWAL EVALUATION for City of Ashland", Oregon Department of Environmental Quality, March 16, 1998
2. Proposed Draft NPDES renewal permit for City of Ashland
3. Oregon Administrative Rules Chapter 340
4. Title 40 Code of Federal Regulations
5. Oregon Revised Statutes
6. Brown and Caldwell, *City of Ashland Wastewater Facilities Plan*, September 1995
7. Carollo Engineers, *Wastewater Facility Plan Amendment, City of Ashland*, July 1997
8. Oregon Department of Environmental Quality, *Oregon's 1994 Water Quality Status Assessment Report (305(b) Report)*, 1994
9. Oregon Department of Environmental Quality, *Water Quality Mixing Zone Study*, August 1988

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10. Scott A. Wells, Ph.D., P.E. and Robert Annear, *Flows and Water Quality Loading for Bear Creek* , prepared for Corollo Engineers, 5100 SW Macadam Ave, Suite 440, Portland, OR 97201, February 1997
11. Tchobanoglous, G., and Burton, Franklin L., *Wastewater Engineering*, Metcalf and Eddy, 1991, third ed.
12. Oregon Department of Environmental Quality, *Technical Memorandum revising TMDL for Bear Creek*, December 18, 1997
13. EPA, *Technical support Document for Water Quality-based Toxics Control*, EPA publication EPA/505/2-90-001.
14. Stevenson, R. Jan, *Algal Ecology*, Academic Press, 1996

Approved:

Section: \_\_\_\_\_

Division: \_\_\_\_\_

Report Prepared By: Jonathan Gasik. PE

Phone: 541-776-6010 x230

Date Prepared: May 14, 1998

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10/13/95



DRAFT

Before the Environmental Quality Commission  
of the State of Oregon

In the Matter of City of Ashland	)	
Wastewater Treatment Facility	)	ORDER CONDITIONALLY
Request for Waiver of OAR	)	WAIVING OAR
340-41-375 (c) ["Dilution Rule"]	)	340-41-375 (c)
	)	

FINDINGS

The Department has made the following findings:

1. The City of Ashland owns and operates a wastewater treatment facility in Jackson County, Oregon which discharges to Ashland Creek.
2. In 1989, the Environmental Quality Commission promulgated OAR 340-41-385 which set instream criteria quality standards within the Bear Creek subbasin of the Rogue Basin, including Total Daily Maximum Loads (TMDL) waste loads allocations.
3. The City of Ashland has chosen a treatment option to comply with OAR 340-41-385 which will meet all water quality standards. This option will not, however, meet the requirements of OAR 340-41-375 (c) during the high flow season.
4. The City of Ashland has requested a waiver to OAR 340-41-375 (c) ["Dilution Rule"].
5. The Department has reviewed the City's request and supports the request for waiver during the high flow season provided that the City maintain instream flows in Bear Creek during the low flow season.

ORDER

A waiver of OAR 340-41-375 (c) ["Dilution Rule"] for the City of Ashland's wastewater treatment facility is hereby granted with the following conditions:

1. The waiver shall apply to the high flow season only.
2. The City shall increase flows in Bear Creek during the low flow season by allocating water from city-owned water rights in a quantity at least equivalent to the quantity of effluent that is land applied by the wastewater treatment facility.
3. The increased flows shall be targeted toward increasing flows during critical low flow periods.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

On behalf of the Commission

\_\_\_\_\_

DRAFT

Langdon Marsh, Director  
Department of Environmental Quality

Minutes are not final until approved by the EQC

## Environmental Quality Commission Minutes of the Two Hundred and Sixth-Ninth Meeting

June 11-12, 1998  
Regular Meeting

The Environmental Quality Commission toured the Montezuma West Spill Site before the regular meeting was convened at 10:10 a.m. on Thursday, June 11, 1998, at the Smullin Education Center, 2825 Barnett Road, Medford, Oregon. The following members were present:

Carol Whipple, Chair  
Melinda Eden, Member  
Linda McMahan, Member  
Mark Reeve, Member

Also present were Larry Edelman and Larry Knudsen, Assistant Attorney Generals, Oregon Department of Justice; Langdon Marsh, Director, Department of Environmental Quality; 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.

Items were taken in the following order:

### A. Minutes

Commissioner Reeve made the following correction to the April 3, 1998 minutes: on page 6 the agenda item should read, E. Rule Adoption: Area Source NESHAP Standards for the Following Source Categories Including Perchloroethylene Dry Cleaning, Commercial Ethylene Oxide Sterilization, Halogenated Solvent Cleaning/Degreasing, and Chromium Electroplating/Anodizing. Commissioner Reeve moved the minutes be approved as corrected. The motion was seconded by Commissioner McMahan and was passed with "four" yes votes.

### B. Approval of Tax Credits

Maggie Vandehey, Tax Credit Coordinator, presented the following 51 tax credits for approval.

Application #	Applicant
4727	Teledyne Industries, Inc. Wah Chang(ABN)
4825	Far West Fibers, Inc.
4828	Ernst Hardware Co., Inc.
4853	United Disposal Service, Inc.
4854	United Disposal Service, Inc.
4865	United Disposal Service, Inc.
4871	United Disposal Service, Inc.
4878	United Disposal Service, Inc.
4886	United Disposal Service, Inc.
4887	United Disposal Service, Inc.

4897	United Disposal Service, Inc.
4898	United Disposal Service, Inc.
4900	Stein Oil Co., Inc.
4901	Laughlin Oil Company
4902	PED Manufacturing, LTD
4904	Willamette Industries, Inc.
4907	Albany-Lebanon Sanitation, Inc.
4908	Albany-Lebanon Sanitation, Inc.
4909	United Disposal Service, Inc.
4913	Albany-Lebanon Sanitation, Inc.
4919	Neher: Larry Neher, Inc.
4922	Capitol Recycling & Disposal, Inc.
4923	United Disposal Service, Inc.
4924	United Disposal Service, Inc.
4925	Albany-Lebanon Sanitation, Inc.
4930	Jenks-Olsen Farms, Inc.
4931	United Disposal Service, Inc.
4932	United Disposal Service, Inc.
4933	Mt. Hood Metals, Inc.
4943	Willamette Industries, Inc.
4949	Pacific Petroleum Corp.
4950	Blount, Inc.
4951	Ronald Schmidt
4952	Corvallis Disposal Co.
4953	Corvallis Disposal Co.
4954	Corvallis Disposal Co.
4955	Mullen Farms, Inc.
4958	Capitol Recycling & Disposal, Inc.
4960	United Disposal Service, Inc.
4961	United Disposal Service, Inc.
4962	Truitt Bros., Inc.
4964	Dardanelles
4967	Wilco Farmers, INC.
4970	Corvallis Disposal Co.
4971	Cain Petroleum, Inc.
4981	Willamette Industries, Inc.
4991	Priscilla E. Thompson
4994	United Disposal Service, Inc.
4995	United Disposal Service, Inc.
4998	Estherwin, Inc.
5002	Russell Oil Co.

Due to the relative importance and the revenue impact of the decisions they make regarding tax credits, the Commission asked if anyone questioned or audited their findings or if there was any review of facilities issued certificates to determine if the facility was still being used as claimed on the application. Ms. Vandehey indicated the Department does not have the resources to audit these facilities. The Department of Revenue does not have any resources to audit these tax credits and would only review the claimed credits if they audit a tax payer's return for some other reason.

Several clarifying questions regarding the reduced percentage allocable to pollution control for tank systems and alternatives to field burning were asked. Ms. Vandehey responded that the DEQ and the Department of Agriculture review these two types of facilities, as well as automotive refrigerant recycling

equipment facilities, based on early 1990 methods approved by the Commission. When asked if these methods had been placed in rule, Ms. Vandehey responded they had not been placed into rule. Statute requires owners of underground storage tanks to upgrade their systems by the end of 1998. Jim Britton, Department of Agriculture, explained the statute also requires a reduction in the number of acres that are open field burned by the end of 1998.

A motion was made by Commissioner Eden to approve all tax credit application presented in Attachment B. The motion was seconded by Commissioner Reeve and carried with "four" yes votes.

Ms. Vandehey asked that three of the four tax credits presented for denial be removed from consideration at this date for the following reasons:

- Columbia Steel Casting (application number 4826) intends to reduce their claimed facility to just the pollution control rather than the entire installation.
- Unable to make the trip to Medford, Don Rhyne Painting (application number 4837) expressed the desire to postpone consideration until the August EQC meeting. They also intend to reduce their claimed facility to just the pollution control rather than the entire installation.
- Pioneer Truck Equipment intends to clarify how they use the equipment washing facility claimed on application number 4892.

Albany-Lebanon Sanitation's application number 4873 was presented for denial because it does not meet the definition of pollution control facility in ORS 468.155. The truck would have been eligible if it were used directly and exclusively for recycling rather than for transporting recycling equipment.

A motion was made by Commissioner Eden and seconded by Commissioner Reeve to deny Albany-Lebanon Sanitation's application number 4873 presented for denial in Attachment C. The motion carried with four "yes" votes.

Staff reported the impact of the Commission's direction regarding Far West Fibers/E Z Recycling's application number 4825. The report included the number of all material recovery facilities, transfer stations, solid waste collection companies, recyclable material processing facilities, transfer stations, and composting facilities in the state. It also included an estimate of how many companies might build eligible facilities in the near future with the following qualifications:

- It is not possible to know how many pollution control facilities will have a similar relationship to the applicant's overall business as the relationship between Far West Fibers/E Z recycling and their facility claimed on application number 4825.
- Even if the facility is not integral to the operation of the applicant's business, the applicant will still have to consider the return on investment in the facility.
- All claimed costs will have to be eligible costs.
- Less than 25% of all companies who build eligible facilities apply for a tax credit.

Ms. Vandehey indicated the unqualified impact of the decision could double the program.

### **C. Rule Adoption: Addition to OARs Affirming the Director's Intent to Respond to Comments on Confirmed Release and Inventory Listing Proposals**

Anne Price, Manager of the Hazardous Waste Program, presented a brief summary of the proposed regulatory change, indicating that it merely codifies an already existing practice of responding in writing to substantive comments and any material new data submitted during the Confirmed Release List and Inventory Listing proposal comment period.

Commissioner Reeve asked whether under OAR 340-122-075(3)(b) the new language should read "Whenever the Director makes a decision to add a facility to the inventory, the Director shall . . .", instead of using the term "list" as noted in the proposed rule. After consultation with the Department program staff, the Department agreed with Commissioner Reeve's recommended language change, such that OAR 340-122-075(3)(b) now reads: "Whenever the Director makes a decision to add a facility to the Inventory, the Director shall . . ."

Commissioner Reeve indicated a preference for definitional terms and terms of art to be presented throughout the rules with initial capital letters. The Department agreed this rule formatting change could be made throughout the Department's rules.

A motion was made by Commissioner McMahan to adopt the proposed rules with the modification in language to OAR 340-122-075(3)(b) and the proposed formatting change. The motion was seconded by Commissioner Reeve and was carried with four "yes" votes.

#### **D. Rule Adoption: Amend Oregon Hazardous Waste Administrative Rules**

Anne Price presented a brief overview of the rules, the major comments received and the Department's response to comments. Commissioner Reeve reiterated his request for definitions and terms of art to be represented in initial capital letters. The Department agreed to this modification to rule formatting. Commissioner Reeve express some concern at the 10% late fee the rule imposes on full or partial invoices that remain unpaid after each 30 day period for a total of 90 days. The other Commissioners in attendance indicated they believed the Department does not receive full reimbursement for many of its costs and given the ample degree of notice provided to those who will be receiving these invoices, the 10% late charge is not excessive. One change to the staff report (in two locations in the report) was made for the record:

- Page 6, May 29, 1998, Staff Report Cover Letter, from Lang Marsh to the EQC. In the last paragraph before the heading Conclusions, the parenthetical should read "(the Department does not view elemental screening of wood chips from waste water as reclamation)".
- Page 10, Attachment D, last paragraph – the parenthetical should read "(the Department does not view elemental screening of wood chips from waste water as reclamation)".

Anne Price also clarified that treatment, storage and disposal facilities operating under their Part A, interim status, a 3008(h) order, Part B application or any other administrative mechanism prior to an approved Part B application are subject to these rules, including any cost recovery and fee schedules applicable to the facility or the activities at the facility.

A motion was made by Commissioner Reeve to adopt the rules as presented, with the identified change to the formatting and the recognized changes to the staff report. The motion was seconded by Commissioner Eden and was carried with four "yes" votes.

#### **E. Rule Adoption: Toxic Use Reduction and Hazardous Waste Reduction Rule Revisions and Amendments to OAR Chapter 340, Division 135**

Anne Price presented a brief overview of the rules, the major comments received and the Department's response to comments. Commissioner Reeve raised a concern that OAR 340-135-050(2)(c), due to the language "This section is repealed on December 1, 1998.", may inappropriately contain a repeal within the rule language itself. A discussion followed which clarified the Department's intent was to extend the amnesty from penalty to small quantity generators who had not previously submitted a plan only until December 1, 1998 and not after that date. Department counsel agreed this intent was met by eliminating the sentence "This section is repealed on December 1, 1998." from OAR 340-135-050(2)(c), with all other language remaining the same. The Commission accepted this modification.

A motion was made by Commissioner Eden to adopt the rules be adopted as presented with the identified change to the formatting and the modification to OAR 340-135-050(2)(c). The motion was seconded by Commissioner Reeve and was carried with four "yes" votes.

#### **G. Update on the Southwest Community Center at Gabriel Park**

Neil Mullane, Regional Administrator of the Northwest Region (NWR) office, provided the Commission with an update on the City of Portland's Stormwater permit at the Gabriel Park. The Department had completed its enforcement action since the last EQC meeting resulting in a \$4,500 civil penalty assessed against the City. The City paid the penalty. When the site was last inspected it was in compliance. The site, however, will continue to be a difficult site because of its physical location and the amount of area opened.

The Department is in the very early stages of budget proposals which would include additional staff (potentially two additional staff) for Water Quality (WQ) permit activity in the NWR. The Southwest Community Groups would like to see five new stormwater inspectors added to the NWR WQ Staff.

The NWR region's stormwater inspector has resigned and the Department is currently recruiting to fill this position. It is not expected to have this position fill until August at the earliest.

#### **K. Appeal of Hearing Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of the City of Coos Bay, Case No. WQMW-WR-96-277**

The Department of Environmental Quality appealed a hearing officer's decision on a contested case involving a civil penalty assessment for the City of Coos Bay. The City cross-appealed. The facts in the case were that a pressure line carrying partially treated sewage sludge from the City's Treatment Plant #1 to a facultative sludge lagoon for final treatment broke and released sewage sludge to tidal wetlands and Coos Bay. The Department's Notice of Noncompliance contained three violations:

- (1) ORS 468B.050(1)(A) by discharging wastes into waters of the state without a permit allowing the discharge;
- (2) ORS 468B.025(1)(b) by discharging waters that reduced the quality of state waters below the water quality standard established for the body of water; and
- (3) ORS 468B.025(2) by violating a condition of its NPDES permit by causing or allowing a sewage bypass of the treatment facility.

The Department assessed civil penalties in the amounts of \$3,900 for violation #1 and \$1,500 for violation #2. The Final Order issued by the hearings officer found the City had not violated ORS 468B.050(1), thus they were only liable for the \$1,500 penalty. After hearing arguments from the City attorney, C. Randall Tosh and the Department's representative, Jeffrey R. Bachman, Commissioner Reeve made a motion to affirmed the hearings officer's finding of facts but reversed the conclusions of law. The motion was seconded by Commissioner Eden and carried with four "yes" votes. The Commission requested legal counsel draft an order for their consideration at the next meeting which would find the City liable for violations of ORS 468B.050(1), ORS 468B.025(1)(b) and ORS 468B.025(2) and for a civil penalty in the amount of \$3,900 for the violation #1 and \$1,500 for violation #2.

#### **F. Amendment to the Tualatin Basin Total Maximum Daily Load Compliance Order**

Presentations to the Commission were made by John Jackson, Unified Sewerage Agency(USA); Dennis Lynch, United States Geological Survey (USGS); Dr. Wes Jarrell, Chair of the Tualatin Basin Technical Advisory Committee; and Dr. Jack Smith.

John Jackson presented an overview of the pollution control actions undertaken by the designated management agencies (DMAs) in the Tualatin Basin. Dennis Lynch described the studies undertaken by the USGS in cooperation with USA to better understand water quality in the Tualatin Basin. Dr. Wes Jarrell presented the results of the technical advisory committee recommendations. Dr. Jack Smith presented concerns with the existing approach and appealed for more defined actions and timelines. Dr. Smith presented an alternative to the proposed strategy presented by the Department.

Bob Baumgartner, Water Quality Manager, Northwest Region, explained the request and responded to questions from the Commission following the panel presentation.

Commissioner Eden made a motion to accept the proposal with two modifications to the Order. In the second paragraph presenting the second purpose of the order the reference to "...Agenda Item E ..." was changed to correctly reference "Agenda Item F". On page two, the reading of the fifth task was changed from "... programs for future development ..." to "programs for existing and future development." The motion was seconded by Commissioner Reeve and carried with four "yes" votes.

The Commission also provided guidance the Department and the DMAs. They were interested in knowing what the DMAs could do to address the pollution problems in the area and encouraged actual

implementation of pollution control efforts as opposed to planning exercises. The Commission wanted the TMDLs to be an objective and measurable guidance that could be measured and used by the DMAs to determine the success of the programs, and they are also interested in the cost and effectiveness of alternative strategies. The guidance will be used to develop the TMDL and focus subsequent presentations to the Commission.

#### **H. Rule Adoption: LRAPA Rules and Modification of the State Implementation Plan (SIP)**

Andy Ginsburg, acting Air Quality Administrator, introduced the topic and described how the Clean Air Act is implemented with the EPA establishing national air quality standards and the state or local agencies developing plans and methods to achieve those standards. Barbara Cole (Director of Oregon's only regional air quality authority--Lane Regional Air Pollution Authority or LRAPA) described her organization and the general nature of the regulations before the Commission. Dave Nordberg, State Implementation Plan Coordinator, indicated LRAPA's regulations were reviewed by the Department and were found to be at least as stringent as the State's requirements.

Commissioner Reeve questioned how "stringency" was determined. Staff responded that a regional authority's rules must require the same universe of regulated parties to meet at least the level of control dictated by state rules. Staff further explained when dissimilar measures are considered, the Department determines stringency by applying EPA's interpretation of the question.

A motion was made by Commissioner Reeve to approve LRAPA's regulations and adopt them as a revision to the State Implementation Plan under OAR 340-020-0047. The motion was seconded by Commissioner McMahan and carried with four "yes" votes.

#### **I. Rule Adoption: Increase in Title V Operating Permit Fees**

Andy Ginsburg, Manager of Air Quality Program Development, presented this item. The Clean Air Act and state statutes require the Title V program to be fully funded by fees, and authorizes increases to adjust the fees for inflation if needed. Costs are projected to increase by three percent in the next fiscal year primarily due to salary increases approved by the legislature. As a result, the Department proposed to increase the Title V base fee and emission fee by the change in the Consumer Price Index during 1997 of 2.29 percent. For special activity fees, which had never been increased since originally adopted, the Department proposed an increase of 11.07 percent based on the change in the Consumer Price Index from 1993 to 1997. Mr. Ginsburg noted there was only one comment which neither supported nor opposed the proposal but asked for additional information about the Title V program.

In response to questions from the Commission, Mr. Ginsburg clarified that the synthetic minor fees, while listed in the Air Contaminant Discharge Permit (ACDP) fee table, are actually special activity Title V fees. The other fees in the ACDP fee table were increased last year and are not proposed for increases at this time. He also explained the proposed new subcategories of permit revision fees and noted the guidance included in the staff report on how these fees will be implemented.

A motion to approve the package was made by Commissioner Reeve and seconded by Commissioner Eden. The motion was carried with four "yes" votes.

The Commission recessed for dinner. The meeting reconvened at 6:00 p.m.

#### **General Public Comment:**

Carter Rose of Wolf Creek presented comment on the challenge of maintaining high standards for the quality of life in the Bear Creek Basin.

Corinne Weber representing the Maplewood and Hayhurst Neighborhood Associations in Portland presented public comment on the contamination of Vermont Creek due to the building of the Community Center adjacent to Gabriel Park.



## **L. Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan Status**

Steve Greenwood, Western Region Administrator, introduced the informational report on the status of the Medford Urban Growth Boundary Carbon Monoxide Maintenance Plan. The plan process involved a diverse group of local citizens working as a DEQ advisory committee over a two-year period. Mr. Greenwood also remarked on the great progress that had been made in the Medford area to clean up the airshed.

Annette Liebe, Air Quality Division/Airshed Planning Manager, presented an overview of the proposed maintenance plan. This included the health basis of the carbon monoxide air quality standards, information on the course of the long-term trend in measured carbon monoxide, strategy choices considered by the citizens advisory committee, and carbon monoxide emission trend data to 2015. The advisory committee decided to retain the wintertime oxygenated fuel program, with the understanding that the new Mobile model from the Environmental Protection Agency might show that total airshed carbon monoxide emissions could stay below the 1993 level without oxygenated fuel. In response to a question from Commissioner Reeve about whether the last data point on the trend graph represented an upward trend, Ms. Liebe explained carbon monoxide measurements were especially sensitive to meteorology and year to year fluctuations could be expected.

## **Public Comment Regarding the Medford Carbon Monoxide Maintenance Plan Only**

Chair Whipple announced the Commission would take testimony on the proposed Medford Area Carbon Monoxide Maintenance Plan. The following citizens testified.

Mike Montero, representing the Jackson County Chamber of Commerce, served as the Chair of the Medford-Ashland Air Quality Advisory Committee. He cited the broad-based membership of the Committee that represented a diversity of interests with a common goal to preserve and enhance the quality of the air in Medford. He remarked on the range of alternatives considered by the Committee and noted some frustration in dealing with the oxygenated fuel program. Mr. Montero expressed appreciation for the work of the DEQ staff and strongly urged the Commission to adopt the CO maintenance plan in its present form.

Mr. Skyman, representing the Coalition to Improve Air Quality, read his written comments into the record. He noted the Coalition's support of air quality-related regulation and enforcement and the great progress that had been made to improve air quality in the Medford area. He indicated the area should be able to meet the health standards for carbon monoxide, even with the phase out of oxygenated fuel. He also advocated for the control of heavy duty diesel vehicles through a testing program.

Matthew Hart, representing the Medford City Council, stated the city was very happy about coming into compliance with the carbon monoxide health standards. Oxygenated fuel was a hot topic and he understood that updated modeling might make the provision unnecessary in the future. The program could then be dropped if the city endorsed that type of action. He strongly recommended adoption of the plan and forwarding it to EPA for acceptance, so the whole country can recognize the Medford area.

Ric Holt briefly cited the progress of the Medford area on implementing alternative fuel projects and obtaining a Clean Cities designation. He focused on oxygenated fuel and on the oxygenate, methyl tertiary butyl ether (MTBE). He said Jackson County had held three public hearings on the oxygenated fuel issue, with citizen complaints indicating the program destroyed cars and endangered lives. He indicated that MTBE had caused groundwater problems in California and urged testing of local groundwater for MTBE contamination. He suggested citizens were being harmed by forcing them to use oxygenates.

Stuart Foster, representing the Oregon Transportation Commission, stated the plan was in the best interest of the area and oxygenated fuel was a critical element. He cited past involvement in the development of air quality strategies in the Medford area and urged adoption of the plan.

Tom Koehler, representing Parallel Products, stated there is quite a bit of conflicting information on oxygenated fuel and ethanol gets confused with MTBE. MTBE has some peculiarities and real problems

with groundwater, but ethanol does not. He said the citizen's recommendation on the maintenance plan was appropriate and noted that retention of the oxygenated fuel program in the Portland area was supported by local governments.

Carter Rose stated that he understood MTBE was a byproduct of the refining industry and suggested the Commission delve into the actual history of the approval of MTBE as an additive to gasoline.

Larry Worch, representing Henry's Lady Chapter—Model A Club, handed out a flyer put out by the Vintage Car Club of Canada. He said oxygenates are tough on old cars and that ARCO uses oxygenates all the time.

Steve Schultz stated he owns an older car and the mileage drops way off during the oxygenated fuel season. His older car does not run well on oxygenated fuel, and he questioned what we were gaining.

Following public testimony on the proposed Medford Area Carbon Monoxide Maintenance Plan, DEQ staff members including Merlyn Hough, Western Region/Underground Storage Tanks Manager; Steve Greenwood; Annette Liebe; and Howard Harris, Air Quality Division/Airshed Planning, assembled to answer questions from the Commission. Director Marsh commented about alternative-fueled, zero emission vehicles (ZEVs) mentioned in the public testimony. He stated the Department does not require ZEVs, but encourage them. He noted DEQ has started an advisory committee to guide the Department on setting up a program to begin testing heavy duty Diesel vehicles in the year 2000. The program could be implemented in Portland and Medford.

Steve Greenwood indicated Jackson County Commissioner Ric Holt was asking a different question about oxygenated fuel (with his focus on methyl tertiary butyl ether--MTBE) than what the advisory committee addressed in its deliberations. Annette Liebe explained ethanol is the oxygenate of choice in Oregon and is cheaper than MTBE. Most of the gas comes into Oregon from the Washington refineries, where there is no MTBE capability. She also stated the State was limited by the Environmental Protection Agency in its ability to regulate fuels and fuel additives. When asked whether MTBE came from the tailpipe and was a source of contamination, Annette Liebe indicated the amount of MTBE from the tailpipe was small in comparison to leaking tanks and spills. Howard Harris cited the Interagency Assessment on Oxygenated Fuels (National Science Technology Council, 1997) which indicated that washout (from tailpipe exhaust) was a very minor route for water contamination.

Merlyn Hough followed up with information on testing of leaking sites in the Western Region. MTBE has been detected in groundwater at some gasoline-contaminated sites in cities where there is no requirement for an oxygenated fuel program. Benzene is the most prevalent toxic found in testing. He stated testing results in Medford have been non-detect for MTBE.

Annette Liebe clarified that the "new tool" mentioned in the testimony referred to the new Mobile model expected to be released by EPA in 1999. Chair Whipple asked about the role of prescribed burning. Annette Liebe responded there were no emissions from prescribed burning within the Urban Growth Boundary CO area, but that this was a particulate issue.

Commissioner Reeve noted the split vote of the advisory committee directed at the particulate plan and asked that the staff be very inclusive in its treatment of public comment on the particulate plan.

The meeting was adjourned until Friday morning.

Friday morning the Commission made a field trip to the Ashland area. The Commission went to the Ashland wastewater treatment plant. A tour of the facility and experimental wetland project was conducted by Paula Brown, Ashland Public Works Director; Dick Marshall, treatment plant operator; and Bob Eimstad, Carollo Engineers. The group then went to the Roca/Paradise Creek 319 site where Steve Koskella of K&C Environmental gave a short presentation about the project.

The regular meeting resumed at 9:45 a.m.

## **M. Briefing on Bear Creek Water Quality Actions and Issues**

Gary Arnold, technical support for the Southwest Oregon Basin Teams, gave a short introduction on the history of the Bear Creek TMDL process, the 1995 EQC meeting on Bear Creek TMDL progress, and concluded with a brief introduction of the physical and cultural setting of Bear Creek in Jackson County. A number of speakers representing Designated Management Agencies (DMA's) gave updates on their progress with their Bear Creek TMDL tasks.

A panel from the Rogue Valley Council of Governments (RVCOG) presented their update. Most of the urban DMA's are members of the RVCOG, so many of the compliance schedule tasks have been coordinated by RVCOG staff. Marc Prevost, Bill Meyers and Dave Jacobs gave updates on work done in the areas of public awareness, stream/stormwater monitoring, reviews of local ordinances and Rogue Basin restoration plans developed under Governor Kitzhaber's Oregon Plan for Salmon and Watersheds.

Mike Wolf, Oregon Department of Agriculture (ODA), gave an update on the inspections that have been done of dairies and container nurseries. He also talked about the SB 1010 Bear Creek farm plan and ODA's upcoming role under the Healthy Streams Partnership.

Dan Thorpe, Oregon Department of Forestry (ODF), gave an update on ODF's involvement in Bear Creek and an update on the Oregon Forest Practices Act.

Henry Montes, Jackson County Parks and Roads; and Vivian Payne, Oregon Department of Transportation, gave a presentation on an effort to begin a program of Integrated Vegetation Management along Jackson County roads. This would use native plants and change maintenance practices to reduce problems with sedimentation and exotic weed species.

Jim Hill, City of Medford, gave a presentation on projects unique to urban areas. He talked about stormwater management, urban stream management and ended with an update on the Jackson Street dam removal this fall.

Jon Gasik, DEQ Water Quality Engineer, gave an update on incorporating the existing TMDL load allocations into the NPDES permit for the Medford Boise Cascade mill.

Steve Greenwood described where the Bear Creek TMDL efforts will go from here. Existing DMA efforts to address current Bear Creek TMDL and new water quality problems, identified through subsequent 303(d) listings, as well as evolving requirements under the Endanger Species Act will be addressed with water quality management plans developed with DEQ's Healthy Streams Partnership staff. The scope of this effort will also expand to the entire Rogue Basin.

A short period of questions and answers ensued. The Commission commended the Bear Creek DMA team for their efforts so far, and asked to be advised if they could somehow aid in bringing in additional future funding for efforts in the Bear Creek Watershed.

## **N. Waiver of the Dilution Rule for the City of Ashland**

Jon Gasik presented this item. The City of Ashland is proposing to upgrade their wastewater treatment facility to meet the requirements of Bear Creek Total Maximum Daily Load (TMDL). The City has chosen to spray irrigate during the summer months and discharge during the winter months. The dilution rule requires there be a minimum of 30-to-1 dilution during the winter months. The waiver was requested because historic flow data indicate there are periods during the winter months when this dilution ratio would not be met.

The Department's evaluation showed that water quality criteria would be met and beneficial uses would be protected. There was a brief discussion. Commissioner Reeve asked whether the project had been reviewed and approved. Jon Gasik, with the assistance of Paula Brown, Public Works Director for the City of Ashland, explained that final plans and specifications for Project A (wastewater treatment facility upgrades) have been received and are under review. While the DEQ has reviewed predesign reports for Project B (effluent irrigation and biosolids management off-site), final plans and specifications have not been submitted. Commissioner Reeve also asked about neighbor concerns about Project B. Paula

Brown explained that several public meetings have been held and will be continued through the design process.

Commissioner Eden moved to approve the waiver. Commissioner McMahan seconded the motion and it was carried with four "yes" votes. Commissioner Eden stated the Commission has recently received similar requests from other cities, and it is likely they will receive more requests in the future. She suggested the Commission consider reviewing and perhaps modifying the "Dilution Rule" so the Department does not have to bring every request for waiver to the Commission.

The Commission recessed for lunch with local officials. The meeting resumed at 1:30 p.m.

#### **O. Commissioners' Reports**

Linda McMahan currently serves on the Oregon Community Foundation Advisory Committee. They are responsible for the administration of the Tualatin Valley Water Quality Endowment Fund. The Committee just awarded \$260,000 to various groups for education and water quality improvement.

Chair Whipple reported on the Governor's Water Enhancement Board (GWEB). She indicated that she would like to have an informational item presented to the Commission at one of their upcoming meetings regarding GWEB.

#### **P. Director's Report**

In the Portland metropolitan area over 400 businesses voluntarily promote air quality pollution prevention activities at their worksites on days DEQ issues advisories (Clean Air Action Days). This list has grown considerably in the past year due to extensive outreach to the business community in the form of presentations to Chambers of Commerce, civic organizations and so on.

An Oregon Magistrate ruled that the National Marine Fisheries Service (NMFS) decision not to list Coho Salmon on the Oregon Coast was inappropriate. NMFS based its no list action upon the work effort promised under the Oregon Coastal Salmon Restoration Plan. Magistrate Stewart determined NMFS cannot rely on plans for future actions to reduce threats and protect a species as a basis for deciding that listing is not currently warranted. Governor Kitzhaber announced Oregon would be appealing the decision; it is uncertain whether NMFS will appeal.

A steering committee will be established due to the recent Steelhead listing on the Willamette River. The committee will guide the effort to develop water quality and fish restoration efforts for the Willamette.

Director Marsh recognized a number of employees whose work had been acknowledged by citizens and other agencies.

There being no further business, the meeting was adjourned at 2:25 p.m.