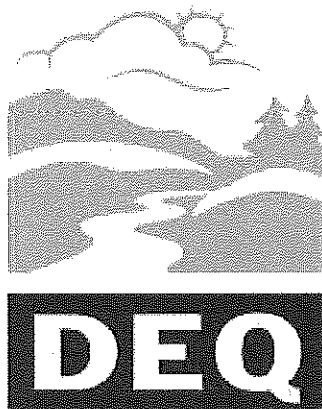


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 09/17/1998**



**State of Oregon
Department of
Environmental
Quality**

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Revised A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

September 17, 1998
DEQ Conference Room 3A
811 S. W. Sixth Avenue
Portland, Oregon

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

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

Beginning at 8:30 a.m.

- A. **Approval of Minutes**
- B. **Approval of Tax Credits**
- C. **†Rule Adoption:** Compliance Assurance Monitoring (CAM) and Credible Evidence Rules
- D. **†Rule Adoption:** Amendments to Division 22 Reasonably Available Control Technology (RACT) Rules
- E. **†Rule Adoption:** Update New Source Performance Standards (NSPS) and Emission Guidelines for Hospital/Medical and Infectious Waste Incinerators
- F. **†Rule Adoption:** Update Existing NESHAP, Adopt New NESHAP Standards and Revise Existing Division 25 Standards

- G. **Action Item:** Appeal of Hearing's Officer's Findings of Fact, Conclusions of Law and Final Order in the Matter of William H. Ferguson, Case No. AQAB WR 96-351
- H. **Action Item:** Petition for Reconsideration of Certification #98-002 and #98-032
- I. **Informational Item:** Update to the Commission on Activities of the Governor's Water Enhancement Board (GWEB)
- J. **Informational Item:** Update to the Commission on the Umatilla Chemical Depot
- K. **Commissioners' Reports**
- L. **Director's Report**

Notice of Executive Session of the Environmental Quality Commission

The Environmental Quality Commission will hold an executive session at 12:00 noon in room 3B, 811 SW Sixth, Portland, Oregon. The Commission will be consulting with legal counsel regarding *G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159)*. The executive session is to be held pursuant to ORS 192.660(1)(h). The regular meeting of the Environmental Quality Commission will commence at 1:00 pm. Representatives of the media will not be allowed to report on any of the deliberations during the session.

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

The Commission has set aside October 29-30 1998, for their next meeting. The meeting will be in Ontario, Oregon; however, a specific location has not been confirmed.

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.

September 15, 1998

Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Seventieth Meeting

**August 6-7, 1998
Regular Meeting**

The Environmental Quality Commission convened it's regular meeting at 1:05 p.m. on Thursday, August 6, 1998, at the Department of Environmental Quality Headquarters, 811 SW Sixth, Portland, Oregon. The following members were present:

Melinda Eden, Member
Linda McMahan, Member
Mark Reeve, Member

Also present were Larry Edelman, Shelley McIntyre 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.

Commissioner McMahan called the meeting to order. The following items were addressed:

A. Update on Spring Creek Hatchery Release

Gene Foster, DEQ-WQ, presented information to the Commission on the results of the U.S. Fish & Wildlife (USFWS) Spring Creek Fish Hatchery release. The USFWS released 7,727,000 juvenile fall Chinook from the Spring Creek Fish Hatchery on March 13, 1998. The release began at 8:00am and ended at 12:30pm. Spill began at 8:00pm on March 13 and ended on March 23. Spill was limited to the volume that produced 110% TDG. Effects of the spill were monitored by collecting fish on March 14, 16, and 17 downstream of Bonneville Dam. Chinook salmon, large scale suckers and mountain whitefish were collected and examined for gas bubble disease. There were no signs of gas bubble disease in the fish collected. The actual average flow during the release was 188,300 cfs. The estimated survival rate at 80,000cfs spill (120% TDG) would have been 93.28% and at 70,000 cfs (110% TDG) would have been 92.96%. This would have resulted in a loss of about 24,727 juvenile fish that would equate to 272 adults.

B. Update on the City of Portland Combined Sewer Overflow (CSO) Project

Dean Marriott, Director of the City of Portland's Bureau of Environmental Services (BES), presented this item. He explained the full scope of BES activities, including the operation of two sewage treatment plants, the Mid-County Sewer Project and various watershed enhancement projects. Using charts and slides, he made a presentation on the background and current status of the CSO program. He described the progress made in implementing the "Cornerstone Projects" which are intended to remove stormwater from the sewer system and which have already reduced the volume of overflows from about 6 billion gallons per year in 1991 to about 3.4 billion gallons at present. The initiation of construction of the

Columbia Slough Consolidation Conduit and related facilities will capture and treat overflows to Columbia Slough by the Year 2000, and the "Willamette Pre-Design" process will define in detail the capture and treatment facilities for overflows to the Willamette River. To date, the City has spent \$123 million on the CSO program. The BES has begun to work on an "Integrated Watershed Approach" and would be reexamining the CSO program from this perspective. The City hoped to visit with the Commission again in 1999 to discuss the matter further. Following the presentation, Commission members, Mr. Marriott and Director Marsh briefly discussed the CSO program and expenditures for it in relation to other water quality objectives

C. Update on the Umatilla Chemical Depot

Mr. Wayne Thomas, DEQ Umatilla Program Manager, updated the Commission on the status of the hazardous waste incineration facility being constructed at the Umatilla Chemical Depot near Hermiston. The facility is approximately 25% complete, and there have been numerous permit modification requests from the U.S. Army. The Commission requested that the Department arrange for a briefing from the Attorney General's office on the status of the lawsuit against the Commission and the Department related to the decision to issue the required permits. *Commissioner Eden requested that no modification to the specific conditions made to the permit by the Commission be granted without the EQC being briefed.*"

D. Update on the 401 Certification Program for Livestock Grazing

Michael Llewelyn, Water Quality Administrator; Russell Harding, Manager, Watershed/Basin Section, Water Quality Division, and Debra Sturdevant, Natural Resource Specialist, briefly reported on the implementation of the Clean Water Act Section 401 grazing program since DEQ and ODA adopted rules in February. Staff also informed the Commission that in late July, the Ninth Circuit Court of Appeals reversed the decision of the District Court and ruled that 401 certifications are not required for grazing or other nonpoint sources of pollution.

The EQC was not asked to take action at this time. Staff will wait to find out whether there will be further legal action on the case before moving to repeal the pertinent Oregon administrative rules. DEQ will not take formal action to cancel the 401s that were issued prior to the Circuit Court Decision, but will not enforce the certifications as long as the current ruling is in effect.

After hearing this item, the Commission recessed for the evening. The meeting was resumed at 8:35 a.m. on August 7 with the following commissioners present:

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

E. Approval of Minutes

Commissioner Reeve made the following correction to the June 11-12, 1998 minutes: on page 5, paragraph 5, line 5, the line should read "affirmed the hearings officer's finding of facts but *amended* the conclusions of law. The motion was." Commissioner Eden then made the following correction: on page 10, first full paragraph, line 4, the words after "Dilution Rule" should be removed. Commissioner Eden moved the minutes be approved as amended. The motion was seconded by Commissioner Reeve and carried with five "yes" votes.

G. Revision to the PM10 Attainment Plan for the Medford-Ashland Air Quality Maintenance Area

Greg Green, Air Quality Administrator, and David Collier, Nonattainment Area Specialist, Air Quality Division, presented this item. Mr. Collier summarized the local advisory committee process used to develop the plan, key plan elements, and changes in EPA guidance on modeling and plan development. The proposed plan was a combination of existing strategies and additional new proactive strategies aimed at preventing air quality problems for both PM10 and the new fine particulate standard (PM2.5). The plan had been recommended by a majority of the local advisory committee and goes beyond the minimum effort required by EPA. Mr. Collier summarized public testimony; how the plan satisfied many of the comments made in testimony; and how the on-going advisory committee process in Medford will address other concerns raised by the public. Commissioner Van Vliet moved to accept the revisions as indicated in Attachment A. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

Several Commissioners commented that the Medford-Ashland advisory committee, and the people of the Medford-Ashland area should be commended for their willingness to be proactive and go beyond the minimum effort required. Commissioner Whipple stated there was something positive to learn from this effort and it should be held up as a model for future work. The Commission was interested in finding some way to give proper credit to the people of the Medford-Ashland area. The Commission also asked that a work session be done at a future meeting to look at additional ozone issues.

H. Revision to the Prevention of Significant Deterioration (PSD) Requirements Under the New Source Review (NSR) Program for New and Expanding Major Industry in the Medford-Ashland Air Quality Maintenance Area (AQMA)

Greg Green and David Collier presented this item. The proposal is a companion piece to the Medford-Ashland PM10 Plan. The local advisory committee recommended the proposal to ensure no backsliding of requirements on new or expanding major industry in the Medford-Ashland area. The proposal will retain the current stringent nonattainment area control and analysis requirements for new or expanding major industry in place of less stringent requirements that would become effective once the nonattainment designation for the Medford-Ashland area is revoked. EPA commented that major sources with emissions greater than established federal PSD thresholds could not be exempt from the PSD requirement to evaluate air quality impacts on Class I wilderness areas. This particular analysis is not part of the suite of nonattainment area control and analysis requirements. The proposal has been modified to accommodate EPA's comment. The new proposal would subject sources to both nonattainment area requirements and the impact analysis on Class I wilderness areas. Commissioner Reeve asked that Table 3, OAR 340-028-110 and the text of the rule be consistent when referring to particulate matter or PM10. It was agreed to strike the words "particulate matter or" from the table. Commissioner Reeve moved to approve the requirements with the change noted. Commissioner Eden seconded the motion and it was carried with five "yes" votes.

I. Medford Area Carbon Monoxide (CO) Maintenance Plan and Designations of Nonattainment and Maintenance Areas

Greg Green and Kevin Downing, Airshed Planner, Air Quality Division, presented this item. The Medford area had violated the federal carbon monoxide air quality standards on numerous occasions in the 1970s and 1980s. A combination of strategies implemented at the federal, state and local levels has succeeded in reducing ambient exposures to safe levels. To remove the nonattainment classification triggered by these historic exceedances an area, under federal Clean Air Act requirements, must also present a plan that will ensure continued maintenance of the standard for at least ten years. The Commission was asked to adopt the maintenance plan and supporting emission inventories that would provide the basis for a request to the Environmental Protection Agency to reclassify the Medford area in compliance with the carbon monoxide standard.

Commissioner Eden asked if there was clarification on why local residents were so concerned about the use of methyl tertiary butyl ether (MTBE) in oxygenated fuels considering the presence of other toxic chemicals in gasoline. Mr. Downing replied that MTBE replaces benzene reducing the carcinogenic risks otherwise associated with gasoline. Greg Green stated much of the concern focused on potential water quality impacts and the Department, through the underground storage tank program, was monitoring for MTBE at tank cleanup sites. It was asked whether older vehicles could be exempted from the oxygenated fuel requirements, and Mr. Downing replied it would be logistically difficult. When asked for clarification on several oxygenated fuel program requirements and questioned whether the Department would be able to track gasoline constituents outside of the oxygenated fuel season, Mr. Green stated the Department currently tracked air toxics through the hazardous air pollutant program.

Commissioner Eden moved that the maintenance plan, emission inventories and supporting rule amendments be adopted as presented in the staff report. Commissioner Van Vliet seconded the motion and it was carried with five "yes" votes.

J. New Source Review Amendment for Carbon Monoxide (CO) Maintenance Areas

Greg Green and Kevin Downing presented this item. Under current rules, new or expanding major industrial sources in air quality maintenance areas are subject to Best Available Control Technology (BACT) for air emissions, and any remaining emissions must either be accommodated within a growth allowance or offset by reductions elsewhere. The Medford carbon monoxide maintenance plan was developed without a growth allowance and there were no offsets available in the area, the Medford air quality advisory committee recommended creating another option. The proposed rule amendment would allow major industrial sources of carbon monoxide in maintenance areas to model the proposed increase to show there would be no significant impact.

Commissioner Van Vliet asked whether the standards for evaluating what is best available control technology reflected prototype systems. Mr. Downing replied BACT determinations were based on inventories of established control technologies that took into account various environmental impacts and economic costs. Mr. Green added that if the systems failed to provide the emission reduction predicted then the Department could require additional controls to be installed. When asked whether these modeling processes and techniques were familiar to sources and Department staff, Mr. Downing replied that industrial sources, consultants and Department staff were familiar with these techniques as they have also been required for new or expanding sources in attainment areas. He also indicated carbon monoxide impacts from industrial sources are very small, the limits allowed under the proposal are very low and that cumulative impacts can be assessed through the emission tracking program established in the maintenance plan.

Commissioner Reeve moved to adopt the proposal as presented in the staff report and was seconded by Commissioner Van Vliet. The motion carried with five "yes" votes.

K. Rule Revisions for Transportation Conformity, Indirect Sources, General Conformity and State Implementation Plan (SIP) Streamlining

Greg Green and Dave Nordberg, State Implementation Plan Coordinator, briefly explained the proposed rule amendments. In response to questions from the commission pertaining to Transportation Conformity, Airshed Planning Manager Annette Liebe indicated "conformity lapses" have occurred twice in Oregon, and during such events federal highway funds are not lost from a state's highway budget.

Regarding the second group of proposed rules, staff clarified for the Commission that the Indirect Source Construction Permits program addresses only the pollutant carbon monoxide, and the program differs from the Transportation and General Conformity programs in that the latter address ozone and particulate matter in addition to carbon monoxide.

On the subject of General Conformity, Commissioner Whipple questioned why the proposed rules remove controls on prescribed burning on federal lands outside nonattainment and maintenance areas. Annette Liebe explained that for state conformity rules to be more restrictive than the federal measures they must apply equally to federal and nonfederal activities, and the Department lacks the resources needed to control diverse nonfederal sources. She also indicated that the newly adopted Medford Maintenance Plan does not establish a budget for the emission of particulate matter, but the Oregon Smoke Management Plan does provide goals for emissions from prescribed burning and such emissions are reported annually to the department.

Commissioner Van Vliet moved that the four groups of rule amendments be adopted. The motion was seconded by Commissioner McMahan and carried with five "yes" votes.

L. Sunset of Title V Small Source Deferral and Establishing a "General" Air Contaminant Discharge Permit (ACDP) Category

Greg Green and Kathleen Craig, Environmental Specialist, Air Quality Division, presented the two rule actions. The Title V deferral applies to sources whose actual emissions are 50% of major thresholds, yet have the potential to emit at major levels. The original Title V deferral period was January, 1995 through January, 1997 and was extended to July, 1998. This action extends the deferral to December 31, 1999, which is consistent with a recent extension allowed by EPA. Once the deferral expires, deferred sources will need to apply for a Title V or Synthetic Minor permit.

Regular Air Contaminant Discharge Permits are issued to individual facilities. This approach is reasonable for issuing permits for facilities with different requirements, but is not efficient when many facilities are subject to the same requirements. Establishing a general ACDP will give the Department the authority to issue one General ACDP per source category, with a standard set of requirements applying to all sources in the category. Qualifying sources have low emissions, minimal impact to the environment, good compliance records and are subject to only those requirements contained in the General ACDP. A distinguishing feature of a General ACDP is one public notice will be issued for a General ACDP versus public notices each time a facility is issued a regular ACDP; however, an updated list of sources assigned to a General ACDP is available for public review. The Commission asked that the Department report back to the Commission after the first of the year with a list of whom general permits were issued.

A motion was made by Commissioner Van Vliet to accept the rule action regarding the Title V Small Source Deferral. The motion was seconded by Commissioner Reeve and carried with five "yes" votes. A motion was made by Commissioner Reeve to accept the recommendation to establish a general ACDP category. The motion was seconded by Commissioner Eden and carried with four "yes" votes. One Commissioner voted "no" on this motion.

Public Comment

Joseph Higgins and Corinne Weber representing the Maplewood and Hayhurst Neighborhood Associations in Portland presented public comment on the contamination of Vermont and Fanno Creek due to the building of the Community Center adjacent to Gabriel Park. Bob Baumgartner, Water Quality Manager, Northwest Region, responded from the Department.

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

The Department appealed the Hearing Officer's Findings of Fact and Conclusions of Law. In that order, the hearing officer found that Mr. Ferguson was liable for a civil penalty in the amount of \$1,000, a reduction of the originally assessed penalty of \$5,400. Mr. Ferguson was not present for the EQC meeting and authorized Mr. John W. Eads, Jr. to represent him. It was determined Mr. Eads was neither

a licensed attorney at law nor did he meet the definition of an authorized representative for a contested case hearing.

The Commission made preliminary rulings on several outstanding procedural motions. Commissioner Eden moved to deny Mr. Ferguson's motion to dismiss the appeal based on the late filing of the Department's exceptions and brief. Commissioner McMahan seconded the motion and it carried with five "yes" votes. Carol Whipple, the Commission Chair, granted the Department's and Mr. Ferguson's motions for an extension for filing briefs. The Commission then considered whether it should reopen the case, on its own motion to consider the applicability of OSHA regulations to this matter. The Commission declined to reopen the case. Commissioner Van Vliet moved to set this agenda item over to the September meeting. Commissioner Eden seconded the motion and it passed with five "yes" votes.

N. Appeal of Hearing's 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

Larry Knudsen, Assistant Attorney General, presented the Findings of Fact, Conclusions of Law and Commission's Opinion for approval. There being no further discussion, Commissioner Reeve moved to adopt the order. It was seconded by Commissioner Eden and approved with five "yes" votes.

O. Amendments to the Department's Division 12 Rules Concerning Enforcement and Civil Penalty Assessment Procedures

Les Carlough, Enforcement Manager, and Jenny Root, Environmental Law Specialist, presented this item. The proposed changes included moving violations of water quality statutes or rules by persons having or needing a Water Pollution Control Facility (WPCF) Permit, from the \$2,500 civil penalty matrix to the \$10,000 civil penalty matrix, granting the Director the authority to assess smaller penalties for violations that are self-reported, granting the Director the authority to use discretion in assessing a penalty based only on the economic benefit gained through noncompliance without assessing the class-and-magnitude based portion of the penalty, and housekeeping changes such as additions and revisions to classifications of violations and clarification of existing rules. The public notice was sent to all persons on the agency's rulemaking list, and each division's rule making list.

Commissioner Eden asked whether removing "Air Contaminant Discharge Permit" from the Notice of Permit Violation requirement meant the person or facility would not know an enforcement action was pending before receiving the action in the mail. Mr. Carlough explained enforcement actions are always preceded by a Notice of Noncompliance, regardless of whether there is a Notice of Permit Violation.

Commissioner Reeve requested the word "not" be added to (h) of the self-disclosure rule (OAR 340-12-0045(2)(h)), so (h) reads, "Not the cause of significant harm to human health or the environment." A motion was made by Commissioner Eden to adopt the rules as presented in Attachment A of the Staff Report, including the Addendum and with the additional change suggested by Commissioner Reeve. Commissioner Van Vliet seconded the motion and it carried with five "yes" votes.

P. Commissioners' Reports

No reports were given.

Q. Director's Report

The Department is in the process of developing a comprehensive statewide plan for managing contaminated sediments. The plan will incorporate a tiered approach where the least contaminated sediments will be eligible for in water disposal or confined in water disposal, the next level, upland disposal and seriously contaminated sediments to an appropriate hazardous waste landfill. Recent news

articles regarding disposal of dredged spoils at the Ross Island site in the Portland area points out how this issue has been evolving over time. The Governor will convene a series of meetings among federal and state agencies to focus on contaminated sediment management issues. A chronology was handed out regarding Ross Island and the article from The Oregonian entitled "Port buries toxic silt at Ross Island."

DEQ has declared four clean air action days (CAADs) so far this summer in the Portland metropolitan area. The new 8-hour ozone standard level of 0.08 ppm has been exceeded at two sites in the Portland metropolitan area and once in Salem. The new standard is the 3 year average of the 4th highest ozone value at a site, which is not to exceed .08 ppm. Over 400 businesses voluntarily promote air quality pollution prevention activities at their work sites on these days.

The first hearings were held on draft Title V air quality permits for five gasoline terminals located in northwest Portland and for the ESCO facility. The Title V permits will replace existing air contaminant discharge permits. The Title V permits by themselves do not create new requirements, but are shells that incorporate all of the state and federal air quality requirements from our rules and laws. DEQ will be respond to comments over the next two months and then prepare the permits to go to EPA for final review and approval.

The Portland Pollution Prevention Outreach (P2O) Team is a group comprised of representatives from six local governments and DEQ that was established in 1993 to promote pollution prevention in the Portland metropolitan area through coordinated efforts. The P2O Team has demonstrated how government agencies can work together to convey unified educational message in an efficient manner. The P2O Team has developed and implemented three major outreach efforts that have reached hundreds of small businesses and thousands of households in the region since 1995.

The Team's pilot project is a recognition program for local automotive service businesses. Called the Eco-Logoical Business Program," it is designed to encourage these small firms to strive for exemplary environmental performance. Automotive facilities implementing a series of best management practices (BMPs) will be eligible to receive a window sticker and certificate to highlight their accomplishments. An advisory committee with representatives from two automotive businesses, a local trade association, AAA, and OSPIRG, has been working with agency staff to develop a program that will be widely accepted by both businesses and consumers.

The Oregon Supreme Court has refused to review a decision of the Oregon Court of Appeals, which ruled six to three that the City of Eugene had exceeded its authority in compelling connection to the sewer system. The City required individual property owners outside city limits to obtain the sewer connections after the EQC made the determination that connecting to sewers was necessary for public health and the environment. Previously separate studies of the groundwater in the River Road-Santa Clara area had documented nitrate and fecal bacteria contamination and identified septic systems as the main source of that contamination. The EPA standard for fecal coliform bacteria was exceeded in virtually every well sampled in the area. In response to the study, the EQC directed DEQ to obtain agreements from local governments to develop a master sewerage plan and provide the service. A \$6 million grant from EPA in 1984 was predicated upon the schedule of connection that included 100% connection by the year 2000. The Court of Appeals ruling was limited to the matter of connection authority. The City's authority to build the sewer, collect assessment fees, or charge monthly sewer user fees is not affected. Out of 8,000 hookups, 230 remain to be completed. The City continues to explore options to ensure 100% connection to the system.

Last October, a natural toxin was first detected at Ten Mile Lakes. Health official spotted the lakes as off limits for drinking, swimming, or other contact. The water was contaminated by a toxic blue-green algae known as microcystis, which is toxic at high concentration levels. The warning was lifted in December. The City of Lakeside recently raised concerns about the possibility of return of the algae this year and asked DEQ to help with monitoring to determine the extent of the problems. Western Regional staff have been working with the local watershed council on the issue. The lakes are not only a tourist attraction,

but are also a source of drinking water. DEQ applied for and received a \$11,000 grant from EPA to carry out the monitoring through October 1, 1998. If the monitoring shows a problem, DEQ will apply for funding to carry out more extensive work to determine sources of nutrient loads causing the algae bloom.

The Water Quality program will review the Agency's dilution rule during the next periodic rule review which is required under ORS 183.545. This review will occur, covering all DEQ rules, in the fall of 1999.

DEQ certified the cities of Coburg and Junction City for their plans to protect the cities' drinking water supplies. Both cities worked with advisory committees to develop their plans. They used volunteers to develop pamphlets for farmers and rural residents, flyers for the local newspaper, household hazardous waste collection events, stormwater catch basin stenciling programs and display posters about groundwater protection. The cities were among the first to receive Wellhead Protection Certification from DEQ.

The natural resource agencies are reviewing the proposed action by EPA of recognizing the Warm Springs Tribe as a state for purposes of developing water quality standards and issuing permits related to facilities on the tribes' reservation land. DEQ and other agencies have raised the question regarding the application that relates to where the boundaries of the tribal lands are that include the Deschutes and Metolious rivers. The agencies are proposing to EPA that a separate agreement be completed with the Tribes to maintain the existing Water Resources Department agreement and approach with the Tribes to not try to define the exact boundary, but rather to reach agreements managing these waters.

There being no further business, the meeting was adjourned at 3:05 p.m.

ARGUMENTS FOR APPROVAL OF APPLICATION NO. 4458

DRIFT ELIMINATORS, D-15 CELLULAR PVC

The Energy Facility Siting Council of the State of Oregon issued their final order September 16, 1994 requiring PGE to keep the cooling tower drift to .002% of the circulation rate, see pages 3-7. The site certificate, Page 11 also included the provision that the cooling tower drift shall not exceed .002 percent of the water circulation rate. The drift eliminator was installed solely to reduce the amount of dissolved solids and salts that would escape and pollute the adjoining wetland. As a result of using drift eliminators, PGE must remove water from the system (called blow down) to keep the dissolved solids and salts in the water to an acceptable level. Any cost savings by using the drift eliminators to reduce the loss of water is offset by the required (blow down) removal of water from the system using an alternative method to the cooling tower drift to maintain satisfactory water quality within the cooling system.

The drift eliminators were required to prevent any detrimental environmental impact to the adjacent Messner Pond and the wildlife it supports. Inasmuch as this is the sole purpose of installing the pollution control equipment, PGE was surprised by the DEQ staff recommended denial of the credit.

The DEQ staff recommendation for denial states that the facility fails the sole purpose test because it doesn't prevent, control or reduce a substantial quantity of water pollution. It appears obvious to PGE that if a state agency, the Facility Energy Siting Council of the State of Oregon, is concerned enough about the pollution of a wetland area to require the cooling tower drift eliminators, that the DEQ should also recognize this pollution problem. PGE's sole purpose of installing the drift eliminator was to reduce to .002 percent the drift from the cooling tower into the wetland area called Messner Pond.

The DEQ staff in denying this application stated that it does not prevent, control or reduce a substantial quantity of water pollution, however, without the drift eliminators approximately fifty times as much dissolved solids and salts could have been introduced into the wetland area called Messner Pond. The reduction from about .1% to .002% in PGE's eyes does prevent, control and reduce a substantial quantity of water pollution and certainly should qualify this facility for the pollution control credit.

PGE requests based on the above discussion and attached support that Application 4458, Drift Eliminators, be allowed as pollution control equipment for credit purposes in the amount of \$44,385.

FILED
SEP 19 1994
RESOURCE STRATEGY
AND DEVELOPMENT

BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

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In the matter of the Application)
for Site Certificate of Portland)
General Electric Company for the)
Coyote Springs Cogeneration)
Project)

FINAL ORDER

*Explains why
rules were used
in Site Certificate*

See pages 51, 52, 54, 55

On review of the entirety of record in this proceeding, the Energy Facility Siting Council issues this order.

I. INTRODUCTION

This final order addresses the application for a site certificate (ASC) for the construction and operation of a electrical generating facility submitted by the Applicant Portland General Electric Company (Applicant). The proposed facility is known as the Coyote Springs Cogeneration Project (CSCP).

The Energy Facility Siting Council (EFSC) of the State of Oregon is responsible for review and approval of the siting, construction, operation and retirement of large energy facilities within the State of Oregon. Oregon Revised Statute (ORS) chapter 469. EFSC is directed by this statutory authority to protect the public health and safety and oversee compliance with the state's energy policy and air, water, solid waste, land use and other environmental protection policies of this state. ORS 469.310.

In this process, EFSC determines whether an application satisfies the statutory and administrative standards for the siting of a facility and, in doing so, under what conditions the application would satisfy these standards. If the application does satisfy these standards, either unconditionally or subject to certain conditions, EFSC also determines what other requirements, limitations or conditions it should impose upon the Applicant as obligated or authorized under ORS chapter 469 (1993).

This order is based on the Hearings Officer's Proposed Order issued July 27, 1994, and the ODOE proposed order issued January 10, 1994.

II. PROCEDURAL HISTORY

On May 10, 1991, the Applicant's former subsidiary and predecessor in interest, PowerLink Corporation, submitted a Notice of Intent (NOI) for the proposed CSCP to EFSC. An addendum to the NOI was submitted on August 15, 1991, responding to a request from EFSC staff for additional information dated June 19, 1991.

federal primary and secondary standards for air emissions. The primary standards were implemented to protect human health. The secondary standards, which are sometimes referred to as the welfare standard, were established to protect economic and environmental values, including agricultural, fish and wildlife. Because air emissions that can be expected from this natural gas powered plant do not raise any particular concerns for these protected areas, there is no reason for us to conduct a review of air emissions beyond that conducted by DEQ other than for cooling tower drift.

We consider cooling tower drift for two reasons. First, no other agency, including DEQ, is reviewing cooling tower drift from the CSCP. Second, cooling tower drift has the potential to adversely impact the surrounding area because of the cooling process used here. Cooling tower drift refers to water droplets from the circulating water in the cooling tower system that are entrained and discharged from the cooling tower by the action of the fans. The water droplets carry chemicals into the atmosphere that are found in the water as particulate matter.

Depending on wind speed, most of the drift will fall within close proximity to the cooling tower. Beyond 1500 feet, the amount of drift remaining airborne will be insignificant. Therefore, cooling tower drift will not adversely affect protected areas given their distance from the CSCP site.

The Applicant contacted representatives of the Umatilla National Wildlife Refuge who reviewed the ASC for the project and indicated no concern with potential impacts. Similarly, the Oregon Department of Fish and Wildlife raised no issues of concern regarding the proposed project in relation to any of the protected areas. Based on our review, we conclude that the CSCP will not significantly affect the two closest protected areas.

The remaining protected areas are a national wildlife refuge, a state park, two state fish hatcheries, three state wildlife management areas, two state natural heritage areas, a state agricultural research center and two Bureau of Land Management areas of critical concern. The nearest of these are the two hatcheries, which are about eight miles from the CSCP site. Given the distances to these protected areas and the nature of these areas, we conclude that the CSCP will also not affect these more distant protected areas.

We conclude therefore that the proposed facility will not have a significant adverse impact on any protected areas.

VI. E. 2. Fish and Wildlife Standard: OAR 345-22-060

OAR 345-22-060 provides:

"(1) The design, construction, operation and retirement of a facility shall be consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-030."

"(2) This rule shall not apply to threatened or endangered species listed under ORS 469.172(2)."

Mitigation goals and standards: OAR 635-415-030 identifies four categories of fish and wildlife habitat and provides a separate mitigation goal and standard for each category. Habitat Category 1 is

"habitat of exceptional value for an evaluation species and is irreplaceable and unique; or is essential habitat of any State of Oregon listed threatened or endangered species; or is the critical habitat as defined in the Endangered Species Act of any federally listed threatened or endangered species." OAR 635-415-030(1).

Evaluation species are species "identified for the purposes of evaluating the impacts of . . . development . . . or developing or evaluating programs to mitigate those impacts." OAR 635-415-005(7).

For habitat category 1, the mitigation goal is "no loss of habitat units or habitat value." OAR 635-415-030(1)(a). Habitat value means "the relative ability of a habitat to support fish and wildlife populations." OAR 635-415-005(11).

The standards require that the Oregon Department of Fish and Wildlife (ODFW) act to protect category 1 habitats by avoiding impacts to developments through alternatives or not authorizing the development if no alternative exists. OAR 635-415-030(1)(b).

Habitat category 2 is

"habitat of high value for an evaluation species and is scarce or becoming scarce . . . ; or is habitat essential to achieving policies or population objectives specified in a species management plan of the Fish and Wildlife Commission; or is essential habitat of any sensitive species listed by the Fish and Wildlife Commission." OAR 615-415-030(2).

The mitigation goal is no net loss of habitat units or habitat value. OAR 635-415-030(2)(a). The standards require that this goal be achieved by avoiding the impacts of development through alternatives; mitigating the impacts, if the impacts can not be avoided; or not authorizing the development, if mitigation is not possible. Mitigation must use reliable, in-kind and on-site methods. OAR 635-415-030(2)(b).

Habitat category 3 is habitat of high to medium value for evaluation species and is abundant. OAR 635-415-030(3). The mitigation goal is no net loss of habitat units or habitat value. OAR 635-415-030(3)(a). The standards require that this goal be achieved by avoiding the impacts of development through alternatives; mitigating the impacts, if the impacts can not be avoided; or not authorizing the development, if mitigation is not possible. Mitigation may use reliable, in-kind or out-of-kind, and on-site or off-site methods. OAR 635-415-030(3)(b).

Habitat category 4 is habitat of low value to fish and wildlife. OAR 635-415-030(4). The mitigation goal is to minimize the loss fish and wildlife habitat value or to conserve or enhance fish and wildlife habitat. OAR 635-415-030(4)(a). Under the standards, ODFW must recommend or require mitigation measures to achieve that goal. OAR 635-415-030(4)(b).

The expected impacts: Although, the CSCP site is located approximately one-quarter mile from the Columbia River and 450 feet from Messner Pond, construction activities would not adversely impact fish or aquatic habitat. Construction activities would not cause effluent or sediment to enter either the Columbia River or Messner Pond. No explosives or harmful substances would be placed in any waters as the result of the proposed project.

The CSCP site is habitat category 4. Loss of this habitat will not constitute a significant adverse impact on wildlife habitat or species populations. Moreover, the Applicant has agreed to plant an area of trees between Messner Pond and the project site. This will enhance adjacent wildlife habitat and mitigate for the habitat taken by the facility.

Construction and operation of the CSCP could have some adverse effect on wildlife in the surrounding area, but certain steps described below will be taken to mitigate these impacts. (ODFW report attached and incorporated in Staff Report Appendix A.5--ODOE Exhibit 2/Meehan.)

Three state sensitive wildlife species may be found near the site. These are American white pelicans (Pelecanus erythrorhynchos), Franklin's gull (Larus pipixcan) and bank swallows (Riparia

ripaia). (ODFW report attached to Staff Report as Appendix A.5--
ODOE Exhibit 2/Meehan.) The pelican and gull species were only
observed at Messner Pond. The Messner Pond habitat is habitat
category 2. It will not be significantly affected by the
construction and operation of the CSCP. It will be protected from
auditory and visual impacts of the project by a tree buffer.

A small nesting colony of bank swallows is located along the south
bank of the Union Pacific Railroad mainline, about 75 feet north of
the facility site. This area therefore constitutes a habitat
category 2 area. (See ODFW Report attached as appendix A5 to ODOE
staff report--ODOE Exhibit 2/Meehan.)

Project construction and operation will not remove or alter the
bank swallows' nesting area. In addition, the Applicant has
committed to place a temporary fence between the project
construction area and the bank swallow nesting area to minimize
disturbance of the nesting colony during construction. ODFW does
not believe that the operation of the CSCP will cause the swallows
to abandon the site. The Applicant has further committed to
monitor the swallow's activity at the site during construction and
operation. For these reasons, ODFW mitigation standards and goals
will be satisfied.

The transmission corridor crosses both habitat category 3 and 4.
Construction of the transmission line would not result in
significant impact to fish and wildlife habitat. No wetlands are
located within the proposed transmission line corridor, and
construction of the line would not affect any wetland areas. The
Applicant has committed to take appropriate mitigation measures to
minimize electrocution hazards to raptors from the transmission
line. The Applicant has also committed to limit the construction
disturbance area along the electrical transmission-line corridor.
To the extent practicable, the Applicant will leave vegetation root
systems intact within the disturbed areas to allow for
regeneration. However, any vegetation which exceeds 12 feet in
height, and all Russian olive trees, will be removed within the
corridor. The root systems of removed Russian olive trees will be
treated to prevent regrowth. The Applicant has agreed to reseed
this area with woody shrubs and perennial grass in consultation
with ODFW. The Applicant has further committed to reseeding
disturbed areas along the transmission-line corridor using an
upland bird cover habitat area mix. These mitigation measures
satisfy ODFW's mitigation standards and goals.

The effects on fish and wildlife from noise is considered under the
noise standard and is not expected to be a problem.

The Applicant studied the impact of cooling tower drift on Messner
Pond. (See PGE Exhibit 4/Walt--Appendix to ASC Exhibit P

containing a report entitled Estimated Potential Cooling Tower Drift Effects on the Water Quality and Vegetation at Messner Pond, Beak Consultants, Inc., September 7, 1993). The study was based on a drift factor of 0.002 percent (resulting in a drift rate of about 1.5 gpm) carrying a low concentration of total dissolved solids (TDS) of 2,084 parts per million (based on 3.9 cycles of concentration in the cooling tower system). At these levels, the salts will be below that level that would tend to be harmful or toxic to plants or wildlife. ODOE has reviewed this study and concluded that the study's results are reasonably supported given the low drift rates and water chemistry.

Applicant subsequently proposed installing a zero discharge wastewater treatment system that would eliminate wastewater discharges to the Port of Morrow wastewater disposal system. Applicant would install this system in the event that DEQ does not approve the Port of Morrow wastewater system for disposal of the CSCP wastewater.

In order to implement the zero discharge system, Applicant would need to increase the cycles of concentration in the cooling tower system. This would result in an increase in the TDS concentration in the cooling water. As presently designed, Applicant proposes 10 cycles of concentration with a TDS concentration of approximately 6,000 parts per million. Applicant submitted two supplemental reports (Beak Consultants, letter reports dated January 4 and 5, 1994) addressing potential impacts from cooling tower drift at this higher TDS concentration. The reports noted the possibility of excess algae and plant growth from high nutrient loadings, and riparian plant stress from salt deposition. The reports indicate that these conclusions are based on conservative assumptions that are not likely to occur. However, Applicant has agreed to monitor Messner Pond and the surrounding vegetation both before and during the operation of the CSCP. Applicant has committed to full mitigation in the event that adverse impacts from cooling tower drift are identified. Applicant's agreement is contained in the January 5, 1994 revision to the December 10, 1993 Ecological Monitoring Program that has been approved by ODFW and ODOE. Further, the site certificate shall be conditioned on a requirement that drift rates and water chemistry will be as represented in the above referenced September 7, 1993 study.

A maximum of 6 cubic feet per second (cfs) of water will be used by the CSCP. This water will come from existing water supply wells. Most of these wells rely on aquifers that have connection with the Columbia River and thus affect the water budget of the river up to a maximum of 6 cfs. The Applicant evaluated the possible effects of this reduction of water in the Columbia River on fish. A 6 cfs withdrawal, even under worst case conditions, would result in only a three one-thousandth of one percent (0.003%) change in the flow

RECEIVED
SEP 19 1994
RESOURCE STRATEGY
AND DEVELOPMENT

THERMAL POWER PLANT

SITE CERTIFICATE

FOR THE

COYOTE SPRINGS COGENERATION PROJECT

See pages 11
of 13

This site certificate for the Coyote Springs Cogeneration Project (CSCP) is issued and executed in the manner provided by ORS Chapter 469, as amended by 1993 Public Laws ch. 569 (SB 1016), by and between the State of Oregon (State) acting by and through its Energy Facility Siting Council (EFSC) and Portland General Electric Company (PGE), an Oregon corporation.

I. SITE CERTIFICATION

- A. To the extent authorized by State law and subject to those warranties and conditions set forth herein, the State approves and authorizes the construction, operation and retirement by PGE of a natural gas-fired combustion turbine energy facility, together with related or supporting facilities, at the site near Boardman, Oregon, in the manner described in PGE's application for site certificate. "Facility", as used in this site certificate, consists of the energy facility and the related or supporting facilities described in PGE's application for site certificate, except where otherwise stated or where the context clearly indicates otherwise. The findings of facts, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in EFSC's final order, which by this reference is incorporated herein. Subject to the conditions herein, this certificate binds the State and all counties, cities and political subdivisions in this State as to the approval of the site and the construction, operation and retirement of the facility, as to matters that are included in and governed by this site certificate.
- B. Each affected state agency, county, city and political subdivision with authority to issue a permit, license or other approval with respect to matters included in or governed by this site certificate shall, upon submission by PGE of the proper application and payment of the proper fees, issue such permit, license or other approval without hearing or other proceeding, subject only to

proposed facility in accordance with and 1
in compliance with the laws and 2
regulations administered by BCA. 3

(2) Before submitting building permit 4
applications to BCA, applicant shall re- 5
evaluate peak ground acceleration for the 6
site based on applying an amplification 7
factor determined from its site-specific 8
studies. The applicant shall report the 9
results of its reevaluation to ODOE, 10
DOGAMI and BCA. The applicant shall 11
design and construct the facility to 12
address any estimate of peak ground 13
acceleration exceeding that covered by 14
seismic zone 2B. 15
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b. Adverse soil impacts 17
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During construction, the applicant and its 19
subcontractors shall make reasonable efforts 20
to keep soil disturbances to a minimum. 21
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2. Land use standard 23
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Applicant shall comply with the conditions in the 25
variance for the CSCP transmission line granted to 26
applicant by Morrow County on October 25, 1993. 27
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D. Standards relating to the impacts of construction, 29
operation and retirement 30
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1. Fish and Wildlife Standard: OAR 345-22-060 32
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(1) Applicant shall implement the vegetation, fish 34
and wildlife mitigation measures as contained 35
in its ASC (Exhibits N, P and R), and the 36
following mitigation conditions of ODFW: 37
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a. The applicant shall design and construct 39
the electrical transmission towers and lines 40
in a manner appropriate for the protection of 41
raptors. 42
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b. Applicant shall reseed areas of disturbed 44
soil using the seed composition and planting 45
procedure described in ASC, Exhibit N. 46
Applicant shall reseed areas where Russian 47
olive trees or tall vegetation is removed 48
using a mix of woody shrubs and perennial 49
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- grasses to be jointly determined by ODFW and PGE. 1
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- c. Applicant shall plant trees between the west side of Messner Pond and the facility site, as described in the ASC, to enhance wildlife habitat around Messner Pond and to provide a visual and auditory buffer between the facility site and Messner Pond. The applicant shall maintain trees in healthy condition and replace trees that die or become unhealthy. 4
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- d. The following activities shall be prohibited within 100 feet of the wetland associated with Messner Pond: storage of hazardous materials, chemicals, fuels and lubricating oils; refueling of construction equipment; and performing concrete coating activities. 14
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- e. Applicant shall insure that notification is provided to the ODFW representative in charge of the Heppner District Office at least one week prior to the start of construction for the power plant and transmission lines. 22
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- f. Applicant shall leave a 50 foot buffer between the edge of construction and the high water line of the wetland area associated with Messner Pond. 28
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- g. Applicant shall erect a temporary fence and signs to protect the bank swallow nesting colony from disturbance during construction. 33
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- (2) Applicant shall, as part of the post-construction completion compliance status certification report required by Mandatory Condition No. 3, provide documentation of the following: a) cooling tower drift rate, including manufacturer specifications and guaranty, and actual field testing of the CSCP cooling tower drift rate; and b) water analysis of the cooling tower circulation water representative of identified actual source water and cycles of concentration. 37
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- (3) Applicant shall install, operate and maintain a continuous monitoring system to measure and 49
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- record the total dissolved solids (TDS) concentration of the cooling tower/condenser circulating water. 1
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- (4) Applicant's cooling tower drift factor shall not exceed 0.002 percent of the circulation rate. Applicant shall not allow the total dissolved solids concentration in the cooling tower/condenser system to exceed 2,084 parts per million. 5
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- (5) Applicant shall fully comply with the terms and conditions of the December 10, 1993 Ecological Monitoring Program, as revised on January 5, 1994, and shall take such actions as deemed appropriate by ODOE, in consultation with ODFW, to fully mitigate adverse impacts to the Messner Pond area, including but not limited to reducing the cycles of concentration in the cooling tower system. 12
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2. Scenic and Aesthetic Standard: OAR 345-22-080 22
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- Applicant shall implement and fulfill the mitigation proposals as contained in the ASC, including site perimeter landscaping with appropriate vegetation; painting building structures and the exhaust stacks in neutral shades; minimizing exterior lighting and directing lights into the facility site; and establishing landscape screening along the perimeter of the proposed power plant site. 24
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3. Historic, Cultural, and Archaeological Standard: OAR 345-22-090 35
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- (1) If the area in which artifacts were found is to be disturbed by construction or operation, the applicant shall obtain the recommendation of SHPO as to any clearance requirements for the affected area and shall comply with all applicable regulations and laws relating to historic, cultural, and archaeological resources. 38
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- (2) If historic, cultural or archaeological resources are found during project construction or construction-related activities, the applicant shall stop all work 47
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DEPARTMENT OF ENVIRONMENTAL QUALITY
 APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
 FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.

(continued)

SECTION II DESCRIPTION OF OPERATION	<p>(1) Briefly describe the nature of the industrial or commercial process conducted and the end product produced.</p> <p>Coyote Springs consists of single combined-cycle combustion turbine (CCCT) electric generating unit designed to produce a nominal 221,000 kW at the generator terminal. Electricity will be produced by operation of both a gas turbine generator and steam turbine generator.</p>
SECTION III DESCRIPTION OF CLAIMED FACILITY	<p>(1) Provide a brief technical description of the facility claimed for certification as a pollution control or a waste utilization facility (including model and serial numbers of equipment) and describe the complete function of such facility. Attach additional sheet if necessary.</p> <p>The cooling tower is provided with D-15 cellular PVC drift eliminators, manufactured by Munters Corp. They are located 24" above the distribution system. Their purpose is to hold applicant's cooling tower drift factor at or below 0.002% of the circulation rate as required by Condition V.D.1(4) of applicant's Approved Site Certificate. There are no specific drawings, model numbers, or serial numbers for this system. A General Cooling Tower Drawing has been placed in Exhibit B which shows the general location of this facility in the cooling tower. The system is located in the Coyote Springs cooling towers.</p> <p>(2) Describe the condition which existed, or would have existed had the claimed facility not been provided, and describe the methods of pollutant or waste disposal which were utilized prior to installation or construction of the claimed facility. Attach additional sheet if necessary.</p> <p>This system reduces cooling tower drift as required by the site certificate, Section V.D.1.4 (OAR 345-22-060).</p> <p>(3) Describe the conditions which currently exist as a result of the installation of the claimed facility. How has the impact on the environment been reduced or minimized as a result of the claimed facility? Attach additional sheet if necessary.</p> <p>Not applicable.</p> <p>(4) Describe the effectiveness of the claimed facility to reduce pollution or waste, quantitative data preferred though not mandatory. Attach additional sheet if necessary.</p> <p>Drift eliminators will reduce water losses to less than 0.002%. Compliance tests will be performed according to EPA Method 13A. Two test runs will be performed on each cell.</p> <p>(5) Describe how the facility's principal or sole purpose conforms to the requirements of ORS 468.155.</p> <p>Meets ORS 468-155 by satisfying condition placed on Applicant by EFSC to meet Fish and Wildlife Standard OAR 345-22-060.</p>

DEPARTMENT OF ENVIRONMENTAL QUALITY
 APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
 FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.
 (continued)

SECTION IV SIGNIFICANT DATES AND INFORMATION

(1)	<p>Was claimed facility required by the Department or any other governmental organization? <input checked="" type="radio"/> yes or <input type="radio"/> no (circle one) If yes, who required facility?</p> <p>Facility was required by the Energy Facility Siting Council (EFSC) to comply with Fish and Wildlife Standard: OAR 345-22-060.</p>
(2)	<p>Did claimed facility replace an existing facility? yes or <input checked="" type="radio"/> no (circle one).</p>
(3)	<p>Were plans and specifications or construction approval obtained prior to construction from the Department or Regional Air Pollution Authority? yes or <input checked="" type="radio"/> no (circle one). If so, attach a copy of approval document.</p> <p>Not required.</p>
(4)	<p>Was claimed facility constructed according to approved plans and specifications? <input checked="" type="radio"/> yes or <input type="radio"/> no (circle one) if no, explain deviations on an attached sheet.</p> <p>To PGE specifications/not required to obtain preapproval from DEQ.</p>
(5)	<p>Was preliminary certification for tax credit obtained from the Department for the claimed facility? (ORS 468.925) yes or <input checked="" type="radio"/> no (circle one) if yes, attach a copy of the certification document (Exhibit F - Page 6).</p> <p>Not required.</p>
(6)	<p>The date a continuous program of erection, construction or installation of claimed facility was started. <u>August 12, 1993</u></p>
(7)	<p>The date a continuous program of erection, construction or installation of claimed facility was completed. <u>November 15, 1995</u></p>
(8)	<p>The date claimed facility was placed into operation. <u>November 15, 1995</u></p>
(9)	<p>Estimated useful life of claimed facility. <u>30 years</u>. Explain the basis for this estimate.</p> <p>The expected useful life for Coyote Springs is identified as "at least 30 years" in Exhibit Z of the Coyote Springs Application for Site Certificate.</p>
(10)	<p>Does the claimed facility perform any function other than pollution control? yes or <input checked="" type="radio"/> no (circle one)</p> <p>Explain: Not applicable.</p>
(11)	<p>A - To what extent is the claimed facility used to recover and convert waste products into a salable or usable commodity?</p> <p>Not applicable.</p> <p>B - Describe the salable or usable source of power or end product being produced through the recovery and conversion of waste products by the claimed facility: also describe the economic value of the end product.</p> <p>Not applicable.</p> <p>C - is the end product, other than a usable source of power, competitive with an end product produced in another state? yes or no (circle one)</p> <p>Explain: Not applicable.</p>

DEPARTMENT OF ENVIRONMENTAL QUALITY
 APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
 FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.
 (continued)

SECT IV (cont.)

- (12) Has claimed facility previously been certified by DEQ for tax credit, or is tax credit application currently pending on claimed facility or any portion of it? Yes _____, please explain. No X
- (13) Has claimed facility, or any portion of it, previously been certified as an Energy Conservation Facility by the State Department of energy, or is such an application pending? Yes _____, please explain. No X

SECTION V ALLOCAT. OF COSTS

(1) Provide the following information regarding costs associated with the claimed facility. Fill out tables as designated.

- a. Actual cost of the claimed facility \$ 40,110.00
- b. Salvage value of any facility removed from service \$ 0
- c. Claimed facility cost \$ 40,110.00 (subtract B from above)
- d. Calculation of annual cash flows:

YEAR	GROSS ANNUAL INCOME*	ANNUAL OPERATING EXPENSES*	ANNUAL CASH FLOW
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
TOTALS	<u>0</u>	<u>Not Available</u>	<u>0</u>

d. Average annual cash flow \$ 0

Calculate by using the following formula:

$$\frac{\text{Total of Annual Cash Flows}}{5} = \text{Average Annual Cash Flow}$$

e. Useful life of claimed facility 30 years

f. Return on investment factor \$ NA

Calculate using the following formula:

$$\frac{\text{Cost of Facility}}{\text{Average Annual Cash Flow}} = \text{Return on investment Factor}$$

g. Annual percent return on investment (ROI) NA %
 (Use Table 1, OAR 340-16-030)

h. Reference annual percent return on investment (ROI) (Use Table 2, OAR 340-16-030) NA %

i. Portion of actual costs properly allocable to pollution control 100 %
 Calculate by using the following formula:

$$\frac{\text{RROI} - \text{ROI}}{\text{RROI}} \times 100\% = \text{Percent allocable}$$

* Attach calculations for each of the first five years.

DEPARTMENT OF ENVIRONMENTAL QUALITY
APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.
(continued)

SECTION V ALLOCATION OF COSTS (continued)

- (2) What alternative method or facilities were considered for achieving the same pollution control, recycling or resource recovery objective. Indicate the estimated cost of each and the reasons for the selection of the method used.

The Coyote Springs Generation Plant Site Certificate [Section "V.D.1.(4)" on page 13] requires that applicant's cooling tower drift factor shall not exceed 0.002 percent of the circulation rate. To meet this requirement, Section 4.5.1 of the Application for Site Certificate (ASC) states that the cooling tower will be provided with high-efficiency drift eliminators designed to limit the drift to a maximum of 0.002 percent of the circulating water flow rate.

- (3) List any other facts which may be relevant in establishing the portion of the actual cost of the facility property allocable to pollution control, recycling or resource recovery.

The sole purpose of this facility is pollution control, and all costs claimed were incurred in the construction of the pollution control facility.

- (4) Percent or Cost of Claimed Facility properly allocable to pollution control 100%

Explain how the gross annual income and annual operating expenses figures in part (1), Section V were derived. Also see the rules governing facilities that are integral to the operation of a business, if applicable (OAR 340-16-030), and the explanation provided in Section VI of the instructions.

Not applicable as this facility does not generate any gross income.

SECTION V(4) & VI

DEPARTMENT OF ENVIRONMENTAL QUALITY
APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.
(continued)

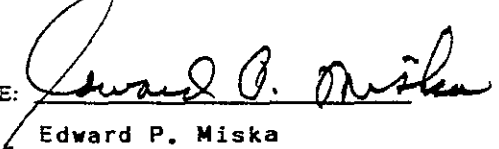
- Attach the Following Exhibits to the application:
- (1) As Exhibit A. attach a plot plan or site map which shows the overall plant site and the location within the plant site where the claimed facility is located. The general location and extent of the claimed facility should be clearly marked.
 - (2) As Exhibit B. attach detailed as built engineering plans which clearly and completely identify and describe the claimed facility. Any other facilities shown on the plans which are not claimed should be clearly marked accordingly. Photographs of the claimed facility can also be attached to supplement the plans.
 - (3) As Exhibit C. attach a listing of the land, material, machinery, and equipment incorporated into the claimed facility together with the associated cost. All items should be grouped into logical units and referenced to the specific unit on the as built plans provided as Exhibit B.
 - (4) As Exhibit D. attach a statement from an independent public accountant or certified public accountant which gives a breakdown of the actual cost of the claimed facility and certifies that the total cost indicated is a true and correct representation of the actual cost of the facility.

Reference should be made to the listing of costs in Exhibit C.
- NOTE: In cases where the total actual cost of the claimed facility is less than \$20,000 and where the cost can be completely and thoroughly documented by copies of invoices, cancelled checks, etc., the Department of Environmental Quality may accept copies of such documentation in lieu of the accountant's certification.

REQUIRED EXHIBITS

IMPORTANT: each item of the application must be completed. If inapplicable explain why. Failure to complete application shall constitute basis for denial of Certification.

I hereby certify that I have completed this application to the best of my ability, and that the information provided herein and in the attached exhibits is true and correct to the best of my knowledge, and that the facility described in this application was erected, constructed or installed and will be operated to a substantial extent for the purpose of preventing, controlling or reducing air, noise or water pollution or solid waste, hazardous waste or used oil.

SIGNATURE: 
Edward P. Miska

TITLE: Corporate Tax Manager

DATE: June 26, 1995

SUPPLEMENTAL APPLICATION QUESTIONS
FOR CERTIFICATION OF A POLLUTION CONTROL FACILITY
FOR TAX CREDIT PURPOSES

Please submit this form as part of the pollution control tax credit application.

1. What DEQ permits have been issued for the claimed facility? (State type, number and date issued).

Air Contaminant Discharge Permit No. 25-0031, issued May 31, 1994

2. Is the claimed facility in compliance with all applicable DEQ, EPA or Regional Air Authority regulations? (Provide explanation if no).

Yes

3. What is the Standard Industrial Classification (SIC) code for your business?

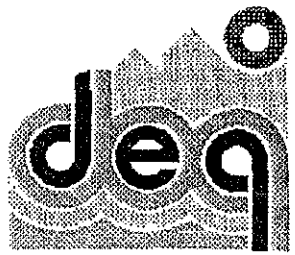
4911

If a DEQ informal review is desired before submitting a tax credit application, notify the Department at the address below:

Department of Environmental Quality
Management Services Division
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Director's
Recommendation: **DENY**

Applicant **Portland General Electric Company**
Application No. **4458**
Claimed Facility Cost **\$44,385**
Claimed % Allocable **100%**
Useful Life **10 years**



Tax Credit Review Report

Revised 11/23/97

**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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility.

The applicant's address is:

121 SW Salmon St. 1WTC-0402
Portland, OR 97204

Facility Identification

The claimed facility is identified as:

Cooling tower with a D-15 cellular PVC drift eliminators, manufactured by Munters Corporation.

The facility is located at:

200 Ullman Blvd.
PO Box 10
Boardman, OR 97818

Technical Information

The claimed facility consists of D-15 cellular PVC drift eliminators for a cooling tower. They are located 24" above the distribution system. Their purpose is to hold the cooling tower drift factor at or below 0.002% of the circulation rate as required by Condition V.D.1(4) of applicant's Approved Site Certificate (OAR 345-22-060). There are no model or serial numbers or specific drawing for the facility

Eligibility

ORS 468.155 (1)(a) The facility fails the **principal purpose** test, as the applicant claimed, because the requirement is not imposed by the Department, the federal Environmental Protection or an Agency Regional Air Pollution Authority. The facility was required by the Energy Facility Siting Council for the applicant to comply with Condition V.D.1(4).4 of its Approved Site Certificate. The applicant must comply with the Fish and Wildlife Standard, OAR 345-22-060. This rule refers to fish and wildlife habitat mitigation goals and standard of the Oregon Department of Fish & Wildlife.

The facility fails the **sole purpose** test because it does not prevent, control or reduce a substantial quantity of water pollution. The high efficiency drift eliminators is designed to limit the drift to a maximum of 0.0002 percent of the circulating water flow rate.

<i>Application Received</i>	<u>06/28/1995</u>
<i>Application Substantially Complete</i>	<u>03/17/1997</u>
<i>Construction Started</i>	<u>08/12/1993</u>
<i>Construction Completed</i>	<u>08/12/1993</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

Timeliness of Application

The application met the timing requirements of ORS 468.165 (6) as indicated.

Facility Cost	\$44,385		
Salvage Value	\$	-	
Government Grants	\$		-
Other Tax Credits	\$		-
Insignificant Contribution (ORS 468.155(2)(d))	\$		-

Ineligible Costs
Eligible Facility Cost

- \$44,385
\$ 0

Coopers & Lybrand L.L.P. performed accounting review submitted with the application.

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 for the purpose of the return on investment calculation is 30 years No return on investment.
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.

The applicant claimed the facility was 100% allocable to pollution control. The Department did not verify the percentage allocable since the facility is not eligible for certification as a pollution control facility.

Compliance

The applicant states this facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to this facility: Air Contaminant Discharge Permit No. 25-0031, issued May 31, 1994.

Reviewers: Renato Dulay
M.C. Vandehey

ARGUMENTS FOR APPROVAL OF APPLICATION NUMBER 4463

COYOTE SPRINGS CONTINUOUS EMISSION MONITORING SYSTEM

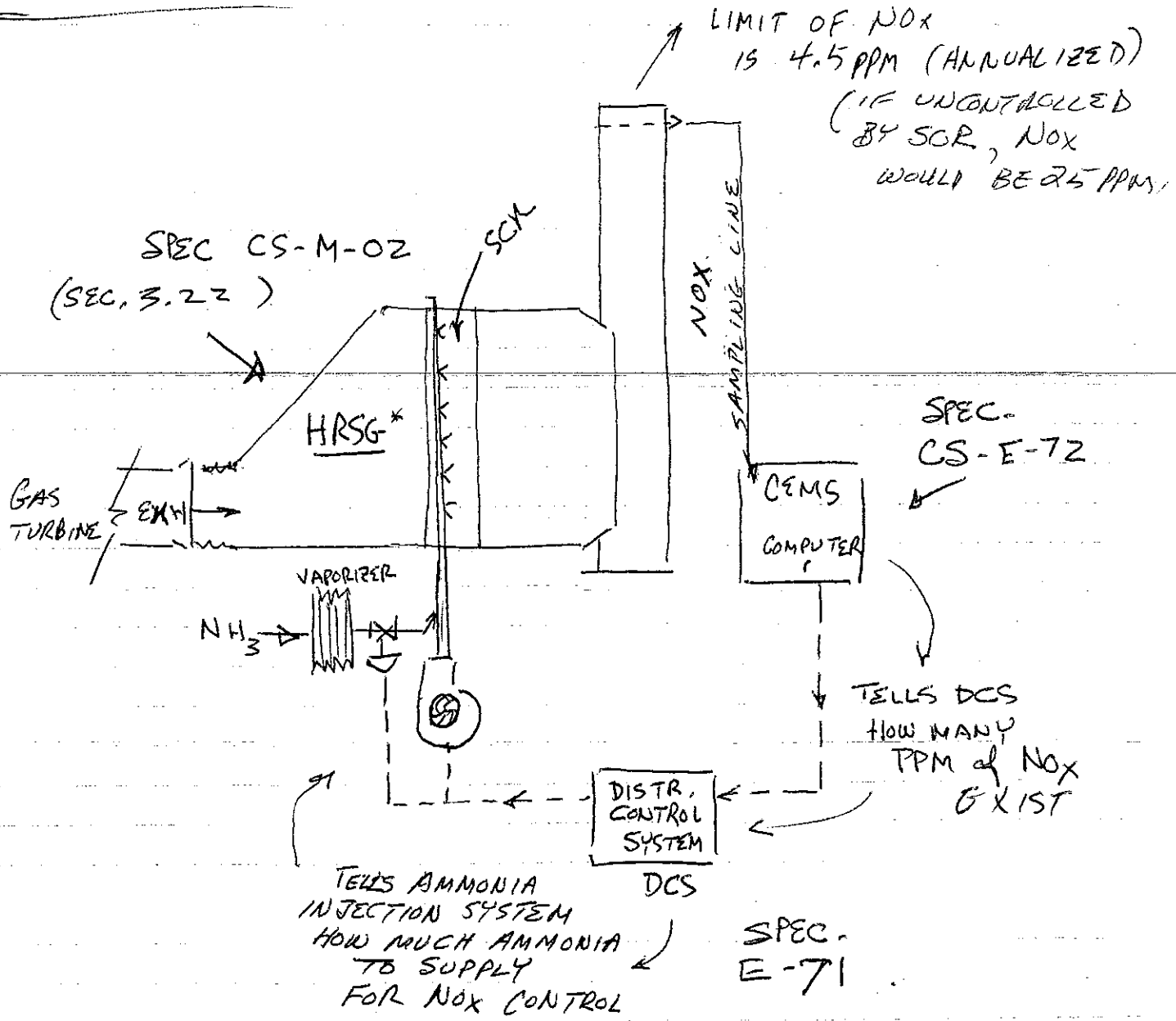
This Continuous Emission Monitoring System (CEMS) required by DEQ Permit No. 25-0031 and 40CFR, Part 75, is directly connected with the ammonia injection system to enable the Coyote Springs Plant to maintain its nitrogen oxide (NOx) emissions at or below the DEQ prescribed levels. As the NOx emission levels begin to approach the DEQ limit, as recorded by the CEMS, the CEMS System transmits that information directly to the ammonia injection system, which calibrates and injects additional ammonia into the combustion turbine to reduce the NOx emissions. These two systems are in actuality part of the larger NOx monitoring and control design. The CEMS and the ammonia injection system are both required to maintain NOx emissions below the DEQ emission limit, therefore, the CEMS is an integral part of the NOx pollution control and does, in conjunction with the ammonia injection system, prevent, control and reduce air pollution.

I am attaching a diagram from Leonard Gunderson, the Project Engineer for the Coyote Springs Plant, as a further explanation of the system on Page 2. The diagram indicates that the sensors at the top of the exhaust stack measure the NOx being emitted, and transmit such information to the CEMS computer. The CEMS computer in turn sends a message to the Distribution Control System indicating the amount of parts per million of NOx being emitted. The Distribution Control System then sends a message to the ammonia injection system indicating the amount of ammonia needed to control the NOx emissions at or below the DEQ permit level. The ammonia injection system responds by injecting the amount of ammonia indicated, and reduces the NOx emissions to an acceptable level. These systems are all necessary to maintain the NOx emissions at or below the DEQ permit level. The subsystems do not in themselves eliminate the NOx, however, each plays an important part in making the entire system work properly to reduce the NOx emissions. In addition, I have attached a second explanation of the CEMS and ammonia injection system furnished by Plant Engineer, Michael Dwyer on Page 3.

Attached on Pages 4, 5 and 6 is a description of the NOx control system which indicates how ammonia is used to control the NOx emissions. The injection of ammonia is described in Len Gunderson's diagram and shows how the CEMS is an integral part of the NOx reduction system. Possibly the cost of this system should have been included with the CTG NOx Reduction System, however, separate credit applications were filed. Filing separately for each part of a working system should not disqualify a part of the system which makes the entire system work properly.

PGE requests that Application No. 4463 be approved as a pollution control facility in the amount of \$500,738.


SPECS ARE ON FILE AT GATE
CONTACT:
NADYNE ICHIMURA 8153



* Heat Recovery Steam Generator

LEN GUNDERSON

TO: Ed Miska

FROM: Mike Dwyer 

DATE: September 14, 1998

SUBJECT: Use of the Continuous Emissions Monitoring System for NOX Control

The Continuous Emissions Monitoring System (CEMS) measures and records NOX and CO emissions from the Coyote Springs Power Plant. In addition to the requirement to report stack emissions, it also provides inputs to the ammonia control system as implemented by the plant Distributed Control System (DCS). These two functions require similar instruments and overlap considerably. Optimum ammonia injection rates vary significantly during the typical day. NOX emission limits could be exceeded if too little ammonia is injected. Excess ammonia (ammonia slip) could be released if too much ammonia is injected. Use of the CEMS inputs to the ammonia control system allows real time automatic control of ammonia injection, thus reducing both NOX emissions and ammonia slip.

c: File

**ADDENDUM
AIR CONTAMINANT DISCHARGE PERMIT
APPLICATION FOR THE COYOTE SPRINGS
COGENERATION PROJECT**

Prepared for

**Portland General Electric Company
121 SW Salmon Street
Portland, Oregon 97204**

Project Number 92C012

September 13, 1993

4.1.3.4 Control of Oxides of Nitrogen

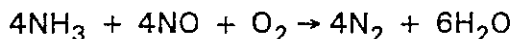
Oxides of nitrogen (NO_x) are formed either when the nitrogen in the air combines with free oxygen in the presence of high temperatures (thermal NO_x) or when nitrogen in the fuel is oxidized during combustion (fuel NO_x). Natural gas has no significant levels of nitrogen.

4.1.3.4.1 Gas Turbines.

4.1.3.4.1.1 Applicable Technologies. Based on a review of existing facilities through the BACT/LAER Clearinghouse, articles written on control of NO_x combustion, and discussions with federal and state air pollution control officers, the current technologies used or proposed for use to control NO_x emissions from gas turbines and similar source types are:

- Selective Catalytic Reduction (SCR) Control
- Water or Steam Injection (Wet Control)
- Dry Low-NO_x Combustors (Dry Control)
- Selective Non-Catalytic Reduction (SNCR) Control
- Low-Nitrogen Fuels

4.1.3.4.1.1.1 Selective Catalytic Reduction (SCR) Control. SCR is a post-combustion NO_x control technology which is applied at the exhaust end of the gas turbine system. In this process, ammonia (NH₃) is injected into the exhaust (flue) gas upstream of a catalyst bed. On the catalyst surface, the NH₃ reacts with NO_x from the turbines to form molecular nitrogen and water vapor. Although several reactions take place, 95% of the NO_x generated is NO (Schorr 1992). The primary overall reaction mechanism for the SCR process is:



For conventional (vanadium- or titanium-based) catalyst types, optimum NO_x reduction occurs at catalyst bed temperatures between 500 °F and 750 °F. A specific catalyst formulation exhibits optimum performance within a temperature range of ± 50 °F within

the 500 to 700 °F range. Below this optimum temperature range, catalyst effectiveness is greatly reduced, allowing unreacted NH_3 to be emitted from the stack. This emission is called *ammonia slip*. Above 850 °F, NH_3 begins to oxidize to form additional NO_x , with oxidation increasing as temperature increases. Furthermore, depending on the catalyst substrate material, the catalyst may be quickly damaged at temperatures in excess of 850 °F due to thermal stress. A new family of zeolite catalysts has been developed that are capable of functioning at higher temperatures than conventional catalysts. Zeolites can be applied over a temperature range of 600 to 1075 °F, although any specific zeolite catalyst formulation operates within a narrow temperature band, ± 100 °F, within the 600 to 1075 °F range.

For SCR catalysts, NO_x removal efficiency depends on flue gas temperature, amount of catalyst, and ratio of NH_3/NO_x in the flue gas stream. Based on available data and the specific design features of the system, removal efficiencies of up to 86% have been demonstrated for GTGs firing natural gas.

IMPORTANT:

- 1) Read application instructions carefully.
- 2) Submit original and one copy of application and exhibits.
- 3) Submit required fees (see instructions).
- 4) Mail to:
 Department of Environmental Quality
 Management Services Division, 6th Floor
 811 SW Sixth Ave
 Portland, Oregon 97204

FOR DEQ USE ONLY	
Application No.:	_____
Date Received:	_____
Fee Paid:	_____

APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 ET. SEQ.

SECTION IDENTIFICATION OF APPLICANT	(1) Indicate the Type of Facility by Placing an X in Appropriate Box <input checked="" type="checkbox"/> AIR <input type="checkbox"/> NOISE <input type="checkbox"/> WATER <input type="checkbox"/> WATER/UST <input type="checkbox"/> SOLID WASTE <input type="checkbox"/> HAZARDOUS WASTE <input type="checkbox"/> USED OIL		(3) Status of Applicant <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit <input type="checkbox"/> Co-Op
	(2) Official Name of Applicant (if corporation, exact name as specified in charter, if partnership or joint venture the names of all partners or principals). <div style="text-align: center;">Portland General Electric Company Official Name</div> <hr/> <div style="text-align: center;">Coyote Springs - (CEMS) division identification</div> <hr/> <div style="text-align: center;">Not Applicable names of general partners or principals</div> <hr/> <div style="text-align: center;">121 SW Salmon Street address</div> <hr/> <div style="display: flex; justify-content: space-between;"> Portland City Oregon State 97204 Zip Code </div>		
	(4) Person Authorized to Receive Certification <u>Edward P. Miska</u> name <u>Corporate Tax Manager</u> title <u>121 SW Salmon Street - 1WTC-0402</u> address <div style="display: flex; justify-content: space-between;"> Portland, Oregon City 97204 Zip 464-7091 phone no. </div>	(5) Persons to Contact for Additional Details <u>Edward P. Miska</u> name <u>Corporate Tax Manager</u> title <u>121 SW Salmon Street - 1WTC0402</u> address <div style="display: flex; justify-content: space-between;"> Portland, Oregon City 97204 Zip 464-7091 phone no. </div>	
	(6) Location of Claimed Facility <u>200 Ullman Blvd, P.O. 10</u> address <u>Boardman, Oregon 97818</u> City <u>Morrow County</u> County	(7) Access Directions/includes map in Exhibit A Coyote Springs is within sight of I-84 Take Exit 165 off I-84 Proceed North for several hundred yards on I-84 underpass road Turn west on Columbia Ave Turn north on Ullman Blvd Contact for Inspection: Ed P. Miska	
(8) Applicant's IRS Employer Identification Number <u>93-0256820</u>	(9) Applicant's Tax Year <div style="display: flex; justify-content: space-between;"> <u>January 1</u> beginning date <u>December 31</u> ending date </div>		

DEPARTMENT OF ENVIRONMENTAL QUALITY
 APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
 FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.

(continued)

SECTION II DESCRIPTION OF OPERATION	<p>(1) Briefly describe the nature of the industrial or commercial process conducted and the end product produced.</p> <p>Coyote Springs consists of single combined-cycle combustion turbine (CCCT) electric generating unit designed to produce a nominal 221,000 kW at the generator terminal. Electricity will be produced by operation of both a gas turbine generator and steam turbine generator.</p>
SECTION III DESCRIPTION OF CLAIMED FACILITY	<p>(1) Provide a brief technical description of the facility claimed for certification as a pollution control or a waste utilization facility (including model and serial numbers of equipment) and describe the complete function of such facility. Attach additional sheet if necessary.</p> <p>The facility claimed is a multicomponent, continuous emissions monitoring (CEM) system designed to measure, control, record, and report carbon monoxide (CO) and nitrogen oxides (NOx) pollutant emissions from Coyote Spring's exhaust stack. The CEM system consists of a sample probe in the turbine exhaust duct and a second sample probe in the heat recovery steam generator (HSRG) exhaust duct. Gas from the turbine exhaust sample probe is analyzed by a NOx monitor. Gas from the HSRG probe is analyzed by NOx and CO monitors. The system has a flow monitor to calculate emissions on an absolute (lb/hr) basis and an oxygen (O₂) analyzer to calibrate emissions readings. The data system consists of PCs. The system is housed in a building with associated plumbing and electrical systems. System engineering drawings are contained in Exhibit B. Model and serial numbers for the equipment are contained in the Exhibit C.</p> <p>The function of the system is twofold. It serves to provide plant operations personnel with data on pollutant control processes so plant emissions can be controlled, and it serves to meet EPA and DEQ regulatory emissions reporting requirements.</p> <p>(2) Describe the condition which existed, or would have existed had the claimed facility not been provided, and describe the methods of pollutant or waste disposal which were utilized prior to installation or construction of the claimed facility. Attach additional sheet if necessary.</p> <p>The CEM system is required by law and permit.</p> <p>(3) Describe the conditions which currently exist as a result of the installation of the claimed facility. How has the impact on the environment been reduced or minimized as a result of the claimed facility? Attach additional sheet if necessary.</p> <p>Not applicable.</p> <p>(4) Describe the effectiveness of the claimed facility to reduce pollution or waste, quantitative data preferred though not mandatory. Attach additional sheet if necessary.</p> <p>Based on experience with similar systems, we expect that this system will have less than 5% error and will have an availability greater than 98%. The system will be used to meet regulatory reporting requirements, and will be used to detect upward trends in plant emissions of NOx and CO. This information will be used to change plant operating conditions so that emissions remain within permitted limits.</p> <p>(5) Describe how the facility's principal or sole purpose conforms to the requirements of ORS 468.155.</p> <p>Required by DEQ under Conditions 18 and 19.e of the Coyote Springs Cogeneration Project Air Contaminant Discharge Permit, No. 25-0031. Also must meet EPA monitoring requirements as specified in 40 CFR 60, Part 75.</p>

DEPARTMENT OF ENVIRONMENTAL QUALITY
 APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
 FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.

(continued)

SECTION IV SIGNIFICANT DATA AND INFORMATION

(1)	Was claimed facility required by the Department or any other governmental organization? <input checked="" type="radio"/> yes or no (circle one) If yes, who required facility? Facility was required by both Oregon Department of Environmental Quality and EPA.
(2)	Did claimed facility replace an existing facility? yes or <input checked="" type="radio"/> no (circle one).
(3)	Were plans and specifications or construction approval obtained prior to construction from the Department or Regional Air Pollution Authority? yes or <input checked="" type="radio"/> no (circle one). If so, attach a copy of approval document. Not required.
(4)	Was claimed facility constructed according to approved plans and specifications? <input checked="" type="radio"/> yes or no (circle one) if no, explain deviations on an attached sheet. To PGE specifications/not required to obtain preapproval from DEQ.
(5)	Was preliminary certification for tax credit obtained from the Department for the claimed facility? (ORS 468.925) yes or <input checked="" type="radio"/> no (circle one) if yes, attach a copy of the certification document (Exhibit F - Page 6). Not required.
(6)	The date a continuous program of erection, construction or installation of claimed facility was started. <u>August 12, 1993</u>
(7)	The date a continuous program of erection, construction or installation of claimed facility was completed. <u>November 15, 1995</u>
(8)	The date claimed facility was placed into operation. <u>November 15, 1995</u>
(9)	Estimated useful life of claimed facility. <u>30 years</u> . Explain the basis for this estimate. Design requirement in Owner's Specifications is not less than 30 years.
(10)	Does the claimed facility perform any function other than pollution control? yes or <input checked="" type="radio"/> no (circle one) Explain: Not applicable.
(11)	A - To what extent is the claimed facility used to recover and convert waste products into a salable or usable commodity? Not applicable. B - Describe the salable or usable source of power or end product being produced through the recovery and conversion of waste products by the claimed facility: also describe the economic value of the end product. Not applicable. C - is the end product, other than a usable source of power, competitive with an end product produced in another state? yes or no (circle one) Explain: Not applicable.

DEPARTMENT OF ENVIRONMENTAL QUALITY
 APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
 FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.
 (continued)

SECT IV (cont.)

- (12) Has claimed facility previously been certified by DEQ for tax credit, or is tax credit application currently pending on claimed facility or any portion of it? Yes _____, please explain. No X
- (13) Has claimed facility, or any portion of it, previously been certified as an Energy Conservation Facility by the State Department of energy, or is such an application pending? Yes _____, please explain. No X

SECTION V ALLOCAT. OF COSTS

(1) Provide the following information regarding costs associated with the claimed facility. Fill out tables as designated.

- a. Actual cost of the claimed facility \$ 454,573.00
- b. Salvage value of any facility removed from service \$ 0
- c. Claimed facility cost \$ 454,573.00 (subtract B from above)
- d. Calculation of annual cash flows:

YEAR	GROSS ANNUAL INCOME*	ANNUAL OPERATING EXPENSES*	ANNUAL CASH FLOW
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
TOTALS	<u>0</u>	<u>Not Available</u>	<u>0</u>

d. Average annual cash flow \$ 0

Calculate by using the following formula:

$$\frac{\text{Total of Annual Cash Flows}}{5} = \text{Average Annual Cash Flow}$$

e. Useful life of claimed facility 30 years

f. Return on investment factor \$ NA

Calculate using the following formula:

$$\frac{\text{Cost of Facility}}{\text{Average Annual Cash Flow}} = \text{Return on investment Factor}$$

g. Annual percent return on investment (ROI) NA %
 (Use Table 1, OAR 340-16-030)

h. Reference annual percent return on investment (ROI) (Use Table 2, OAR 340-16-030) NA %

i. Portion of actual costs properly allocable to pollution control 100 %
 Calculate by using the following formula:

$$\frac{\text{RROI} - \text{ROI}}{\text{RROI}} \times 100\% = \text{Percent allocable}$$

* Attach calculations for each of the first five years.

DEPARTMENT OF ENVIRONMENTAL QUALITY
APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.

(continued)

SECTION V ALLOCATION OF COSTS (continued)

- (2) What alternative method or facilities were considered for achieving the same pollution control, recycling or resource recovery objective. Indicate the estimated cost of each and the reasons for the selection of the method used.

A Continuous Emission Monitoring System is required by the Oregon Department of Environmental Quality. There is no alternative means or facilities which satisfy this requirement.

- (3) List any other facts which may be relevant in establishing the portion of the actual cost of the facility property allocable to pollution control, recycling or resource recovery.

The sole purpose of the facility is pollution control, and all costs claimed were incurred in the construction of the pollution control facility.

SECTION V(4) & VI

- (4) Percent or Cost of Claimed Facility properly allocable to pollution control 100%

Explain how the gross annual income and annual operating expenses figures in part (1), Section V were derived. Also see the rules governing facilities that are integral to the operation of a business, if applicable (OAR 340-16-030), and the explanation provided in Section VI of the instructions.

Not applicable as this facility does not generate any gross income.

DEPARTMENT OF ENVIRONMENTAL QUALITY
APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY
FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 et. seq.

(continued)

Attach the Following Exhibits to the application:

- (1) As Exhibit A. attach a plot plan or site map which shows the overall plant site and the location within the plant site where the claimed facility is located. The general location and extent of the claimed facility should be clearly marked.
- (2) As Exhibit B. attach detailed as built engineering plans which clearly and completely identify and describe the claimed facility. Any other facilities shown on the plans which are not claimed should be clearly marked accordingly. Photographs of the claimed facility can also be attached to supplement the plans.
- (3) As Exhibit C. attach a listing of the land, material, machinery, and equipment incorporated into the claimed facility together with the associated cost. All items should be grouped into logical units and referenced to the specific unit on the as built plans provided as Exhibit B.
- (4) As Exhibit D. attach a statement from an independent public accountant or certified public accountant which gives a breakdown of the actual cost of the claimed facility and certifies that the total cost indicated is a true and correct representation of the actual cost of the facility.

Reference should be made to the listing of costs in Exhibit C.

NOTE: In cases where the total actual cost of the claimed facility is less than \$20,000 and where the cost can be completely and thoroughly documented by copies of invoices, cancelled checks, etc., the Department of Environmental Quality may accept copies of such documentation in lieu of the accountant's certification.

IMPORTANT: each item of the application must be completed. If inapplicable explain why. Failure to complete application shall constitute basis for denial of Certification.

I hereby certify that I have completed this application to the best of my ability, and that the information provided herein and in the attached exhibits is true and correct to the best of my knowledge, and that the facility described in this application was erected, constructed or installed and will be operated to a substantial extent for the purpose of preventing, controlling or reducing air, noise or water pollution or solid waste, hazardous waste or used oil.

SIGNATURE: 

Edward P. Miska

TITLE: Corporate Tax Manager

DATE: June 26, 1995

REQUIRED EXHIBITS
SECTIC

SUPPLEMENTAL APPLICATION QUESTIONS
FOR CERTIFICATION OF A POLLUTION CONTROL FACILITY
FOR TAX CREDIT PURPOSES

Please submit this form as part of the pollution control tax credit application.

1. What DEQ permits have been issued for the claimed facility? (State type, number and date issued).

Air Contaminant Discharge Permit No. 25-0031, issued May 31, 1994

2. Is the claimed facility in compliance with all applicable DEQ, EPA or Regional Air Authority regulations? (Provide explanation if no).

Yes

3. What is the Standard Industrial Classification (SIC) code for your business?

4911

If a DEQ informal review is desired before submitting a tax credit application, notify the Department at the address below:

Department of Environmental Quality
Management Services Division
811 SW Sixth Avenue
Portland, Oregon 97204-1390



Tax Credit Review Report

Revised 7/8/98

Director's
Recommendation: **DENY - Ineligible For**
Applicant **Portland General Electric Company**
Application No. **4463**
Claimed Facility Cost **\$500,738**
Claimed Percentage Allocable **100%**
Useful Life **10 years**

Certification

**Pollution Control Facility Tax Credit: Air
Final Certification**
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-050

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant's address is:

121 SW Salmon St.
1WTC-04-02
PORTLAND, OR 97204

The claimed facility was identified as:

A multi-component continuous emissions monitor system (CEM) to measure, control, record and report carbon monoxide and NOX pollutant emissions from the exhaust stack.

The applicant is the owner of the facility located at:

Coyote Springs
200 Ullman Blvd
Boardman, OR 97818

Technical Information

A continuous monitoring system was required by the DEQ. The CEG system uses various sampling probes in the exhausts. Gas samples from the exhausts run to the NOx and CO monitors located in an adjacent building. The system has a flow monitor to calculate emissions on an absolute (lb/hr) basis and an oxygen analyzer to calibrate emission readings. Based on experience with similar systems, the system will have less than a 5% error factor. The system will be used to meet regulatory reporting requirements and will be used to detect upward trends in plant emissions of NOX and CO. This information will be used to change plant operating conditions so that emissions remain within permitted limits. The claimed facility is for monitoring emissions as required by the Air Contaminant Discharge Permit, but does not reduce or control air emissions.

EQUIPMENT INCLUDES:

<u>Model</u>	<u>Serial #</u>	<u>Model</u>	<u>Serial #</u>
HRSG STACK NOX ANALYZER ROSEMOUNT MD19S1C	1000116	HRSG STACK CO ANALYZER SEIMENS ULTRAMAT 5E NOIR	EZ-718
HRSG STACK O2 ANALYZER SEIMENS OXYMAT 5E PARAMAGNETIC	GZ-819	SCR INLET NOX ANALYZER ROSEMOUNT MD1951C	1000115
DAHS DATASTORE 486-66 W/345 MB HD, 16 MB RAM, 105 MB REM DISK	203670		

Eligibility

ORS 468.155 (1)(a) **The principal purpose of this new installation, equipment and devices is to meet the monitoring requirements of the Air Contaminant Discharge Permit No 25-0031 (DEQ) and 40CFR 60, Part 75 - Monitoring Requirements (EPA), not to prevent, control or reduce air pollution.**

ORS 468.155 The claimed facility is a monitoring system and not an air cleaning devices
(1)(b)(B) as defined in ORS 468A.005

<i>Application Received</i>	<u>06/28/1995</u>
<i>Application Substantially Complete</i>	<u>11/23/1997</u>
<i>Construction Started</i>	<u>08/12/1993</u>
<i>Construction Completed</i>	<u>08/12/1993</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

Timeliness of Application.

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

Facility Cost

Facility Cost	\$500,738
Salvage Value	
Government Grants	
Other Tax Credits	
Insignificant Contribution (ORS 468.155(2)(d))	-\$500,738
Ineligible Costs	
Eligible Facility Cost	<u>\$0.0</u>

Summarized contractor invoices substantiate the cost of the facility and a certified public accountant's statement, by Coopers and Lybrand L.L.P., accompanied the application.

Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department would have considered the following factors in the determination of 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	No return on investment.
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.

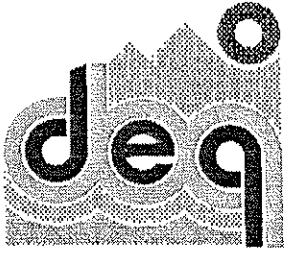
The Applicant claimed the facility cost is 100% percentage allocable to pollution control. The Department did not verify this percentage.

Reviewers: Cascade Earth Sciences- rad, skr
Marina McCoy Gerritz, P.C.

Date: September 16, 1998
To: Environmental Quality Commission
From: Langdon Marsh, Director
Subject: Addendum
Agenda Item B, September 17, 1998, EQC Meeting
Approval of Tax Credit Applications

Correction to Tax Credit Application Number 4879

The Director recommends the approval tax credit application number 4879 in the amount of \$80,378 rather than \$71,416 as recommended in the original report. The change is due to an addition error in the Facility Cost table on page two of the Review Report. A copy of the corrected report is attached.



Tax Credit Review Report

Revised 9/16/98

Director's
Recommendation: **APPROVE**
Applicant **Portland General Electric Company**
Application No. **4879**
Facility Cost **\$80,378**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

3 oil/water separators with piping system.

The facility is located at:

**Gresham Service Center
1705 SE Burnside Road
Gresham, OR 97030**

Technical Information

The oil spill containment facility for the transformer storage area consists of an oil/water separator and a 6 inch drainage pipe. In the event of an oil spill, the oil will be retained in the separator and wastewater will be discharged into a nearby drainage ditch.

The garage and the covered wash bay are provided each with an oil/water separator. Wastewater that will be generated from these areas will be pretreated by the oil/water separators before it will be discharged to the city sanitary sewer.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of the **new installation** is to control a substantial quantity of water pollution. The requirement is imposed by the federal Environmental Protection Agency per 40 CFR part 112 (Oil Pollution Prevention) and by the City of Gresham pretreatment program.
- ORS 468.155 (1)(b)(A) The control is accomplished by reducing 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) as verified by the DEQ Business Office receipt number 71672.

<i>Application Received</i>	<u>11/14/1997</u>
<i>Application Substantially Complete</i>	<u>11/27/1997</u>
<i>Construction Started</i>	<u>10/9/1995</u>
<i>Construction Completed</i>	<u>11/15/1995</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

Facility Cost

Claimed Facility Cost		89,340
Labor (PGE)	\$ 2,178.50	
Labor (Contractor)	\$ 11,399.77	
Materials (Contractor)	\$ 66,800.00	
Ineligible Costs		
Overhead		-\$ 8,962
Eligible Facility Cost		<u>\$ 80,378</u>

Coopers & Lybrand, L.L.P. provided the independent certified public accountant's statement on behalf of the applicant. The applicant claimed the overhead was \$8,962. There was no discription of what made up this overhead; therefore, the Department did not allow the cost.

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 36 years. No gross annual revenues are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Concrete berms, liner systems and oil stop valves were considered. However, the oil/water separators provide the optimum oil spill containment and compliance to pretreatment requirements.
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 the requirements of the federal Environmental Protection Agency and the City of Gresham pretreatment program.

Reviewers: R. C. Dulay

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

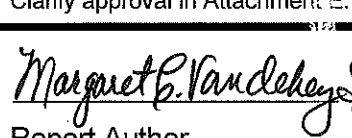
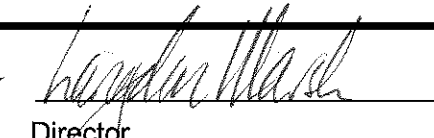
Agenda Item B
September 17, 1998, Meeting

Title: Approval and Denial of Tax Credit Applications

Summary: Staff recommends the following actions regarding tax credits:

<i>Approve</i>	<u>Certified Cost</u>	<u>Value</u>
<i>Pollution Control Facility Tax Credit</i>		
Air (12 applications)	\$6,677,569	\$3,338,784
CFC (1 application)	\$2,100	\$1,050
Field Burning (9 applications)	\$526,335	\$231,405
Hazardous Waste (2 applications)	\$236,636	\$118,318
Noise (4 applications)	\$353,508	\$176,754
Solid Waste (12 applications)	\$275,004	\$137,502
Water (22 applications)	\$2,445,102	\$1,222,551
<i>Pollution Control Facility Tax Credit (62 applications)</i>	\$10,516,253	\$5,226,364
 <i>Pollution Prevention Tax Credit</i>		
Perc (1 application)	\$7,507	\$3,753
 <i>Reclaimed Plastics Products Tax Credit</i>		
Plastics (4 applications)	\$110,120	\$55,060
Approve (67 applications)	\$10,633,879	\$5,285,177
 <i>Deny</i>		
<i>Pollution Control Facility Tax Credit</i>		
Air (4 applications)	\$971,420	\$485,710
Air/Hazard (1 application)	\$1,487,995	\$743,998
Field Burning (1 application)	\$117,525	\$58,763
USTs (1 application)	\$148,893	\$74,447
Water (2 applications)	\$56,475	\$28,238
Deny (9 applications)	\$2,782,308	\$1,391,154
 <i>Revoke 1 certificate</i>		

Approve issuance of tax credit certificates for the applications presented in Attachment B. Deny issuance of tax credit certificates for the applications presented in Attachment C. Revoke certificate presented in Attachment D. Clarify approval in Attachment E.

 Report Author	 Division Administrator	 Director
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August 31, 1998

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

Date: August 31, 1998
To: Environmental Quality Commission
From: Langdon Marsh, Director
Subject: Agenda Item B, September 17, 1998, EQC Meeting
Approval of Tax Credit Applications

Statement of the Need for Action

This staff report presents the staff analysis of pollution control facility, reclaimed plastic, and pollution prevention tax credit applications and the Department's recommendation for Commission action on these applications.

All applications are summarized in Attachment A of this staff report. Applications recommended for Approval are presented in detail in Attachment B and applications recommended for denial are presented in Attachment C.

Background APPROVALS: Attachment B

Approval of PGE Applications

In the past, the Commission questioned the methods by which PGE allocated costs to facilities claimed for certification, especially indirect labor loading or construction overhead loading. As a general rule, PGE performs most of their work internally; therefore, they allocate overhead costs to any pollution control facility they claim for certification. Each application in the staff report addresses these costs individually when warranted.

Approval of PGE Coyote Spring Applications Numbered 4454 through 4460

The costs of the pollution control facilities claimed by PGE at their Coyote Springs generating plant were based on an allocation method. These facilities were part of a much larger turnkey construction project, unlike normal construction projects that PGE builds. The method the applicant used to allocate direct and indirect overhead costs to the pollution control facilities was rational and properly applied. However, some of the overhead costs did not contribute to pollution control and were removed. The costs removed were:

Port of Morrow Land Lease: PGE was required to pay the Port of Morrow lease payments from the time the plant site was selected until the plant went on-line; a period of almost three years. This cost does not contribute to pollution control and was removed from the claimed cost of the pollution control facilities.

Raytheon Invoice Duplicated in Cost. In the final DEQ audit of job costs, PGE discovered they had included additional construction costs by Raytheon twice. The duplicated amount was removed.

Internal and External Legal Fees. Legal fees and payments to the Oregon Department of Energy for the Energy Facility Siting Council were removed. These costs included the cost of holding hearings for the site certificate for the generation plant.

Capitalized Property Taxes: PGE included the amount of the property taxes they paid during the construction of the project.

DEQ did not remove the construction overhead loading from the facility costs claimed on PGE's Coyote Springs applications. Only the departments directly involved in the plant construction were included. The rate was applied based on direct labor charged to the plant. Only the departments with the most direct involvement in the plant construction were included in the construction overhead loading rate calculation.

Approval of Applications Removed from June 11, 1998 Agenda

At the June 11, 1998, EQC meeting, staff asked the Commission to withdraw Applications Numbered 4826, 4837 and 4992 from Agenda Item B, Attachment C - Denials. Each of the Applicants provided additional information that changed staff's recommendation.

Approval of Application Number 4826

Columbia Steel Casting requested that the Department remove their Application No. 4826 from the June 11, 1998 Agenda. The applicant indicated the "sole purpose" of the natural gas fired oven was to control pollution. The Department recommended the denial of this application because the oven was not used exclusively for pollution control but used to heat-treat castings.

Columbia Steel Casting's clarified that the low-NO_x burners, not the oven, was the facility they had meant to present on the application. The amount claimed on the application was \$114,810. The amount accurately reflects the cost of the low-NO_x burners. The overall cost of the used heat treat oven was \$400,000.

The Department now recommends approval of Columbia Steel Casting's application because the sole purpose of the low-NO_x burners is to reduce emissions of nitrogen oxides and carbon monoxides from natural gas combustion.

Approval of Application Number 4837

Don Rhyne Painting requested that the Department remove their Application No. 4837 from the June 11, 1998 Agenda and presented an amended application. Originally, the Department recommended the denial of this application because the facility presented on the application was a complete paint booth with air filtration system. The facility did not meet the definition of a principal purpose facility because it was not built in response to a requirement imposed by DEQ, EPA, or a regional air pollution authority. The

applicant claimed the facility was eligible under the **sole purpose** definition. However, the Department recommended denial of the application because the new installation was not used exclusively to prevent, control or reduce a substantial quantity of air pollution. The applicant uses the facility to create a controlled environment for painting.

Don Rhyne Painting reduced their claim to \$3,129; the cost of the double air filters used prior to discharge to the atmosphere. Based on this amendment, the Department recommends the approval of tax credit application 4837 because it meets the definition of a sole purpose facility since this filter is used exclusively for pollution control.

Approval of Application Number 4992

Pioneer Truck Equipment claimed a truck— and equipment— washing installation on Application No. 4992. The facility is located in an area where sanitary sewers are not available. Staff recommended the denial of the application (Agenda Item B - June 11, 1998) because the application indicated the facility also washed portable toilets containing human waste. According to ORS 468.155 (2), facilities for human waste are excluded from the definition of a "pollution control facility."

The Applicant provided a letter assuring the Department that the facility is not used to clean portable toilets containing human waste as indicated in the initial application. Based on this letter, staff recommends the approval of Application No. 4992. The letter is shown in Attachment B immediately following Review Report 4992.

Background DENIALS: Attachment C

Denial of Application Number 4455

The applicant, Portland General Electric Co., claimed a stack test platform on the auxiliary boiler stack as a principal purpose facility on application number 4455. The applicant claimed that it was required by DEQ under Condition 14 of the Coyote Springs Air Contaminate Discharge Permit No. 25-0031. However, the Department claims that the platform does not include any air pollution control equipment to accomplish the disposal or elimination of air contaminants and therefore, it is not an eligible pollution control facility for tax credit purposes as defined in ORS 468.005. The platform is a four-foot wide platform that traverses the circumference of the eight foot diameter auxiliary stack. The applicant explains that the platform has been designed to accommodate a working environment for performance of air emissions testing and access to CEMS monitoring equipment.

Denial of Application Number 4456

The applicant, Portland General Electric Co., claimed a stack test platform on turbine stack #1 as a principal purpose facility on application number 4456. The applicant claimed that it was required by DEQ under Condition 14 of the Coyote Springs Air Contaminate Discharge Permit No. 25-0031. However, the Department claims that the platform does not include any air pollution control equipment to accomplish the disposal or elimination of air contaminants and therefore, it is not an eligible pollution control facility for tax credit purposes as defined in ORS

468.005. The platform is a four-foot wide platform that traverses the circumference of the 16'6" diameter stack. The applicant explains that the platform has been designed to accommodate stack testing and access CEMS monitoring equipment.

Denial of Application Number 4458

The applicant, Portland General Electric Co., claimed a drift eliminator as a principal purpose facility on tax credit application 4458. However, it was not required by the Department, the federal Environmental Protection Agency or a "regional air pollution authority" that is the criteria for tax credit purposes. The applicant claimed it was required by the Energy Facility Siting Council for the applicant to comply with Condition V.D.1(4).4 of its Approved Site Certificate. The applicant must comply with the Fish and Wildlife Standard, OAR 345-22-060. This rule refers to fish and wildlife habitat mitigation goals and standard of the Oregon Department of Fish & Wildlife. Though the applicant did not claim the drift eliminator as a sole purpose facility, the facility is not a sole purpose facility because it does not prevent, control or reduce a substantial quantity of water pollution. The high efficiency drift eliminator is designed to limit the drift to a maximum of 0.0002 percent of the circulating water flow rate.

Denial of Application Number 4462

The facility includes coverage of all grounds except roads and parking lots in the form of either rock or paving. The applicant references conditions 7 and G4, claiming the purpose of the coverage is to mitigate dust at the site during and after construction. These conditions do not require surface coverage; however, the conditions do indicate it is the responsibility of the permittee to avoid nuisance conditions. The Department did not consider this a nuisance condition because of the location of the rock and paving within the plant site. A site plan is included with the Review Report in Attachment C.

The applicant also references OAR 340-021-0050 through -0060 but these rules do not contain any reference that specifically requires the surface coverage performed at Coyote Springs. OAR 340-021-0055 defines the applicability of rules -0050 through -0060 to be only in special control areas or when ordered by the Department. Neither citation applies to the Coyote Springs site. The surface coverage was not required to comply with DEQ, EPA or "regional air pollution authority" requirements; it is not a permit condition. The Department asserts that the paving and gravel in this application is used as landscaping and ease of site maintenance.

Denial of Application Number 4463

In application number 4463, Portland General Electric Co. claimed a system for monitoring emissions as required by the Air Contaminant Discharge Permit as required by the DEQ. The system uses various sampling probes in the exhausts and a flow monitor calculates emissions. The system is used to meet regulatory reporting requirements and will be used to detect upward trends in plant emissions of NO_x and CO. This information will be used to change plant-operating conditions so that emissions remain within permitted limits. However, the monitoring system is not an air-cleaning device as defined in ORS 468A.005. ORS 468.155 (1)(b)(B).

On August 5, 1998, Ed Miska of PGE wrote, "This continuous monitoring system does control the amount of NO_x pollutant emitted from the plant and as such is a pollution control facility, which does both control and reduce air pollution by its integrated operation with the chemical (ammonia) injection system." (The letter accompanies the Review Report for application number 4463 shown in Attachment C.)

The ammonia injection system Mr. Miska refers to in his letter is the eligible pollution control presented for approval on application number 4457 shown in Attachment B of the Staff Report.

Denial of Application Number 4580

In application number 4580, Portland General Electric Co. claimed a new supply line to transfer diesel oil from railcars to the Beaver Generating Plant. The facility provides piping and valves but it does not provide a control that detects, deters or prevents a spill or unauthorized release. OAR-016-025 (2)(g). The applicant claims that by off-loading diesel fuel at an upland terminal rather than by marine terminal they are controlling pollution. The new fuel transfer facility located at the refurbished railcar unloading area is a duplicate of the transfer facility located at the dock. The new facility provides no greater prevention, control or reduction attributes than the marine facility.

Denial of Application Number 4893

The applicant, Elf Atochem North America claimed equipment that had already been certified on tax credit applications 2740, 2762 and 2949 (2949 was erroneously numbered out of sequence) each issued on 12/13/1991. Denial of an application is the formal method for removing a withdrawn application from the record.

The issued certificates are shown with the Review Report for application number 4893 in Attachment B. The discussion of replacement facilities is in Attachment G.

Denial of Application Number 4972

In application number 4972, Cain Petroleum claimed an upgrade to an underground storage tank system. This is a replacement for a facility that received certification on April 26, 1991. The original certificate is shown with the Review Report in Attachment C. The discussion of replacement facilities is in Attachment G.

Denial of Application Number 5011

The applicant, Tom Herndon, claimed a 1997 John Deere 8300 tractor on application number 5011. However, the applicant already received Pollution Control Facility Certificate Number 2134 on March 2, 1990, certifying a John Deere tractor. Once the applicant became aware of the definition of a pollution control facility, they withdrew their application. Denial of an application is the formal method for removing a withdrawn application from the record.

Certificate Number 2134 is shown with the Review Report for application number 5011 in Attachment B. The Topic regarding like-for-like replacements is shown in Attachment G.

Background CERTIFICATE REVOCATION: Attachment D

According to ORS 315.304, Portland General Electric Company notified the Department that the facility represented on Certificate No. 3158 (issued September 10, 1993) was removed from service in June of 1998. The facility presented for certification on Application No. 3999 is located at 14655 SW Old Shoals Ferry Road in Beaverton. Supporting documents are shown in Attachment D. Consistent with OAR 468.185 (1)(b), upon the Commission's revocation of Certificate No. 5158, the Department will notify the Department of Revenue of this action.

Background CLARIFICATION: Attachment E

On June 11, 1998, the Commission approved Mt. Hood Metals' Application No. 4933 based on Staff's recommendation. The Commission approved the tax credits presented in Attachment A of the Staff Report. However, Staff erroneously included two copies of the Review Report for Application No. 4933.

The First Review Report showed a reduction in the facility cost. This was the report staff intended to present to the Commission. It shows the facility cost of \$884,321 reduced by the ineligible, fire wall cost of \$6,677. The intended recommendation was that the Commission certify the facility cost in the amount of \$877,644. The applicant was aware that DEQ would recommend this to the Commission.

The second Review Report shows the erroneous facility cost recommendation in the amount of \$884,321.

Supporting documents are in Attachment E.

Background REJECTIONS: Attachment F

The Commission is not required to act upon rejections. The Department presents all tax credit rejections in this Agenda Item because it is the official program record and it provides the applicant with an opportunity to address the Commission regarding the rejections before the Department actually rejects the application.

If the Department determines an application is incomplete for processing and the applicant fails to submit requested information within 180 days of the date when the Department requested the information, the Department will reject the application unless applicant requests in writing additional time to submit requested information. OAR 340-016-0020 (1)(h) *Hist.: ...DEQ 6-1990, f. & cert. ef. 3-13-90*

Rejection of Application Number 4800

The Department will reject Willamette Industries' application number 4800 submitted on July 21, 1997. This date was prior to the rules adopted on May 1, 1998; therefore, the application was reviewed according to the rules in effect at the time. The Department received the application well within two years of the date the facility began operations.

On October 13, 1997, SJO Consulting Engineers requested additional information. On April 11, 1998, the 180 days in which Willamette Industries had to respond the request for additional information passed. SJO returned the application and their report to the Department pursuant to the Tax Credit Coordinators instructions. However, on June 5, 1998, Willamette Industries responded to the request for additional information. Both letters are shown in *Attachment F - Department Rejections*.

Based upon the additional information that Willamette Industries provided, the application would have been eligible for certification as a pollution control facility had they responded to the request for additional information within the 180 days. This information is reflected in the Review Report provided in *Attachment F - Department Rejections*

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.

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

The Department recommends the Commission revoke Pollution Control Facility Certificate No. 3158 issued to Portland General Electric Company as presented in Attachment D of the Department's Staff Report.

The Department recommends the Commission affirm their intention to approve Mt. Hood Metals' Application No. 4933 in the amount of \$877,644.

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. Tax Credit Review Reports for Approval
- C. Tax Credit Review Reports for Denial
- D. Certificate Revocation
- E. Clarification: Mt. Hood Metals
- F. Department Rejections
- G. TOPIC: Replacement or Reconstruction

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: August 31, 1998

Attachment A

Summary

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
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Approve

Pollution Control Facility Tax Credit

Air

4442	Portland General Electric Company	Updated water injection controls	\$96,056	100%	\$48,028
4457	Portland General Electric Company	Selective catalyst system	\$2,054,682	100%	\$1,027,341
4459	Portland General Electric Company	CTG NOX REDUCTION SYSTEM	\$3,584,173	100%	\$1,792,087
4475	Portland General Electric Company	DUST SUPPRESSION SYSTEM	\$181,042	100%	\$90,521
4792	Willamette Industries, Inc.	Western Pneumatics Model #542 Baghouse	\$61,631	100%	\$30,816
4826	Columbia Steel Casting Co., Inc.	Natural Gas Fired Oven used for heat treating steel castings, using low-Nox burners for reduction of nitogen oxide emissions.	\$114,810	100%	\$57,405
4895	Mitsubishi Silicon America	Claimed facility consists of a dust collector which collects dry particulate from the crystal growing & preparation processes. Torit, model DFT 2-8, serial # IG374178-001.	\$12,617	100%	\$6,309
4896	Mitsubishi Silicon America	Claimed facility consists of packed bed wet scrubber which treats acidic fumes produced from acid etching of polysilicon & silicon ingots. Harrington Industrial Plastics, model # 44-5 LB Serial # S-092595-1.	\$147,174	100%	\$73,587
4899	Eagle Foundry Company	Dust Collector system (Bag House) consisting of a Model 160 HPT-8 dust collector with top removal bags and New York Company system fan.	\$100,386	100%	\$50,193
4937	Don Rhyne Painting Co.	Installation of a Double Air Filter system.	\$3,129	100%	\$1,565
5013	Ash Grove Cement Co.	kiln air recycling system and dust collection	\$254,049	100%	\$127,025
5044	Avison Wood Specialties, Inc.	A baghouse manufactured by Fabric Filters Air Systems, Inc. Model # 144-10TRLOD; serial number 5290.	\$67,820	100%	\$33,910

Air (12 applications)

\$6,677,569

\$3,338,784

CFC

5015	Seiler & Smith, Inc.	recover and recycle R-134A and R-12	\$2,100	100%	\$1,050
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CFC (1 application)

\$2,100

\$1,050

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Pollution Control Facility Tax Credit					
Field Burning					
4918	Neher, Larry & Mary Lou Neher	Drain Tile: 860' 8" corrugated HDPE, 1500' 6" corrugated HDPE, 29,850 4" corrugated HDPE, fittings & outlets.	\$26,834	100%	\$13,417
5010	Neuschwander, Lyle D.	John Deere 9400 tractor hp 225	\$117,640	46%	\$27,057
5012	Marx, Carol	132'x144'x22' pole building enclosed on 3 sides, storage for straw for sale through the winter months	\$131,499	100%	\$65,750
5014	Cruikshank, Kenneth D. & Karen L.	a 124'X180'X22' pre-engineered all steel straw storage barn and hay squeeze, Hyster Model SC180 hay squeeze type G serial #SC97808	\$131,339	100%	\$65,670
5016	Bashaw Land & Seed, Inc.	purchased a Rear's 15' flail chopper	\$11,195	100%	\$5,698
5017	Bowers, Eric & Vicki	43150' of 4" drain pipe, 680' of 8", & 880' of 6" pipe was plowed in the ground on 40' to 60' centers to drain the wet soils for easier control of weeds & provide more options on crops without burning	\$30,852	100%	\$15,426
5037	Roth, Scott	John Deere 1450-6 bottom plow John Deere 115 15' flail chopper	\$8,750	100%	\$4,375
5050	Scheffel Farms Inc.	An Alloway Wing flail chopper.	\$28,191	100%	\$14,096
5051	Scheffel Farms, Inc.	A 25'6" Kello-Bilt dow disk.	\$39,835	100%	\$19,918
Field Burning (9 applications)			\$526,335		\$231,405
Hazardous Waste					
4829	Integrated Device Technology (IDT)	Solvent Hazardous Waste Collection & Disposal System.	\$155,939	100%	\$77,970
4830	Integrated Device Technology (IDT)	Phosphoric Acid Waste Collection System.	\$80,697	100%	\$40,349
Hazardous Waste (2 applications)			\$236,636		\$118,318
Noise					
4394	Portland General Electric Company	Noise pollution Barrier consisting of eight 48" x 92" sheets of absorbant fiberglass sewn onto eight 54" by 96" sheets of noise reflecting material	\$11,043	100%	\$5,522
4460	Portland General Electric Company	Silencers installed on various plant components with a valve trim kit.	\$256,032	100%	\$128,016
4471	Portland General Electric Company	SUB TRANSFORMER NOISE BARRIERS	\$68,099	100%	\$34,050
4968	Nosler, Inc.	Installation of Noise Enclosure for Manufacturing Equipment.	\$18,334	100%	\$9,167
Noise (4 applications)			\$353,508		\$176,754

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Pollution Control Facility Tax Credit					
Solid Waste					
5018	Capitol Recycling & Disposal, Inc.	twenty 6 yd. front load expanded metal cardboard recycling cages with one piece steel lid, with auto release flip-up lid lock, with standard slots front & rear, and with bolt on 4 swivel casters. (there's more..)	\$10,304	100%	\$5,152
5023	Capitol Recycling & Disposal, Inc.	residential recycling bins	\$4,410	100%	\$2,205
5025	United Disposal Service, Inc.	Twenty-four yard front load cardboard recycling containers with lids and casters.	\$8,004	100%	\$4,002
5026	United Disposal Service, Inc.	500 fire red 14-gallon recycle bins	\$2,220	100%	\$1,110
5027	Corvallis Disposal Co.	Kann trough plastic compactor (48" wide) to replace 26" wide compactor on Volvo FE42 side load recycle truck	\$18,239	100%	\$9,120
5029	United Disposal Service, Inc.	New cat backhoe loader, Model 426C, ID# G97248, and Serial #6XN00870.	\$69,245	100%	\$34,623
5030	Willamette Industries, Inc.	production lines were modified to utilize 100% of the plant's sanderdust production as raw material in the board production process. A 61' screw conveyor was installed. Line 1 delivery system was modified. Line 2 delivery system was modified to install additional drives & controls to redirect 2 screws to the face blender.	\$38,614	100%	\$19,307
5031	United Disposal Service, Inc.	1,000 fire red 14-gallon recycle bins and 487 storehouse white 13-gallon recycle bins.	\$6,286	100%	\$3,143
5032	Corvallis Disposal Co.	Ten 1-yd self dumping hopper style containers. One 30-yd SC style drop box with domed crank-up lid. one 40-yd newsprint style drop box, 30-yd newsprint style drop box	\$24,647	100%	\$12,324
5033	Capitol Recycling & Disposal Co.	Ten 30-yd SC style standard drop boxes	\$29,918	100%	\$14,959
5039	United Disposal Service, Inc.	Ten 48.9 yard SC style drop boxes, serial #'s 10348, 10349, 10350, 10351, 10352, 10353, 10354, 10355, 10356 & 10357. Two 30-yd SC style drop boxes, serial #'s 10455 & 10456.	\$45,164	100%	\$22,582
5056	United Disposal Service Inc.	six 30-yd standard drop boxes, serial numbers 10459, 10460, 10457, 10458, 10461 and 10462	\$17,952	100%	\$8,976
Solid Waste (12 applications)			\$275,004		\$137,502

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Pollution Control Facility Tax Credit					
Water					
4454	Portland General Electric Company	Rainwater runoff system	\$97,035	100%	\$48,518
4464	Portland General Electric Company	A waste neutralization tank	\$194,477	100%	\$97,239
4465	Portland General Electric Company	OIL WATER SPEARATORS	\$92,971	100%	\$46,486
4466	Portland General Electric Company	SECONDARY CONTAINMENTS	\$80,778	100%	\$40,389
4470	Portland General Electric Company	SUB OIL SPILL CONTAINMENT	\$10,710	100%	\$5,355
4777	Portland General Electric Company	A liner system prevents passage of oil in control area in the event of a spill.	\$19,960	100%	\$9,980
4797	Portland General Electric Company	Oil Spill Containment System.	\$51,663	100%	\$25,832
4798	Portland General Electric Company	Oil Spill Containment System.	\$50,378	100%	\$25,189
4857	Elf Atochem North America	Caustic storage capacity of 2,250,000 gallons consisting of four 400,000 gal. tanks & two 200,000 gal. tanks & two 125,000 gal. tanks.	\$925,753	100%	\$462,877
4879	Portland General Electric Company	Each wash area has vaults & piping for oil/water separator	\$71,416	100%	\$35,708
4880	Portland General Electric Company	The oil/water separator collects water from the shop service area. In the event of an oil spill, the oil will be contained by the oil/water separator vault.	\$19,595	100%	\$9,998
4882	Portland General Electric Company	Secondary sump containment for potential oil spills.	\$7,833	100%	\$3,917
4883	Portland General Electric Company	Secondary sump containment for potential oil spills.	\$15,826	100%	\$7,913
4884	Portland General Electric Company	Secondary sump containment for potential oil spills.	\$10,298	100%	\$5,149
4941	Oregon Brewing Company	Facility for pre-treatment of effluent water containing High Levels of organic matter.	\$69,988	100%	\$34,994
4973	Portland General Electric Company	Transformer Drainage Containment System.	\$205,753	100%	\$102,877
4974	Portland General Electric Company	Transformer Drainage Containment System.	\$105,715	100%	\$52,858
4992	Pioneer Truck Equipment, Inc.	A Wastewater filtration & recovery system using a Karcher, model ASA 600.	\$39,244	100%	\$19,622

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Pollution Control Facility Tax Credit					
Water					
5000	Portland General Electric Company	An oil/water separator made up of a lined containment system in the transformer areas. The system drains to a vault allowing the passage of water while stopping the flow of oil in the event of an oil spill.	\$71,319	100%	\$35,660
5008	Portland General Electric Company	An oil containment system consisting of a lined containment area that drains to a vault.	\$276,730	100%	\$138,365
5019	B & F Drycleaners, Inc.	a pan is placed under the dry cleaning machine to contain any spills of solvent. A Mark II mister by AQ Labs. The mister filters out dry cleaning solvent from the water, then mists water into the atmosphere.	\$3,425	100%	\$1,713
5034	Portland General Electric Co.	a concrete pad with drain pipes and curbing was installed to direct contaminated water to an evaporation pond. The pond is lined with reinforced polypropylene liner and a layer of sand backfill.	\$23,835	100%	\$11,917
Water (22 applications)			\$2,445,102		\$1,222,551
Summary for Pollution Control Facility Tax Credit (62 applications)			\$10,516,253		\$5,226,364
Pollution Prevention Tax Credit					
Perc					
5038	SOLEM, INC	conversion of existing dry to dry refrigerated condenser dry cleaning machine using perc to a dry cleaning machine using petroleum solvent	\$7,507		\$3,753
Summary for Pollution Prevention Tax Credit (1 application)			\$7,507		\$3,753
Reclaimed Plastics Products Tax Credit					
Plastics					
4911	WWDD Partnership		\$11,500	100%	\$5,750
4916	WWDD Partnership		\$70,000	100%	\$35,000
4969	Denton Plastics, Inc.	Hyster Forklift, model H30XM	\$18,620	100%	\$9,310
4997	Denton Plastics, Inc.	Two 1986 Frauhauf 48' Vans	\$10,000	100%	\$5,000
Summary for Reclaimed Plastics Products Tax Credit (4 applications)			\$110,120		\$55,060
Summary for Approvals (67 applications)			\$10,633,879		\$5,285,177

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
Deny					
Pollution Control Facility Tax Credit					
Air					
4455	Portland General Electric Company	Stack test platform, auxillary boiler	\$55,520	100%	\$27,760
4456	Portland General Electric Company	STACK TEST PLATFORM-TURBINE STACK #1	\$24,110	100%	\$12,055
4462	Portland General Electric Company	ROCK/PAVING COVERING SITE	\$391,052	100%	\$195,526
4463	Portland General Electric Company	CONTINUOUS EMISSION MONITOR SYSTEM	\$500,738	100%	\$250,369
Air (4 applications)			\$971,420		\$485,710
Air/Hazard					
4893	Elf Atochem North America	The facility is an Emergency Chlorine Scrubber consisting of a spray tower followed by two packed bed columns operation in parallel.	\$1,487,995	100%	\$743,998
Air/Hazard (1 application)			\$1,487,995		\$743,998
Field Burning					
5011	Herndon, Tom	1997 John Deere 8300 tractor S.N. RW 8300P010128	\$117,525	100%	\$58,763
Field Burning (1 application)			\$117,525		\$58,763
USTs					
4972	Cain Petroleum, Inc.	Upgrade Tank, Piping, Pollution Control Equipment.	\$148,893	100%	\$74,447
USTs (1 application)			\$148,893		\$74,447
Water					
4458	Portland General Electric Company	Cooling tower with a D-15 cellular PVC drift eliminators, manufactured by Munters Corporation.	\$44,385	100%	\$22,193
4580	Portland General Electric Company	Repair/upgrade rail road leading into the Beaver Generating Plant to facilitate the delivery and off loading of diesel by rail car to the plant.	\$12,090	100%	\$6,045
Water (2 applications)			\$56,475		\$28,238
Summary for Deny (9 applications)			\$2,782,308		\$1,391,154

Application Number	Applicant	Description of Facility	Facility Cost	Percent Allocable	Possible Tax Benefit
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Reject

Pollution Control Facility Tax Credit

Air

4800	Willamette Industries, Inc.	An 80,000 ACFM negative air collection system to reduce the fugitive emissions escaping into the atmosphere.	\$110,418	100%	\$55,209
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Summary for Reject (1 application)

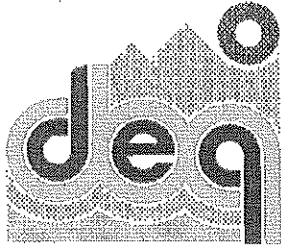
\$110,418	\$55,209
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Action	App No	Applicant	Certified	Percent	Media
Approve	4394	Portland General Electric	\$11,043	100.00%	Noise
Approve	4442	Portland General Electric	\$96,056	100.00%	Air
Approve	4454	Portland General Electric	\$97,035	100.00%	Water
Approve	4457	Portland General Electric	\$2,054,682	100.00%	Air
Approve	4459	Portland General Electric	\$3,584,173	100.00%	Air
Approve	4460	Portland General Electric	\$256,032	100.00%	Noise
Approve	4464	Portland General Electric	\$194,477	100.00%	Water
Approve	4465	Portland General Electric	\$92,971	100.00%	Water
Approve	4466	Portland General Electric	\$80,778	100.00%	Water
Approve	4470	Portland General Electric	\$10,710	100.00%	Water
Approve	4471	Portland General Electric	\$68,099	100.00%	Noise
Approve	4475	Portland General Electric	\$181,042	100.00%	Air
Approve	4777	Portland General Electric	\$19,960	100.00%	Water
Approve	4792	Willamette Industries, Inc.	\$61,631	100.00%	Air
Approve	4797	Portland General Electric	\$51,663	100.00%	Water
Approve	4798	Portland General Electric	\$50,378	100.00%	Water
Approve	4826	Columbia Steel Casting Co., Inc.	\$114,810	100.00%	Air
Approve	4829	Integrated Device Technology	\$155,939	100.00%	Hazardous
Approve	4830	Integrated Device Technology	\$80,697	100.00%	Hazardous
Approve	4857	Elf Atochem North America	\$925,753	100.00%	Water
Approve	4879	Portland General Electric	\$71,416	100.00%	Water
Approve	4880	Portland General Electric	\$19,995	100.00%	Water
Approve	4882	Portland General Electric	\$7,833	100.00%	Water
Approve	4883	Portland General Electric	\$15,826	100.00%	Water
Approve	4884	Portland General Electric	\$10,298	100.00%	Water
Approve	4895	Mitsubishi Silicon Amercia	\$12,617	100.00%	Air
Approve	4896	Mitsubishi Silicon Amercia	\$147,174	100.00%	Air
Approve	4899	Eagle Foundry Company	\$100,386	100.00%	Air
Approve	4911	VWDD Partnership	\$11,500	100.00%	Plastics
Approve	4916	VWDD Partnership	\$70,000	100.00%	Plastics
Approve	4918	Neher, Larry & Mary Lou Neher	\$26,834	100.00%	Field Burning
Approve	4937	Don Rhyne Painting Co.	\$3,129	100.00%	Air
Approve	4941	Oregon Brewing Company	\$69,988	100.00%	Water
Approve	4968	Nosler, Inc.	\$18,334	100.00%	Noise
Approve	4969	Denton Plastics, Inc.	\$18,620	100.00%	Plastics
Approve	4973	Portland General Electric	\$205,753	100.00%	Water
Approve	4974	Portland General Electric	\$105,715	100.00%	Water
Approve	4992	Pioneer Truck Equipment, Inc.	\$39,244	100.00%	Water
Approve	4997	Denton Plastics, Inc.	\$10,000	100.00%	Plastics
Approve	5000	Portland General Electric	\$71,319	100.00%	Water
Approve	5008	Portland General Electric	\$276,730	100.00%	Water
Approve	5010	Neuschwander, Lyle D.	\$117,640	46.00%	Field Burning
Approve	5012	Marx, Carol	\$131,499	100.00%	Field Burning
Approve	5013	Ash Grove Cement Co.	\$254,049	100.00%	Air
Approve	5014	Cruikshank, Kenneth D. & Karen	\$131,339	100.00%	Field Burning
Approve	5015	Seiler & Smith, Inc.	\$2,100	100.00%	CFC
Approve	5016	Bashaw Land & Seed, Inc.	\$11,395	100.00%	Field Burning

Action	App No	Applicant	Certified	Percent	Media
Approve	5017	Bowers, Eric & Vicki	\$30,852	100.00%	Field Burning
Approve	5018	Capitol Recycling & Disposal, Inc.	\$10,304	100.00%	Solid Waste
Approve	5019	B & F Drycleaners, Inc.	\$3,425	100.00%	Water
Approve	5023	Capitol Recycling & Disposal, Inc.	\$4,410	100.00%	Solid Waste
Approve	5025	United Disposal Service, Inc.	\$8,004	100.00%	Solid Waste
Approve	5026	United Disposal Service, Inc.	\$2,220	100.00%	Solid Waste
Approve	5027	Corvallis Disposal Co.	\$18,239	100.00%	Solid Waste
Approve	5029	United Disposal Service, Inc.	\$69,245	100.00%	Solid Waste
Approve	5030	Willamette Industries, Inc.	\$38,614	100.00%	Solid Waste
Approve	5031	United Disposal Service, Inc.	\$6,286	100.00%	Solid Waste
Approve	5032	Corvallis Disposal Co.	\$24,647	100.00%	Solid Waste
Approve	5033	Capitol Recycling & Disposal Co.	\$29,918	100.00%	Solid Waste
Approve	5034	Portland General Electric Co.	\$23,835	100.00%	Water
Approve	5037	Roth, Scott	\$8,750	100.00%	Field Burning
Approve	5038	SOLEM, INC.	\$7,507	100.00%	Perc
Approve	5039	United Disposal Service, Inc.	\$45,164	100.00%	Solid Waste
Approve	5044	Avison Wood Specialties, Inc.	\$67,820	100.00%	Air
Approve	5050	Scheffel Farms Inc.	\$28,191	100.00%	Field Burning
Approve	5051	Scheffel Farms, Inc.	\$39,835	100.00%	Field Burning
Approve	5056	United Disposal Service Inc.	\$17,952	100.00%	Solid Waste
Deny	4455	Portland General Electric	\$55,520	100.00%	Air
Deny	4456	Portland General Electric	\$24,110	100.00%	Air
Deny	4458	Portland General Electric	\$44,385	100.00%	Water
Deny	4462	Portland General Electric	\$391,052	100.00%	Air
Deny	4463	Portland General Electric	\$500,738	100.00%	Air
Deny	4580	Portland General Electric	\$12,090	100.00%	Water
Deny	4893	Elf Atochem North America	\$1,487,995	100.00%	Air/Hazard
Deny	4972	Cain Petroleum, Inc.	\$148,893	100.00%	USTs
Deny	5011	Herndon, Tom	\$117,525	100.00%	Field Burning
Reject	4800	Willamette Industries, Inc.	\$110,418	100.00%	Air

Attachment B

Approvals



Tax Credit Review Report

Revised 11/23/1997

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4394**
Facility Cost **\$11,043**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Noise 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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility.

The applicant's address is:

**121 SW Salmon St.
1WTC-04-02
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Noise pollution barrier consisting of eight 48" x 92" sheets of absorbant fiberglass sewn onto eight 54" by 96" sheets of noise reflecting material

The facility is located at:

**SE 49TH & Stark Street
Portland, OR**

Technical Information

The claimed facility had exceeded the mandated night-time allowable octave band sound pressure for the 125 Hz level. The barrier was installed to lower the noise generated by the transformers to levels below those required by the Department.

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation** is to reduce a substantial quantity of noise pollution.
- (1)(a)
- ORS 468.155 The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the Commission. Oregon Environmental Quality Commission Noise Control Regulations for Industry and Commerce (35-035, Section 1, Paragraph F, Part (I)).
- (1)(b)(C)

Timeliness of Application

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

<i>Application Received</i>	05/04/1995
<i>Application Substantially Complete</i>	10/3/1997
<i>Construction Started</i>	02/15/1993
<i>Construction Completed</i>	02/15/1993
<i>Facility Placed into Operation</i>	05/16/1993

Facility Cost

PGE Labor Direct	3,223
PGE Labor Loading (vacation, pension, etc.)	1,185
Contract Labor	2,565
Materials	1,712
PGE Construction Overhead Loading	1,887
Outside Services	471
Eligible Facility Cost	\$11,043

A Job Cost Summary accompanied the application. The facility cost did not exceed \$20,000 and therefore, an independent accounting review was not required.

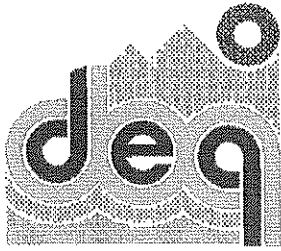
Facility Cost Allocable to Pollution Control

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 facility is used 100% of the time 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: Cascade Earth Sciences - RAD, SKR
Dave Kauth



Tax Credit Review Report

Revised 11/23/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4442**
Facility Cost **\$96,056**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-050

Applicant Identification

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility.

The applicant's address is:

**121 SW Salmon St. 1WTC-0402
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Allen-Bradley injection controls

The facility is located at:

**Beaver Plant
80997 Kallunki Road
Klatskanie, OR**

Technical Information

The automated water injection controls continuously adjusts water flow to control NO_x in the exhaust to maintain acceptable limits. The system consists of an Allen-Bradley programable logic control system, hardware interface with a PC and associated software programs.

PGE previously filed for and received tax credit for 6 Horiba Stack Gas Analyzers, certificate numbers 3076 and 2946. The analyzers were installed for the purpose of collecting samples and providing emissions analysis on a continuous basis. The current facility application is for NO_x emission monitors, a requirement of DEQ.

Past practice relied on data from a single engine run at one power level to manually set the water flow. As power level changes or other changes occur which change exhaust NO_x, the water flow would not change with it. Thus, NO_x may have greatly increased without changes in water flow, resulting in higher emissions.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new installation** is to prevent, control or reduce a substantial quantity of air pollution as required **DEQ air contaminant discharge permit #05-2520**.
- 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>	06/14/1995
<i>Application Substantially Complete</i>	10/23/1997
<i>Construction Started</i>	02/07/1994
<i>Construction Completed</i>	02/07/1994
<i>Facility Placed into Operation</i>	05/24/1994

Facility Cost

PGE Labor Direct	39,819
PGE Labor Loading	14,892
Materials (\$7.00 loading)	40,718
PGE Employee Expense	60
Construction Overhead	11,240
	<u>Claimed Cost</u>
	\$106,729
Ineligible Costs	
	<u>Ineligible Engineering</u>
	-\$ 10,673
Eligible Facility Cost	\$96,056

Job cost summaries substantiate the cost of the facility and the certified public accountant's statement, from Arthur Andersen, LLP, accompanied the application. The \$10,673 listed under the ineligible costs is 10% of the engineering time that was not associated with this pollution control facility as stated on the application.

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.

Factor	Applied to This Facility
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 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 Department rules and statutes and with EQC orders.

Reviewers: Cascade Earth Sciences - RAD, SKR
M.C. Vandehey
Dave Kauth



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4454**
Facility Cost **\$97,035**
Percentage Allocable **100%**
Useful Life **10 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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility.

The applicant's address is:

**121 SW Salmon St. WTC-0402
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Storm water runoff drainage and collection system.

The facility is located at:

**Coyote Springs
200 Ullman Blvd
Boardman, OR 97818**

Technical Information

The facility utilizes a drainage system that carries storm water runoff to a retention pond that is lined with an impervious membrane. The capacity of the pond is approximately one million gallons. The water from the retention pond will be discharged to the Port of Morrow's industrial wastewater system. None of the water from the retention pond will be reused for other plant operations.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new installation** is to reduce a substantial quantity of water pollution. The reduction of water pollution is a pretreatment requirement for industrial wastewater discharge to the public owned treatment facility of the Port of Morrow.
- 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>	<u>06/28/1997</u>
<i>Application Substantially Complete</i>	<u>10/15/1997</u>
<i>Construction Started</i>	<u>08/12/1993</u>
<i>Construction Completed</i>	<u>11/15/1995</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

Facility Cost

Cost allocation substantiated the cost of the facility and the certified public accountant's statement from Coopers and Lybrand, LLP accompanied the application.

Raytheon contract engineering design, construction and indirect	92,951
PGE Internal Cost	7,169
Construction overhead & storeroom loading	86
Claimed on Application	\$ 100,206
Raytheon invoice duplicated in contract costs	(2,745)
Capitalized property tax	(28)
Legal Fees	(266)
Land Lease - Port of Morrow	(132)
Eligible Facility Cost	\$ 97,035

Summarized contractor invoices substantiate the cost of the facility and an certified public accountant's statement, performed by Coopers and Lybrand, LLP, accompanied the application.

Marina, McCoy & Co., P.C. performed the certified public accountant's review on behalf of the Department. PGE included engineering, materials and direct labor costs in the application. Indirect company costs, captioned construction overhead, material loading costs, legal services, land lease costs, permits and licenses and capitalized property taxes were included in the application.

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.

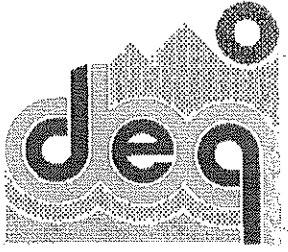
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 30 years. There are no gross annual revenues associated with this facility.
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 the requirements for industrial wastewater discharge to the Port of Morrow treatment system.

Reviewers: Cascade Earth Sciences - R.A.D, S.K.R
 Marina, McCoy & Co., P.C.
 Renato Dulay
 Maggie Vandehey



Tax Credit Review Report

Revised 8/24/1998

Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190

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

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant's address is:

**121 SW Salmon St.
1WTC-0402
Portland, OR 97204**

The certificate will identify the facility as:

**A catalytic reduction control system (SCR) for NO_x reduction.
MORFAB serial # R10835C3,
Various vaporizers model # F59-1HD,
Dilution fans model # HP-8E23.**

The applicant is the owner of the facility located at:

**Coyote Springs
200 Ullman Blvd.
Boardman, OR 97818**

Technical Information

SCR is a post-combustion NO_x control technology which is applied at the exhaust end of the gas turbine system. Ammonia is injected into the exhaust gas upstream of the catalyst bed. The ammonia reacts with the NO_x to form molecular nitrogen and water vapor. The effectiveness of the SCR process relies on flue gas temperature, amount of catalyst, and ratio of ammonia to NO_x in the flue gas stream.

Eligibility

- ORS 468.155 The **principal purpose** of this **new equipment** is to prevent, control or reduce a substantial quantity of air pollution. The SCR was installed to keep NO_x emissions below the 4.5 ppm levels required in their permit.
- (1)(a)
- ORS 468.155 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
- (1)(b)

Timeliness of Application

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

<i>Application Received</i>	06/28/1995
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	11/15/1993
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Raytheon contract engineering design, construction and indirect	\$ 1,968,189
PGE Internal Cost	151,805
Construction overhead & storeroom loading (\$3)	1,821
Claimed on Application	\$ 2,121,815
Raytheon invoice duplicated in contract costs	(58,116)
Capitalized property tax	(584)
Legal Fees	(5,641)
Land lease - Port of Morrow	(2,792)
	\$ 2,054,682

Cost allocation documentation substantiate the cost of the facility and a certified public accountant's statement, performed by Coopers and Lybrand, LLP.

Marina, McCoy & Co., P.C. provided the independent accounting review on behalf of the Department. PGE included engineering, materials and direct labor costs in the application. Indirect company costs, captioned construction overhead, material loading costs, legal services, land lease costs, permits and licenses and capitalized property taxes were included in the application.

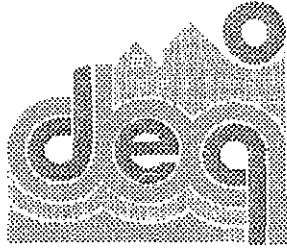
Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	No return on investment.
ORS 468.190(1)(c) Alternative Methods	Alternative methods compared.
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%.

Reviewers: Cascade Earth Sciences - RAD, SKR
Marina McCoy Gerritz, P.C.
Dave Kauth



Tax Credit Review Report

Revised 11/23/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4459**
Facility Cost **\$3,584,173**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-050

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant's address is:

**121 SW Salmon St.
1WTC-0402
Portland, OR 97204**

The certificate will identify the facility as:

A CTG NO_x reduction system which includes a combustion chamber; crossfire tubes; flow sleeves (comb liner and an RFT liner sleeve); and fuel nozzels (gas nozzel, valve distribution assembly and manifold assembly.)

The applicant is the owner of the facility located at:

**Coyote Springs
200 Ullman Blvd.
Boardman, OR 97818**

Technical Information

The CTG NO_x reduction system was installed to lower NO_x emissions below the conditions set forth in the facility's Air Contaminant Discharge Permit No. 25-0031. The CTG system reduces NO_x emissions to less than 25 ppm as required by Condition 4 of the air contaminant discharge permit. Without the CTG system, the site could not operate within acceptable limits.

Eligibility

- ORS 468.155 The **principal purpose** of this **new equipment, installation and device** is to
 - (1)(a) prevent, control or reduce a substantial quantity of air pollution.
- ORS 468.155 The disposal or elimination of or redesign to eliminate air contamination sources
 - (1)(b) 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>06/28/1995</u>
<i>Application Substantially Complete</i>	<u>11/23/1997</u>
<i>Construction Started</i>	<u>08/12/1993</u>
<i>Construction Completed</i>	<u>11/15/1995</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

Facility Cost

Raytheon contract engineering design, construction and indirect	3,433,312
PGE Internal Cost	264,810
Construction overhead & storeroom loading	<u>3,163</u>
Claimed on Application	\$ 3,701,285
Raytheon invoice duplicated in contract costs	(101,378)
Capitalized property tax	(1,022)
Legal Fees	(9,841)
Land lease - Port of Morrow	<u>(4,871)</u>
Eligible Facility Costs	\$ 3,584,173

A job cost summary and equipment detail substantiate the cost of the facility and a certified public accountant's statement, provided by Arthur Anderson L.L.P., accompanied the application. Merina, McCoy & Company., P.C. performed the accounting review on behalf of the Department.

Facility Cost Allocable to Pollution Control

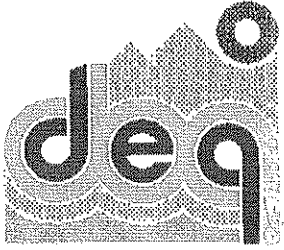
According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

<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 for the purpose of the return on investment calculation is 30 years No return on investment.
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%.

Reviewers: Cascade Earth Sciences- RAD, SKR
Marina, McCoy & Co., P.C. Certified Public Accountants
Dave Kauth
Maggie Vandehey



Tax Credit Review Report

Revised 11/23/97

Director's Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4460**
Facility Cost **\$ 256,032**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Air/Noise Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-050

Applicant Information

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
1WTC-0402
Portland, OR 97204**

Facility Information

The certificate will identify the facility as:

Silencers installed on various plant components with a valve trim kit.

The facility is located at:

**Coyote Springs
200 Ullman Blvd
Boardman, OR 97818**

Technical Information

The silencers are designed to reduce noise levels to those acceptable in OAR 340-35-035(1)(b)(B). They are installed on high, intermediate, and low pressure steam vents; the extraction steam letdown; the steam turbine outlet lines; and the heat recovery steam generator blow-down flash. A valve trim kit was installed on valve CSO-AB-PV-551 to reduce noise emissions. Equipment includes:

<u>Model #</u>	<u>Serial #</u>	<u>Model #</u>	<u>Serial #</u>
BOS-64-111-1333	6001169	BOS-58-103-1081	6001168
BOS-36-102-338	6001171	BOS-24-120-167	6001170
BOS-38-100-369	6001172	BOS-86-104-2588	9470640A
BOS-58-96-1173	9470640B	BOS-28-105-176	9470640K
BOS-18-80-44	9470640D	HKV3-12-105	05-8422-94
HKV3-24-105	05-8423-94-1	HKV3-30-105	05-8423-94-2

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new equipment or device** is to prevent, control, or reduce noise pollution.
- ORS 468.155 (1)(b)(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission - OAR 340-35-035(1)(b)(B).

Timeliness of Application

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

<i>Application Received</i>	06/28/1995
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	11/15/1993
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Raytheon contract engineering design, construction and indirect	\$ 245,255
PGE Internal Cost	18,917
Construction overhead & storeroom loading	226
Claimed on Application	264,398
Raytheon invoice duplicated in contract costs	(7,242)
Capitalized property tax	(73)
Legal fees	(703)
Land lease - Port of Morrow	(348)
Eligible Facility Cost	\$ 256,032

Cost allocation summaries represented the cost of the facility and a certified public accountant's statement by Coopers and Lybrand, L.L.P., accompanied the application.

Marina, McCoy & Co., P.C. provided the independent accounting review on behalf of the Department. PGE included engineering, materials and direct labor costs in the application. Indirect company costs, captioned construction overhead, material loading costs, legal services, land lease costs, permits and licenses and capitalized property taxes were also included in the application.

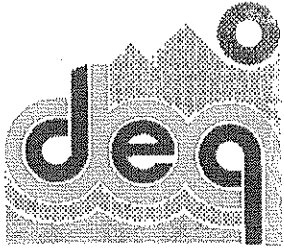
Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
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 purpose of return on investment is 30 years. No return on investment.
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%.

Reviewers: Cascade Earth Sciences- RAD, SKR
Marina McCoy Gerritz, P.C.



Tax Credit Review Report

Revised 11/23/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4464**
Facility Cost **\$194,477**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Water Final Certification

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

Applicant Information

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
1WTC-0402
Portland, OR 97204**

Facility Information

The certificate will identify the facility as:

**A 24' x 30' waste neutralization tank, associated
electronic control and plumbing system**

The facility is located at:

**Coyote Springs
200 Ullman Blvd.
Boardman, OR 97818**

Technical Information

The waste neutralization tank is designed, fabricated and erected according to AWWA D100 basic codes and standards. The neutralization system is controlled by a micro processor with automatic level controls, mixers, and measured acid and caustic additives. There is a time period built into the system to ensure adequate mixing and pH equilibrium after final chemical adjustment. Each batch is monitored for compliance before release. All water from the neutralization tank is discharged to the Port of Morrow industrial wastewater system.

Equipment Includes:	Model #	Tag #
Neutralization Tank	Morse Construction Group 24' X 30'	
Tank Mixer	Plenty Products	CS-DW-MX-01
(4) Control Valves		DW-KV-8274 through 8277
(4) Instruments		DW-LIT-8270 DW-LSHH-8271 DW-AIT-8272 and 8273

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new installation and device** is to control water pollution, and meet effluent pH requirements for industrial wastewater discharges to the Port of Morrow wastewater treatment facility.

ORS 468.155 (1)(b)(A) The control 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>	06/28/1995
<i>Application Substantially Complete</i>	1/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	11/15/1995
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Raytheon contract engineering design, construction and indirect	\$ 186,291
PGE Internal Cost	14,369
Construction overhead & storeroom loading	172
Claimed on Application	\$ 200,831
Raytheon invoice duplicated in contract costs	(5,501)
Capitalized property tax	(55)
Legal Fees	(534)
Land lease - Port of Morrow	(264)
Eligible Facility Costs	\$ 194,477

Summarized contractor invoices substantiate the cost of the facility and an certified public accountant's statement, performed by Coopers and Lybrand, LLP, accompanied the application.

Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

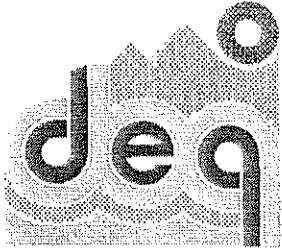
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	No return on investment.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or 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 the requirements for industrial wastewater discharge to the Port of Morrow treatment system.

Reviewers: Cascade Earth Sciences
Renato Dulay
Maggie Vandehey



Tax Credit Review Report

Revised 11/23/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4465**
Facility Cost **\$ 92,971**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Water Final Certification

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

Applicant Information

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
1WTC-0402
Portland, OR 97204**

Facility Information

The certificate will identify the facility as:

Two oil-water separators for equipment wash and one oil-water separator for runoff from a storm-water retention pond.

The facility is located at:

**Coyote Springs
200 Ullman Blvd.
Boardman, OR 97818**

Technical Information

The facility includes a system for collecting, separating, and subsequent transfer of oil and water. Two of the oil/water separators process equipment drain wastewater to less than 10 ppm oil before discharge to the City of Boardman's sanitary sewer system. The third oil/water separator processes storm water from the storm retention pond to less than 10 ppm oil before discharge to the Port of Morrow's industrial wastewater system.

Equipment Includes:

<u>Model #</u>	<u>Serial #</u>
OS-1 MODEL	CGD-C-1000
OS-2 MODEL	C-4000
OS-3 MODEL	SRC-30-STD

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new installation and device** is to prevent, control, or reduce water pollution, and provide for the appropriate disposal of used oil to comply with ORS 345-022-0010, the Port of Morrow Water Pollution Control Facility Permit (DEQ) and the City of Boardman Wastewater Permit (PoM).

ORS 468.155 (1)(b)(A) The disposal or elimination of or redesign to eliminate industrial waste 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>	06/28/1995
<i>Application Substantially Complete</i>	1/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	11/15/1995
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Raytheon contract engineering design, construction and indirect	\$ 89,058
PGE Internal Cost	6,869
Construction overhead & storeroom loading	82
Claimed on Application	\$ 96,009
Raytheon invoice duplicated in contract costs	(2,630)
Capitalized property tax	(26)
Legal Fees	(255)
Land lease - Port of Morrow	(126)
Eligible Facility Costs	\$ 92,971

Summarized facility cost information accompanied the application. The independent certified public accountant's statement was performed by Coopers and Lybrand, LLP, accompanied the application.

PGE included engineering, materials and direct labor costs in the application. Indirect company costs, captioned construction overhead, material loading costs, legal services, land lease costs, permits and licenses and capitalized property taxes were included in the application.

Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

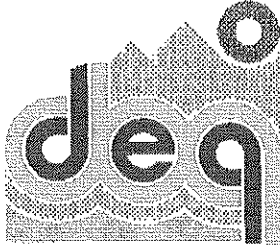
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	No return on investment.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or 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 the requirements for industrial wastewater discharge to the Port of Morrow treatment system and the City of Boardman sanitary sewer system.

Reviewers: Cascade Earth Sciences-RAD, SKR
Maggie Vandehey
Renato Dulay



Tax Credit Review Report

Revised 7/10/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4466**
Facility Cost **\$ 80,778**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Water Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-050

Applicant Information

The applicant is a C Corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
1WTC-0402
Portland, OR 97204**

Facility Information

The certificate will identify the facility as:

Secondary containment barriers to contain materials that would contaminate wetland areas.

The facility is located at:

**Coyote Springs
200 Ullman Blvd
Boardman, OR 97818**

Technical Information

Coyote Springs is a single combined-cycle combustion turbine electric generating unit. The claimed facility consists of secondary containment barriers constructed around the main transformers, the auxiliary transformer, the standby transformers, the acid and caustic storage areas, the cooling tower, the chemical storage area, and the steam turbine lubricating oil skid area. Barriers are designed to prevent contamination of water or wetlands.

Eligibility

- ORS 468.155 The **principal purpose** of this **new structure** is to prevent water pollution as
 (1)(a) required by 40 CFR 112 (transformers and steam turbine lube oil area.), 40 CFR
 265-193(b) (acid and caustic storage area and chemical storage area for the cooling
 tower.)
- OAR-16-025 Installation or construction of facilities which will be used to detect, deter, or prevent
 (2)(g) spills or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	06/28/1995
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	05/31/1995
<i>Facility Placed into Operation</i>	05/31/1995

Facility Cost

Raytheon contract engineering design, construction and indirect	\$ 77,378
PGE Internal Cost	5,968
Construction overhead & storeroom loading (\$3)	71
Claimed on Application	\$ 83,417
Raytheon invoice duplicated in contract costs	(2,285)
Capitalized property tax	(23)
Legal Fees	(222)
Land lease - Port of Morrow	(110)
Eligible Facility Costs	\$ 80,778

A cost allocation summary accompanied the application. The certified public accountant's statement was prepared by Coopers and Lybrand, LLP on behalf of PGE. PGE included engineering, materials and direct labor costs in the application. Indirect company costs, captioned construction overhead, material loading costs, legal services, land lease costs, permits and licenses and capitalized property taxes were included in the application.

Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

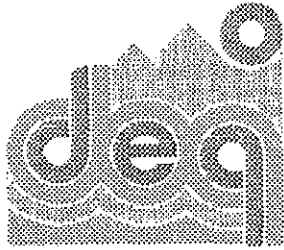
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	No return on investment.
ORS 468.190(1)(c) Alternative Methods	No alternative investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or 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 the requirements for industrial wastewater discharge to the Port of Morrow treatment system.

Reviewers: Cascade Earth Sciences - RAD, SKR
M.C. Vandehey



Tax Credit Review Report

Revised 7/10/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4470**
Facility Cost **\$10,710**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Water Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-050

Applicant Information

The applicant is a C Corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The Applicant is the owner of the facility The applicant's address is:

**121 SW Salmon St.
1-WTC-04-02
Portland, OR 97204**

Facility Information

The certificate will identify the facility as:

An impermeable membrane liner/barricade that retards the passage of oil from the yard in the event of an oil spill.

The facility is located at:

**4410 SE 24th Avenue
Portland, OR**

Technical Information

The installed membrane system effectively prevents the possibility of contamination of the City of Portland's storm drain system in the event of an oil spill by containing the contaminated material until cleanup crews can be dispatched to the site.

Eligibility

- ORS 468.155 The **principal purpose** of the **new installation** is to prevent, control or reduce water pollution as required by the federal Environmental Protection Agency in.
(1)(a) 40 CFR 112 - Oil Pollution Prevention
- ORS 468.155 The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005
(1)(b)(A)
- OAR-16-025 Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases.
(2)(g)

Timeliness of Application

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

<i>Application Received</i>	<u>07/03/1995</u>
<i>Application Substantially Complete</i>	<u>11/23/1997</u>
<i>Construction Started</i>	<u>10/15/1994</u>
<i>Construction Completed</i>	<u>10/20/1994</u>
<i>Facility Placed into Operation</i>	<u>12/15/1994</u>

Facility Cost

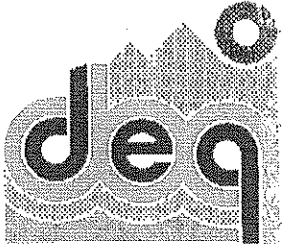
Facility Cost	
Material Costs	\$3,471
PGE Direct Labor (includes labor loading.)	\$4,285
Employee Expense	\$ 180
Contract Labor	\$2,774
Ineligible Costs	
Construction Overhead Loading	<u>- \$4,480</u>
Eligible Facility Cost	\$10,710

Invoices, vouchers and a summary of job costs accompanied the application. Since the facility cost did not exceed \$20,000, an independent certified public accountant was not required. PGE labor loading rate was acceptable. However, construction overhead loading was not allowed since these costs did not directly contribute to the installation of the pollution control facility.

Facility Cost Allocable to Pollution Control

According to ORS 468.190(3), the only consideration in the determination of 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: Cascade Earth Sciences - RAD, SKR
M.C. Vandehey



Tax Credit Review Report

Revised 11/23/97

Pollution Control Facility Tax Credit: Noise Final Certification

ORS 468.150 -- 468.190

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

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant's address is:

**121 SW Salmon St.
1WTC-04-02
PORTLAND, OR 97204**

The certificate will identify the facility as:

A subtransformer noise barrier to absorb and reflect substation noise.

The applicant is the owner of the facility located at:

**N. Delaware Ave. & Lombard St.
Portland, OR**

Technical Information

Prior to construction of the barrier, noise along the south side of the substation exceeded the 50 dBA DEQ noise limit by 7 dB. The barrier was constructed to lower noise generated by the station to within DEQ limits.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **new structure** is to control noise pollution (Oregon Environmental Quality Commission Noise Control Regulations for Industry and Commerce (35-035, section 1, paragraph B))

ORS 468.155 (1)(b)(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission;

Director's

Recommendation: **APPROVE**

Applicant: **Portland General Electric Company**

Application No. **4471**

Facility Cost **\$68,099**

Percentage Allocable **100%**

Useful Life **10 years**

Timeliness of Application

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

<i>Application Received</i>	07/03/1995
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	01/16/1995
<i>Construction Completed</i>	04/25/1995
<i>Facility Placed into Operation</i>	04/25/1995

Facility Cost

Facility Cost	\$68,099
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$68,099

A job cost summary and equipment detail substantiate the cost of the facility and a certified public accountant's statement, provided by Arthur Anderson L.L.P., accompanied the application. PGE labor loading was \$7,473, an acceptable amount.

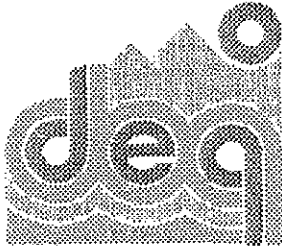
Facility Cost Allocable to Pollution Control

According to ORS 468.190(1), the Department considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	Useful life of the facility is 10 years for the purpose of the return on investment.
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%.

Reviewers: Cascade Earth Sciences- RAD, SKR
Dave Kauth



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4475**
Facility Cost **\$181,042**
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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

121 SW Salmon St.
1WTC-04-02
PORTLAND, OR 97204

Facility Identification

The certificate will identify the facility as:

Dust suppression system

The facility is located at:

Boardman Coal Plant
BOARDMAN, OR 97818

Technical Information

The claimed facility consists of a surfactant foam dust control system which controls dust generated by the movement of coal. Prior to installation of the claimed facility coal dust was suppressed with a water spray. Department inspections noted that during periods of high winds airborne dust was generated by the movement of coal at the plant site. Coal movement is controlled by the use of a stacker/reclaimer which can either place coal on the pile, or take coal from the pile and forward it to the plant, where it is burned to produce electricity.

The dust suppression system was installed on the stacker/reclaimer and consists of a surfactant tank, hydropneumatic surge tank, foam/binder combination tank, chemical tank, water tank, and other associated instrumentation and equipment. The system generates a foam layer on the top of the moving coal. This foam then dissipates to leave dust particles agglomerated on larger coal particles:

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation** is to prevent, control or reduce a
(1)(a) substantial quantity of air pollution. As required by the ACDP 25-0016.
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>	7/3/95
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	5/12/93
<i>Construction Completed</i>	10/6/94
<i>Facility Placed into Operation</i>	10/10/94

Facility Cost

Facility Cost	\$223,351
Salvage Value	
Ineligible Costs	
material loading	(169)
capitalized property tax	(43)
construction overhead expense	(42,097)
Eligible Facility Cost	\$ 181,042

A distant portion of these claimed expenses, \$42,097 were allocated from corporate expenditure pools which would have been incurred without the construction of the facility. Invoices or canceled checks substantiated the cost of the facility. Arthur Anderson, LLP provided the Independent Public Accountant's Report.

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.

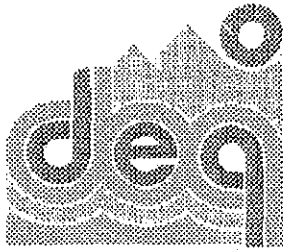
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	The facility prevents the annual loss of twelve tons of coal dust to the atmosphere. The applicant estimates the value to be \$300.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 30 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Other utilities were polled to see if a satisfactory type of dust suppression system could be found. The applicant designed their own system because it could not find any other suitable dust suppression system.
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: PRC Environmental Management, Inc.
Dave Kauth, DEQ



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Corporation**
Application No. **4777**
Facility Cost **\$19,960**
Percentage Allocable **100%**
Useful Life **10 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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The Applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Oil spill containment system consisting of a membrane liner, containment vault and piping system.

The facility is located at:

**West Portland Substation
Near Intersection of US Hwy 99 and SW
65th Avenue
Tigard, OR 97223**

Technical Information

The oil spill containment system consists of a membrane liner, containment vault with an oil stop valve, and piping system. The liner is buried 18 inches and extends above the yard grade eight to ten inches. The membrane liner is attached to the existing fence. The driveway areas are fitted with impermeable membrane liners and a ¾-0 compacted crushed rock berm.

In the event of an oil spill from the transformers, the oil stop valve closes and oil will be collected within the liner system. The facility is designed such that it will allow adequate time for a cleanup crew to be dispatched to the substation before oil discharges to a nearby storm drain.

Eligibility

- ORS 468.155 The **principal** purpose of this **new facility** is to control a substantial quantity of water pollution. The requirement is imposed by the Environmental Protection Agency per 40CFR, part 112 (Environmental Protection Agency Oil Pollution Prevention)
- (1)(a)
- ORS 468.155 The control is accomplished with the use of treatment works for industrial waste as defined in ORS 468B.005.
- (1)(b)(A)

Timeliness of Application

The application was submitted within the timing required under ORS 468.165 (6).

<i>Application Received</i>	<u>06/9/1997</u>
<i>Application Substantially Complete</i>	<u>6/11/1998</u>
<i>Construction Started</i>	<u>05/01/1995</u>
<i>Construction Completed</i>	<u>06/09/1995</u>
<i>Facility Placed into Operation</i>	<u>06/09/1995</u>

Facility Cost

Claimed Facility Cost	\$19,960
PGE Labor	4,063
PGE Labor Loading	2,138
Contract Labor	6,783
Materials	3,288
Employee Expenses	98
Construction Overheads	<u>3,591</u>
Eligible Facility Cost	\$19,960

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.

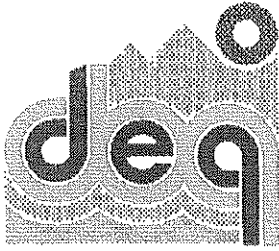
Facility Cost Allocable to Pollution Control

According to ORS.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control 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 the federal Environmental Protection Agency regulations.

Reviewers: R. C. Dulay
Maggie Vandehey



Tax Credit Review Report

Revised 6/25/98

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **4792**
Facility Cost **\$61,631**
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 corporation operating as a laminated veneer lumber plant 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, Oregon 97201**

Facility Identification

The certificate will identify the facility as:

Western Pneumatics baghouse.

The facility is located at:

**Winston Engineered Wood Products Division
375 Dillard Garden Road
Winston, Oregon 97496**

Technical Information

One new Western Pneumatic model #542 baghouse was installed for wood particulate control. The baghouse will handle up to 49,000 cfm air capacity. The installation includes fans, motors, ducting, structural supports and foundations.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of the **new baghouse** is to control air pollution. The emission reduction is accomplished by the removal of air contaminants from the air stream before discharge to the atmosphere as defined in ORS 468A.005.
- ORS 468.155 (1)(b)(B) 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>7/8/97</u>
<i>Application Substantially Complete</i>	<u>6/11/98</u>
<i>Construction Started</i>	<u>12/30/96</u>
<i>Construction Completed</i>	<u>2/28/97</u>
<i>Facility Placed into Operation</i>	<u>2/28/97</u>

Facility Cost

Claimed Facility Cost		\$	76,138
Salvage Value			
Government Grants			
Other Tax Credits			
Ineligible Costs	fire protection		(9,892)
	catwalk		(4,615)
Eligible Facility Cost		\$	61,631

Insignificant Contribution listed above includes \$9,892 for fire protection, and \$4,615 for catwalk equipment, installation and painting. Invoices 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.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.

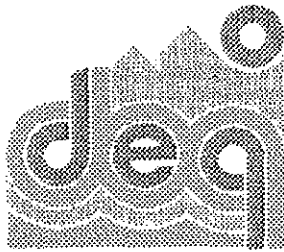
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 7 years. No gross annual revenues associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Alternatives were not considered.
ORS 468.190(1)(d) Savings or Increase in Costs	The claimed facility was said to have an average annual operating cost of \$4,486 per year as a five-year average.
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 No. 10-0156

Reviewers: Dave Kauth



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4797**
Facility Cost **\$51,663**
Percentage Allocable **100%**
Useful Life **10 years**

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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The Applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Oil spill containment system consists of 818 oil/water separator and associated PVC piping system.

The facility is located at:

**Canyon Substation
1414 SW 17th Ave.
Portland, OR**

Technical Information

The claimed facility consists of an 818 oil vault and associated piping system. The system prevents passage of oil beyond the vault in the event of a spill. This system is designed such as to allow adequate time for a cleanup crew to be dispatched to the site before oil enters the City of Portland's storm drain.

- ORS 468.155 (1)(a) The **principal purpose** of this **new installation** is to prevent a substantial quantity of water pollution.
The requirement is imposed by the Environmental Protection Agency per 40CFR, part 112 (Environmental Protection Oil Pollution Prevention)
- ORS 468.155 (1)(b)(A) The prevention 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>	<u>07/17/1997</u>
<i>Application Substantially Complete</i>	<u>01/12/1998</u>
<i>Construction Started</i>	<u>02/25/1995</u>
<i>Construction Completed</i>	<u>08/01/1995</u>
<i>Facility Placed into Operation</i>	<u>08/01/1995</u>

Facility Cost

Facility Cost	\$51,663
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$51,663</u>

Invoices or canceled checks substantiated the cost of the facility. Arthur Andersen LLP 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.

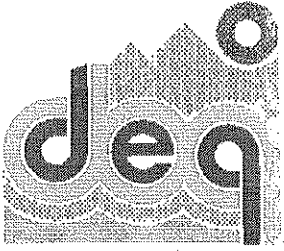
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 55 years. No gross annual revenues associated with this 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 the requirements imposed by the federal Environmental Protection Agency.

Reviewers: R. C. Dulay
Maggie Vandehey



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4798**
Facility Cost **\$50,378**
Percentage Allocable **100%**
Useful Life **10 years**

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 supplier of electrical energy, taking tax relief under taxpayer identification number 93-0256820. The Applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Oil spill containment system consists of oil/water separator, catch basins and associated concrete piping system.

The facility is located at:

**Oregon City Service Center
209 Warner Milne Road
Oregon City, Oregon**

Technical Information

The claimed facility consists of an oil vault, catch basins and associated concrete piping system. The system prevents passage of oil beyond the vault in the event of a spill. Drainage discharges to a nearby open drainage ditch.

ORS 468.155 (1)(a) The **sole purpose** of this facility is to prevent a substantial quantity of water pollution.

ORS 468.155 (1)(b)(A) The prevention 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>	<u>7/17/97</u>
<i>Application Substantially Complete</i>	<u>8/17/98</u>
<i>Construction Started</i>	<u>7/1/95</u>
<i>Construction Completed</i>	<u>8/30/95</u>
<i>Facility Placed into Operation</i>	<u>8/30/95</u>

Facility Cost

Facility Cost	\$50,378
Salvage Value	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$50,378</u>

Arthur Andersen LLP 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.

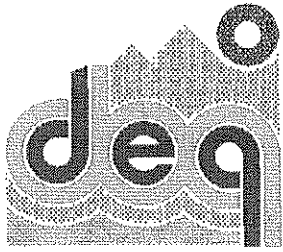
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	There is no gross revenue associated to this facility. Therefore, there is no return on investment.
ORS 468.190(1)(c) Alternative Methods	Alternative investigated included skimmer tank and oil stop valve system. These were rejected because of cost and operational maintenance.
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.

Reviewers: R. C. Dulay
Maggie Vandehey



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant	Columbia Steel Casting Co., Inc.
Application No.	4826
Facility Cost	\$114,810
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:

**Low-NOx burners for Natural Gas Fired
Oven used for heat treating steel castings,**

The facility is located at:

**10425 N Bloss Avenue
Portland, OR 97283**

Technical Information

The claimed facility is the overhaul of the combustion system including the installation of low-NOx burners on a natural gas fired oven used to heat-treat castings. The new low NO_x 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_x 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_x 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 combustion system** was installed for the **sole purpose** of pollution control by reducing emissions of nitrogen oxides and carbon monoxides from natural gas combustion.
- 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>6/10/98</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	\$114,810
Salvage Value	
Government Grants	
Other Tax Credits	
Ineligible Costs	
Eligible Facility Cost	<u>\$114,810</u>

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	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 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:

Reviewers: Dave Kauth
Maggie Vandehey

columbia[®]

STEEL CASTING CO., INC.
10425 NORTH BLOSS AVE.
P.O. BOX 83095
PORTLAND, OREGON 97283, U.S.A.
(503) 286-0685 FAX (503) 286-1743

June 8, 1998

Department of Environmental Quality
811 S W. Sixth Avenue
Portland, Ore. 97204-1390
Attn: Dave Kauth

Re: Application #4826 for Certification of Pollution Control Facility
for Tax Relief Purposes

Dear Dave:

Confirming our conversation today, this letter is to clarify details regarding this pollution control facility. We purchased a used heat treat oven, which was still in service, in good operating condition, at another foundry in another state. We paid to have it dismantled and moved to our plant site here in Portland. One of the choices we faced when planning the re-erection of this oven was whether to reassemble it exactly as it was, or to change the natural gas combustion system to modern state-of-the-art low pollution burners. Although the expense was considerable, we decided to do this conversion now, rather than wait until changes in environmental regulations forced us to do it at some point in the future, when the cost would undoubtedly be much higher.

The total project cost for this oven was roughly \$400,000.00. What we identified as the "claimed facility" on our application for tax credits was only the combustion system overhaul expenses, which added up to \$114,810.00. This figure covered 12 new burners, plus the necessary related piping for gas and air to feed them, and the necessary electronic controls to keep them operating safely and at their rated efficiency. This \$114,810 expense was optional, and solely for the purpose of pollution reduction. Although not required by DEQ or EPA regulations at this time, we assumed that this conversion would inevitably be required.

Please feel free to call me if you need any additional information.

Sincerely,

COLUMBIA STEEL CASTING CO., INC.

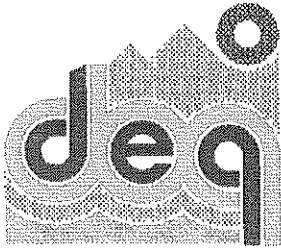


Bruce Schacht
Plant Engineer

cc: File, Bruce Johnson, Guy Marshall

RECEIVED
JUN 10 1998

AIR QUALITY DIVISION
Dept. Environmental Quality



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Integrated Device Technology (IDT)**
Application No. **4829**
Facility Cost **\$155,939**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Hazardous 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 designer, manufacturer & marketer of integrated circuits taking tax relief under taxpayer identification number 94-2669985. The applicant is the owner of the facility. The applicant's address is:

**2975 Stender Way
Santa Clara, CA 95054**

Facility Identification

The certificate will identify the facility as:

Hazardous Phosphoric Acid Waste Collection and Containment System.

The facility is located at:

**3131 NE Brookwood Pkwy.
Hillsboro, OR 97124**

Technical Information: IDT designs, manufactures and markets high performance integrated circuits and modules that are used in communications equipment, distributed computing systems, personal computers and office automation equipment. Part of the manufacturing process generates hazardous ignitable, solvent and creosol (D001, D026, F003, and F004) wastes which are collected inside two 2,500-gallon stainless steel waste tanks located within a coated containment vault. The tanks are hard-plumbed to the manufacturing units generating the wastes.

Eligibility

- ORS 468.155 The **principal purpose** of this **new installation** is to collect and contain
(1)(a) hazardous wastes for subsequent disposal off site. The hazardous waste collection and containment requirement is imposed by the Department under federal Environmental Protection Agency Code of Federal Regulation (CFR) 40 Subpart J, hazardous waste tank and containment requirements.
- OAR-016-0025 Installation or construction of facilities will be used to detect, deter, or prevent
(2)(g) 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>8/27/97</u>
<i>Application Substantially Complete</i>	<u>7/23/1998</u>
<i>Construction Started</i>	<u>7/1/95</u>
<i>Construction Completed</i>	<u>9/1/95</u>
<i>Facility Placed into Operation</i>	<u>10/1/95</u>

Facility Cost

Claimed Facility Cost	\$155,939
Salvage Value	
Government Grants	
Other Tax Credits	
Insignificant Contribution (ORS 468.155(2)(d))	
Ineligible Costs	
Eligible Facility Cost	<u>\$159,939</u>

A list of costs for the facility was included in the application and Kessler & Company, PC provided the certified public accountant's statement substantiating the costs.

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.

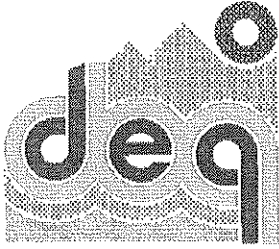
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues associated with this 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 appears to be in compliance with the EPA's and Department's rules and statutes.

Reviewers: Gary J Calaba, 7/23/98



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Integrated Device Technology (IDT)**
Application No. **4830**
Facility Cost **\$80,697**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Hazardous 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 designer, manufacturer & marketer of integrated circuits taking tax relief under taxpayer identification number 94-2669985. The applicant is the owner of the facility. The applicant's address is:

**2975 Stender Way
Santa Clara, CA 95054**

Facility Identification

The certificate will identify the facility as:

Hazardous Phosphoric Acid Waste Collection and Containment System.

The facility is located at:

**3131 NE Brookwood Pkwy.
Hillsboro, OR 97124**

Technical Information: IDT designs, manufactures and markets high performance integrated circuits and modules that are used in communications equipment, distributed computing systems, personal computers and office automation equipment. Part of the manufacturing process generates hazardous acid waste. The hazardous waste mixture of approximately 85% water and 15% phosphoric acid (D002) is collected inside two 1,500-gallon polyethylene tanks. The tanks are hard-plumbed to the manufacturing unit so the phosphoric acid waste stream goes directly into the two collection tanks. The tanks are inside a fiberglass-lined containment vault to prevent spilled waste from entering the environment.

Eligibility

ORS 468.155 The **principal purpose** of this **new installation** is to collect and contain
(1)(a) hazardous wastes for subsequent disposal off site. The hazardous waste

collection and containment requirement is imposed by the Department under federal Environmental Protection Agency Code of Federal Regulation (CFR) 40 Subpart J, hazardous waste tank and containment requirements.

OAR-016-0025 Installation or construction of facilities will be used to detect, deter, or prevent
(2)(g) spills or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	8/27/97
<i>Application Substantially Complete</i>	7/23/1998
<i>Construction Started</i>	6/1/95
<i>Construction Completed</i>	9/1/95
<i>Facility Placed into Operation</i>	10/1/95

Facility Cost

Facility Cost	\$80,697
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$80,697

A list of costs for the facility was included in the application and Kessler & Company, PC provided the certified public accountant's statement substantiating the costs.

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.

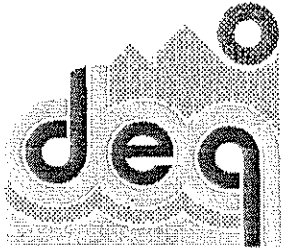
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues associated with this facility.
ORS 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 appears to be in compliance with the EPA's and Department's rules and statutes.

Reviewers: Gary J Calaba, 7/23/98



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Elf Atochem North America**
Application No. **4857**
Facility Cost **\$925,753**
Percentage Allocable **100%**
Useful Life **10 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 electrochemical plant taking tax relief under taxpayer identification number 23-0960890. The applicant is the owner of the facility. The applicant's address is:

6400 NW Front Avenue
Portland, OR 97210

Facility Identification

The certificate will identify the facility as:

Secondary containment concrete foundations for tanks and concrete containment flooring and containment walls.

The facility is located at:

6400 NW Front Avenue
Portland, OR 97210

Technical Information

This is a secondary containment for a new tank farm. Secondary containment is a commonly used best management practice. It is designed to prevent liquid from a damaged or leaking tank from getting into the environment. This facility was designed to hold 110% of the volume of the largest tank plus a 10 year, 24 hour storm event. Such secondary containment systems are in general used in the chemical processing and oil industries.

Eligibility

ORS 468.155 (1)(a) The **sole** purpose of this **new installation** 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-016-025 (2)(g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases.

Timeliness of Application

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

<i>Application Received</i>	<u>10/22/97</u>
<i>Application Substantially Complete</i>	<u>10/22/97</u>
<i>Construction Started</i>	<u>6/21/95</u>
<i>Construction Completed</i>	<u>11/1/96</u>
<i>Facility Placed into Operation</i>	<u>12/1/96</u>

Facility Cost

Facility Cost	\$925,753
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$925,753</u>

Vendor invoices or canceled checks substantiated the cost of the facility as represented on the certified public accountant's statement provided by Symonds, Evans & Larson, P.C.

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 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 Department rules and statutes and with EQC orders.

Reviewers: Elliott Zais
Maggie Vandehey



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**
Applicant **Portland General Electric Company**
Application No. **4879**
Facility Cost **\$71,416**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

3 oil/water separators with piping system.

The facility is located at:

**Gresham Service Center
1705 SE Burnside Road
Gresham, OR 97030**

Technical Information

The oil spill containment facility for the transformer storage area consists of an oil/water separator and a 6 inch drainage pipe. In the event of an oil spill, the oil will be retained in the separator and wastewater will be discharged into a nearby drainage ditch.

The garage and the covered wash bay are provided each with an oil/water separator. Wastewater that will be generated from these areas will be pretreated by the oil/water separators before it will be discharged to the city sanitary sewer.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of the **new installation** is to control a substantial quantity of water pollution. The requirement is imposed by the federal Environmental Protection Agency per 40 CFR part 112 (Oil Pollution Prevention) and by the City of Gresham pretreatment program.

ORS 468.155 (1)(b)(A) The control is accomplished by reducing 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) as verified by the DEQ Business Office receipt number 71672.

<i>Application Received</i>	11/14/1997
<i>Application Substantially Complete</i>	11/27/1997
<i>Construction Started</i>	10/9/1995
<i>Construction Completed</i>	11/15/1995
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Claimed Facility Cost		89,340
Labor (PGE)	\$ 2,178.50	
Labor (Contractor)	\$ 11,399.77	
Materials (Contractor)	\$ 66,800.00	
Ineligible Costs		
	Overhead	<u>-\$ 8,962</u>
Eligible Facility Cost		\$71,416

Coopers & Lybrand, L.L.P. provided the independent certified public accountant's statement on behalf of the applicant. They stated that the allocated amount of overhead cost identified by PGE in this project was \$9,680, representing 11% of the total claimed costs in the application. The applicant claimed the overhead was \$8,962. There was no discription of what made up this overhead; therefore, the Department did not allow the cost.

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 36 years. No gross annual revenues are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Concrete berms, liner systems and oil stop valves were considered. However, the oil/water separators provide the optimum oil spill containment and compliance to pretreatment requirements.
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 the requirements of the federal Environmental Protection Agency and the City of Gresham pretreatment program.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's Recommendation:	APPROVE
Applicant	Portland General Electric Company
Application No.	4879
Facility Cost	\$71,416
Percentage Allocable	100%
Useful Life	10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

3 oil/water separators with piping system.

The facility is located at:

**Gresham Service Center
1705 SE Burnside Road
Gresham, OR 97030**

Technical Information

The oil spill containment facility for the transformer storage area consists of an oil/water separator and a 6 inch drainage pipe. In the event of an oil spill, the oil will be retained in the separator and wastewater will be discharged into a nearby drainage ditch.

The garage and the covered wash bay are provided each with an oil/water separator. Wastewater that will be generated from these areas will be pretreated by the oil/water separators before it will be discharged to the city sanitary sewer.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of the **new installation** is to control a substantial quantity of water pollution. The requirement is imposed by the federal Environmental Protection Agency per 40 CFR part 112 (Oil Pollution Prevention) and by the City of Gresham pretreatment program.
- ORS 468.155 (1)(b)(A) The control is accomplished by reducing 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) as verified by the DEQ Business Office receipt number 71672.

<i>Application Received</i>	11/14/1997
<i>Application Substantially Complete</i>	11/27/1997
<i>Construction Started</i>	10/9/1995
<i>Construction Completed</i>	11/15/1995
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Claimed Facility Cost		89,340
Labor (PGE)	\$ 2,178.50	
Labor (Contractor)	\$ 11,399.77	
Materials (Contractor)	\$ 66,800.00	
Ineligible Costs		
	Overhead	-\$ 8,962
Eligible Facility Cost		\$71,416

Coopers & Lybrand, L.L.P. provided the independent certified public accountant's statement on behalf of the applicant. The applicant claimed the overhead was \$8,962. There was no discription of what made up this overhead; therefore, the Department did not allow the cost.

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.

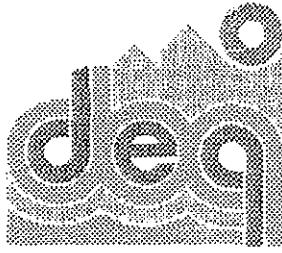
Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 36 years. No gross annual revenues are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	Concrete berms, liner systems and oil stop valves were considered. However, the oil/water separators provide the optimum oil spill containment and compliance to pretreatment requirements.
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 the requirements of the federal Environmental Protection Agency and the City of Gresham pretreatment program.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4880**
Facility Cost **\$19,995**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Oil/water separator and associated plumbing system.

The facility is located at:

**Salem Service Center
NE Corner of Hwy 99E & Kale Rd.
Salem, OR**

Technical Information

The claimed facility consists of an oil/water separator and associated plumbing system for the truck washing facility located on the north end of the garage building. Trucks are washed and the generated wash water is drained to the oil/water separator wherein oil is collected and the wash water flows into a collection sump. From the sump the wash water is pumped to the city sanitary sewer.

The truck washing facility has no roof and is exposed to the weather. During periods of wet weather rain falling onto the concrete pad is drained into the same oil/water separator and to the collection sump. At this point the drainage is discharged to a storm drainage pipe by gravity and to the storm retention pond located at the north end of the property. The retention pond discharges to a city storm drainage ditch along Portland Road.

The collection sump is controlled such that when washing is occurring a pump is actuated and wash water is discharged into the sanitary sewer. When the truck wash facility is not in use any drainage in the collection sump is discharged by gravity to the storm sewer.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new installation** is to control a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The control is accomplished by 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>	11/19/97
<i>Application Substantially Complete</i>	8/11/1998
<i>Construction Started</i>	12/19/95
<i>Construction Completed</i>	12/19/95
<i>Facility Placed into Operation</i>	1/9/96

Facility Cost

Facility Cost	\$19,995
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution ORS 468.155(2)(d)	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$19,995

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.

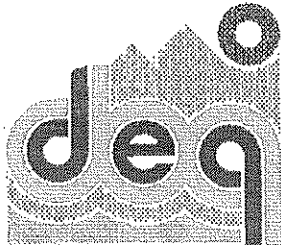
Facility Cost Allocable to Pollution Control

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 the City of Salem pretreatment program requirements.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4882**
Facility Cost **\$7,833**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services; taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Drainage piping within the concrete secondary containment sump.

The facility is located at:

**North Fork Plant
33831 SE Faraday Road
Estacada, OR**

Technical Information

The claimed facility consists of new drainage piping within the concrete secondary containment sump that collects much of the drainage within the transformer yard. The new piping is installed down the side of the sump to route the drainage from the existing inlets down to the low water level in the sump. The installation prevents turbulent mixing of contaminated runoff inside the sump and allows efficient oil/water separation at the downstream precast oil/water separator. The treated wastewater is discharged eventually to the Clackamas River.

Eligibility

ORS 468.155 (1)(a) The sole purpose of the facility is to control a substantial quantity of water pollution.

ORS 468.155 (1)(b)(A) The control 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>	<u>11/24/97</u>
<i>Application Substantially Complete</i>	<u>8/11/1998</u>
<i>Construction Started</i>	<u>12/1/96</u>
<i>Construction Completed</i>	<u>2/28/97</u>
<i>Facility Placed into Operation</i>	<u>2/28/97</u>

Facility Cost

Facility Cost		\$7,833
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u>\$7,833</u>

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

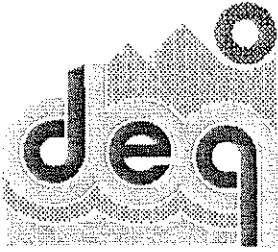
Facility Cost Allocable to Pollution Control

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 is 100%. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes.

Reviewers: R. C. Dulay
 Maggie Vandehey



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4883**
Facility Cost **\$15,826**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Drainage piping system for a secondary oil spill containment facility.

The facility is located at:

**Pelton Plant
726 SW Lower Bend Road
Madras, OR**

Technical Information

The claimed facility consists of a 6 inch PVC pipe and fitting drainage for the secondary oil spill containment system. New pipes were installed down the side of the 2 concrete sumps to route the drainage from existing inlets down to the low water level in the sump. This prevents the turbulent mixing of drainage in the sump and thus minimized the pumping of entrained oil and be discharged to Deschutes River.

Eligibility

ORS 468.155 (1)(a) The sole purpose of the facility is to control a substantial quantity of water pollution.

ORS 468.155 (1)(b)(A) This control 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>	11/24/1997
<i>Application Substantially Complete</i>	8/11/199*
<i>Construction Started</i>	01/02/1997
<i>Construction Completed</i>	02/28/1997
<i>Facility Placed into Operation</i>	02/28/1997

Facility Cost

Facility Cost	\$15,826
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$15,826

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

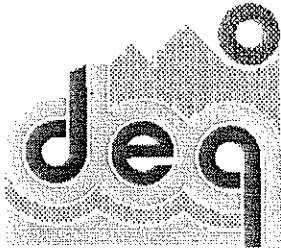
Facility Cost Allocable to Pollution Control

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%.

Compliance

The facility is in compliance with Department rules and statutes.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4884**
Facility Cost **\$10,298**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

**Drainage piping within two concrete secondary
containment sumps.**

The facility is located at:

**Faraday Plant
33831 SE Faraday Road
Estacada, OR**

Technical Information

The claimed facility consists of steel and PVC drainage piping system within the 2 concrete secondary containment sumps. The new pipes were installed down the side of the sumps to route the drainage from the existing inlets down to the low water level in the sump. The pipes prevent turbulent mixing of drainage inside the sump and allows oil to be retained inside. Drainage eventually discharges to the Clackamas River.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of this facility is to control a substantial quantity of water pollution.

ORS 468.155 (1)(b)(A) This control 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>	<u>11/24/97</u>
<i>Application Substantially Complete</i>	<u>8/11/1998</u>
<i>Construction Started</i>	<u>12/1/96</u>
<i>Construction Completed</i>	<u>2/28/97</u>
<i>Facility Placed into Operation</i>	<u>2/28/97</u>

Facility Cost

Facility Cost	\$10,298
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$10,298</u>

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

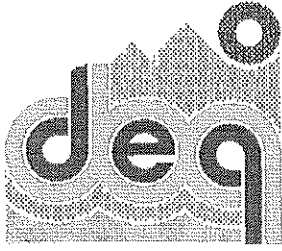
Facility Cost Allocable to Pollution Control

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.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Mitsubishi Silicon America**
Application No. **4895**
Facility Cost **\$12,617**
Percentage Allocable **100%**
Useful Life **10 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 supplier of electronic grade silicon wafers, taking tax relief under taxpayer identification number 94-1687933. The applicant is the owner of the facility. The applicant's address is:

**PO Box 7748
1351 Tandem Ave., NE
Salem, OR 97303**

Facility Identification

The certificate will identify the facility as:

A dust collector which collects dry particulate from the crystal growing & preparation processes.

The facility is located at:

**3990 Fairview Industrial Drive
Salem, OR 97303**

Technical Information

The Torit Downflo II Model 2-8, serial # IG374178-001, dust collector is a filter that physically captures dry particulate, generated during the crystal growing phase of the silicon wafer manufacturing process, before it can be discharged into the outside atmosphere. The equipment was installed to control air pollution emissions. The equipment was installed to meet Air Contaminant Discharge Permit #24-0001 limitations.

Eligibility

- ORS 468.155 (1)(a) The **principle purpose** of this **new equipment and installation** is to control a substantial quantity of air pollution as required by DEQ's Air Contaminant Discharge Permit #24-0001.
- ORS 468.155 (1)(b)(B) The 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>	12/16/97
<i>Application Complete</i>	2/26/98
<i>Construction Started</i>	1/15/95
<i>Construction Completed</i>	12/18/95
<i>Facility Placed into Operation</i>	12/18/95

Facility Cost

Facility Cost	\$12,617
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$12,617

A single invoice for the total cost of the facility accompanied the application. Symonds, Evans, and Larson, P.C. provided the certified public accountant's statement indicating that the applicant spent the money claimed in the application.

Facility Cost Allocable to Pollution Control

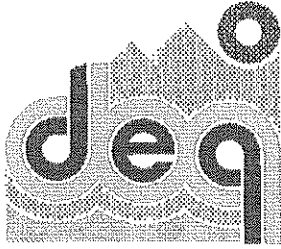
According to ORS 468.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The facility is used 100% of the time for pollution control is 100%.

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: Air Contaminant Discharge Permit #24-0001

Reviewers: Cascade Earth Sciences, Ltd.
Dave Kauth ODEQ AQ



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Mitsubishi Silicon America**
Application No. **4896**
Facility Cost **\$147,174**
Percentage Allocable **100%**
Useful Life **10 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 supplier of electronic grade silicon wafers, taking tax relief under taxpayer identification number 94-1687933. The applicant is the owner of the facility. The applicant's address is:

**PO Box 7748
1351 Tandem Ave., NE
Salem, OR 97303**

Facility Identification

The certificate will identify the facility as:

A packed bed wet scrubber manufactured by Harrington Industrial Plastics, model # 44-5 LB Serial # S-092595-1 which treats acidic fumes produced from acid etching of polysilicon & silicon ingots.

The facility is located at:

**3990 Fairview Industrial Drive
Salem, OR 97303**

Technical Information

The equipment was installed to control and reduce corrosive acid fumes that are produced during the etching of polysilicon ingots. The equipment was installed to comply with Air Contaminant Discharge Permit # 24-0001. The packed bed wet scrubbers effectively treat nitric acid, hydrofluoric acid, chromic acid, and acetic acid. The minimal removal efficiency for the scrubber ranges from 95% for hydrofluoric acid to 99% for Chromic acid.

Eligibility

- ORS 468.155 (1)(a) The **principle purpose** of this **new installation** is to prevent, control or reduce a substantial quantity of air pollution as required by DEQ's Air Contaminant Discharge Permit #24-0001.
- 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>12/16/97</u>
<i>Application Substantially Complete</i>	<u>2/26/98</u>
<i>Construction Started</i>	<u>1/15/95</u>
<i>Construction Completed</i>	<u>12/18/95</u>
<i>Facility Placed into Operation</i>	<u>12/18/95</u>

Facility Cost

Facility Cost	\$147,174
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$147,174</u>

A single invoice for the total cost of the facility accompanied the application. Symonds, Evans, and Larson, P.C. provided the certified public accountant's statement.

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.

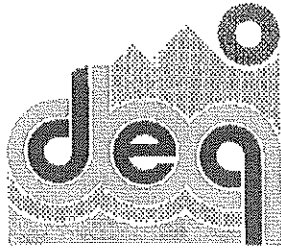
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues associated with this 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.

Based on file review and the applicant's claims, the percentage allocable to pollution control is 100%.

Compliance

Based on file review and the applicants claims the facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to facility: Air Contaminant Discharge Permit #24-0001.

Reviewers: Cascade Earth Sciences, Ltd.
Dave Kauth



Tax Credit Review Report

Revised 7/27/98

Director's
Recommendation: **APPROVE**

Applicant **Eagle Foundry Company**
Application No. **4899**
Facility Cost **\$100,386**
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 manufacturing facility producing abrasion resistant steel castings taking tax relief under taxpayer identification number 93-0634858. The applicant is the owner of the facility. The applicant's address is:

**PO Box 250
Eagle Creek, OR 97022**

Facility Identification

The certificate will identify the facility as:

Dust collector system (Bag House) consisting of a Model 160 HPT-8 dust collector with top removal bags and New York Company system fan.

The facility is located at:

**231 SE Eagle Creek Road
Eagle Creek, OR 97022**

Technical Information

A dust collector system was installed at the Eagle Creek Foundry for the purpose of cleaning and filtering the dusty air produced at the grinders in the grinding room. The air handling system consists of exhaust ductwork, a Day Donaldson 160HPT-8 dust collector (baghouse), a New York Company fan, and a discharge silencer. The system is sized to handle 30,000 cfm dusty air from the grinding room before discharging it into the atmosphere. The exhaust ducting is hard connected to each individual grinder and routed to a main header which runs outside. The baghouse, fan, and silencer are located outside the west wall of the finishing building.

Prior to installing this system, the grinding process took place in a different building. The dust and particulate were airborne and either remained in the work area or escaped into the outdoors through gravity vents, doors and power ventilators. The dust that remained in the room was swept up from the floor and used, as it is now, to form concrete for site improvement projects.

A new finishing building was built to house the grinding process and the new baghouse was installed at that time. The baghouse operates at an estimated 99.9% efficiency and provides an effective method of reducing air pollution. The grinders are used to remove residual sand off of castings produced at the plant, therefore the dust collected at the baghouse consists of fine silica dust with some aluminum oxide particles and metal scrapings. The exhaust duct is hard-connected at each grinder to capture the dust off the grinders. The finishing building doors are always open when the plant is in production to allow hysters to move product. The doors are approximately 14 feet high and 12 feet wide and provide the primary means of ventilation for the building. If the interior ducting was not connected at the grinders, the dust would become airborne and reduce the effectiveness of the baghouse significantly. Therefore, the interior ductwork in this case is an integral part of the air pollution control facility and is eligible for tax credit certification.

Approximately 2000 pounds per week (52 tons/year) of dust is collected. It is removed from the baghouse, stored in a large waste container, and used as a substitute for sand to mix concrete as required for site improvement purposes. It is expected that at some time in the future there will be no use for the collected material and it will have to be disposed of off-site as solid waste.

Eligibility

- ORS 468.155 (1)(a)(B) The **sale purpose** of this **new equipment installation** is to prevent and 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

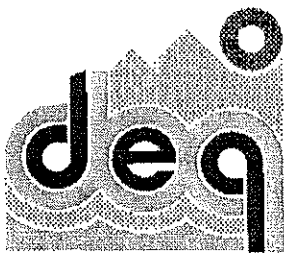
Timeliness of Application

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

<i>Application Received</i>	12/18/97
<i>Additional Information Requested</i>	2/24/98
<i>Additional Information Received</i>	6/22/98
<i>Additional Information Received</i>	7/22/98
<i>Application Substantially Complete</i>	7/24/98
<i>Construction Started</i>	12/1/95
<i>Construction Completed</i>	5/1/96
<i>Facility Placed into Operation</i>	5/1/96

Facility Cost

Facility Cost	\$ 100,386
Salvage Value	-0
Government Grants	-0
Other Tax Credits	-0
Ineligible Costs	-0
Eligible Facility Cost	\$ 100,386



Tax Credit Review Report

08/13/98 2:58 PM

Director's
Recommendation: **APPROVE**

Applicant **Denton Plastics, Inc.**
Application No. **4911**
Facility Cost **\$9283**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 through 468.491

OAR 340-017-0010 through 340-017-0055

Applicant Identification

The applicant is a C Corporation operating as a plastic recycling business that is taking tax relief under taxpayer identification number 93-0852298. The applicant is the owner of the facility. The applicant's address is:

Denton Plastics Inc.
4427 NE 158th
Portland, Oregon 97230

Facility Identification

The certificate will identify the facility as:

**2 Zebra bar code systems, printers, scanners
and one Compac computer**

The facility is located at:

4427 NE 158th
Portland, Oregon 97230

Technical Information

The bar codes scanners, readers and printers and the computer will be used for tracking the storage and shipping of reclaimed plastic.

Eligibility

ORS 468.461(1) Any person may apply to the EQC for certification of an investment made to allow the person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.461(6).

<i>Preliminary Application Received</i>	12/19/1997
<i>Preliminary Application Approved</i>	01/07/1998
<i>Application Received</i>	08/05/1998
<i>Date of Investment</i>	02/01/1998
<i>Facility Placed into Operation</i>	02/01/1998

Facility Cost

Facility Cost	\$9283
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$9283

According to OAR 340-017-0030 (1)(a), invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

Facility Cost Allocable to Pollution Control

According to ORS 468.486, the following factors were used to determine the percentage of the investment allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic product.

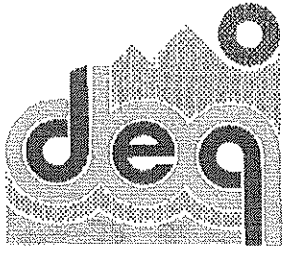
Factor	Applied to This Facility
OAR 340-017-0030 (2)(a) Extent Used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, equipment and costs for achieving the same objective;	No alternative methods were considered.
OAR 340-017-0030 (2)(c) Other relevant factors used to establish portion of the cost allocable to collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic products.	No other factors were considered relevant.

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. There are no DEQ permits issued to this facility:

Reviewer: William R. Bree



Tax Credit Review Report

08/13/98 2:58 PM

Director's
Recommendation: **APPROVE**

Applicant **WWDD Partners**
Application No. **4916**
Facility Cost **\$60,913**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 through 468.491

OAR 340-017-0010 through 340-017-0055

Applicant Identification

The applicant is a partnership operating as a plastic recycling equipment leasing business that is taking tax relief under taxpayer identification number 93-0764756. The applicant is the owner of the facility. The applicant's address is:

WWDD Partners
230 NW 10th
Portland Oregon 97209

Facility Identification

The certificate will identify the facility as:

A Ball & Jewell granulator with blower, piping, motors and electrical support equipment including a 75H.P. 460 V 6 blade motor and 5H.P. Cyclone.

The lessee's address and the facility location is:

Denton Plastics
4427 NE 158th
Portland, Oregon 97230

Technical Information

This granulator is used to process waste plastic into reclaimed plastic.

Eligibility

ORS 468.461(1) Any person may apply to the EQC for certification of an investment made to allow the person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.461(6).

<i>Preliminary Application Received</i>	<u>01/09/1998</u>
<i>Preliminary Application Approved</i>	<u>01/09/1998</u>
<i>Application Received</i>	<u>08/05/1998</u>
<i>Date of Investment</i>	<u>02/01/1998</u>
<i>Facility Placed into Operation</i>	<u>02/01/1998</u>

Facility Cost

Facility Cost	\$60,913
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$60,913</u>

According to OAR 340-017-0030 (1)(a) invoices or canceled checks substantiated the cost of the facility. The facility cost exceeds \$50,000; however, under the provisions of OAR 340-017-0030 (1)(a)(B) the Department has waived the independent accounting review.

Facility Cost Allocable to Pollution Control

According to ORS 468.486, the following factors were used to determine the percentage of the investment allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic product.

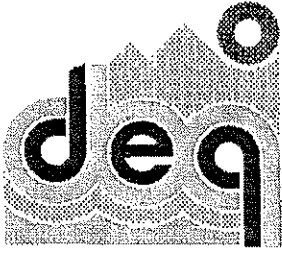
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent Used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, equipment and costs for achieving the same objective;	No alternative methods were considered.
OAR 340-017-0030 (2)(c) Other relevant factors used to establish portion of the cost allocable to collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic products.	No other factors were considered relevant.

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. There are no DEQ permits issued to this facility:

Reviewer: William R. Bree



Tax Credit Review Report

Completed 8/21/98

Director's
Recommendation: **APPROVE**

Applicant **Larry & Mary Lou Neher**
Application No. **4918**
Facility Cost **\$26,834**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Field Burning

Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is operating as a grass seed grower. The applicant is the owner of the facility. The applicant's address is:

**28485 Brownsville Road
Brownsville, OR 97327**

Facility Identification

The certificate will identify the facility as:

**Drain Tile: 860 feet 8" corrugated HDPE,
1500 feet of 6" corrugated HDPE, 29,850 feet
of 4" corrugated HDPE, fittings & outlets.**

The facility is located at:

**28485 Brownsville Road
Brownsville, OR 97327**

Technical Information

The applicant has 900 acres of annual and 900 acres of perennial grass seed varieties under cultivation. The Neher's have 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. However, they do resort to field burning periodically to control weeds and volunteer grass seedlings.

Providing adequate drainage will allow the applicants to select crops that do not require flame sanitation as a rotation crop with grass seed production. Crop rotation provides for non-thermal sanitation following a grass seed stand. The Natural Resources Conservation Service has completed the wetland determination for this acreage and has found it to be prior converted cropland.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 (1)(a) The **principal purpose** of this **new drain tile** is to reduce a substantial quantity of air contaminants by reducing the maximum acreage to be open-burned in the Willamette Valley as required in OAR 340-026-0013.
- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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 340-016-0025 (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.

Timeliness of Application

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

<i>Application Received</i>	1/14/98
<i>Application Substantially Complete</i>	4/13/98
<i>Construction Started</i>	11/1/96
<i>Construction Completed</i>	11/1/96
<i>Facility Placed into Operation</i>	11/1/96

Facility Cost

Facility Cost	\$26,834
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$26,834

Invoices substantiated the cost of the facility. Since the facility cost did not exceed \$50,000, an independent accounting review was not required.

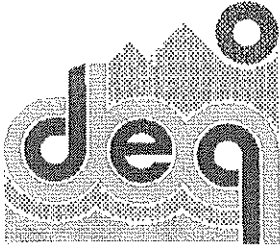
Facility Cost Allocable to Pollution Control

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. Based on this, the percentage allocable to pollution control is 100%.

Compliance

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

Reviewer: James Britton, Oregon Department of Agriculture



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Don Rhyne Painting Co.**
Application No. **4937**
Facility Cost **\$3,129**
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 painting contractor that is 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 double air filter system for a paint booth.

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. The component of the paint booth that is eligible for as a pollution control facility is the double air filter; Model # AEC-PAEC 14-8. This filter removes contaminants prior to exhausting to the atmosphere.

The paint booth creates a controlled environment for painting parts and as such, it is a piece of production equipment.

Eligibility

ORS 468.155 (1)(a) The filter meets the **sole purpose** criteria since it is used exclusively to prevent, control or reduce a substantial quantity of air pollution. The paint booth 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>	<u>2/9/98</u>
<i>Application Substantially Complete</i>	<u>2/20/98</u>
<i>Construction Started</i>	<u>3/7/96</u>
<i>Construction Completed</i>	<u>4/23/96</u>
<i>Facility Placed into Operation</i>	<u>5/15/96</u>

Facility Cost

Facility Cost		\$60,956
Ineligible Costs		
	Pint booth enclosure	<u>-\$ 57,827</u>
Eligible Facility Cost		\$ 3,129

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 does not exceed \$50,000. However, Baker & Colson, P.C. provided the independent Certified Public Accountant's statement of costs. The only factor that needed to be considered was the percentage of time the facility was used for pollution control. This facility is used 100% of the time for pollution control; therefore, the costs are 100% allocable to pollution control.

Reviewers: Dave Kauth



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Oregon Brewing Company**
Application No. **4941**
Facility Cost **\$69,988**
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 C corporation operating as a microbrewery taking tax relief under taxpayer identification number 93-099650. The applicant is the owner of the facility. The applicant's address is:

**2320 SE OSU Drive
Newport, OR 97365**

Facility Identification

The certificate will identify the facility as:

**Facility for pre-treatment of effluent water
containing high levels of organic matter.**

The facility is located at:

**2320 SE OSU Drive
Newport, OR 97365**

Technical Information The facility is a pretreatment system for brewery wastewater. Previously, the discharge went to the City of Newport's sewer system without pretreatment. The discharge was causing premature deterioration in the City's system; hence the decision to install a pretreatment system. The City of Newport does not have a pretreatment program. The system consists of two 9500 gallon tanks and ancillary plumbing, electrical, and chemical equipment. One of the tanks is used for pH adjustment. Both tanks provide aeration. Microorganisms (bugs) are introduced into the first tank to reduce BOD. The average levels in September of 1995 were 12,517 mg/L BOD, pH 6.62, and 2,869 mg/L TSS. As of May 21, 1998, the six week average BOD was 1502 mg/L. The average TSS is 230 mg/L. pH is 7 to 9.

Eligibility

- ORS 468.155 The **sole purpose** of this **new installation** is to prevent, control or reduce a
(1)(a) substantial quantity of water pollution.
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>	2/12/98
<i>Application Substantially Complete</i>	5/6/98
<i>Construction Started</i>	9/1/96
<i>Construction Completed</i>	4/1/97
<i>Facility Placed into Operation</i>	3/1/97

Facility Cost

Facility Cost	\$69,988
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$ 69,988

Invoices or canceled checks substantiated the cost of the facility. Donald Manzer & Company 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.

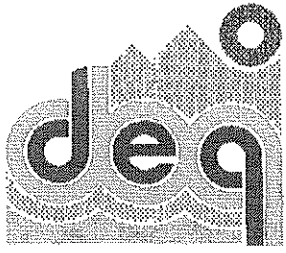
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 10 years. No gross annual revenues associated with this 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 Department rules and statutes and with EQC orders. DEQ permits issued to facility: None

Reviewers: Elliot Zais



Tax Credit Review Report

Director's
Recommendation: **APPROVE**

Applicant **Nosler, Inc.**
Application No. **4968**
Facility Cost **\$18,334**
Percentage Allocable **100%**
Useful Life **10 years**

**Pollution Control Facility: Noise
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 bullets for sporting applications taking tax relief under taxpayer identification number 93-0468612. The applicant is the owner of the facility. The applicant's address is:

**107 SW Columbia Street
Bend, OR 97702**

Facility Identification

The certificate will identify the facility as:

**Soundscreen acoustical enclosure around
manufacturing equipment.**

The facility is located at:

**107 SW Columbia Street
Bend, OR 97702**

Technical Information

A **soundscreen acoustical enclosure** was installed around the shear and bump machines at the Nosler manufacturing plant. These two machines are Niagara A-22 with a 3 HP motor which generate a substantial amount of noise.

United McGill manufactured and installed the 15' x 7' enclosure. It is made of four-inch thick interlocking wall and roof panels. The panels have an 18 gauge galvanized steel exterior, 4.0 lb/cu.ft. mineral wool insulation, and a perforated 22 gauge galvanized steel interior. A moisture/erosion barrier is included to protect from condensation. There are four double doors, 8' x 7'; two with two 12" x 12" and one with one 12" x 12" ¼" safety glass window installed. One interior curtain wall that measures 7' x 10'-6" is included in the system and is installed between the two machines. It is fabricated from a 1.0 lb/sq.ft. reinforced acoustical barrier sandwiched between two 1-inch thick faced fiberglass absorption panels. Velcro is included on the sides of each panel to form interlocking panels. Convection ventilation is provided in the enclosure with vent silencers and roof exhaust baffles.

The acoustical properties provided for the soundscreen enclosure are evidence that it will provide significant noise reduction; furthermore, installing the enclosure at the source (around the machines) provides for optimum noise reduction. Data substantiating the sound decibal (dB) levels at the property line either before or after installation of the soundscreen was not available.

The interior curtain panel provides no additional reduction in exterior noise, its' only purpose is to reduce noise within the enclosure.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of the **installation** of the **new** soundscreen acoustical enclosure **device** is to prevent, control or reduce a substantial quantity of noise pollution.

The exclusive purpose of the soundscreen enclosure is to reduce external noise levels and eliminate complaints from neighbors. After complaints from neighbors, the business installed the soundscreen. The interior curtain panel provides no additional reduction in exterior noise, its only purpose is to reduce noise within the enclosure, therefore is an ineligible portion of the project.

ORS 468.155 (1)(b)(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission.

Timeliness of Application

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

<i>Application Received</i>	<u>3/26/98</u>
<i>Additional Information Requested</i>	<u>4/24/98</u>
<i>Additional Information Received</i>	<u>7/13/98</u>
<i>Application Substantially Complete</i>	<u>7/13/98</u>
<i>Construction Started</i>	<u>11/1/97</u>
<i>Construction Completed</i>	<u>12/1/97</u>
<i>Facility Placed into Operation</i>	<u>12/1/97</u>

Facility Cost

Facility Cost	\$19,059
Salvage Value	\$ - 0
Government Grants	\$ - 0
Other Tax Credits	\$ - 0
Ineligible Costs	
Interior curtain wall	\$ - 725
Eligible Facility Cost	<u>\$ 18,334</u>

Invoices or canceled checks substantiated the cost of the facility. The interior curtain wall is an optional portion of the project and provides no additional exterior noise reduction, therefore, is an ineligible cost. United McGill was contacted to ascertain the add-on cost of \$725 for the interior

curtain. The facility cost does not exceed \$20,000; therefore, an external accounting review was not required.

Facility Cost Allocable to Pollution Control

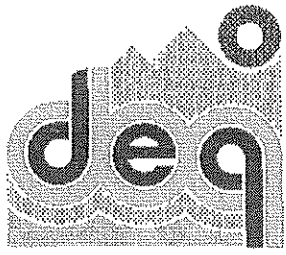
According to ORS.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. The percentage of time this facility is used for 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.

DEQ permits issued to facility: None

Reviewers: Lois L. Payne, P.E., SJO Engineers
Dennis Cartier, Associate, SJO Engineers
Maggie Vaudehey, DEQ



Tax Credit Review Report

08/13/98 2:58 PM

Director's
Recommendation: **APPROVE**

Applicant **WWDD Partners**
Application No. **4969**
Facility Cost **\$14,420**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 through 468.491

OAR 340-017-0010 through 340-017-0055

Applicant Identification

The applicant is a partnership operating as a "plastic recycling equipment leasing business" that is taking tax relief under taxpayer identification number 93-0764756. The applicant is the owner of the facility. The applicant's address is:

WWDD Partners
230 NW 10th
Portland Oregon 97209

Facility Identification

The certificate will identify the facility as:

**A Hyster Challenger Lift Truck Model
H30XM- Serial Number D001H04264V.**

The lessee's address and the facility location is:

Denton Plastics
4427 NE 158th
Portland, Oregon 97230

Technical Information

This lift truck is used to transport reclaimed plastic that will be processed for recycling.

Eligibility

ORS 468.461(1) Any person may apply to the EQC for certification of an investment made to allow the person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.461(6).

<i>Preliminary Application Received</i>	03/17/1998
<i>Preliminary Application Approved</i>	03/18/1998
<i>Application Received</i>	08/05/1998
<i>Date of Investment</i>	03/01/1998
<i>Facility Placed into Operation</i>	03/01/1998

Facility Cost

Facility Cost	\$14,420
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$14,420

According to OAR 340-017-0030 (1)(a), invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

Facility Cost Allocable to Pollution Control

According to ORS 468.486, the following factors were used to determine the percentage of the investment allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic product.

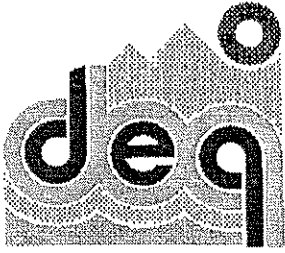
<u>Factor</u>	<u>Applied to This Facility</u>
OAR 340-017-0030 (2)(a) Extent Used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, equipment and costs for achieving the same objective;	No alternative methods were considered.
OAR 340-017-0030 (2)(c) Other relevant factors used to establish portion of the cost allocable to collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic products.	No other factors were considered relevant.

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. There are no DEQ permits issued to this facility:

Reviewer: William R. Bree



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4973**
Facility Cost **\$205,753**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services; taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Secondary oil spill containment system consisting of a geomembrane lined pit, associated fittings and drainage piping system.

The facility is located at:

**Gresham Substation
21015 SE Stark St.
Gresham, OR**

Technical Information

The secondary oil spill containment system for the transformer substation consists of a geomembrane-lined pit and drainage piping system. The transformer area is graded such that the drainage is collected by the collection piping system and flows into the lined pit. The system allows passage of water while stopping the flow of oil in the event of oil spill. The drainage discharges to a nearby wetland and eventually to the Johnson Creek. The system allows adequate time for a cleanup crew to be dispatched to the site and remove the spilled oil.

Eligibility

- ORS 468.150 (1)(a) The **principal purpose** of the **new installation** is to control a substantial quantity of water pollution. The requirement is imposed by the federal Environmental Protection Agency per 40 CFR Part 112 (Oil Pollution Prevention).
- ORS 468.150 (1)(b)(A) The control 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>	<u>4/1/98</u>
<i>Application Substantially Complete</i>	<u>8/21/98</u>
<i>Construction Started</i>	<u>12/9/96</u>
<i>Construction Completed</i>	<u>3/28/97</u>
<i>Facility Placed into Operation</i>	<u>3/28/97</u>

Facility Cost

Facility Cost	\$205,753
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$205,753</u>

Coopers & Lybrand L.L.P. provided the certified public accountant's statement.

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.

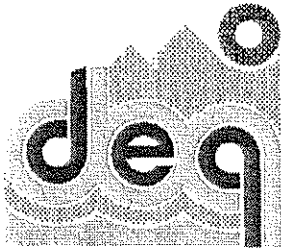
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	There is no gross revenue associated with this facility and therefore no return on investment.
ORS 468.190(1)(c) Alternative Methods	Oil vault and sand filter system were considered but were rejected because of cost and maintenance.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase of 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 the requirements imposed by the federal Environmental Protection Agency.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **4974**
Facility Cost **\$105,715**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Secondary oil spill containment system consisting of a geomembrane lined pit filled with rocks, berm, associated fittings and drainage piping system.

The facility is located at:

**Linneman Substation
21015 SE Stark St.
Gresham, OR**

Technical Information

The secondary oil spill containment system for the transformer substation consists of a geomembrane-lined pit filled with rocks, a berm and drainage piping system. The transformer area is graded such that the drainage is collected by the collection piping system and flows into the lined pit. The system allows passage of water while stopping the flow of oil in the event of oil spill. The drainage discharges to a nearby wetland and eventually to the Johnson Creek. The system allows adequate time for a cleanup crew to be dispatched to the site and remove the spilled oil.

Eligibility

- ORS 468.155 (1)(a) The principal purpose of the facility is to control a substantial quantity of water pollution. The requirement is imposed by the federal Environmental Protection Agency per 40 CFR Part 112 (Oil Pollution Prevention).
- ORS 468.155 (1)(b)(A) The control 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>	<u>4/1/98</u>
<i>Application Substantially Complete</i>	<u>8/11/98</u>
<i>Construction Started</i>	<u>12/9/96</u>
<i>Construction Completed</i>	<u>3/28/97</u>
<i>Facility Placed into Operation</i>	<u>3/28/97</u>

Facility Cost

Facility Cost	\$105,715
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$105,715</u>

Coopers & Lybrand L.L.P. provided the certified public accountant's statement.

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.

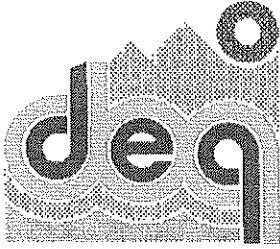
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	There is no gross revenue associated with this facility and therefore no return on investment.
ORS 468.190(1)(c) Alternative Methods	Oil vault and sand filter system were considered but were rejected because of cost and maintenance.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase of 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 the requirements imposed by the federal Environmental Protection Agency.

Reviewers: R. C. Dulay



Tax Credit Review Report

6/21/1998

Pollution Control Facility: Water Final Certification

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

Director's
Recommendation: **APPROVE**

Applicant	Pioneer Truck Equipment, Inc.
Application No.	4992
Facility Cost	\$39,244
Percentage Allocable	100%
Useful Life	10 years

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 generation unit combined to complete a zero effluent discharge system. It includes a concrete pad to collect wash water; a sump pump that transfers the wastewater through a bag filter to remove free oil and grease; and an ASA 600 that mixes the wastewater with a clay based flocculent. 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.

Sanitary sewer service is not available at this facility; therefore, without this closed-loop system, wastewater containing oil and grease would have drained to the storm drains or the ground.

As claimed by the applicant, the facility is used to prep new metal structures, dump-bodies and trailer chassis for new paint application. The wastewater contains dirt, oil and grease.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose** of this **new equipment** is to prevent, a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) This prevention 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>	<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	
Ineligible Costs	
Eligible Facility Cost	<u>\$39,244</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 cost is 100% allocable to pollution control.

Compliance

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

Reviewer: Renato Dulay
Maggie Vandehey

PIONEER
TRUCK EQUIPMENT, INC.

June 16, 1998

RECEIVED
JUN 17 1998
BUDGET DEPT.

Department of Environmental Quality
Maggie Vandehey
811 SW Sixth Avenue
Portland, OR 97204-1390

Dear Mrs. Vandehey:

I received your letter dated May 29, 1998, in reference to the Pollution Control Facility Tax Credit application number 4992.

Upon reviewing the Tax Credit Review Report, I understand that the recommendation would be to Deny our application.

The reason being that our facility is not suitable for disposal of human waste.

This information was gathered from literature that illustrated the full capabilities that the Karcher Model ASA 600 is suitable for.

The Karcher Model ASA 600, located at our facility is used strictly to prep new metal structures, dump bodies and trailer chassis, for new paint application. The wastewater contains dirt, oil, and grease. It is not used to clean garbage containers or portable toilets and the wastewater does not contain waste food products, urine and body waste.

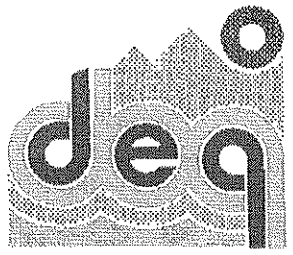
Please contact myself or W.I. "Nick" Nicholas to confirm that this will be adequate information to resubmit our application at your next committee meeting.

Sincerely,

Michelle Choate
Office Manager

Michelle Choate

Cc: Dean Allen
Fisher, Hayes, & Associates



Tax Credit Review Report

08/13/98 2:58 PM

Director's
Recommendation: **APPROVE**

Applicant **WWDD Partners**
Application No. **4997**
Facility Cost **\$10,000**
Percentage Allocable **100%**
Useful Life **5 years**

Reclaimed Plastic Products

Final Certification

ORS 468.451 through 468.491

OAR 340-017-0010 through 340-017-0055

Applicant Identification

The applicant is a partnership operating as a "plastic recycling equipment leasing business" that is taking tax relief under taxpayer identification number 93-0764756. The applicant is the owner of the facility. The applicant's address is:

WWDD Partners
230 NW 10th
Portland Oregon 97209

Facility Identification

The certificate will identify the facility as:

Two Frauhaf 1986 48-foot van-trailers.

The lessee's address and the facility location is:

Denton Plastics
4427 NE 158th
Portland, Oregon 97230

Technical Information

These trailers will be used to transport waste plastic and processed reclaimed plastic. .

Eligibility

ORS 468.461(1) Any person may apply to the EQC for certification of an investment made to allow the person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.461(6).

<i>Preliminary Application Received</i>	04/17/1998
<i>Preliminary Application Approved</i>	04/21/1998
<i>Application Received</i>	08/05/1998
<i>Date of Investment</i>	05/01/1998
<i>Facility Placed into Operation</i>	06/01/1998

Facility Cost

Facility Cost	\$10,000
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$10,000

According to OAR 340-017-0030 (1)(a), invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

Facility Cost Allocable to Pollution Control

According to ORS 468.486, the following factors were used to determine the percentage of the investment allocable to the collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic product.

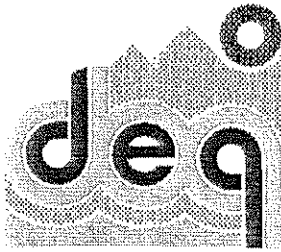
Factor	Applied to This Facility
OAR 340-017-0030 (2)(a) Extent Used to convert reclaimed plastic into a salable or usable commodity.	The equipment is used 100% of the time for processing reclaimed plastic into a salable or useable commodity.
OAR 340-017-0030 (2)(b) The alternative methods, equipment and costs for achieving the same objective;	No alternative methods were considered.
OAR 340-017-0030 (2)(c) Other relevant factors used to establish portion of the cost allocable to collection, transportation or processing of reclaimed plastic or the manufacture of reclaimed plastic products.	No other factors were considered relevant.

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. There are no DEQ permits issued to this facility:

Reviewer: William R. Bree



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **5000**
Facility Cost **\$71,319**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Secondary oil spill containment system consisting of an oil/water separator, geomembrane liner and drainage piping system.

The facility is located at:

**Fujitsu Substation
21015 SE Stark St.
Gresham, OR**

Technical Information

The secondary oil spill containment system for the transformer substation consists of a concrete oil/water separator, geomembrane liner and drainage piping system. The oil/water separator allows the passage of water while stopping the flow of oil in the event of an oil spill. The transformer area is graded such that the drainage is collected by the collection piping system and is discharged to the oil/water separator. The treated drainage is then discharge to a ditch and eventually to the Fairview Creek.

Eligibility

- ORS 468.155 (1)(a) The principal purpose of the facility is to control a substantial quantity of water pollution. The requirement is imposed by the federal Environmental Protection Agency per 40 CFR Part 112 (Oil Pollution Prevention).
- ORS 468.155 (1)(b)(A) The control 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>	<u>4/27/98</u>
<i>Application Substantially Complete</i>	<u>8/11/98</u>
<i>Construction Started</i>	<u>4/10/96</u>
<i>Construction Completed</i>	<u>4/26/98</u>
<i>Facility Placed into Operation</i>	<u>4/26/98</u>

Facility Cost

Facility Cost	\$71,319
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$71,319</u>

Coopers & Lybrand L.L.P. provided the certified public accountant's statement.

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.

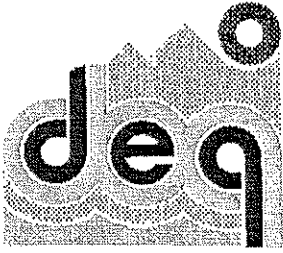
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	There is no gross revenue associated with this facility and therefore no return on investment.
ORS 468.190(1)(c) Alternative Methods	Oil pit and sand filter system were considered but were rejected because of cost and maintenance.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase of 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 the requirements imposed by the federal Environmental Protection Agency.

Reviewers: R. C. Dulay



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **5008**
Facility Cost **\$276,730**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Secondary oil spill containment system consisting of a geomembrane lined pit, vault, associated fittings and drainage piping system.

The facility is located at:

**Boise Cascade Substation
St. Helens, Oregon**

Technical Information

The secondary oil spill containment system for the transformer substation consists of a geomembrane-lined pit, vault and drainage piping system. The transformer area is graded such that the drainage is collected by the collection piping system and flows into the lined pit and vault. The system allows passage of water while stopping the flow of oil in the event of oil spill. The drainage discharges to a nearby ditch and eventually to the Multnomah Channel. The system allows adequate time for a cleanup crew to be dispatched to the site and remove the spilled oil.

Eligibility

- ORS 468.155 (1)(a) The sole purpose of the facility is to control a substantial quantity of water pollution.
- ORS 468.155 (1)(b)(A) The control 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>	<u>5/5/98</u>
<i>Application Substantially Complete</i>	<u>8/17/98</u>
<i>Construction Started</i>	<u>1/1/96</u>
<i>Construction Completed</i>	<u>5/1/96</u>
<i>Facility Placed into Operation</i>	<u>5/1/96</u>

Facility Cost

Facility Cost	\$276,730
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$276,730</u>

Coopers & Lybrand L.L.P. provided the certified public accountant's statement.

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.

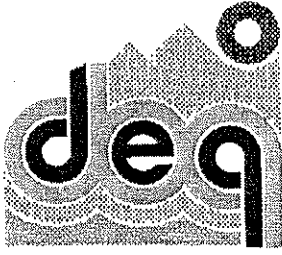
<u>Factor</u>	<u>Applied to This Facility</u>
ORS 468.190(1)(a) Salable or Usable Commodity	No salable or useable commodity.
ORS 468.190(1)(b) Return on Investment	There is no gross revenue associated with this facility and therefore no return on investment.
ORS 468.190(1)(c) Alternative Methods	Oil vault and sand filter system were considered but were rejected because of cost and maintenance.
ORS 468.190(1)(d) Savings or Increase in Costs	No savings or increase of 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.

Reviewers: R. C. Dulay



Tax Credit Review Report

05/23/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Lyle Neuschwander**
Application No. **5010**
Facility Cost **\$117,640**
Percentage Allocable **46%**
Useful Life **7 years**

Pollution Control Facility: Field Burning Final Certification

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

Applicant Identification

The applicant is an individual operating as a grass seed grower taking tax relief under their social security number. The applicant is the owner of the facility. The applicant's address is:

**Lyle Neuschwander
26262 Powerline Road
Halsey, Oregon 97348**

Facility Identification

The certificate will identify the facility as:

John Deere 8400 tractor 225 h.p. tractor.

The facility is located at:

**26262 Powerline Rd
Halsey, OR**

Technical Information

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 flail chopping the straw, plowing the residue under, and rolling and dragging the field as preparation for seeding. The applicant states that the purchased tractor now enables him to work the fields in a more timely fashion following harvest as an alternative to open field burning.

The applicant states is required to accomplish timely flail chopping after harvest, plowing following the flailing, harrowing and rolling after plowing, and concluding with leveling. The faster these functions are accomplished the better weed control attained that used to be provided by open field burning.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. The applicant has 640 acres of annual grass seed under cultivation.
- ORS 468.155 (1)(a) The **principal purpose** of this **new machinery and equipment** is to prevent, control or reduce a substantial quantity of air pollution by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-026-0013.
- OAR 340-016-0025 (2)(f)(A) The equipment, facilities for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.
- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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)(B) This is the second tractor presented for certification as a pollution control facility by this applicant. However, this tractor is not considered a **replacement facility**. The first implements (certificate # 2291) and tractor (certificate # 3414) addressed 300 acres. With certification of this second tractor, all 640 incorporate alternative methods to open field burning.

Timeliness of Application

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

<i>Application Received</i>	05/11/1998
<i>Application Substantially Complete</i>	06/19/1998
<i>Construction Started</i>	03/10/1998
<i>Construction Completed</i>	03/10/1998
<i>Facility Placed into Operation</i>	03/10/1998

Facility Cost

Claimed Facility Cost	\$117,640
Salvage Value	
Government Grants	
Other Tax Credits	
Ineligible Costs	
Eligible Facility Cost	\$117,640

Hadley & Ford, LLC, Certified Public Accountants performed the accounting review on behalf of the Applicant.

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.

<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 were associated with this facility.																				
ORS 468.190(1)(c) Alternative Methods	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.																				
ORS 468.190(1)(d) Savings or Increase in Costs	There is an increase in operating costs of \$1,960 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.																				
ORS 468.190(1)(e) Other Relevant Factors	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Implement</th> <th style="text-align: center;">Acres Worked</th> <th style="text-align: center;">Machinery Capacity</th> <th style="text-align: center;">Annual Operating hours</th> </tr> </thead> <tbody> <tr> <td>Plow</td> <td style="text-align: center;">320</td> <td style="text-align: center;">7 acres/hr</td> <td style="text-align: center;">46</td> </tr> <tr> <td>Harrow roller</td> <td style="text-align: center;">240X2=480</td> <td style="text-align: center;">7 acres/hr</td> <td style="text-align: center;">69</td> </tr> <tr> <td>Leveler</td> <td style="text-align: center;">320X2=640</td> <td style="text-align: center;">7 acres/hr</td> <td style="text-align: center;">91</td> </tr> <tr> <td colspan="3" style="text-align: right;">Total</td> <td style="text-align: center;">206</td> </tr> </tbody> </table>	Implement	Acres Worked	Machinery Capacity	Annual Operating hours	Plow	320	7 acres/hr	46	Harrow roller	240X2=480	7 acres/hr	69	Leveler	320X2=640	7 acres/hr	91	Total			206
Implement	Acres Worked	Machinery Capacity	Annual Operating hours																		
Plow	320	7 acres/hr	46																		
Harrow roller	240X2=480	7 acres/hr	69																		
Leveler	320X2=640	7 acres/hr	91																		
Total			206																		

The total annual operating hours of 206 divided by the standard average annual operating hours of 450 produces a percent allocable of 46%.

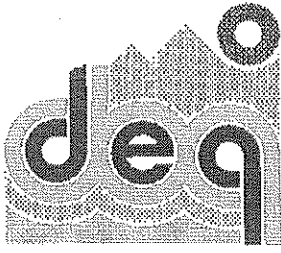
Considering these factors, the percentage allocable to pollution control is 46%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to facility.

Description of Facility	Facility	Certificat	Issue Date
John Deere flail chopper and moldboard plow. 100% allocable to pollution control.	\$16,200	2291	09/21/1990
John Deere 4850 200 hp tractor. 62% allocable to pollution control.	\$49,865	3414	12/02/1994

Reviewers: Jim Britton, Oregon Department of Agriculture



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Carol Marx**
Application No. **5012**
Facility Cost **\$131,499**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Field Burning Final Certification

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

Applicant Identification

The applicant is an S Corporation operating as a grass seed grower; taking tax relief under taxpayer identification number 93-0864063. The applicant is the owner of the facility. The applicant's address is:

**4150 Oak Grove Rd
Rickreall, OR 97371**

Facility Identification

The certificate will identify the facility as:

A 144' x 132' x 22' pole construction, grass straw storage building.

The facility is located at:

**4955 Oak Grove Rd.
Rickreall, OR**

Technical Information

The applicant has 746 acres of perennial and 150 acres of annual grass seed under cultivation. Previously the applicant raked, baled, and field stacked the straw after the grass seed harvest. All straw not sold before the onset of the rainy season was stack burned. The grass straw storage building provides protection from inclement weather preserving its marketability.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 The **principal purpose** of this **new machinery and equipment** is to prevent, (1)(a) control or reduce a substantial quantity of air pollution by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-026-0013.

- OAR 340-016-0025 (2)(f)(A) The equipment, facilities for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.
- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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>	05/11/1998
<i>Application Substantially Complete</i>	7/30/1998
<i>Construction Started</i>	05/01/1997
<i>Construction Completed</i>	09/01/1997
<i>Facility Placed into Operation</i>	09/01/1997

Facility Cost

Facility Cost	\$131,499
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$131,499

The facility cost was greater than \$50,000 but less than \$500,000; therefore, Burton, Creamer & Co., P.C., performed an accounting review according to DEQ guidelines on behalf of the Applicant.

A construction cost summary and the independent Certified Public Accountant's statement accompanied the application.

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000; therefore, the following factors were used to determine the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
ORS 468.190(1)(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.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility used for the return on investment consideration is 15 years. No gross annual revenues were associated with this facility.

ORS 468.190(1)(c) Alternative Methods

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

ORS 468.190(1)(d) Savings or Increase in Costs

There is an increase in operating costs of \$10,788 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

ORS 468.190(1)(e) Other Relevant Factors

No other relevant factors.

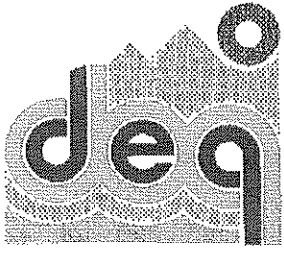
Considering these factors, the percentage allocable to pollution control is 100%.

Compliance

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

DEQ permits issued to facility:

Reviewers: James Britton



Tax Credit Review Report

07/21/98

Director's
Recommendation: **APPROVE**

Applicant **Ash Grove Cement Company**
Application No. **5013**
Facility Cost **\$254,049**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Air Preliminary 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 base elements for cement taking tax relief under taxpayer identification number 44-00539214. The applicant is the owner of the facility. The applicant's address is:

**8900 Indian Creek Parkway, Suite 600
Overland Park, KS 66210**

Facility Identification

The certificate will identify the facility as:

Two dust abatement systems for kilns #1 and #2.

The facility is located in Multnomah County at:

**13939 N. Rivergate Blvd.
Portland, OR 97203**

Technical Information

This facility consists of two dust abatement systems for kilns #1 and #2.

Dust Recycling System The first system consists of ductwork which routes dust-laden exhaust air from the quicklime product cooler cyclones over to the kiln fuel burners where it is used as preheated combustion air, thus recycling the air and eliminating the air contaminant source. Before this system was installed, the exhaust off of the cooler cyclones was exhausted into the atmosphere. The previously installed duct system would not provide the velocity needed to carry the dust-laden exhaust air into the kiln burners. Therefore the old duct and asbestos insulation were removed and new smaller ducts were installed and insulated. The exhaust system design velocity of 4000 fpm will carry the dust in the air stream through the duct system and is considered best industrial design practice. The dust is burned in the kilns with the limestone and the dust becomes part of the end product produced at the plant.

Baghouse System The second system consists of two dust collectors (baghouses) installed on the discharge of each of the two kilns which reduces the amount of air contaminants. Previously, the

dust-laden air discharged from the kiln went through a cyclone, then was discharged to the atmosphere. The new dust collectors have ducted connections which collect dust from the kiln discharge hood scrapers and from other lime conveyor system handling points located below the kilns. The dust collected is transported by conveyor to storage and becomes part of the end product produced at the plant.

The estimated reduction in air pollution is significant: from 26 tons per year to 1.8 tons per year, or 93%. The dust collected becomes part of the agricultural product sold by Ash Grove Cement Co. for \$8/ton, providing an estimated revenue of \$200/year.

Eligibility

- ORS 468.155 (1)(a) The **sole purpose of this new ductwork and baghouse system equipment and installation** is to prevent, 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

Timeliness of Application

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

<i>Application Received</i>	<u>05/12/1998</u>
<i>Additional Information Requested</i>	<u>7/7/98</u>
<i>Application Substantially Complete</i>	<u>7/14/98</u>
<i>Construction Started</i>	<u>12/01/1996</u>
<i>Construction Completed</i>	<u>12/31/1997</u>
<i>Facility Placed into Operation</i>	<u>01/01/1998</u>

Facility Cost

Facility Cost	\$254,049
Salvage Value	0
Government Grants	0
Other Tax Credits	0
Insignificant Contribution (ORS 468.155(2)(d))	0
Ineligible Costs	0
Eligible Facility Cost	<u>\$254,049</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost was greater than \$50,000 but less than \$500,000, however, Ash Grove Cement Company requested a waiver of an external CPA audit because the costs were documented in the invoices included with the application, because it was not part of a larger construction project, and because a single pollution control process was applied to two adjacent manufacturing machines.

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.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The dust produced is a salable and useable commodity. By recycling the dust-laden air back to the burners, the dust becomes part of the end product and is sold for an estimated \$208 per year. The energy recovered provides a savings of an estimated \$16,320 per year.
ORS 468.190(1)(b) Return on Investment	The useful life of the facility is 20 years. Gross annual revenues associated with this facility did not exceed operating costs, therefore the return on investment was zero.
ORS 468.190(1)(c) Alternative Methods	Using a baghouse instead of recycling the airstream off of the cyclone coolers was examined and found to be more expensive. No alternatives were investigated for the baghouse system.
ORS 468.190(1)(d) Savings or Increase in Costs	Operating costs increased.
ORS 468.190(1)(e) Other Relevant Factors	The duct system is located in an outdoor manufacturing plant, it is not part of a ventilation system.

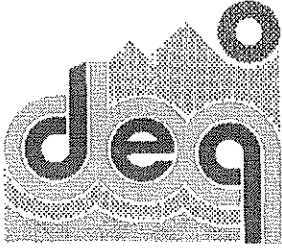
Considering these factors, the percentage allocable to pollution control is 100%.

Compliance

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

Air Contaminant Discharge Permit #26-1891, Sept. 2, 1997;
NPDES Waste Water Discharge Permit #101478, April 25, 1997.

Reviewers: Lois L. Payne, P.E., SJO Engineers
Dennis Cartier, Associate, SJO Engineers
Dave Kauth, AQ-DEQ
Maggie Vandehey, DEQ



Tax Credit Review Report

05/21/08 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Cruikshank, Kenneth D. & Karen L.**
Application No. **5014**
Facility Cost **\$131,339**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Field Burning
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0050

Applicant Identification

The applicant is an individual operating as a grass seed grower taking tax relief under taxpayer identification number 93-1025196. The applicant is the owner of the facility. The applicant's address is:

Cruikshank, Kenneth D. & Karen L.
5545 Mill Rd.
Sheridan, OR 97378

Facility Identification

The certificate will identify the facility as:

A 124' x 180' x 22' pre-engineered all steel straw storage barn and hay squeeze, Hyster Model SC180, Type G Hay Squeeze, serial #SC97808.

The facility is located at:

5545 Mill Creek Rd.
Sheridan, OR

Technical Information

The applicants' have 700 acres of perennial grass seed under cultivation. Prior to incorporating alternatives to flame sanitation the applicants' open field burned and stack burned as many acres as the weather and smoke management program permitted.

The applicants now bale off the bulk straw from their fields and flail chop the remaining stubble. Some straw was weather damaged each year and required stack burning. The storage barn was built to protect the baled straw from inclement weather and the hay squeeze is used to stack the straw in the building.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 (1)(a) The **principal purpose** of this **new machinery and equipment** is to prevent, control or reduce a substantial quantity of air pollution by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-026-0013.

- OAR 340-016-0025 (2)(f)(A) The equipment, facilities for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.
- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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>05/15/1998</u>
<i>Application Substantially Complete</i>	<u>06/02/1998</u>
<i>Construction Started</i>	<u>05/05/1997</u>
<i>Construction Completed</i>	<u>06/20/1997</u>
<i>Facility Placed into Operation</i>	<u>06/20/1997</u>

Facility Cost

Facility Cost	\$131,339
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$131,339</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost was greater than \$50,000 but less than \$500,000; therefore, the accounting review was prepared by an independent accounting firm on according to Department guidelines on behalf of the Applicant.

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	The facility promotes the conversion of a waste product (straw) into a salable usable commodity by providing protection from inclement weather and a means to stack the product.
ORS 468.190(1)(b) Return on Investment	The actual cost of claimed facility (\$131,339) divided by the average annual cash flow (\$2,132) equals a return on investment factor of 59.258. Using Table 1 of OAR 340-16-030 for the life of 25 years, the annual percent return on investment is 0. Using the annual percent return of 0 and the reference annual percent return of 6.3%, 100% is allocable to pollution control. No gross annual revenues were associated with this facility.

ORS 468.190(1)(c) Alternative Methods

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.

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.

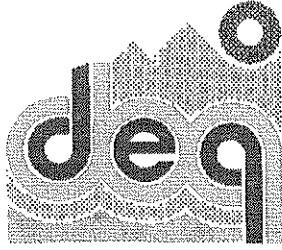
Considering these factors, the percentage allocable to pollution control is 100%.

Compliance

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

DEQ permits issued to facility:

Reviewers: James Britton



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Seiler & Smith, Inc.**
Application No. **5015**
Facility Cost **\$2,100**
Percentage Allocable **100%**
Useful Life **3 years**

Pollution Control Facility: CFC
Final Certification
ORS 468.150 -- 468.190

Applicant Identification

The applicant is an S corporation operating as an express lube service, automotive and light truck maintenance business taking tax relief under taxpayer identification number 91-1781267. The applicant is the owner of the facility. The applicant's address is:

Seiler & Smith, Inc.
37055 Hwy 26
Sandy, OR 97055

Facility Identification

The certificate will identify the facility as:

Equipment used for the recovery and recycling of R-134A & R-12 manufactured by White Industries. Model # 1234XL Dual Gas.

The facility is located at:

37055 Hwy 26
Sandy, OR 97055

Technical Information

The equipment controls air contaminants by recycling automobile air conditioner refrigerants instead of discharging to the atmosphere. The design is UL/CUL listed and EPA Approved for meeting Society of Automotive Engineers (SAE) standards J1991 and J1220 s.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new equipment** is to comply with the DEQ requirements of OAR 340-22-405 to OAR 340-22-415, Control Ozone Depleting Chemicals, to recycle air conditioning refrigerants. This equipment captures and recycles contaminants that would otherwise be released to the atmosphere, as defined in ORS 468.275.
- 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>	05/19/1998
<i>Application Substantially Complete</i>	6/27/1998
<i>Construction Started</i>	04/06/1998
<i>Construction Completed</i>	04/06/1998
<i>Facility Placed into Operation</i>	04/06/1998

Facility Cost

Facility Cost	\$2,800
Salvage Value	
Government Grants	
Other Tax Credits	
Ineligible Costs	
	Recharge capabilities <u>-\$ 700</u>
Eligible Facility Cost	\$2,100

The Department's standard reduction for recharge capabilities is \$700. An invoice substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

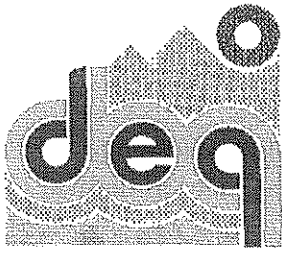
Facility Cost Allocable to Pollution Control

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. Therefore, the percentage of the facility cost 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: Maggie Vandehey



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Bashaw Land & Seed, Inc.**
Application No. **5016**
Facility Cost **\$11,395**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Field Burning 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 grass seed grower; taking tax relief under taxpayer identification number 93-1208082. The applicant is the owner of the facility. The applicant's address is:

Bashaw Land & Seed, Inc.
31950 Bowers Drive
Harrisburg, OR 97446

Facility Identification

The certificate will identify the facility as:

A Rear's 15' flail chopper.

The facility is located at:

31731 Bowers Drive
Harrisburg, OR 97446

Technical Information

The applicant has 420 perennial and 205 annual grass seed acres under cultivation. Prior to utilizing alternatives to thermal sanitization the Bowers open field burned as many acres as the smoke management program and weather allowed.

The applicants have been experimenting with chopping the full straw load on perennial tall fescue and found the results acceptable. They also intend to flail chop annual ryegrass and allow the field to volunteer. The Bowers have gradually reduced their open field burning over the last three years and feel using the flail chopper will further reduce their open field burning by approximately 400 acres.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 (1)(a) The **principal purpose** of this **new equipment** is to reduce a substantial quantity of air contaminants by reducing the maximum acreage to be open-burned in the Willamette Valley as required in OAR 340-026-0013.

- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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 340-016-0025 (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.

Timeliness of Application

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

<i>Application Received</i>	06/02/1998
<i>Application Substantially Complete</i>	8/20/1998
<i>Construction Started</i>	08/15/1996
<i>Construction Completed</i>	08/15/1996
<i>Facility Placed into Operation</i>	08/15/1996

Facility Cost

Facility Cost	\$11,395
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$11,395

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

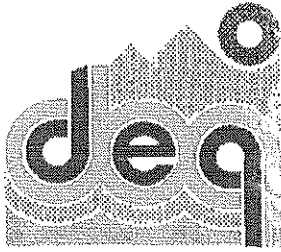
Facility Cost Allocable to Pollution Control

According to ORS.190 (3), the facility cost does not exceed \$50,000; 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 allocable to pollution control is 100%.

Compliance

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

Reviewer: James Britton, Oregon Department of Agriculture



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Bowers, Eric & Vicki**
Application No. **5017**
Facility Cost **\$30,852**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is an individual operating as a "grass seed grower" taking tax relief under their social security number. The applicant is the owner of the facility. The applicant's address is:

**Bowers, Eric & Vicki
31950 Bowers Drive
Harrisburg, OR 97446**

Facility Identification

The certificate will identify the facility as:

A drainage installation. 43150 feet of 4" drain pipe, 680 feet of 8", & 880 feet of 6" pipe was plowed in the ground on 40' to 60' centers to drain.

The facility is located at:

**.3 miles SE of the end of Holmes Rd
off Gap Road
Brownsville, OR**

Technical Information

The applicant has 420 perennial and 205 annual grass seed acres under cultivation. Prior to utilizing alternatives to thermal sanitization the Bowers open field burned as many acres as the smoke management program and weather allowed.

The applicants farm is located in a very 'wet soil' area of the Willamette Valley. Drying the ground on this 60 acres with the drain tile installation allows for adequate weed control previously provided by open field burning. The drier soil also allows rotation of crops such as meadowfoam and wheat.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 (1)(a) The **principal purpose** of this **new installation** is to reduce a substantial quantity of air contaminants by reducing the maximum acreage to be open-burned in the Willamette Valley as required in OAR 340-026-0013.
- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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 340-016-0025 (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.

Timeliness of Application

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

<i>Application Received</i>	06/02/1998
<i>Application Substantially Complete</i>	8/20/1998
<i>Construction Started</i>	08/01/1997
<i>Construction Completed</i>	08/01/1997
<i>Facility Placed into Operation</i>	08/01/1997

Facility Cost

Facility Cost	\$30,852
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$30,852

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

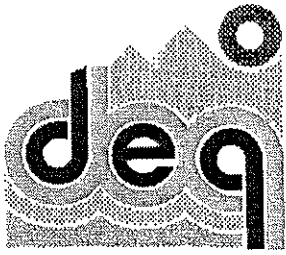
Facility Cost Allocable to Pollution Control

According to ORS.190 (3), the facility cost does not exceed \$50,000; 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 allocable to pollution control is 100%.

Compliance

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

Reviewers: James Britton, Oregon Department of Agriculture



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant	Capitol Recycling & Disposal, Inc.
Application No.	5018
Facility Cost	\$10,304
Percentage Allocable	100%
Useful Life	7 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 recycling facility; taking tax relief under taxpayer identification number 93-1197641. The applicant is the owner of the facility. The applicant's address is:

**Capitol Recycling & Disposal, Inc.
1890 16th Street, SE
Salem, OR 97302**

Facility Identification

The certificate will identify the facility as:

Twenty 6-yd. front load expanded metal cardboard recycling cages with one piece steel lid, with auto release flip-up lid lock, with standard slots front & rear, and with bolt on 4 swivel casters.

The facility is located at:

**1890 16th Street, SE
Salem, OR 97302**

Technical Information

These front loader containers are used for the collection of recyclable materials from commercial recycling accounts.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of this **new equipment and devices** 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>06/02/1998</u>
<i>Application Substantially Complete</i>	<u>08/07/1998</u>
<i>Construction Started</i>	<u>05/01/1996</u>
<i>Construction Completed</i>	<u>05/31/1996</u>
<i>Facility Placed into Operation</i>	<u>06/10/1996</u>

Facility Cost

Facility Cost	\$10,304
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$10,304</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

Facility Cost Allocable to Pollution Control

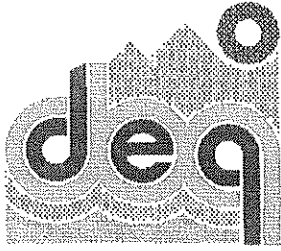
According to ORS 486.190 (3), the facility cost does not exceed \$50,000 and therefore, the only factor used to determine the percentage of the facility cost allocable to pollution control is the percentage of time the facility is used for pollution control. Therefore, the percentage allocable to pollution control is 100%.

Compliance

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

There are no DEQ permits issued to this facility:

Reviewer: William R Bree



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **B & F Drycleaners, Inc.**
Application No. **5019**
Facility Cost **\$3,425**
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 an S corporation operating as a retail dry cleaning business, taking tax relief under taxpayer identification number 93-1146067. The applicant is the owner of the facility. The applicant's address is:

**B&F Dry Cleaners
11003 Division
Portland, OR 97266**

Facility Identification

The certificate will identify the facility as:

One pan placed under a perc dry cleaning machine to contain any spills of solvent. One Mark II mister by Air Quality Labs.

The facility is located at:

**11003 Division
Portland, OR 97266**

Technical Information

The containment pan (no model or serial number) was installed under the dry cleaning machine to contain any solvent drips that otherwise could have leached through the concrete and cause contamination. The mister filters dry cleaning solvent from wastewater using carbon, reducing solvent from 400 ppm to 1 ppm. The effluent is then atomized to the atmosphere. Before the mister was installed, perc was evaporated to the atmosphere by boiling in a crock pot. Once the carbon is full it is managed as hazardous waste.

Eligibility

ORS 468.155 The principal purpose of this new installation and equipment is to prevent, control or reduce a substantial quantity of water pollution. Beginning June 30, 1998, the waste minimization requirements dry cleaning facilities (ORS 465.505 (b) and (f)) prohibits the discharge of solvent-contaminated discharge to any sanitary sewer, septic system or waters of the State.

- ORS 468.155 The disposal or elimination of or redesign to eliminate industrial waste and the
(1)(b)(A) use of treatment 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>06/08/1998</u>
<i>Application Substantially Complete</i>	<u>8/11/1998</u>
<i>Construction Started</i>	<u>05/12/1997</u>
<i>Construction Completed</i>	<u>03/29/1998</u>
<i>Facility Placed into Operation</i>	<u>03/29/1998</u>

Facility Cost

Facility Cost	\$3,425
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$3,425</u>

Invoices and canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

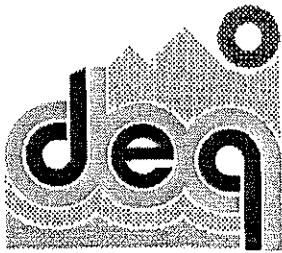
Facility Cost Allocable to Pollution Control

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. 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



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Capitol Recycling & Disposal, Inc.**
Application No. **5023**
Facility Cost **\$4,410**
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 recycling business; taking tax relief under taxpayer identification number 93-1197641.

The applicant is the owner of the facility. The applicant's address is:

Capitol Recycling & Disposal, Inc.
1890 16th Street SE
Salem, OR 97302

Facility Identification

The certificate will identify the facility as:

residential recycling bins

The facility is located at:

1890 16th St. SE
Salem, OR 97302

Technical Information

The containers are used for the collection of recyclable material from residential collection service customers.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of this **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>06/09/1998</u>
<i>Application Substantially Complete</i>	<u>08/07/1989</u>
<i>Construction Started</i>	<u>05/20/1996</u>
<i>Construction Completed</i>	<u>06/14/1996</u>
<i>Facility Placed into Operation</i>	<u>06/30/1996</u>

Facility Cost

Facility Cost		\$4,410
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution (ORS 468.155(2)(d))	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u>\$4,410</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000, therefore, an independent accounting review was not required.

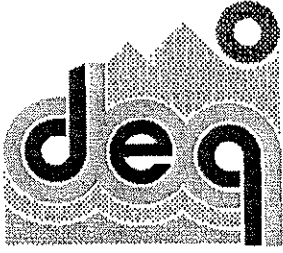
Facility Cost Allocable to Pollution Control

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. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to facility.

Reviewers: William R Bree



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **United Disposal Service Inc.**
Application No. **5025**
Facility Cost **\$8,004**
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 recycling business; taking tax relief under taxpayer identification number 93-06625022. The applicant is the owner of the facility. The applicant's address is:

United Disposal Service, Inc.
2215 N Front Street
Woodburn, OR 97071

Facility Identification

The certificate will identify the facility as:

**Twenty-four yard front load cardboard
recycling containers with lids and casters.**

The facility is located at:

2215 N Front Street
Woodburn, OR 97071

Technical Information

These front load containers are used to collect recyclable cardboard from commercial collection 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>06/22/1998</u>
<i>Application Substantially Complete</i>	<u>08/07/1998</u>
<i>Construction Started</i>	<u>03/02/1998</u>
<i>Construction Completed</i>	<u>03/25/1998</u>
<i>Facility Placed into Operation</i>	<u>04/10/1998</u>

Facility Cost

Facility Cost	\$8,004
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution ORS 468.155(2)(d)	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$8,004</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

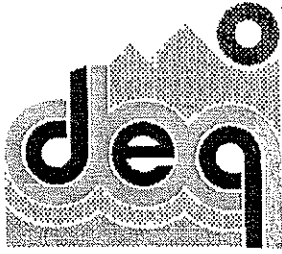
Facility Cost Allocable to Pollution Control

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. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility.

Reviewers: William R Bree



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**
Application No. **5026**
Facility Cost **\$2,220**
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 recycling business taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

**United Disposal Service, Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

500 fire red 14-gallon recycle bins

The facility is located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

These bins are used for collection of recyclable materials from residential 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>	06/22/1998
<i>Application Substantially Complete</i>	08/17/1998
<i>Construction Started</i>	01/02/1998
<i>Construction Completed</i>	01/21/1998
<i>Facility Placed into Operation</i>	02/01/1998

Facility Cost

Facility Cost	\$2,220
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$2,220

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

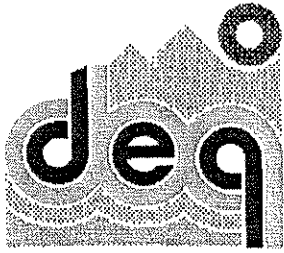
Facility Cost Allocable to Pollution Control

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. 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

05/21/98 4:31 PM

Director's
Recommendation: **APPROVE**

Applicant **Corvallis Disposal Co.**
Application No. **5027**
Facility Cost **\$18,239**
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 recycling business taking tax relief under taxpayer identification number 93-0422468. The applicant is the owner of the facility. The applicant's address is:

Corvallis Disposal Co.
PO Box 1
Corvallis, OR 97339

Facility Identification

The certificate will identify the facility as:

Kann trough plastic compactor (48" wide) to replace 26" wide compactor on Volvo FE42 side load recycle truck

The facility is located at:

110 NE Walnut Blvd.
Corvallis, OR 97330

Technical Information

The compactor is used for the collection of plastic bottles from both residential and 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>	06/22/1998
<i>Application Substantially Complete</i>	08/07/1998
<i>Construction Started</i>	06/03/1996
<i>Construction Completed</i>	08/21/1996
<i>Facility Placed into Operation</i>	08/23/1996

Facility Cost

Facility Cost	\$18,239
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$18,239

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

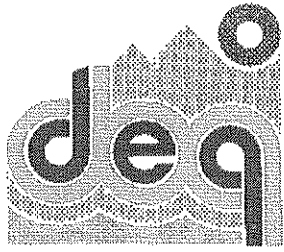
Facility Cost Allocable to Pollution Control

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.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility.

Reviewers: William R Bree



Tax Credit Review Report

Director's
Recommendation: **APPROVE**

Applicant	United Disposal Service Inc.
Application No.	5029
Facility Cost	\$69,245
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 recycling business taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

**United Disposal Service, Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

New cat backhoe loader, Model 426C, ID# G97248, and Serial #6XN00870 with special claw for picking up scrap metal, cardboard and newspaper.

The facility is located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

This equipment is used to process and load recyclable material prior to shipment to end-users.

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>06/24/1998</u>
<i>Application Substantially Complete</i>	<u>08/01/1998</u>
<i>Construction Started</i>	<u>08/14/1997</u>
<i>Construction Completed</i>	<u>08/26/1997</u>
<i>Facility Placed into Operation</i>	<u>09/10/1997</u>

Facility Cost

Facility Cost	\$69,245
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$69,245</u>

The facility cost was greater than \$50,000 but less than \$500,000; therefore, Theodore R. Ahre, CPA performed an accounting review according to Department guidelines on behalf of the Applicant.

Facility Cost Allocable to Pollution Control

According to ORS468A.190 (1), the facility cost exceeds \$50,000; 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	The facility produces a 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. The return on investment factor for the facility was 4.98 and the portion of the facility cost allocable to pollution control was 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. There are no DEQ permits issued to facility:

Reviewers: William R Bree



Tax Credit Review Report

07/28/98 10:09 AM

Director's
Recommendation: **APPROVE**

Applicant **Willamette Industries, Inc.**
Application No. **5030**
Facility Cost **\$38,614**
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 paper mill; taking tax relief under taxpayer identification number 93-0312940. The applicant is the owner of the facility. The applicant's address is:

**Willamette Industries, Inc.
1300 SW Fifth Avenue, Suite 3800
Portland, OR 97201**

Facility Identification

The certificate will identify the facility as:

Sanderdust storage and utilization equipment.

The facility is located at:

**55 SW Division
Bend, OR 97702**

Technical Information

Production lines were modified to utilize 100% of the plant's sanderdust production as raw material in the board production process. A 61' screw conveyor was installed. Line 1 delivery system was modified. Line 2 delivery system was modified to install additional drives & controls to redirect 2 screws to the face blender.

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>	06/24/1998
<i>Application Substantially Complete</i>	8/1/1998
<i>Construction Started</i>	03/26/1996
<i>Construction Completed</i>	07/31/1996
<i>Facility Placed into Operation</i>	07/31/1996

Facility Cost

Facility Cost	\$38,614
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$38,614

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000, therefore, an independent accounting review was not required.

Facility Cost Allocable to Pollution Control

According to ORS.190 (3), the facility cost does not exceed \$50,000; 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 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: Air Discharge Permit 09-0002 7/20/83
120W Storm Water permit

Reviewers: William R Bree



Tax Credit Review Report

07/28/98 10:09 AM

Director's
Recommendation: **APPROVE**

Applicant **UNITED DISPOSAL SERVICE, INC.**
Application No. **5031**
Facility Cost **\$6,286**
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 recycling business taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

**United Disposal Service, Inc.
2215 N Front St
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**1,000 fire red 14-gallon recycle bins and 487
storehouse white 13-gallon recycle bins.**

The facility is located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

These bins are used for the collection of recyclable material from residential 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>07/02/1998</u>
<i>Application Substantially Complete</i>	<u>8/01/1998</u>
<i>Construction Started</i>	<u>05/10/1998</u>
<i>Construction Completed</i>	<u>05/29/1998</u>
<i>Facility Placed into Operation</i>	<u>06/15/1998</u>

Facility Cost

Facility Cost		\$6,286
Salvage Value	\$	-
Government Grants	\$	-
Other Tax Credits	\$	-
Insignificant Contribution ORS 468.155(2)(d)	\$	-
Ineligible Costs	\$	-
Eligible Facility Cost		<u>\$6,286</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent 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. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility.

DEQ permits issued to facility:

Reviewers: William R Bree



Tax Credit Review Report

07/28/98 10:09 AM

Director's
Recommendation: **APPROVE**

Applicant **Corvallis Disposal Co.**
Application No. **5032**
Facility Cost **\$24,647**
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 recycling business; taking tax relief under taxpayer identification number 93-0422468. The applicant is the owner of the facility. The applicant's address is:

**Corvallis Disposal Co.
PO Box 1
Corvallis, OR 97339**

Facility Identification

The certificate will identify the facility as:

Ten 1-yd self-dumping hopper style containers. One 30-yd SC style drop box with domed crank-up lid. one 40-yd newsprint style drop box, 30-yd newsprint style drop box

The facility is located at:

**110 NE Walnut Blvd.
Corvallis, OR 97330**

Technical Information

This equipment is used to collect and process recyclable material from both commercial and residential 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>07/08/1998</u>
<i>Application Substantially Complete</i>	<u>08/01/1998</u>
<i>Construction Started</i>	<u>12/03/1997</u>
<i>Construction Completed</i>	<u>12/20/1997</u>
<i>Facility Placed into Operation</i>	<u>12/30/1997</u>

Facility Cost

Facility Cost	\$24,647
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution ORS 468.155(2)(d)	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$24,647</u>

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent 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. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility:

Reviewers: William R Bree



Tax Credit Review Report

07/28/98 10:09 AM

Director's
Recommendation: **APPROVE**

Applicant **Capitol Recycling & Disposal, Inc.**
Application No. **5033**
Facility Cost **\$29,918**
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 recycling business taking tax relief under taxpayer identification number 93-1197641. The applicant is the owner of the facility. The applicant's address is:

**Capitol Recycling & Disposal Co.
1890 16th Street, SE
Salem, OR 97302**

Facility Identification

The certificate will identify the facility as:

Ten 30-yd SC style standard drop boxes

The facility is located at:

**1890 16th Street SE
Salem, OR 97302**

Technical Information

This equipment is used to collect recyclable material from commercial collection 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>07/08/1998</u>
<i>Application Substantially Complete</i>	<u>08/01/1998</u>
<i>Construction Started</i>	<u>08/01/1996</u>
<i>Construction Completed</i>	<u>08/22/1996</u>
<i>Facility Placed into Operation</i>	<u>09/01/1996</u>

Facility Cost

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

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000 and therefore, an independent accounting review was not required.

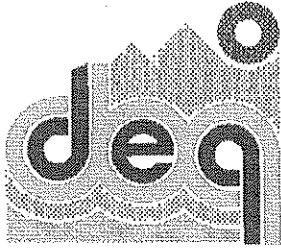
Facility Cost Allocable to Pollution Control

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. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility:

Reviewers: William R Bree



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **APPROVE**

Applicant **Portland General Electric Company**
Application No. **5034**
Facility Cost **\$23,835**
Percentage Allocable **100%**
Useful Life **10 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 provider of electrical services, taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon Street
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

A car washing and disposal facility consisting of 100 square feet concrete pad, a lined evaporation lagoon and associated plumbing system.

The facility is located at:

**Round Butte Plant
726 SW Lower Bend Road
Madras, OR 97741**

Technical Information

The claimed facility consists of a car wash concrete pad with a concrete containment berm that drains to a lined evaporation lagoon. The concrete pad is approximately 100 square feet with buried drain lines. The evaporation lagoon is 5 feet deep with a bottom of 30 feet on each side and a slope of 1:3 on all sides lined with reinforced polypropylene.

There is no discharge of wastewater to the waters of the state.

Eligibility

ORS 468.155 The **sole purpose** of this facility is to control a substantial quantity of water
(1)(a) pollution.

ORS 468.155 This control is accomplished with the use of treatment works for industrial waste
(1)(b)(A) 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>7/10/98</u>
<i>Application Substantially Complete</i>	
<i>Construction Started</i>	<u>12/14/94</u>
<i>Construction Completed</i>	<u>7/22/96</u>
<i>Facility Placed into Operation</i>	<u>7/22/96</u>

Facility Cost

Facility Cost	\$23,835
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$23,835</u>

Invoices or canceled checks substantiated the cost of the facility.

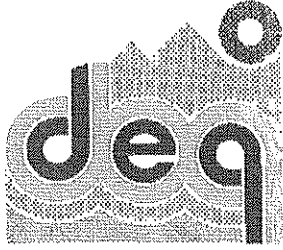
Facility Cost Allocable to Pollution Control

According to ORS 468.190 (3), the only factor used to determine the percentage of the facility cost allocable to pollution control 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. The collection and disposal of wastewater from car washing facility requires a waste discharge permit from the Department. However, washing of less than 8 cars per week is classified as de minimus activity and it does not require a permit from DEQ. The claimed facility is designed to wash less than 8 cars per week.

Reviewers: R. C. Dulay



Tax Credit Review Report

08/18/98 10:09 AM

Director's
Recommendation: **APPROVE**

Applicant **SCOTT ROTH**
Application No. **5037**
Facility Cost **\$8,750**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Field Burning Final Certification

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

Applicant Identification

The applicant is an individual operating as a "grass seed grower" taking tax relief under their social security number. The applicant is the owner of the facility. The applicant's address is:

Scott Roth
4389 Three Lakes Road SE
Albany, OR 97321

Facility Identification

The certificate will identify the facility as:

John Deere 1450, 6 bottom plow and a John Deere 115 15' flail chopper

The facility is located at:

36570 Spicer Drive
Lebanon, OR

Technical Information

The applicant has 50 perennial and 294 annual acres of grass seed under cultivation. The applicant has burned as much acreage as necessary to control weed and volunteer seeds that alternatives failed to control. With this equipment the applicant claims that he will be able to discontinue burning unless he experiences a serious weed or disease problem that can't be controlled any other way.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 (1)(a) The **principal purpose** of this **new machinery and equipment** is to prevent, control or reduce a substantial quantity of air pollution by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-026-0013.

- OAR 340-016-0025 (2)(f)(A) The equipment, facilities for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.
- ORS 468.155 (1)(b)(B) The reduction is accomplished by 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>	07/17/1998
<i>Application Substantially Complete</i>	7/29/1998
<i>Construction Started</i>	01/02/1998
<i>Construction Completed</i>	01/02/1998
<i>Facility Placed into Operation</i>	01/02/1998

Facility Cost

Facility Cost	\$8,750
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$8,750

An invoice substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent 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; 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 the facility cost allocable to pollution control is 100%.

Compliance

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

Reviewers: James Britton, Oregon Department of Agriculture

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT
POLLUTION PREVENTION PILOT PROGRAM

- | 1. | <u>Applicant</u> | <u>Mailing Address</u> |
|----|---|---|
| | Solem, Inc.
3430 Commercial Street SE
Salem, Oregon 97302 | 2523 N. Hayden Island Drive
Portland, Oregon 97217 |

The applicant owns and operates a dry-cleaning shop located at 3430 Commercial Street SE Salem, Oregon.

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

2. Description of Facility

The claimed facility is the conversion of a percholoroethylene (perc) dry-cleaning machine to facilitate the use of Exxon DF 2000 solvent. The conversion was installed as a replacement for a dry-cleaning machine that used perc as a solvent. The conversion eliminates the emissions of perc to the atmosphere.

Claimed Facility Cost: \$ 7,507

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 20, 1998. The Department received the application for final certification on July 17, 1998. The application was found to be complete when processed on July 29, 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 conversion of the 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 \$ 7,507 be issued for the facility claimed in Tax Credit Application No. T-5038.



Tax Credit Review Report

07/28/98 10:09 AM

Director's
Recommendation: **APPROVE**

Applicant **United Disposal Service, Inc.**
Application No. **5039**
Facility Cost **\$45,164**
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 recycling business; taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

**United Disposal Service, Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

Ten 48.9— yard SC style drop boxes, serial #'s 10348, 10349, 10350, 10351, 10352, 10353, 10354, 10355, 10356 & 10357. Two 30-yd SC style drop boxes, serial #'s 10455 & 10456.

The facility is located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

These drop boxes are used to collect recyclable material 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>	07/17/1998
<i>Application Substantially Complete</i>	08/10/1998
<i>Construction Started</i>	02/20/1998
<i>Construction Completed</i>	04/03/1998
<i>Facility Placed into Operation</i>	04/10/1998

Facility Cost

Facility Cost	\$45,164
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$45,164

Invoices or canceled checks substantiated the cost of the facility.

The facility cost does not exceed \$50,000 and therefore, an independent 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. Therefore, the percentage allocable to pollution control is 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility:

Reviewers: William R Bree



Tax Credit Review Report

Director's
Recommendation: **APPROVE**

Applicant **Avison Wood Specialties, Inc.**
Application No. **5044**
Facility Cost **\$67,820**
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 finger-jointed lumber manufacturer, taking tax relief under taxpayer identification number 93-1063909. The applicant is the owner of the facility. The applicant's address is:

Avison Wood Specialties, Inc.
PO Box 419
Molalla, OR 97038

Facility Identification

The certificate will identify the facility as:

**A baghouse manufactured by Fabric Filters
Air Systems, Inc. Model # 144-10TRL0D;
serial number 5290.**

The facility is located at:

**Avison Wood Specialties Dust
Collection**
14000 SW Molalla Ave.
Mollala, OR 97038

Technical Information

A baghouse was installed in a previously existing cyclone system to filter air contaminants. A new finger jointer was installed which generated a fine dust. The existing cyclone system could not handle the additional load generated by the new jointer. The baghouse was installed downstream of the cyclone fan. It is a Fabric Filters Air System, Model 144-10 TRL0D. Without the baghouse, the dust would be airborne and enter the atmosphere.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose** of this **new equipment installation** is to prevent, control or reduce a substantial quantity of air pollution in accordance with OAR 340-21-240.
- 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>	07/28/1998
<i>Application Substantially Complete</i>	8/15/98
<i>Construction Started</i>	1/19/98
<i>Construction Completed</i>	3/10/98
<i>Facility Placed into Operation</i>	3/10/98

Facility Cost

Facility Cost	\$ 67,820
Salvage Value	- 0
Government Grants	- 0
Other Tax Credits	- 0
Ineligible Costs	- 0
Eligible Facility Cost	\$ 67,820

The facility cost was greater than \$50,000 but less than \$500,000. Avison requested a waiver of the accounting review and provided their own statement of cost developed according to Department guidelines. Copies of invoices and canceled checks were included with the application. The documentation substantiated the cost of the facility.

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.

Factor	Applied to This Facility
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 15 years. No gross annual revenues were associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No alternatives investigated.
ORS 468.190(1)(d) Savings or Increase in Costs	There was a slight increase in operating costs.
ORS 468.190(1)(e) Other Relevant Factors	The system is located outdoors and is not part of a ventilation system.

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

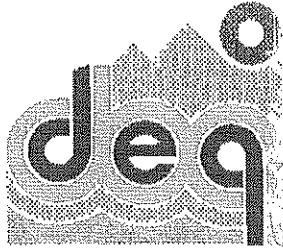
Compliance

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

DEQ permits issued to facility:

 Minimal Source Air Contaminant Discharge Permit #03-1772 (5/11/94)

Reviewers: Lois L. Payne, P.E., SJO Consulting Engineers
Maggie Vandehey, DEQ



Tax Credit Review Report

07/28/98 11:26 AM

Director's
Recommendation: **APPROVE**

Applicant: **Scheffel Farms, Inc.**
Application No. **5050**
Facility Cost **\$28,191**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is an S corporation operating as a grass seed farm; taking tax relief under taxpayer identification number 91-1792279. The applicant is the owner of the facility. The applicant's address is:

**Scheffel Farms Inc.
30060 Nixon Drive
Halsey, OR 97348**

Facility Identification

The certificate will identify the facility as:

A 27" Alloway wing flail chopper.

The facility is located at:

**30060 Nixon Drive
Halsey, OR 97438**

Technical Information

The applicant has 746 perennial acres and 500 annual acres under grass seed cultivation. Prior to using the flail chopper in their operation, the applicant used open field burning to remove straw from annual ryegrass fields and to remove straw and sanitize perennial grass seed fields.

With the flail chopper, annual fields are flail-chopped, then plowed or disked under before tilling and planting. In perennial fields, straw is baled and removed, then the remaining straw and stubble is flail-chopped. The applicant claims the flail chopper will reduce open field burning in 1998 by 29% over 1997.

Eligibility

ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.

ORS 468.155 (1)(a) The **principal purpose** of this **new machinery and equipment** is to

prevent, control or reduce a substantial quantity of air pollution by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-026-0013.

OAR 340-016-0025 (2)(f)(A) The equipment, facilities for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.

ORS 468.155 (1)(b)(B) The reduction is accomplished by 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>	08/05/1998
<i>Application Substantially Complete</i>	8/12/1998
<i>Construction Started</i>	11/01/1997
<i>Construction Completed</i>	11/01/1997
<i>Facility Placed into Operation</i>	11/01/1997

Facility Cost

Facility Cost	\$28,191
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$28,191

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

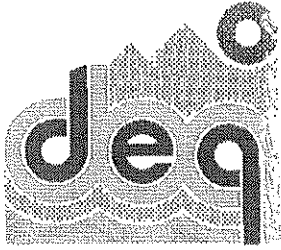
Facility Cost Allocable to Pollution Control

According to ORS 468.190 (3), the facility cost does not exceed \$50,000; 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 is 100%.

Compliance

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

Reviewers: James Britton, Oregon Department of Agriculture



Tax Credit Review Report

07/18/98 11:26 AM

Director's
Recommendation: **APPROVE**

Applicant **Scheffel Farms, Inc.**
Application No. **5051**
Facility Cost **\$39,835**
Percentage Allocable **100%**
Useful Life **7 years**

Pollution Control Facility: Field Burning Final Certification

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is an S corporation operating as a "grass seed grower"; taking tax relief under taxpayer identification number 91-1792279. The applicant is the owner of the facility. The applicant's address is:

**30060 Nixon Drive
Halsey, OR 97348**

Facility Identification

The certificate will identify the facility as:

A 25' 6" Kello-bilt dow disk.

The facility is located at:

**30060 Nixon Drive
Halsey, OR**

Technical Information

The applicant has 746 perennial acres and 500 annual acres under grass seed cultivation. Before using alternatives the applicant open field burned up to 100% of their grass seed acreage depending on the smoke management program and the weather.

With the use of this equipment that incorporates the straw into the soil the applicant claims that 66% of total acres farmed in 1997 were not burned.

Eligibility

- ORS 468.150 The equipment is an **approved alternative method** for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution.
- ORS 468.155 The **principal purpose** of this **new machinery and equipment** is to prevent, control or reduce a substantial quantity of air pollution by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-026-0013.
- (1)(a)

OAR 340-016-0025 (2)(f)(A) The equipment, facilities for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning.

ORS 468.155 (1)(b)(B) The reduction is accomplished by 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>8/05/1998</u>
<i>Application Substantially Complete</i>	<u>8/12/1998</u>
<i>Construction Started</i>	<u>8/10/1996</u>
<i>Construction Completed</i>	<u>8/10/1996</u>
<i>Facility Placed into Operation</i>	<u>8/10/1996</u>

Facility Cost

Facility Cost	\$39,835
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$39,835</u>

Invoices substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent accounting review was not required.

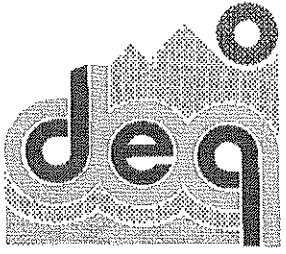
Facility Cost Allocable to Pollution Control

According to ORS 468.190 (3), the facility cost does not exceed \$50,000; 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 is 100%.

Compliance

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

Reviewers: James Britton, Oregon Department of Agriculture



Tax Credit Review Report

07/28/98 11:26 AM

Director's
Recommendation: **APPROVE**

Applicant **United Disposal Services, Inc.**
Application No. **5056**
Facility Cost **\$17,952**
Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility: Solid Waste

Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

Applicant Identification

The applicant is a C corporation operating as a recycling collection firm, taking tax relief under taxpayer identification number 93-0625022. The applicant is the owner of the facility. The applicant's address is:

**United Disposal Service Inc.
2215 N Front Street
Woodburn, OR 97071**

Facility Identification

The certificate will identify the facility as:

**six 30-yd standard drop boxes, serial numbers
10459, 10460, 10457, 10458, 10461 and 10462**

The facility is located at:

**2215 N Front Street
Woodburn, OR 97071**

Technical Information

These drop boxes are used to collect recyclable material from commercial collection service customers.

Eligibility

ORS 468.155 The **sole purpose** of **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>	08/10/1998
<i>Application Substantially Complete</i>	08/12/1998
<i>Construction Started</i>	03/15/1998
<i>Construction Completed</i>	04/30/1998
<i>Facility Placed into Operation</i>	05/11/1998

Facility Cost

Facility Cost	\$17,952
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution ORS 468.155(2)(d)	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	\$17,952

Invoices or canceled checks substantiated the cost of the facility. The facility cost does not exceed \$50,000; therefore, an independent 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; 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 is 100%.

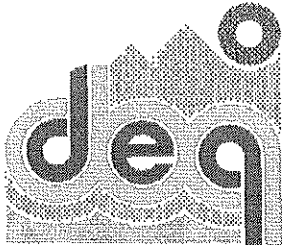
Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. There are no DEQ permits issued to this facility.

Reviewers: William R Bree

Attachment C

Denials



Tax Credit Review Report

Revised 7/10/97

Director's
Recommendation: **DENY**

Applicant **Portland General Electric Company**
Application No. **4455**
Claimed Facility Cost **\$55,520**
Claimed Percentage Allocable **100%**
Useful Life **10 years**

Pollution Control Facility Tax Credit: Air Final Certification

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

Applicant Information

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
1WTC-04-02
Portland, OR 97204**

Facility Information

The claimed facility is:

**A steel stack test platform to
provide access to conduct source
testing.**

The facility is located at:

**200 Ullman Blvd
Boardman, OR 97818**

Technical Information

The facility design includes a four foot wide platform that traverses the circumference of the eight foot diameter auxiliary stack. The platform has been designed to accommodate a working environment for performance of air emissions testing and access to the CEMS monitoring equipment.

Eligibility

ORS 468.155 (1)

The principal purpose of the facility is not pollution control since the facility was not required by the DEQ, federal EPA or a regional air pollution authority. The **sole purpose** of the **new structure** is not to prevent, control or reduce a substantial quantity of air pollution as the applicant claimed.

ORS 468.155
(1)(b)(B)

The claimed facility does not include any air pollution control equipment that may accomplish 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>	06/28/1995
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	11/15/1993
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Facility Cost	\$55,520
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	- \$ 55,520
Eligible Facility Cost	\$0

Cost allocation documentation substantiate the cost of the facility and the certified public accountant's statement performed by Coopers and Lybrand accompanied the application.

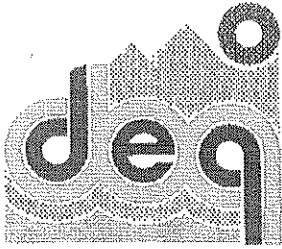
Facility Cost Allocable to Pollution Control

According to ORS 468.190(3), the applicant considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
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 for the return on investment is 30 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	Not a pollution control facility.

Since the facility is not eligible, the Department did not validate the applicant's claim that the percentage allocable to pollution control is 100%.

Reviewers: Dave Kauth
M.C. Vandehey



Tax Credit Review Report

Revised 7/10/97

Director's
Recommendation: **DENY - Ineligible Facility**

Applicant	Portland General Electric Co.
Application No.	4456
<u>Claimed</u> Facility Cost	\$24,110
<u>Claimed</u> Percentage Allocable	100%
Useful Life	10 years

Pollution Control Facility Tax Credit: Air Final Certification

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

Applicant Information

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant's address is:

**121 SW Salmon St.
1WTC-04-02
Portland, OR 97204**

Facility Information

The claimed facility is:

A steel stack test platform to provide access to conduct source testing.

The applicant is the owner of the facility located at:

**200 Ullman Blvd
Boardman, OR 97818**

Technical Information

The platform has been designed to accommodate a working environment for performance of air emissions testing and access to the CEMS monitoring equipment. Stack testing is required to demonstrate plant compliance with state and federal limits.

Eligibility

ORS 468.155 (1)(a) The **sole purpose** of the **new structure** is not to prevent, control or reduce a substantial quantity of air pollution.

ORS 468.155 (1)(b)(B) The claimed facility does not include any air pollution control equipment that may accomplish 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>	06/28/1995
<i>Application Substantially Complete</i>	11/23/1997
<i>Construction Started</i>	08/12/1993
<i>Construction Completed</i>	11/15/1993
<i>Facility Placed into Operation</i>	11/15/1995

Facility Cost

Facility Cost	\$ 24,110
Salvage Value	
Government Grants	
Other Tax Credits	
Insignificant Contribution (ORS 468.155(2)(d))	
Ineligible Costs	- \$ 24,110
Eligible Facility Cost	\$0

Cost allocation documentation substantiate the cost of the facility and the certified public accountant's statement performed by Coopers and Lybrand accompanied the application.

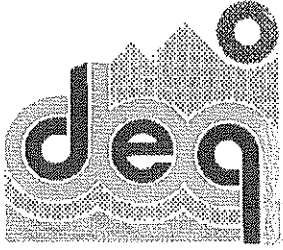
Facility Cost Allocable to Pollution Control

According to ORS 468.190(3), the applicant considered the following factors in the determination of the percentage of the facility cost allocable to pollution control.

Factor	Applied to This Facility
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 for the return on investment is 30 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	Not a pollution control facility.

Since the facility is not eligible, the Department did not validate the applicant's claim that the percentage allocable to pollution control is 100%.

Reviewers: Dave Kauth
M.C. Vandehey



Tax Credit Review Report

Revised 11/23/97

Director's
Recommendation: **DENY**

Applicant	Portland General Electric Company
Application No.	4458
<u>Claimed</u> Facility Cost	\$44,385
<u>Claimed</u> % Allocable	100%
Useful Life	10 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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility.

The applicant's address is:

**121 SW Salmon St. 1WTC-0402
Portland, OR 97204**

Facility Identification

The claimed facility is identified as:

D-15 cellular PVC drift eliminators for a cooling tower, manufactured by Munters Corporation.

The facility location is:

**Coyote Springs
200 Ullman Blvd.
Boardman, OR 97818**

Technical Information

The claimed facility consists of D-15 cellular PVC drift eliminators for a cooling tower. Drift eliminators are baffles through which the induced air draft passes before entering the fan. The main function of the drift eliminators is to reduce entrained water and thus reduce mist content in the air discharged from the fans of the cooling tower. These drift eliminators are located 24" above the distribution system and the applicant claimed they hold the cooling tower drift factor at or below 0.002% — the circulation rate as required by Condition V.D.1(4) of applicant's Approved Site Certificate from the Oregon Department of Energy (OAR 345-022-0060).

The cooling tower itself (not claimed on this application) is used to cool down hot water. A cooling tower is generally constructed of wood with multiple wood-slat decks. The water is

sprayed above the top deck and trickles down through several decks to the bottom collection basin. Fans are located on top of the tower which pulls up air counter-current to the water flow. Contact between water and air in the tower provides heat exchange or cooling effect.

There were no model or serial numbers included with the application.

Eligibility

- ORS (A) The facility does not meet the **principal purpose** criterion, as the applicant
468.155 claimed, because the requirement is not imposed by the Department, the federal
(1)(a) Environmental Protection or an Agency Regional Air Pollution Authority.

The facility was required by the Energy Facility Siting Council (EFSC) for the applicant to comply with Condition V.D.1(4).4 of its Approved Site Certificate Issued by the Oregon Department of Energy (OAR 345-022-0060). This rule requires the EFSC to find that the design, construction, operation and retirement of the power generating facility, taking into account mitigation, is consistent with the consistent with the fish and wildlife habitation mitigation goals and standards of OAR 635-415-0030 (Oregon Department of Fish & Wildlife).

- (B) The facility does not meet the **sole purpose** criterion because it does not prevent, control or reduce a substantial quantity of air, water or noise pollution.

The drift eliminator's "exclusive" purpose is not pollution control but to mitigate the impact of the operation of the power generating facility to wildlife habitat which is a beneficial use.

- ORS The prevention, control or reduction was not accomplished by:
468.155 (A) The disposal or elimination of or redesign to eliminate industrial waste and
(1)(b) the use of treatment works for industrial waste as defined in ORS 468.005(2).

ORS 468.005(2) defines industrial waste as any gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

The drift eliminator reduces the use of fresh water as makeup to the cooling water due to evaporative losses and cooling tower blowdown. It does not treat industrial wastewater.

Timeliness of Application

The application met the timing requirements of ORS 468.165 (6) as indicated.

<i>Application Received</i>	<u>06/28/1995</u>
<i>Application Substantially Complete</i>	<u>03/17/1997</u>
<i>Construction Started</i>	<u>08/12/1993</u>
<i>Construction Completed</i>	<u>08/12/1993</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

<i>Facility Cost</i>	\$44,385
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	<u>- \$44,385</u>
Eligible Facility Cost	\$ 0

Coopers & Lybrand L.L.P. performed accounting review submitted with the application.

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 for the purpose of the return on investment calculation is 30 years No return on investment.
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.

The applicant claimed the facility was 100% allocable to pollution control. The Department did not verify the percentage allocable since the facility is not eligible for certification as a pollution control facility.

Compliance

The applicant states this facility is in compliance with Department rules and statutes and with EQC orders. DEQ permits issued to this facility: Air Contaminant Discharge Permit No. 25-0031, issued May 31, 1994.

Reviewers: Renato Dulay
M.C. Vandehey



**Portland General
Electric**
*One World Trade Center
121 SW Salmon Street
Portland, OR 97204*

RECEIVED
JUN 8 1998
BUDGET DEPT.

June 4, 1998

Maggie Vandehey
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Re: Pollution Control Tax Credit Application No. 4458

Dear Ms. Vandehey:

I received the denial of Application No. 4458. I am therefore submitting some additional information and requesting reconsideration of this application based on the new information.

The documents show that by installing the drift eliminators PGE will not discharge water including concentrated salts in the cooling tower plume above the amounts stated in the Site Certificate as necessary to protect fish, wildlife, wetlands and surrounding vegetation.

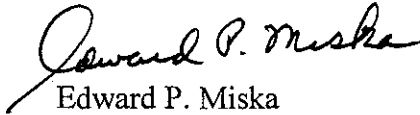
I acknowledge that this effort to control the pollution from the cooling tower is far in excess of standards required by the Department of Environmental Quality (DEQ), however, equipment installed in a facility solely for pollution control is eligible for the credit. The law controlling the eligibility of pollution control equipment for the credit requires the equipment to be solely for pollution control, which is the situation for the drift eliminators. The denial of a credit for these facilities which protect wildlife, wetlands, fish and vegetation near the Coyote Spring Generating Plant appears to be an indication that the DEQ and the Environmental Quality Commission are not really following their recently stated position of "allowing credit for extraordinary measures to prevent pollution." Discussions with you and Helen Lottridge at the last Tax Credit Advisory Committee meetings indicated that DEQ supported allowing the credit for facilities which go beyond what was required by DEQ. PGE is going the extra mile, but you are denying the credit.

I am submitting some additional information from the Energy Facility Siting Council to show its sole purpose. The document indicates that by installing the drift eliminators PGE will not be allowing salt concentrations to pollute the surrounding wet land, plants and wildlife.

Maggie Vandehey
June 4, 1998
Page Two

Please reconsider Application No. 4458 based upon the information in this letter and the attached documents.

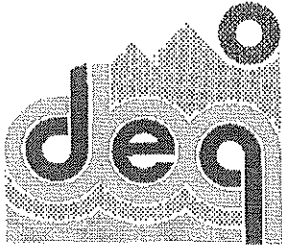
Sincerely,

A handwritten signature in cursive script that reads "Edward P. Miska".

Edward P. Miska
Manager of Taxes

enclosure

EPM60398.LTR



Tax Credit Review Report

Revised 6/25/98

Director's
Recommendation: **DENY**

Applicant	Portland General Electric Company
Application No.	4462
<u>Claimed</u> Facility Cost	\$391,052
<u>Claimed</u> 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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility. The applicant's address is:

**121 SW Salmon St.
1WTC-04-02
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

Rock & paving covering site.

The facility is located at:

**200 Ullman Blvd.
Boardman, OR 97818**

Technical Information

The facility includes coverage of all grounds except roads and parking lots in the form of either rock or paving. The applicant claims the purpose of the coverage is to mitigate dust at the site during and after construction.

Eligibility

ORS 468.155 (1) The **principal purpose** of this **improvement to land** is **not** to prevent, control or reduce a substantial quantity of air pollution as claimed by the applicant. The surface coverage was not required to comply with DEQ, EPA or a regional air pollution authority requirements.

ACDP 25-0031 does not require PGE to provide surface coverage of the grounds surrounding Coyote Springs.

The applicant references conditions 7 and G4. Conditions 7 and G4 do not require surface coverage. However, they do indicate it is the responsibility of the permittee to avoid nuisance conditions.

The applicant also references OAR 340-021-0050 through -0060 but these rules do not contain any reference that specifically requires the surface coverage performed at Coyote Springs. OAR 340-021-0055 defines the applicability of rules -0050 through -0060 to be only in special control areas or when ordered by the Department.

The surface coverage fails the **sole purpose** requirement since it was not installed for the “exclusive” purpose of pollution control. The Department asserts that the paving and gravel in this application is used as landscaping and ease of site maintenance.

ORS 468.155(2) This Department considered ORS 468.155(2) with ORS 468.155 (1) above.

“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:...

(B) Parking lots and road improvements;

(C) Landscaping; ...

Timeliness of Application

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

<i>Application Received</i>	<u>6/28/95</u>
<i>Application Substantially Complete</i>	<u>7/11/97</u>
<i>Construction Started</i>	<u>8/12/95</u>
<i>Construction Completed</i>	<u>11/15/95</u>
<i>Facility Placed into Operation</i>	<u>11/15/95</u>

Facility Cost

Facility Cost	\$391,052
Salvage Value	
Government Grants	
Other Tax Credits	
Insignificant Contribution (ORS 468.155(2)(d))	-\$ 391,052
Ineligible Costs	
Eligible Facility Cost	<u>0</u>

The Department did not perform an accounting review of this application.

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.

Factor	Applied to This Facility
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	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.

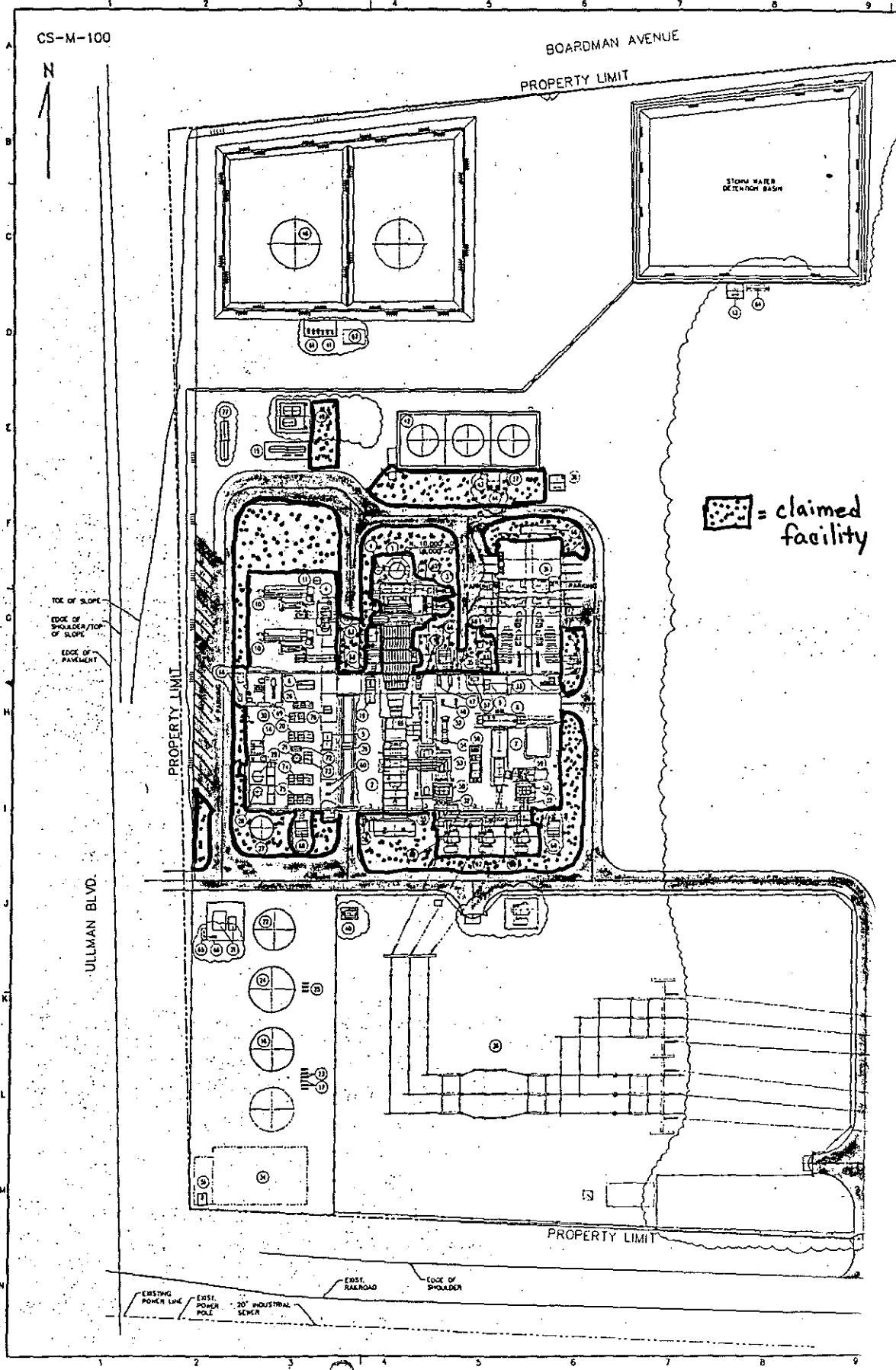
Considering these factors, the percentage allocable to pollution control is 100%.

Compliance

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

DEQ permits issued to facility: Air Contaminant Discharge Permit No. 25-0031

Reviewers: Dave Kauth
Maggie Vandehey



CS-M-100

BOARDMAN AVENUE

PROPERTY LIMIT

STORM WATER
DETENTION BASIN

Ullman Blvd.

PROPERTY LIMIT

PROPERTY LIMIT

EXISTING POWER LINE

EXIST. POWER POLE

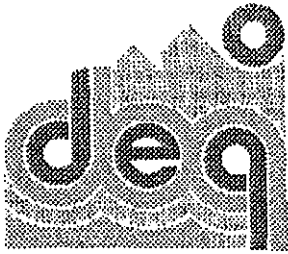
20" INDUSTRIAL SEWER

EXIST. RAILROAD

EDGE OF SHOULDER

TOE OF SLOPE
EDGE OF SHOULDER/TOP OF SLOPE
EDGE OF PAVEMENT

⊠ = claimed facility



Tax Credit Review Report

Revised 7/8/98

Director's

Recommendation: **DENY - Ineligible For
Certification**

Applicant **Portland General Electric Company**

Application No. **4463**

Claimed Facility Cost **\$500,738**

Claimed Percentage Allocable **100%**

Useful Life **10 years**

Pollution Control Facility Tax Credit: Air Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-050

The applicant is a C corporation operating as a supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant's address is:

**121 SW Salmon St.
1WTC-04-02
PORTLAND, OR 97204**

The claimed facility was identified as:

A multi-component continuous emissions monitor system (CEM) to measure, record and report carbon monoxide and NO_x pollutant emissions from the exhaust stack.

The applicant is the owner of the facility located at:

**Coyote Springs
200 Ullman Blvd
Boardman, OR 97818**

Technical Information

A continuous monitoring system was required by the DEQ. The system uses various sampling probes in the exhausts. Gas samples from the exhausts run to the NO_x and CO monitors located in an adjacent building. The system has a flow monitor to calculate emissions on an absolute (lb/hr) basis and an oxygen analyzer to calibrate emission readings. Based on experience with similar systems, the system will have less than a 5% error factor. The system will be used to meet regulatory reporting requirements and will be used to detect upward trends in plant emissions of NO_x and CO. This information will be used to change plant operating conditions so that emissions remain within permitted limits. The claimed facility is for monitoring emissions as required by the Air Contaminant

Discharge Permit, but does not reduce or control air emissions.

EQUIPMENT INCLUDES:

<u>Model</u>	<u>Serial #</u>	<u>Model</u>	<u>Serial #</u>
HRSG STACK NO _x ANALYZER ROSEMOUNT MD19S1C	1000116	HRSG STACK CO ANALYZER SEIMENS ULTRAMAT 5E NOIR	EZ-718
HRSG STACK O ₂ ANALYZER SEIMENS OXYMAT 5E PARAMAGNETIC	GZ-819	SCR INLET NO _x ANALYZER ROSEMOUNT MD19S1C	1000115
DAHS DATASTORE 486-66 W/345 MB HD, 16 MB RAM, 105 MB REM DISK	203670		

Eligibility

- ORS 468.155 (1)(a) The principal purpose of this new installation, equipment and devices is to meet the monitoring requirements of the Air Contaminant Discharge Permit No 25-0031 (DEQ) and 40CFR 60, Part 75 - Monitoring Requirements (EPA), not to prevent, control or reduce air pollution.
- ORS 468.155 (1)(b)(B) The claimed facility is a monitoring system and not an 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>06/28/1995</u>
<i>Application Substantially Complete</i>	<u>11/23/1997</u>
<i>Construction Started</i>	<u>08/12/1993</u>
<i>Construction Completed</i>	<u>08/12/1993</u>
<i>Facility Placed into Operation</i>	<u>11/15/1995</u>

Facility Cost

Facility Cost	\$500,738
Salvage Value	
Government Grants	
Other Tax Credits	
Insignificant Contribution (ORS 468.155(2)(d))	-\$500,738
Ineligible Costs	
Eligible Facility Cost	<u>\$0.0</u>

Summarized contractor invoices substantiate the cost of the facility and a certified public accountant's statement, by Coopers and Lybrand L.L.P., accompanied the application.



Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204

RECEIVED
AUG 6 1998
BUDGET DEPT.

August 5, 1998

Maggie Vandehey
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Ms. Vandehey:

I received the denial of application No. 4463, Continuous Emissions Monitoring System.

This system monitors emissions from the plant continuously and interfaces with a chemical injection system which is activated to reduce the pollutant NOx when certain levels of the NOx begin to approach maximum approved levels.

This continuous emission monitoring system does control the amount of NOx pollutant emitted from the plant and as such is a pollution control facility, which does both control and reduce air pollution by its integrated operation with the chemical (ammonia) injection system.

Please reconsider this application with the above additional information.

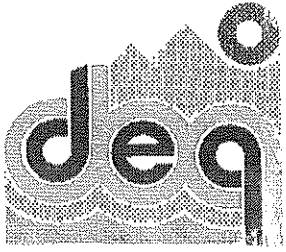
Thanks for your attention to this matter.

Sincerely,

Edward P. Miska
Corporate Tax Manager

EPM8598.LTR





Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **DENY - Ineligible Facility**

Applicant **Portland General Electric Company**
Application No. **4580**
Claimed Facility Cost **\$12,090**
Claimed % Allocable **100%**
Useful Life **10 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 supplier of electrical energy taking tax relief under taxpayer identification number 93-0256820. The applicant is the owner of the facility.

The applicant's address is:

**121 SW Salmon Street.
1WTC-0402
Portland, OR 97204**

Facility Identification

The certificate will identify the facility as:

**New supply line to transfer diesel oil from
railcar to the Beaver Generating Plant.**

The facility is located at:

**80997 Kallunki Rd
Clastskanie, OR 97016**

Technical Information

The facility consists of piping and valves. No alarms or spill containment areas are included in the application. Prior to the installation of the facility, the applicant off loaded diesel at a marine terminal located on the Columbia River. None of the materials examined for the review of this application suggests that the marine facilities will no longer be available should they be needed. In fact an October 31, 1994, letter from W. E. Mays to Jaisen Mody (both of PGE) states that "The existing barge facility will remain in its present condition. This will allow the system to be used during an emergency." PGE claims they are able to eliminate the possibility of an oil spill that may harm environmentally sensitive areas on the Columbia River by building the facility.

Eligibility - The Department recommends the Environmental Quality Commission deny this application because it fails to meet the definition of a pollution control facility:

ORS 468.155 The facility fails the **principal purpose** test because it was **not built** to meet a (1)(a) requirement imposed by the Department; federal Environmental Protection Agency or a Regional Air Pollution Authority. There is no federal regulation that prohibits the existing marine facility.

However, the applicant claims they would not have built this facility had there not been a requirement to prevent oil spill into the Columbia River. Citing 40 CFR 112 - Oil Pollution Prevention, the applicant claims there was no need to install the new facility had there been no environmental requirements regarding oil spills into the Columbia River, or if there would be an adequate way to contain spills had they occur.

The applicant claims the **sole purpose** of this installation is to prevent, control or reduce a substantial quantity of water pollution by off loading deisel fuel at an upland terminal rather than by marine terminal. The new fuel transfer facility located at the refurbished railcar unloading area is a duplicate of the transfer facility located at the dock. Without considering their respective proximity to an environmentally sensitive area, the new facility provides no greater prevention, control or reduction attributes than the marine facility.

PGE claims that a reduction in the price of fuel oil was not a consideration and, in fact, they pay a higher price when fuel is transported by railcar. By installing the upland facility, the applicant was able to avoid preparing a more expensive Spill Response Plan and more costly insurance. (Estimated cost of a Spill Response Plan is under \$20,000. The Department does not have a reliable estimate on insurance costs.)

OAR-016-025 Installation or construction of facilities which will be used to detect, deter, or (2)(g) prevent spills or unauthorized releases. The facility provides piping and valves but it does not provide a control that detects, deters or prevents a spill or unauthorized release. The equipment does not meet the definition of detecting, deterring, or preventing 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>01/10/1996</u>
<i>Application Substantially Complete</i>	<u>11/23/98</u>
<i>Construction Started</i>	<u>11/24/94</u>
<i>Construction Completed</i>	<u>2/28/95</u>
<i>Facility Placed into Operation</i>	<u>2/28/95</u>

Facility Cost

	\$12,090
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	<u>-\$12,090</u>
Eligible Facility Cost	\$0

Invoices and job cost details substantiated the facility cost claimed on the application.

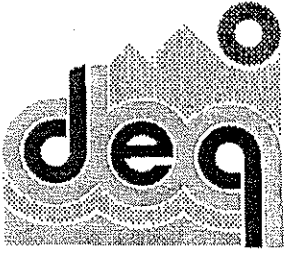
Facility Cost Allocable to Pollution Control

According to ORS 468.190 (3), the only factor that would have been 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.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. No DEQ permits were required for this facility.

Reviewers: Elliot J. Zais, PhD, PE
 M.C.Vandehey



Tax Credit Review Report

Revised 9/30/97

Director's
Recommendation: **DENY – Certificate Already
Issued**

Applicant	Elf Atochem North America
Application No.	4893
<u>Claimed</u> Facility Cost	\$1,487,995
<u>Claimed</u> Percentage Allocable	100%
Useful Life	10 years

Final Certification - Air Quality

ORS 468.150 -- 468.190

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

Applicant Identification

The applicant is a C corporation operating as a electrochemical plant taking tax relief under taxpayer identification number 23-0960890.

The applicant is the owner of the facility. The applicant's address is:

**6400 NW Front Avenue
Portland, OR 97210**

Facility Identification

The certificate will identify the facility as:

The facility is an Emergency Chlorine Scrubber consisting of a spray tower followed by two packed bed columns operation in parallel.

The facility is located at:

**6400 NW Front Avenue
Portland, OR 97210**

Technical Information

The applicant received Pollution Control Facility Certificate Number 2740 on December 13, 1991, for a two stage emergency chlorine seal scrubbers. At the same time the applicant received two other certificates. Certificate number 2949 was for a Ceicote scrubber with a 5-foot packed bed followed by a 12-inch mist eliminator. The system included a fan, motor and pH monitoring system. Certificate number 2762 was for a 24" diameter Norcor packed tower scrubber, a 400 cfm fan, 6" PVC piping and a concrete secondary containment basin.

Eligibility According to 468.155 (2) "Pollution control facility" or "facility" does not include:

468.155 (2)(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

468.155 (2) (e)(A) **Like-for-Like Replacement:** No new DEQ, federal Environmental Protection Agency or "regional air pollution authority" requirements were imposed on the applicant since the purchase of the original scrubber. Therefore, this facility is excluded for the definition of a pollution control facility.

468.155 **Replacement:** The original scrubber was not replaced before the end of its useful life as
(2) (e)(B) claimed to the DEQ on the original application or to the Oregon Department of Revenue;
therefore, the facility is not eligible for the remainder of the tax credit certified to the
original facility.

Timeliness of Application

The application was submitted within the timing requirements of ORS 468.165 (6).	<i>Application Received</i>	<u>12/9/97</u>
	<i>Application Substantially Complete</i>	<u>4/21/1998</u>
	<i>Construction Started</i>	<u>10/1/94</u>
	<i>Construction Completed</i>	<u>3/1/96</u>
	<i>Facility Placed into Operation</i>	<u>3/1/96</u>

Facility Cost

Facility Cost	\$1,487,995
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$1,487,995
Eligible Facility Cost	0

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the following factors would have been 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 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.

Compliance

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

Reviewers: Maggie Vandehey
Dave Kauth

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: ATOCHEM NORTH AMERICA BASIC CHEMICALS DIVISION P.O. Box 4102 Portland, OR 97208	Location of Pollution Control Facility: 6400 N.W. Front Portland, Oregon
As: () Lessee (x) Owner	
Description of Pollution Control Facility: Two-stage emergency chlorine seal scrubber.	
Type of Pollution Control Facility: (x) Air () Noise () Water () Solid Waste () Hazardous Waste () Used Oil	
Date Facility was Completed: 4/12/90 Placed into Operation: 4/12/90	
Actual Cost of Pollution Control Facility: \$345,213.00	
Percent of Actual Cost Properly Allocable to Pollution Control: 100%	

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

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

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

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

Signed: William W. Wessinger
Title: William W. Wessinger, Chairman

Approved by the Environmental Quality Commission
on the 13th day of December, 1991.

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: ATOCHEM NORTH AMERICA P.O. Box 4102 Portland, OR 97208	Location of Pollution Control Facility: 6400 N.W. Front Portland, Oregon
As: () Lessee (x) Owner	
Description of Pollution Control Facility: A Ceilcote scrubber with a 5-foot packed bed followed by a 12-inch mist eliminator. The system included a fan, motor and pH monitoring system.	
Type of Pollution Control Facility: (x) Air () Noise () Water () Solid Waste () Hazardous Waste () Used Oil	
Date Facility was Completed: 3/30/90 Placed into Operation: 3/30/91	
Actual Cost of Pollution Control Facility: \$44,140.00	
Percent of Actual Cost Properly Allocable to Pollution Control: 100%	

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

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

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

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

Signed: William W. Wessinger
Title: William W. Wessinger, Chairman

Approved by the Environmental Quality Commission
on the 13th day of December, 1991.

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: ATOCHEM NORTH AMERICA BASK CHEMICALS DIVISION P.O. Box 4102 Portland, OR 97208	Location of Pollution Control Facility: 6400 NW Front Ave. Portland, OR
As: () Lessee (x) Owner	
Description of Pollution Control Facility: A 24" diameter Norcore packed tower scrubber, a 400 cfm fan, 6" PVC piping and a concrete secondary containment basin.	
Type of Pollution Control Facility: (x) Air () Noise () Water () Solid Waste () Hazardous Waste () Used Oil	
Date Facility was Completed: 8/30/90 Placed into Operation: 8/31/90	
Actual Cost of Pollution Control Facility: \$77,697.50	
Percent of Actual Cost Properly Allocable to Pollution Control: 100%	

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

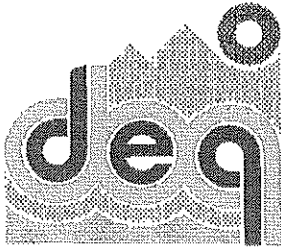
Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

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

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

Signed: William W. Wessinger
Title: William W. Wessinger, Chairman

Approved by the Environmental Quality Commission
on the 13th day of December, 1991.



Director's
Recommendation: **DENY - Facility Certified
on Certificate Number 2492**

Tax Credit Review Report

Revised 9/30/97

Applicant	Cain Petroleum, Inc.
Application No.	4972
Claimed Facility Cost	\$148,893
Claimed Percentage Allocable	100%
Useful Life	7 years

Pollution Control Facility: USTs 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 retail gas station taking tax relief under taxpayer identification number 93-013295. The applicant is the owner of the facility. The applicant's address is:

**2624 Pacific Ave.
Forest Grove, OR 97116**

Facility Identification

The certificate will identify the facility as:

Upgrade underground tank system.

The facility is located at:

**9 SE 82nd Ave.
Portland, OR 97214**

Technical Information

The applicant claimed 100 feet of fiberglass piping and 350 feet of flexible plastic piping. They also claimed 6 spill containment basins, a tank monitoring system, an overfill alarm, automatic shutoff valves, and Stage 1 and II vapor recovery equipment.

Eligibility

ORS 468.155 (1)(a) The **principal purpose** of this **replacement installation and equipment** is to prevent, control or reduce a substantial quantity of air and water pollution. The requirement is imposed by the federal Environmental Protection Agency.

OAR 340-16-025(g) **Reconstruction and Replacement:** The claimed facility replaced a facility that received tax credit certificate number 2492 on April 26, 1991. The applicant has taken the tax credit available under certificate number 2492 and therefore, this facility is not eligible as a replacement facility. DEQ or the federal Environmental Protection Agency has not imposed requirements that are different than the requirements in place when certificate number 2492 was issued. Therefore, the facility is not eligible as a like-for-like replacement facility.

OAR-016-0025 (2)(g) The facility 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>4/1/98</u>
<i>Application Substantially Complete</i>	<u>6/22/1998</u>
<i>Construction Started</i>	<u>8/15/95</u>
<i>Construction Completed</i>	<u>6/28/96</u>
<i>Facility Placed into Operation</i>	<u>6/28/96</u>

Facility Cost

Facility Cost	\$148,893
Ineligible Costs	-\$ 148,893
Eligible Facility Cost	<u>\$0</u>

Weir H. Owens 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.

<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 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 would have been 100%.

Compliance

The facility is in compliance with Department rules and statutes and with EQC orders. Especially, Underground Storage Tank requirements under OAR Chapter 340, Division 150.

Reviewers: Barbara J Anderson
Margaret C. Vandehey

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: L. P. Busch, Inc. 2624 Pacific Ave. Forest Grove, OR 97116	Location of Pollution Control Facility: 9 S. E. 82nd Ave. Portland, Oregon
As: () Lessee (x) Owner	
Description of Pollution Control Facility: Installation of three STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, line leak detectors, float vent valves, sumps and Stage I & II vapor recovery.	
Type of Pollution Control Facility: () Air () Noise (x) Water () Solid Waste () Hazardous Waste () Used Oil	
Date Facility was Completed: 2/90 Placed into Operation: 2/90	
Actual Cost of Pollution Control Facility: \$ 83,038.00	
Percent of Actual Cost Properly Allocable to Pollution Control: 88%	

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

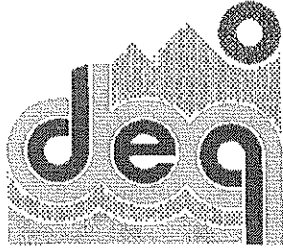
Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

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

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

Signed: William P. Hutchison, Jr.
Title: William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission
on the 26th day of April, 1991.



Tax Credit Review Report

05/21/98 4:31 PM

Director's
Recommendation: **DENY – Certificate Already
Issued**

Applicant	Herndon, Tom
Application No.	5011
Claimed Facility Cost	\$117,525
Claimed Percentage Allocable	100%
Useful Life	7 years

Pollution Control Facility: Field Burning Final Certification

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

Applicant Identification

The applicant is an individual operating as a farm taking tax relief under taxpayer identification number 540-50-4133. The applicant is the owner of the facility. The applicant's address is:

Herndon, Tom
27252 Irish Bend Loop
Halsey, OR 97348

Facility Identification

The certificate will identify the facility as:

**1997 John Deere 8300 tractor S.N. RW
8300P010128**

The facility is located at:

29702 Nicewood Drive
Halsey, OR 97348

Technical Information

The applicant received Pollution Control Facility Certificate Number 2134 on March 2, 1990, for a John Deere tractor. The applicant was not aware that replacement facilities were not included in the definition of a pollution control facility.

Eligibility According to 468.155 (2) "Pollution control facility" or "facility" does not include:
468.155 (2)(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

468.155 (2) (e)(A) **Like-for-Like Replacement:** No new DEQ, federal Environmental Protection Agency or "regional air pollution authority" requirements were imposed on the applicant since the purchase of the original tractor. Therefore, this facility is excluded for the definition of a pollution control facility.

468.155 (2) (e)(B) **Replacement:** The original tractor was not replaced before the end of its useful life as claimed to the DEQ on the original application or to the Oregon Department of Revenue;

therefore, the facility is not eligible for the remainder of the tax credit certified to the original facility.

Timeliness of Application

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

<i>Application Received</i>	<u>05/11/1998</u>
<i>Application Substantially Complete</i>	<u>5/20/1998</u>
<i>Construction Started</i>	<u>01/01/1998</u>
<i>Construction Completed</i>	<u>01/01/1998</u>
<i>Facility Placed into Operation</i>	<u>01/01/1998</u>

Facility Cost

Facility Cost	\$117,525
Salvage Value	
Government Grants	
Other Tax Credits	
Ineligible Costs	<u>(\$117,525)</u>
Eligible Facility Cost	<u>0</u>

Facility Cost Allocable to Pollution Control

According to ORS.190 (1), the facility cost exceeds \$50,000. However, the Department did not verify the following factors.

<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 were 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.

Compliance

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

Reviewers: James Britton
Maggie Vandehey

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2134

Date of Issue 3/02/90

Application No. T-3135

POLLUTION CONTROL FACILITY CERTIFICATE

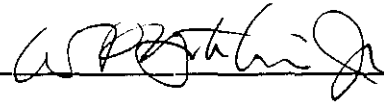
Issued To: Tom Herndon 27252 Irish Bend Loop Halsey, OR 97348	Location of Pollution Control Facility: 29702 Nicewood Drive Halsey, OR
As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner	
Description of Pollution Control Facility: 1988 John Deere 4650 tractor	
Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil	
Date Pollution Control Facility was completed: <u>12/22/88</u> Placed into operation: <u>7/01/89</u>	
Actual Cost of Pollution Control Facility: \$ <u>52,508.00</u>	
Percent of actual cost properly allocable to pollution control: 100 percent	

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

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

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

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

Signed 

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on
the 2nd day of March, 1990.

Attachment D

Certificate Revocation



RECEIVED
JUL 28 1998
BUDGET DEPT.

**Portland General
Electric**
One World Trade Center
121 SW Salmon Street
Portland, OR 97204

Maggie Vandehey,
Director, Tax Credit Program
Oregon Department of
Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

July 23, 1998

Re: Pollution Control Tax Credit
Certificate No. 3158

Dear Ms. Vandehey,

Pursuant to the rules under ORS 315.304, this letter is to notify you that we have taken the above referenced pollution control facility out of service in June of 1998.

Accordingly, PGE will claim a tax credit for the months the facility was in service during 1998, January through May, 1998. I am enclosing a copy of the Certificate for this facility for your reference.

Sincerely,

A handwritten signature in cursive script that reads "Edward P. Miska".

Edward P. Miska
Corporate Tax Manager

cc: Preston Martin, PGE

EPM:jn

STATE OF OREGON
 DEPARTMENT OF ENVIRONMENTAL QUALITY
POLLUTION CONTROL FACILITY CERTIFICATE

Certificate No: 3158
 Date of Issue: 9/10/93
 Application No: 3999

ISSUED TO:
 Portland General Electric Company
 121 SW Salmon Street, 1WTC-10
 Portland, Oregon 97204

LOCATION OF POLLUTION CONTROL FACILITY:

 14655 SW Old Schools Ferry Road
 Beaverton, Oregon

ATTENTION: Ed Miska

Facility 885

AS: () LESSEE (X) OWNER () INDIV () PARTNER (X) CORP () NON-PROFIT () CO-OP

DESCRIPTION OF POLLUTION CONTROL FACILITY:
 Three double wall aboveground tanks, spill containment basins, tank monitor, overflow alarm, monitoring wells, sumps, automatic shutoff valves, an oil/water separator and Stage I and II vapor recovery equipment.

TYPE OF POLLUTION CONTROL FACILITY:
 () AIR () NOISE (X) WATER () SOLID WASTE () HAZARDOUS WASTE () USED OIL

DATE FACILITY COMPLETED: 11/01/92 PLACED INTO OPERATION: 11/01/92

ACTUAL COST OF POLLUTION CONTROL FACILITY: \$141,146.00

PERCENT OF ACTUAL COST PROPERLY ALLOCABLE TO POLLUTION CONTROL: 97%

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

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

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

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

Signed: William W. Wessinger (William W. Wessinger, Chairman)
 Approved by the Environmental Quality Commission on the 10th day of September, 1993.

CERTIFICATE TRANSFER

From: ^C To: ^C

Signed: _____ (William W. Wessinger, Chairman)

Approved by the Environmental Quality Commission on the ^C day of ^C, 1992.

Attachment E

Clarification: Mt. Hood Metals



Tax Credit Review Report

Revised 9/30/97

Director's Recommendation: **APPROVE**

Applicant	Mt. Hood Metals, Inc.
Application No.	4933
Facility Cost	\$877,644
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

CORRECT VERSION

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>	<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	\$884,321
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	
Fire wall	-\$ 6,677
Eligible Facility Cost	<u>\$877,644</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	years. No gross annual revenues associated 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 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

ERRONEOUS VERSION

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>	<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	\$884,321
Salvage Value	\$ -
Government Grants	\$ -
Other Tax Credits	\$ -
Insignificant Contribution (ORS 468.155(2)(d))	\$ -
Ineligible Costs	\$ -
Eligible Facility Cost	<u>\$884,321</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 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.

<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 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.

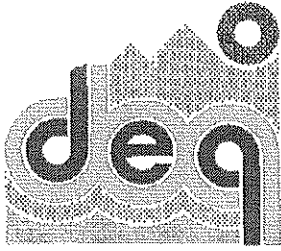
DEQ permits issued to facility:

1200R Storm Water permit. 1200Z is pending development of a special 1200Z permit for Columbia Slough facilities.

Reviewers: Elliot J. Zais
Symonds Evans & Larson

Attachment F

Department Rejections



**Rejected by the Department
Untimely Response**

Tax Credit Review Report

Applicant	Willamette Industries, Inc.
Application No.	4800
<u>Claimed</u> Facility Cost	\$110,418
<u>Claimed</u> 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:

Negative air and screening system

The facility is located at:

**2550 Old Salem Road NE
Albany, OR 97321**

Technical Information

This application is for an 80,000 cfm negative air and screening system installed to capture emissions at the truck doorway in the truck dump area. The system consists of a 10' x 42' air hood and a negative air knife, and ducting. The system is installed above the extended door opening and the duct routes the dusty air from the air hood to the inlet of the #1 and #2 green refiners. The system includes two Siemens 200 Hp fan motors installed to handle the increased load on the fan system.

This system reduces fugitive emissions that would otherwise be released into the atmosphere by approximately 50%. The exact quantity of particulate has not been measured; the estimate is based on the expected performance of the system.

This is an effective system design for capturing fugitive emissions.

Eligibility

- ORS 468.155 (1)(a) The **principal purpose of this new negative air and screening system equipment and installation** is to prevent, control or reduce a substantial quantity of air pollution. Mutual Agreement and Order No. AQP-WR-94-331 between the DEQ and Willamette Industries required this system be operational on or before March 1, 1996.
- 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).

The applicant did not respond to the reviewer's request for additional information by April 11, 1998; 180 days from the date the information was requested. The applicant did not request in writing additional time to submit the information.

<i>Application Received</i>	<u>7/21/97</u>
<i>Additional Information Requested</i>	<u>10/13/97</u>
<i>Additional Information Provided</i>	<u>6/5/98</u>
<i>Application Substantially Complete</i>	<u>6/8/98</u>
<i>Construction Started</i>	<u>5/1/95</u>
<i>Construction Completed</i>	<u>10/31/95</u>
<i>Facility Placed into Operation</i>	<u>10/31/95</u>

If the Department determines the application is incomplete for processing and the applicant fails to submit requested information within 180 days of the date when the Department requested the information, the application will be rejected by the Department unless applicant requests in writing additional time to submit requested information; OAR 340-016-0020(h). Hist.: ...DEQ 6-1990, f. & cert. ef. 3-13-90

Facility Cost

Facility Cost	\$ 110,418
Salvage Value	\$ - 0
Government Grants	\$ - 0
Other Tax Credits	\$ - 0
Ineligible Costs	\$ - 0
Eligible Facility Cost	<u> </u>

Copies of invoices were provided which substantiated most of the cost of the facility. Invoices were not provided for site preparation/installation (\$2,774) and for electrical materials and installation (\$1994). 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.

Factor	Applied to This Facility
ORS 468.190(1)(a) Salable or Usable Commodity	The applicant does not receive income from the captured emissions, it reduces their loss of product.
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 are associated with this facility.
ORS 468.190(1)(c) Alternative Methods	No other alternatives were considered.
ORS 468.190(1)(d) Savings or Increase in Costs	There are no savings or increase in costs from the facility.
ORS 468.190(1)(e) Other Relevant Factors	The duct system is located outdoors; it is not part of a ventilation system.

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

Compliance/Other Tax Credits

The facility complies with Department statutes and permit requirements. DEQ permits issued to facility: NPDES No. 100658, May 4, 1990.

Reviewers: Lois L. Payne, SJO Consulting Engineers, Inc.
Dennis E. Cartier, Associate, SJO Consulting Engineers, Inc.
Maggie Vandehey, DEQ

Attachment G

***TOPIC:
Replacement or
Reconstruction***

TOPIC: Replacement or Reconstruction

This guidance document expresses the Department's interpretation of statute.

The tax credit rules and statutes are not intended to provide ongoing relief. They are intended to provide a one-time incentive for providing an environmental benefit or to reduce the cost of the initial compliance with an environmental regulation. Therefore, replacement or reconstruction of all or any part of a facility that has previously been issued a tax credit certificate are not eligible for a second tax credit except as described in this document.

Citation ORS 468.155

Definitions for ORS 468.155 to 468.190.

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

(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility;

(2)(e)(A) The "*requirement imposed*" refers to the replacement facility not the certified replaced facility. According to Attorney General's advice, "... if DEQ has issued a certificate for a facility, it cannot issue a new certificate for a replacement unless the *replacement* was required by DEQ, EPA or LRAPA. ..."

The Department would process the application for certification of the replacement facility just like any other application and the fees due would be based on the fee structure in effect at the time of application. The original certificate for the replaced facility would be revoked and a new certificate would be issued bearing the like-for-like replacement cost.

If the applicant installed the replacement facility in response to a new DEQ, EPA or a regional air pollution authority requirement then the facility cost would be certified for the difference between:

The cost of the replacement facility multiplied by the percent allocable to pollution control, and

The like-for-like replacement cost of the replaced facility multiplied by the percent allocable to pollution control.

Like-for-like replacement does not consider the depreciation of the facility or even if the facility could be built. It does consider that if it was built today how much would it cost based on inflation.

The Department uses the Consumer Price Index to help determine the like-for-like replacement cost. The Consumer Price Index (CPI) - All Urban Consumers is published by the Bureau of Labor Statistics and may be found in the Tax Credit Department or <http://stats.bls.gov/cgi-bin/surveymost>.

Example 1

Facility A (replaced facility) The certificate issued to the replaced facility bears a facility cost of \$100,000 and 86% of the facility cost allocable to pollution control. Therefore, the amount of the facility cost allocable to pollution control is \$86,000. Facility A began operations in May of 1990 when CPI was 129.2.

Facility B (replacement facility) The cost of Facility B is \$215,000 and the facility cost allocable to pollution control is 94%. Facility B began operations in December of 1996 when CPI was 156.9.

The like-for-like replacement cost of Facility A would be \$104,438 calculated by:

	\$ 86,000	—Amount allocated to pollution control (Facility A certificate)
X	1.2144	—Subtract 5/90 CPI from 2/96 CPI (156.9 - 129.2 = 27.70) Divide results by 5/90 CPI (27.70 ÷ 129.2 = 21.44%) Add 100% to results (1.0 + .2144) = 1.2144
	\$104,438	Like-for-like replacement cost of Facility A

The new certificate in this example would bear the facility cost of \$110,562 (\$215,000 - 104,438 = \$110,562) and 94% allocable to pollution control.

2(e)(B)

If the applicant installed the replacement facility but no new requirements were imposed by DEQ, EPA or a regional air pollution authority, the applicant is not eligible for a tax credit unless there is tax credit available under the original certificate (ORS 468.155 (2)(e)(B)). The certificate would be reissued for no more than the original certified facility cost and percentage allocable to pollution control.

The application for certification of the replacement facility would be processed like any other application and the fees due would be based on the fee structure in effect at the time of application. It is the Applicant's responsibility to determine if there is any remaining tax relief value to the original certificate before submitting an application and the fee for certification of the replacement facility.

DEQ does not know the useful life reported to the Department of Revenue, the amount of the tax credit taken, or the amount carried forward to another tax year. In ORS 468.155 2(e)(B) "useful life" refers to the period over which the applicant takes

the tax credit (not the useful life of the facility as used in the Average Annual Cash Flow calculations). ORS 468.170 (7) states the certificate "...shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief ..." (Please note: Even though the certificate is granted for 10 consecutive years the period over which the applicant may take tax relief is 10 years or the useful life of the facility whichever is the least number of years.)

When determining if a cost is eligible or allocable to pollution control, DEQ does not have authority to reduce either based on the amount of any tax relief already taken from a taxpayer's Oregon tax liability. DEQ only has the authority to certify the facility cost and the percentage of that cost that is allocable to pollution control.

Example 2 In the simplest case, Facility A is replaced by Facility B five years after certification. Facility A certificate holder took or carried forward the maximum tax credit amount available each tax credit year, leaving five year's (assuming the useful life of the facility is 10 years) in which to take the remainder of tax credit. Facility B, providing the same pollution control (elimination, reduction or prevention) benefit as Facility A, would be eligible for the remaining value of the certificate issued for Facility A, regardless of the cost of the new facility.

In this example DEQ would reissue (same certificate number) a certificate for the exact facility cost and the exact percentage allocable to pollution control as represented on the original certificate. However, the reissued certificate would identify both the replaced facility and the replacement facility.

Example 3 In a more complicated case, Facility A is replaced by Facility B five years after certification but Facility B includes incremental pollution control benefits not provided for in Facility A.

The pollution control certified under Facility A would be reissued by the method in Example 2. If Facility B is eligible for a tax credit when Facility A is removed from consideration then Facility B would be issued a new certificate. If Facility B is not eligible for a tax credit when Facility A is removed then it is not eligible for a tax credit.

Background The current statutory provision was enacted in 1993. Or Laws 1993, ch. 637, § 1. The amendment may have been proposed in response to DOJ's advice. Legislative history is not particularly helpful, but it does show that the purpose of the provision was to eliminate eligibility for facilities that had already received credits. The purpose of the amendment was to make sure that the tax credit merely "primed the pump" and was not a continuing subsidy. SB 112, Staff Measure Analysis of SB 112 prepared by Todd Sadlo, Administrator."

Certificate Certificates for the replaced facilities are generally revoked in conjunction with the issuance of the certificate for the replacement facility. However, if there is a considerable period of time between the date the replaced facility is removed from service and the date the replacement facility is placed into service, the original certificate will be revoked.

Related Topics No related topic at this time.


Finalized 10/28/1997

¹ Advice July 1 1997. On file: Tax Credit Department AG Opinion Log

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 31, 1998

To: Environmental Quality Commission
From: Langdon Marsh 
Subject: Combined Public Notice for Agenda Items C - F

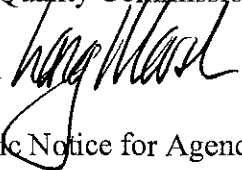
For efficiency reasons, the Department issued one public notice and combined rulemaking proposals Agenda Items C through F at the same hearings. As a result, there is one Presiding Hearing Officer's report for these proposals. Attachment C of each staff report summarizes the comments received as a result of the hearings. Comments received in addition to those received during the hearing process, that are relevant to each proposal, are summarized in Attachment D of each staff report. Attachment D also includes the Department's response.

The majority of comments were focused on the Department's proposed implementation of EPA's Pulp and Paper "cluster rule," which establishes both air quality and water quality requirements for the Pulp and Paper industry. This issue is discussed in Agenda item F. Specific comments were also received on the "credible evidence rule" which is included in Agenda item C.

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 31, 1998

To: Environmental Quality Commission
From: Langdon Marsh 
Subject: Combined Public Notice for Agenda Items C - F

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Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C
September 17, 1998 Meeting

Title:

Compliance Assurance Monitoring (CAM) and Credible Evidence

Summary:

This proposal will adopt the federal Compliance Assurance Monitoring (CAM) rule verbatim and the Credible Evidence rule by reference. These rulemakings will assure compliance with emission limits and standards contained in Oregon's Title V permits and will allow any credible evidence, including non-reference test method information, to be used for determining violations at any source within the state. Both of these rules are being proposed to satisfy federal requirements.

The Compliance Assurance Monitoring rule applies to major emission units at major sources that are required to obtain a Title V permit. This proposal also changes existing general monitoring and other requirements to allow the use of any credible evidence in proving or disproving violations of the Clean Air Act, instead of limiting the evidence to the results of reference test methods. The Credible Evidence rule is proposed to be adopted through concurrent rulemakings to be effected in three areas: 1) new credible evidence language amending the Department's rules on compliance certification; 2) adoption of enforcement language recommended by EPA and the Oregon Department of Justice; and 3) two concurrent rule actions separate from this package, which will cause an adoption by reference of federal credible evidence language in the National Emission Standards for Hazardous Air Pollutants (NESHAP's) and the New Source Performance Standards (NSPS), which are scheduled for adoption along with this rule proposal.

In addition, this proposal makes some housekeeping changes to the definition of "Volatile Organic Compounds" in OAR 340-028-0110(139) to ensure consistency with the same definition in OAR 340-022-0102(73).

Department Recommendation:

The Department recommends that the Commission adopts the rules regarding Compliance Assurance Monitoring, Credible Evidence and the housekeeping changes to Volatile Organic Compounds.

Report Author

Shant Amato

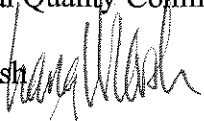
Division Administrator

Gregory A. Gree

Director

Angela Marsh

State of Oregon
Department of Environmental Quality Memorandum

Date: 8/31/98
To: Environmental Quality Commission
From: Langdon Marsh 
Subject: Agenda Item C, Compliance Assurance Monitoring (CAM) and Credible Evidence Rules, EQC Meeting 9/17/98

Background

On 6/5/98, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would establish monitoring requirements for major industrial sources to assure compliance with the emissions limits and standards contained in Oregon Title V Air Operating Permits. The proposed rules also establish that any credible evidence, including non-reference test method information, may be used for determining violations at any source within the state. Both of these rules are being proposed to satisfy federal requirements.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on 7/1/98. 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 6/10/98.

A Public Hearing was held 7/15/98 and 7/16/98 with Ruth Crowley serving as Presiding Officer. Written comment was received through 7/22/98. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, modifications to the initial rulemaking proposal are not being recommended by the Department.

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

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

Memo To: Environmental Quality Commission

Agenda Item C, Compliance Assurance Monitoring (CAM) and Credible Evidence Rules, EQC

Meeting 9/17/98

Page 2

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 Compliance Assurance Monitoring and Credible Evidence rules are proposed for adoption to comply with federal regulations as a result of the Clean Air Act Amendments of 1990. The Department is proposing that the CAM rules be adopted verbatim while the Credible Evidence rules be adopted by reference through concurrent rulemakings as described below and by adding a new rule consistent with recommendations from the U.S. Environmental Protection Agency (EPA) and the Attorney General's Office.

Relationship to Federal and Adjacent State Rules

The proposed rules are based on federal rules that apply to all states. The Department does not propose to alter the stringency of the federal rules.

Authority to Address the Issue

ORS 468.095, 468A.025, and 468A.310

Clean Air Act Secs. 114(a) and 307(b)(1) at ¶2114 and 2307

40 CFR72.6(a)(3)(i)(A)

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

The rules were developed by Department staff based on federal rules. Staff recommends that the federal rules be adopted verbatim for the CAM rule. The Credible Evidence rule is proposed to be effected in three areas: 1) new credible evidence language amending the Department's rules on compliance certification; 2) adoption of enforcement language recommended by EPA and the Oregon Department of Justice; and, 3) two concurrent rule actions separate from this package, which will cause an adoption by reference of federal credible evidence language in the National Emission Standards for Hazardous Air Pollutants (NESHAPS) and the New Source Performance

Memo To: Environmental Quality Commission

Agenda Item C, Compliance Assurance Monitoring (CAM) and Credible Evidence Rules, EQC

Meeting 9/17/98

Page 3

Standards (NSPS).

An advisory committee was not involved in the rulemaking, but the proposed rule was presented at a stakeholders meeting on March 4, 1998 which included invitations to representatives from the public, industry, and environmental interests.

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

The EPA recently promulgated federal rules for Compliance Assurance Monitoring (CAM) as required by the Clean Air Act Amendments of 1990. Oregon must adopt similar rules to maintain approval of the Oregon Title V Air Operating Permit program for major sources. The CAM rules specify monitoring requirements for assuring on-going compliance with emissions limits and standards. The CAM rule will apply to major emissions units at major sources required to obtain Oregon Title V Air Operating Permits.

Also in response to federal rules, this proposal involves changes to existing general monitoring and other requirements within the Oregon Administrative Rules to allow for use of any credible evidence in proving or disproving violations of the Clean Air Act, instead of limiting the evidence to the results of reference test methods. The Department has always relied on both reference and non-reference test methods to prove compliance or non-compliance. While the Department's use of non-reference method data has never been challenged, as it was at the federal level, the Department believes it wise to safeguard air quality programs so the Department can continue to rely upon all evidence necessary to ensure compliance. The proposed rule for credible evidence (OAR 340-028-0310) will be submitted to EPA as a revision to the Oregon State Implementation Plan (SIP) contained in OAR 340-020-0047.

This proposal also makes housekeeping changes to the definition of "Volatile Organic Compounds" in OAR 340-28-0110 (139) to make it consistent with the same definition in OAR 340-22-0102(73).

There are no policy issues that have been identified for this rulemaking, but the Department thought there may be some technical and legal issues as discussed in the Public Notice Cover Memorandum (Attachment B.5). As it turns out, the public was only concerned with the legal issues associated with the Credible Evidence rules because it was the subject of litigation nationally by industrial interests. This challenge to EPA's Credible Evidence Rule was dismissed by the U.S. Court of Appeals for the District of Columbia Circuit on August 14, 1998.

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Summary of Significant Public Comment and Changes Proposed in Response

For the purpose of increasing rulemaking efficiency, the Department provided a single notice to the public for several industrial source rules and held combined hearings. As a result, there were general comments submitted that related to all of the rules in addition to some specific comments for individual rules. The general comments recommended that the Department coordinate more with Lane Regional Air Pollution Authority (LRAPA) and adopt federal rules by reference where feasible. In general, the Department agrees with these comments (see Attachment D for a more detailed discussion).

The responses to specific comments related to the Compliance Assurance Monitoring and Credible Evidence rules are provided below. Specific comments related to the other rules are addressed in the staff reports for those rules. Comments were received from the Association of Oregon Industries, two individual companies, and one law firm. The comments suggested that the Department consider arguments presented against the Credible Evidence rule at the national level and wait until after the lawsuit is concluded to propose adoption of the Credible Evidence rules. (See Attachment D for details.)

The Department has been aware of the legal action challenging the Credible Evidence Rule. The Court's recent dismissal of the challenge to the Credible Evidence Rule makes it unnecessary to reconsider the rule at this time. The Court dismissed the case, deferring judicial review until the issues become relevant in the context of a specific application of a regulation or an enforcement action. Despite the past and potential future legal challenges to the Credible Evidence Rule, it is a final rule that has been in effect since February 1997. Many EPA rules governing delegated air programs are challenged. Unless the rules are stayed, it has been the air program's policy to fulfill its obligations under the Clean Air Act.

STAPPA, ALAPCO and NESCAUM (state and regional regulatory agency associations) filed an amicus brief supporting the Credible Evidence rule. The Department cooperated with this coalition of state regulators to provide examples of how it has reasonably and effectively used credible evidence for compliance assurance purposes even before the Credible Evidence rules were promulgated by EPA. Since the adoption of these rules would not be a departure from current practices in Oregon, the Department does not expect a change in compliance activities once the Credible Evidence Rule is adopted.

For these reasons, the Department is not recommending any changes to the proposed rule.

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

The CAM rule will be implemented through the Title V permit program by incorporating the requirements in permit renewals. See Attachment E for additional details of the implementation plan.

Recommendation for Commission Action

It is recommended, as presented in Attachment A of the Department Staff Report, that the Commission adopt the rules/rule changes regarding Compliance Assurance Monitoring as an amendment to the Title V Program, and rules/rule changes regarding Credible Evidence and the definition of Volatile Organic Compounds as amendments to the State Implementation Plan.

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. Department's Evaluation of Public Comment
- E. Rule Implementation Plan

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Reference Documents (available upon request)

Written Comments Received (listed in Attachment C)

Approved:

Section:

Andrew Ginsburg

Division:

Andrew Ginsburg for Greg Green

Report Prepared By: Mark Fisher and
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Date Prepared: 08/28/98

Attachment A

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Compliance Assurance Monitoring and Credible Evidence

Proposed Rules

DIVISION 28

STATIONARY SOURCE AIR POLLUTION CONTROL AND PERMITTING PROCEDURES

[ED. NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

General

340-028-0110

Definitions

As used in this Division:

- (1) "Act" or "FCAA" means the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.
- (2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.
- (3) "Actual emissions" means the mass 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:
 - (A) Except as provided in paragraph (B) 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;
 - (B) The Department 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% of the actual emissions calculated under paragraph (A) 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 340-028-1500 through 340-028-1520, Major Source Interim Emission Fees under OAR 340-028-2400 through 340-028-2550, and Oregon Title V Operating Permit Fees under OAR 340-028-2560 through 340-028-2740, 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.
- (4) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.
- (5) "Affected States" mean all States:
 - (a) Whose air quality may be affected by a proposed permit, permit modification or permit renewal and that are contiguous to Oregon; or
 - (b) That are within 50 miles of the permitted source.
- (6) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities shall be less than or equal to the lowest applicable level specified in this section. The aggregate insignificant emissions levels are:
 - (a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;
 - (b) 120 pounds for lead;
 - (c) 600 pounds for fluoride;
 - (d) 500 pounds for PM₁₀ in a PM₁₀ nonattainment area;
 - (e) The lesser of the amount established in OAR 340-032-0130, Table 1 or OAR 340-032-5400, Table 3, or 1,000 pounds;
 - (f) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.
- (7) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.
- (8) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340-028-1700 through 340-028-1790 and includes the application review report.
- (9) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.
- (10) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:
 - (a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in **40 CFR Part 52** (July 1, 1997-1996);
 - (b) Any standard or other requirement adopted under OAR 340-020-0047 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340-028-1700 through 340-028-1790, including any term or condition of any preconstruction permits issued pursuant to OAR 340-028-1900 through 340-028-2000, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-028-0800 through 340-028-0820, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-028-2270, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any standard or other requirement under section 111 of the Act, including section 111(d);

(g) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r) (7) of the Act;

(h) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(i) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(j) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(k) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(l) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(m) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(n) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(o) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(11) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-028-2420 or OAR 340-028-2610 from one or more emissions devices or activities within a major source.

(12) "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.

(13) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(14) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the 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 pollutant. 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.

(15) "Calculated Emissions" as used in OAR 340-028-2400 through 340-028-2550 means procedures used to estimate emissions for the 1991 calendar year.

(16) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(17) "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 Divisions 020 through 032 of this chapter, 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;

(t) 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.

(1718) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(1819) "CFR" means Code of Federal Regulations.

(1920) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-031-0120.

(2021) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(2122) "Commission" or "EQC" means Environmental Quality Commission.

(2223) "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.

(2324) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340-028-1900 through 340-028-2000 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(25) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(2426) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems and continuous parameter monitoring systems.

(27) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-028-1200 through 340-028-1280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition shall be binding for purposes of OAR 340-028-1200 through 340-028-1280.

(2528) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, or lead.

(29) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(2630) "Department":

(a) As used in OAR 340-028-0100 through 340-028-2000 and OAR 340-028-2400 through 340-028-2550 means Department of Environmental Quality;

(b) As used in OAR 340-028-2100 through 340-028-2320 and OAR 340-028-2560 throughout 340-028-2740 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.

(2731) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(2832) "Director" means the Director of the Department or the Director's designee.

(2933) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-028-2290 or the EPA and affected State review under OAR 340-028-2310.

(3034) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(3135) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(3236) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(3337) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(3438) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Sources shall use an emission factor approved by EPA or the Department.

(3539)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-28-1200 through 340-028-1280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO₂ per hour, pounds of SO₂ per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO₂) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of

VOC or percentage reduction of SO₂). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of OAR 340-028-1200 through 340-028-1280, an emission limitation or standard shall not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(3640) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340-028-1900 through 340-028-2000, New Source Review, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(3741) "Emission Reporting Form" means a paper or electronic form developed by the Department that shall be completed by the permittee to report calculated emissions, actual emissions or permitted emissions for interim emission fee assessment purposes.

(3842) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct which produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply, and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-028-1930, OAR 340-028-1935, OAR 340-028-1940, or OAR 340-028-2270, or for purposes of determining the applicability of any New Source Performance Standard (NSPS).

(3943) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(4044) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.

(4145) "Event" means excess emissions which arise from the same condition and which occur during a single calendar day or continue into subsequent calendar days.

(47) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(4247) "Excess emissions" means emissions which are in excess of a permit limit or any applicable air quality rule.

(48) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-028-1200 through 340-028-1280 and 340-028-2130(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(4349) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(4450) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-028-2200 through 340-028-2320.

(4551) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(4652) "General permit" means an Oregon Title V Operating Permit that meets the requirements of OAR 340-028-2170.

(4753) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(4854) "Immediately" means as soon as possible but in no case more than one hour after the beginning of the excess emission period.

(55) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-028-1200 through 340-028-1280, inherent process equipment is not considered a control device.

(4956) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(5057) "Insignificant Change" means an off-permit change defined under OAR 340-028-2220(2)(a) to either a significant or an insignificant activity which:

(a) Does not result in a redesignation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(§158) "Interim Emission Fee" means \$13 per ton for each assessable emission subject to emission fees under OAR 340-028-2420 for calculated, actual or permitted emissions released during calendar years 1991 and 1992.

(§259) "Large Source" as used in OAR 340-028-1400 through 340-028-1450 means any stationary source whose actual emissions or potential controlled emissions while operating full-time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL shall be used to determine actual emissions.

(§360) "Late Payment" means a fee payment which is postmarked after the due date.

(§461) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: 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 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 permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(§562) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR Chapter 340, Division 31.

(§663) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(§764) "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase for any regulated air pollutant. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases shall take into account all accumulated increases and decreases in actual emissions occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340-028-1900 through 340-028-2000 for that pollutant, whichever time is more recent. Emissions from insignificant activities shall be included in the calculation of net emission increases. Emission decreases required by rule shall not be included in the calculation of net emission increases. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the New Source Review requirements, including the retrofit of required controls.

(§865) "Major Source":

(a) Except as provided in subsections (b) and (c) of this section, means a source which emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate, as defined in this rule. Emissions from insignificant activities shall be included in determining if a source is a major source.

(b) As used in OAR 340-028-2100 through 340-028-2320, Rules Applicable to Sources Required to Have Oregon Title V Operating Permits, 340-028-2560 through 340-028-2740, Oregon Title V Operating Permit Fees, and OAR 340-028-1740, Synthetic Minor Sources, means any stationary source, (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 is supporting the major industrial group and that are described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, 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 (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which is defined as:

(i) 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 pollutants which has been listed pursuant to OAR 340-032-0130, 25 tpy or more of any combination of such hazardous air pollutants, 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

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) 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 under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas:

(I) That are classified as "serious;" and

(II) 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.

(iv) For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM₁₀.

(c) as used in OAR 340-028-2400 through 340-028-2550, Major Source Interim Emission Fees, means a permitted stationary 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) One hundred tons per year or more of any regulated pollutant; or

(B) Fifty tons per year or more of a VOC and is located in a serious ozone nonattainment area.

(5966) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(67) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Recordkeeping may be considered monitoring where such records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). The conduct of compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis may be considered monitoring (or as a supplement to other monitoring), provided that requirements to conduct such tests on a one-time basis or at such times as a regulatory authority may require on a non-regular basis are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques, where appropriate for a particular circumstance:

(a) Continuous emission or opacity monitoring systems.

(b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(d) Maintenance and analysis of records of fuel or raw materials usage.

(e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(f) Verification of emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(g) Visible emission observations.

(h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(6068) "Nitrogen Oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide.

(6169) "Nonattainment Area" means a geographical area of the State that exceeds any state or federal primary or secondary ambient air quality standard as designated by the Environmental Quality Commission in OAR Chapter 340, Division 031, or the EPA.

(6270) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(6371) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(6472) "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a proposed major source or major modification of a source.

(6573) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to OAR 340-028-2100 through 340-028-2320.

(6674) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70 (July 1, 1997/1996).

(6775) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340-028-2100 through OAR 340-028-2320, as provided in OAR 340-028-2110.

(6876) "Ozone Season" means the contiguous 3 month period of the year during which ozone exceedances typically occur (i.e., June, July, and August).

(6977) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's **Source Sampling Manual**, (January, 1992).

(7078) "Permit" means an Air-Contaminant Discharge Permit or an Oregon Title V Operating Permit issued pursuant to this Division.

(7179) "Permit modification" means a revision to a permit that meets the applicable requirements of OAR 340-028-1700 through 340-028-1790, OAR 340-028-1900 through 340-028-2000, or OAR 340-028-2240 through 340-028-2260.

(7280) "Permit revision" means any permit modification or administrative permit amendment.

(7381) "Permitted Emissions" as used in OAR 340-028-2400 through 340-028-2550, and OAR 340-028-2560 through 340-028-2740 means each assessable emission portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-028-2640.

(7482) "Permittee" means the owner or operator of the facility, in whose name the operation of the source is authorized by the ACDP or the Oregon Title V Operating Permit.

(7583) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal government and any agencies thereof.

(7684) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.

(7785) "PM₁₀";

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, 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 method in accordance with the Department's **Source Sampling Manual** (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J (July, 1997/1996).

(86) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(7887) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 is enforceable by the Administrator. This definition does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(88) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(7989) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(8090) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or Lane Regional Air Pollution Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-028-2310.

(8191) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60, 61 or 63 (July 1, 1997/1996).

(8292) "Regional Authority" means Lane Regional Air Pollution Authority.

(8393) "Regulated air pollutant" or "Regulated Pollutant":

(a) As used in OAR 340-028-0100 through 340-028-2320 means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-032-0130 or OAR 340-032-5400.

(b) As used in OAR 340-028-2400 through 340-028-2550 means PM₁₀, Sulfur Dioxide (SO₂), Oxides of Nitrogen (NO_x), Lead (Pb), 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.

(c) As used in OAR 340-028-2560 through 340-028-2740 means any regulated air pollutant as defined in 340-028-0110(78) except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(8494) "Renewal" means the process by which a permit is reissued at the end of its term.

(8595) "Responsible official" means one of the following:

(a) 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 a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Pollution Authority.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(8696) "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 shall 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.

(8797) "Section 111" means that section of the FCAA that includes Standards of Performance for New Stationary Sources (NSPS).

(8898) "Section 111(d)" means that subsection of the FCAA that requires states to submit plans to the EPA which establish standards of performance for existing sources and provides for the implementation and enforcement of such standards.

(8999) "Section 112" means that section of the FCAA that contains regulations for Hazardous Air Pollutants (HAP).

(90100) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(91101) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(92102) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(93103) "Section 112(r)(7)" means that subsection of the FCAA that requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(94104) "Section 114(a)(3)" means that subsection of the FCAA that requires enhanced monitoring and submission of compliance certifications for major sources.

(95105) "Section 129" means that section of the FCAA that requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(96106) "Section 129(e)" means that subsection of the FCAA that requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(97107) "Section 182(f)" means that subsection of the FCAA that requires states to include plan provisions in the State Implementation Plan for NO_x in ozone nonattainment areas.

(98108) "Section 182(f)(1)" means that subsection of the FCAA that requires states to apply those plan provisions developed for major VOC sources and major NO_x sources in ozone nonattainment areas.

(99109) "Section 183(e)" means that subsection of the FCAA that requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(100110) "Section 183(f)" means that subsection of the FCAA that requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(101111) "Section 184" means that section of the FCAA that contains regulations for the control of interstate ozone air pollution.

(102112) "Section 302" means that section of the FCAA that contains definitions for general and administrative purposes in the Act.

(103113) "Section 302(j)" means that subsection of the FCAA that contains definitions of "major stationary source" and "major emitting facility."

(104114) "Section 328" means that section of the FCAA that contains regulations for air pollution from outer continental shelf activities.

(105115) "Section 408(a)" means that subsection of the FCAA that contains regulations for the Title IV permit program.

(106116) "Section 502(b)(10) change" means a change that contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(407117) "Section 504(b)" means that subsection of the FCAA that states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(408118) "Section 504(e)" means that subsection of the FCAA that contains regulations for permit requirements for temporary sources.

(409119) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in Table 1. For sources of VOC or NO_x, a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area or ozone maintenance area and is capable of impacting the nonattainment area or maintenance area.

(410120) "Significant emission rate", except as provided in subsections (a) through (c) of this section, means emission rates equal to or greater than the rates specified in Table 2.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Klamath Falls Urban Growth Area, and the Lakeview PM₁₀ Nonattainment Area, the Significant Emission Rate for particulate matter is defined in Table 3. For the Klamath Falls Urban Growth Area, the Significant Emission Rates in Table 3 for particulate matter apply to all new or modified sources for which permit applications have not been submitted prior to June 2, 1989. For the Lakeview PM₁₀ Nonattainment Area, the Significant Emission Rates in Table 3 for particulate matter apply to all new or modified sources for which complete permit applications have not been submitted to the Department prior to May 1, 1995.

(b) For regulated air pollutants not listed in Table 2 or 3, the Department shall determine the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 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 ug/m³ (24 hour average) shall be deemed to be emitting at a significant emission rate.

(411121) "Significant Impairment" occurs when visibility impairment in the judgment of the Department interferes with the management, protection, preservation, or enjoyment of the visual experience of visitors within a Class I area. The determination shall be made on a case-by-case basis considering the recommendations 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 areas, and the frequency and occurrence of natural conditions that reduce visibility.

(412122) "Small Source" means any stationary source with a regular ACDP (not an insignificant discharge permit or a minimal source permit) or an Oregon Title V Operating Permit which is not classified as a large source.

(413123) "Source":

(a) Except as provided in subsection (b) of this section, 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.

(b) As used in OAR 340-028-1900 through 340-028-2000, 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 OAR 340-028-1900 through 340-028-2000, 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.

(414124) "Source category":

(a) Except as provided in subsection (b) of this section, means all the pollutant emitting activities which belong to the same industrial grouping (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).

(b) As used in OAR 340-028-2400 through 340-028-2550, Major Source Interim Emission Fees, and OAR 340-028-2560 through 340-028-2740, Oregon Title V Operating Permit Fees, means a group of major sources determined by the Department to be using similar raw materials and having equivalent process controls and pollution control equipment.

(415125) "Source Test" means the average of at least three test runs during operating conditions representative of the period for which emissions are to be determined, conducted in accordance with the Department's Source Sampling Manual or other Department approved methods.

(416126) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(417127) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-020-0047 and approved by EPA.

(418128) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant.

(419129) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(420130) "Synthetic minor source" means a source which would be classified as a major source under OAR 340-028-0110, but for physical or operational limits on its potential to emit air pollutants contained in an ACDP issued by the Department under OAR 340-028-1700 through 340-028-1790.

(421131) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) A major modification subject to OAR 340-028-1930, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-028-1935, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-028-1940, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A change which is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

(422132) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the reference method described in 40 CFR Part 50, Appendix B (July 1, 1997-1996).

(423133) "Total Reduced Sulfur" or "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 (H₂S).

(424134) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-028-0630. For existing sources, the emission limit established shall be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established shall be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations shall be based on information known to the Department considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required.

(425135) "Unavoidable" or "could not be avoided" 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.

(426136) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment which may cause an excess emission.

(427137) "Verified Emission Factor" means an emission factor approved by the Department and developed for a specific major source or source category and approved for application to that major source by the Department.

(428138) "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.

(429139) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

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

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

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

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

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

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

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

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-020-047.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-20-145, 340-20-225, 340-20-305, 340-20-355, 340-20-460 & 340-20-520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. ; DEQ 9-1997, f. & cert. ef. 5-9-97

340-028-0310 Enforcement

Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.

COMPLIANCE ASSURANCE MONITORING

340-028-1200 Applicability.

- (1) General applicability. Except for backup utility units that are exempt under subsection (2)(b) of this rule, the requirements of OAR 340-028-1200 through 340-028-1280 shall apply to a pollutant-specific emissions unit at a major source that is required to obtain an Oregon Title V Operating Permit if the unit satisfies all of the following criteria:
- (a) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant (or a surrogate thereof), other than an emission limitation or standard that is exempt under subsection (2)(a);
 - (b) The unit uses a control device to achieve compliance with any such emission limitation or standard; and
 - (c) The unit has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this subsection, "potential pre-control device emissions" shall have the same meaning as "potential to emit," as defined in 340-028-0110, except that emission reductions achieved by the applicable control device shall not be taken into account.
- (2) Exemptions-
- (a) Exempt emission limitations or standards. The requirements of OAR 340-028-1200 through 340-028-1280 shall not apply to any of the following emission limitations or standards:
 - (A) Emission limitations or standards proposed by the Administrator after November 15, 1990 pursuant to section 111 or 112 of the Act.
 - (B) Stratospheric ozone protection requirements under title VI of the Act.
 - (C) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the Act.
 - (D) Emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved or promulgated by the Administrator under the Act that allows for trading emissions within a source or between sources.
 - (E) An emissions cap that meets the requirements specified in 40 CFR 70.4(b)(12), 71.6(a)(13)(iii), or 340-028-1000 through 340-028-1060 (Plant Site Emission Limits).
 - (F) Emission limitations or standards for which an Oregon Title V Operating Permit specifies a continuous compliance determination method, as defined in OAR 340-028-0110. The exemption provided in this subsection shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test; in this example, OAR 340-028-1200 through 340-028-1280 would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage).
 - (b) Exemption for backup utility power emissions units. The requirements of OAR 340-028-1200 through 340-028-1280 shall not apply to a utility unit, as defined in 40CFR 72.2, that is municipally-owned if the owner or operator provides documentation in an Oregon Title V Operating Permit application that:
 - (A) The utility unit is exempt from all monitoring requirements in 40 CFR part 75 (including the appendices thereto);
 - (B) The utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the Oregon Title V Operating Permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and
 - (C) The actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or such shorter time period that is available for units with fewer than three years of operation) are less than 50 percent of the amount in tons per year required for a source to be classified as a major source and are expected to remain so.

340-028-1210 Monitoring design criteria.

- (1) General criteria. To provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit, monitoring under OAR 340-028-1200 through 340-028-1280 shall meet the following general criteria:
- (a) The owner or operator shall design the monitoring to obtain data for one or more indicators of emission control performance for the control device, any associated capture system and, if necessary to satisfy subsection (1)(b) of this rule, processes at a pollutant-specific emissions unit. Indicators of performance may include, but are not limited to, direct or predicted emissions (including visible emissions or opacity), process and control device parameters that affect control device (and capture system) efficiency or emission rates, or recorded findings of inspection and maintenance activities conducted by the owner or operator.
 - (b) The owner or operator shall establish an appropriate range(s) or designated condition(s) for the selected indicator(s) such that operation within the ranges provides a reasonable assurance of ongoing compliance with emission limitations or standards for the anticipated range of operating conditions. Such range(s) or condition(s) shall reflect the proper operation and maintenance of the control device (and associated capture system), in accordance with applicable design properties, for minimizing emissions over the anticipated range of operating conditions at least to the level required to achieve compliance with the applicable requirements. The reasonable assurance of compliance will be assessed by maintaining performance within the indicator range(s) or designated condition(s). The ranges shall be established in accordance with the design and performance requirements in this rule and documented in accordance with the requirements in OAR 340-028-1220. If necessary to assure that the control device and associated capture system can satisfy this criterion, the owner or operator shall monitor appropriate process operational parameters (such as total throughput where necessary to stay within the rated capacity for a control device). In addition, unless specifically stated otherwise by an applicable requirement, the owner or operator shall monitor indicators to detect any bypass of the control device (or capture system) to the atmosphere, if such bypass can occur based on the design of the pollutant-specific emissions unit.
 - (c) The design of indicator ranges or designated conditions may be:
 - (A) Based on a single maximum or minimum value if appropriate (e.g., maintaining condenser temperatures a certain number of degrees below the condensation temperature of the applicable compound(s) being processed) or at multiple levels that are relevant to distinctly different operating conditions (e.g., high versus low load levels).
 - (B) Expressed as a function of process variables (e.g., an indicator range expressed as minimum to maximum pressure drop across a venturi throat in a particulate control scrubber).
 - (C) Expressed as maintaining the applicable parameter in a particular operational status or designated condition (e.g., position of a damper controlling gas flow to the atmosphere through a by-pass duct).
 - (D) Established as interdependent between more than one indicator.
- (2) Performance criteria. The owner or operator shall design the monitoring to meet the following performance criteria:
- (a) Specifications that provide for obtaining data that are representative of the emissions or parameters being monitored (such as detector location and installation specifications, if applicable).
 - (b) For new or modified monitoring equipment, verification procedures to confirm the operational status of the monitoring prior to the date by which the owner or operator must conduct monitoring under OAR 340-028-1200 through 340-028-1280 as specified in OAR 340-028-1250(1). The owner or operator shall consider the monitoring equipment manufacturer's requirements or recommendations for installation, calibration, and start-up operation.
 - (c) Quality assurance and control practices that are adequate to ensure the continuing validity of the data. The owner or operator shall consider manufacturer recommendations or requirements applicable to the monitoring in developing appropriate quality assurance and control practices.
 - (d) Specifications for the frequency of conducting the monitoring, the data collection procedures that will be used (e.g., computerized data acquisition and handling, alarm sensor, or manual log entries based on gauge readings), and, if applicable, the period over which discrete data points will be averaged for the purpose of determining whether an excursion or exceedance has occurred.
 - (A) At a minimum, the owner or operator shall design the period over which data are obtained and, if applicable, averaged consistent with the characteristics and typical variability of the pollutant-specific emissions unit (including the control device and associated capture system). Such

intervals shall be commensurate with the time period over which a change in control device performance that would require actions by owner or operator to return operations within normal ranges or designated conditions is likely to be observed.

- (B) For all pollutant-specific emissions units with the potential to emit, calculated including the effect of control devices, the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, for each parameter monitored, the owner or operator shall collect four or more data values equally spaced over each hour and average the values, as applicable, over the applicable averaging period as determined in accordance with paragraph (2)(d)(A) of this rule. The Department may approve a reduced data collection frequency, if appropriate, based on information presented by the owner or operator concerning the data collection mechanisms available for a particular parameter for the particular pollutant-specific emissions unit (e.g., integrated raw material or fuel analysis data, noninstrumental measurement of waste feed rate or visible emissions, use of a portable analyzer or an alarm sensor).
- (C) For other pollutant-specific emissions units, the frequency of data collection may be less than the frequency specified in paragraph (2)(d)(B) of this rule but the monitoring shall include some data collection at least once per 24-hour period (e.g., a daily inspection of a carbon adsorber operation in conjunction with a weekly or monthly check of emissions with a portable analyzer).
- (3) Evaluation factors. In designing monitoring to meet the requirements in sections (1) and (2) of this rule, the owner or operator shall take into account site-specific factors including the applicability of existing monitoring equipment and procedures, the ability of the monitoring to account for process and control device operational variability, the reliability and latitude built into the control technology, and the level of actual emissions relative to the compliance limitation.
- (4) Special criteria for the use of continuous emission, opacity or predictive monitoring systems.
- (a) If a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS) or predictive emission monitoring system (PEMS) is required pursuant to other authority under the Act or state or local law, the owner or operator shall use such system to satisfy the requirements of OAR 340-028-1200 through 340-028-1280.
- (b) The use of a CEMS, COMS, or PEMS that satisfies any of the following monitoring requirements shall be deemed to satisfy the general design criteria in sections (1) and (2) of this rule, provided that a COMS may be subject to the criteria for establishing indicator ranges under section (1) of this rule:
- (A) Section 51.214 and appendix P of 40 CFR part 51;
- (B) Section 60.13 and appendix B of 40 CFR part 60;
- (C) Section 63.8 and any applicable performance specifications required pursuant to the applicable subpart of 40 CFR part 63;
- (D) 40 CFR part 75;
- (E) Subpart H and appendix IX of 40 CFR part 266; or
- (F) If an applicable requirement does not otherwise require compliance with the requirements listed in the preceding paragraphs (4)(b)(A) through (E) of this rule, comparable requirements and specifications established by the Department.
- (c) The owner or operator shall design the monitoring system subject to this section (4) to:
- (A) Allow for reporting exceedances (or excursions if applicable to a COMS used to assure compliance with a particulate matter standard), consistent with any period for reporting of exceedances in an underlying requirement. If an underlying requirement does not contain a provision for establishing an averaging period for the reporting of exceedances or excursions, the criteria used to develop an averaging period in (2)(d) of this rule shall apply; and
- (B) Provide an indicator range consistent with section (1) of this rule for a COMS used to assure compliance with a particulate matter standard. If an opacity standard applies to the pollutant-specific emissions unit, such limit may be used as the appropriate indicator range unless the opacity limit fails to meet the criteria in section (1) of this rule after considering the type of control device and other site-specific factors applicable to the pollutant-specific emissions unit.

- (1) The owner or operator shall submit to the Department monitoring that satisfies the design requirements in OAR 340-028-1210. The submission shall include the following information:
 - (a) The indicators to be monitored to satisfy OAR 340-028-1210(1)(a) and (b);
 - (b) The ranges or designated conditions for such indicators, or the process by which such indicator ranges or designated conditions shall be established;
 - (c) The performance criteria for the monitoring to satisfy OAR 340-028-1210(2); and
 - (d) If applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS pursuant to OAR 340-028-1210(4).
- (2) As part of the information submitted, the owner or operator shall submit a justification for the proposed elements of the monitoring. If the performance specifications proposed to satisfy OAR 340-028-1210(2)(b) or (c) include differences from manufacturer recommendations, the owner or operator shall explain the reasons for the differences between the requirements proposed by the owner or operator and the manufacturer's recommendations or requirements. The owner or operator also shall submit any data supporting the justification, and may refer to generally available sources of information used to support the justification (such as generally available air pollution engineering manuals, or EPA or Department publications on appropriate monitoring for various types of control devices or capture systems). To justify the appropriateness of the monitoring elements proposed, the owner or operator may rely in part on existing applicable requirements that establish the monitoring for the applicable pollutant-specific emissions unit or a similar unit. If an owner or operator relies on presumptively acceptable monitoring, no further justification for the appropriateness of that monitoring should be necessary other than an explanation of the applicability of such monitoring to the unit in question, unless data or information is brought forward to rebut the assumption. Presumptively acceptable monitoring includes:
 - (a) Presumptively acceptable or required monitoring approaches, established by the Department in a rule that constitutes part of the applicable implementation plan required pursuant to title I of the Act, that are designed to achieve compliance with OAR 340-028-1200 through 340-028-1280 for particular pollutant-specific emissions units;
 - (b) Continuous emission, opacity or predictive emission monitoring systems that satisfy applicable monitoring requirements and performance specifications as specified in OAR 340-028-1210(d);
 - (c) Excepted or alternative monitoring methods allowed or approved pursuant to 40 CFR part 75;
 - (d) Monitoring included for standards exempt from OAR 340-028-1200 through 340-028-1280 pursuant to OAR 340-028-1200(2)(a)(A) through (F) to the extent such monitoring is applicable to the performance of the control device (and associated capture system) for the pollutant-specific emissions unit; and
 - (e) Presumptively acceptable monitoring identified in guidance by EPA.
- (3) Except as provided in section (4) of this rule, the owner or operator shall submit control device (and process and capture system, if applicable) operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule. If the applicable rule does not specify testing conditions or only partially specifies test conditions, the performance test generally shall be conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the pollutant-specific emissions unit. Such data may be supplemented, if desired, by engineering assessments and manufacturer's recommendations to justify the indicator ranges (or, if applicable, the procedures for establishing such indicator ranges). Emission testing is not required to be conducted over the entire indicator range or range of potential emissions.
 - (b) The owner or operator must document that no changes to the pollutant-specific emissions unit, including the control device and capture system, have taken place that could result in a significant change in the control system performance or the selected ranges or designated conditions for the indicators to be monitored since the performance or compliance tests were conducted.
- (4) If existing data from unit-specific compliance or performance testing specified in section (3) of this rule are not available, the owner or operator:
 - (a) Shall submit a test plan and schedule for obtaining such data in accordance with section (5) of this rule; or
 - (b) May submit indicator ranges (or procedures for establishing indicator ranges) that rely on engineering assessments and other data, provided that the owner or operator demonstrates that factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at levels that satisfy the criteria in OAR 340-028-1210(1).

- (5) If the monitoring submitted by the owner or operator requires installation, testing, or other necessary activities prior to use of the monitoring for purposes of OAR 340-028-1200 through 340-028-1280, the owner or operator shall include an implementation plan and schedule for installing, testing and performing any other appropriate activities prior to use of the monitoring. The implementation plan and schedule shall provide for use of the monitoring as expeditiously as practicable after approval of the monitoring in the Oregon Title V Operating Permit pursuant to OAR 340-028-1240, but in no case shall the schedule for completing installation and beginning operation of the monitoring exceed 180 days after approval of the permit.
- (6) If a control device is common to more than one pollutant-specific emissions unit, the owner or operator may submit monitoring for the control device and identify the pollutant-specific emissions units affected and any process or associated capture device conditions that must be maintained or monitored in accordance with OAR 340-028-1210(1) rather than submit separate monitoring for each pollutant-specific emissions unit.
- (7) If a single pollutant-specific emissions unit is controlled by more than one control device similar in design and operation, the owner or operator may submit monitoring that applies to all the control devices and identify the control devices affected and any process or associated capture device conditions that must be maintained or monitored in accordance with OAR 340-028-1210(1) rather than submit a separate description of monitoring for each control device.

340-028-1230 Deadlines for submittals.

- (1) Large pollutant-specific emissions units. For all pollutant-specific emissions units with the potential to emit (taking into account control devices to the extent appropriate under the definition of this term in OAR 340-028-0110) the applicable regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source, the owner or operator shall submit the information required under OAR 340-028-1220 at the following times:
 - (a) On or after April 20, 1998, the owner or operator shall submit information as part of an application for an initial Oregon Title V Operating Permit if, by that date, the application either:
 - (A) Has not been filed; or
 - (B) Has not yet been determined to be complete by the Department.
 - (b) On or after April 20, 1998, the owner or operator shall submit information as part of an application for a significant permit revision under OAR 340-028-2160, but only with respect to those pollutant-specific emissions units for which the proposed permit revision is applicable.
 - (c) The owner or operator shall submit any information not submitted under the deadlines set forth in subsections (1)(a) and (b) of this rule as part of the application for the renewal of an Oregon Title V Operating Permit.
- (2) Other pollutant-specific emissions units. For all other pollutant-specific emissions units subject to OAR 340-028-1200 through 340-028-1280 and not subject to section (1) of this rule, the owner or operator shall submit the information required under OAR 340-028-1220 as part of an application for a renewal of an Oregon Title V Operating Permit.
- (3) The effective date for the requirement to submit information under OAR 340-028-1220 shall be as specified pursuant to sections (1) and (2) of this rule and a permit reopening to require the submittal of information under this rule shall not be required pursuant to OAR 340-028-2280(1)(a)(A), provided, however, that, if an Oregon Title V Operating Permit is reopened for cause by EPA or the Department pursuant to OAR 340-028-2280(1)(a)(C), (D), or (E), the applicable agency may require the submittal of information under this rule for those pollutant-specific emissions units that are subject to OAR 340-028-1200 through 340-028-1280 and that are affected by the permit reopening.
- (4) Prior to approval of monitoring that satisfies OAR 340-028-1200 through 340-028-1280, the owner or operator is subject to the requirements of OAR 340-028-2130(3)(a)(C).

340-028-1240 Approval of monitoring.

- (1) Based on an application that includes the information submitted in accordance with OAR 340-028-1230, the Department shall act to approve the monitoring submitted by the owner or operator by confirming that the monitoring satisfies the requirements in OAR 340-028-1210.
- (2) In approving monitoring under OAR 340-028-1200 through 340-028-1280, the Department may condition the approval on the owner or operator collecting additional data on the indicators to be monitored for a pollutant-specific emissions unit, including required compliance or performance testing, to confirm the ability of the

monitoring to provide data that are sufficient to satisfy the requirements of OAR 340-028-1200 through 340-028-1280 and to confirm the appropriateness of an indicator range(s) or designated condition(s) proposed to satisfy OAR 340-028-1210(1)(b) and (c) and consistent with the schedule in OAR 340-028-1220(4).

- (3) If the Department approves the proposed monitoring, the Department shall establish one or more permit terms or conditions that specify the required monitoring in accordance with OAR 340-028-2130(3)(a). At a minimum, the permit shall specify:
- (a) The approved monitoring approach that includes all of the following:
 - (A) The indicator(s) to be monitored (such as temperature, pressure drop, emissions, or similar parameter);
 - (B) The means or device to be used to measure the indicator(s) (such as temperature measurement device, visual observation, or CEMS); and
 - (C) The performance requirements established to satisfy OAR 340-028-1210(2) or (4), as applicable.
 - (b) The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under OAR 340-028-1250 and 340-028-1260. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion shall occur, or the specific procedures that will be used to establish that value or condition. If the latter, the permit shall specify appropriate notice procedures for the owner or operator to notify the Department upon any establishment or reestablishment of the value.
 - (c) The obligation to conduct the monitoring and fulfill the other obligations specified in OAR 340-028-1250 through 340-028-1270.
 - (d) If appropriate, a minimum data availability requirement for valid data collection for each averaging period, and, if appropriate, a minimum data availability requirement for the averaging periods in a reporting period.
- (4) If the monitoring proposed by the owner or operator requires installation, testing or final verification of operational status, the Oregon Title V Operating Permit shall include an enforceable schedule with appropriate milestones for completing such installation, testing, or final verification consistent with the requirements in OAR 340-028-1220(5).
- (5) If the Department disapproves the proposed monitoring, the following applies:
- (a) The draft or final permit shall include, at a minimum, monitoring that satisfies the requirements of OAR 340-028-2130(3)(a)(C);
 - (b) The Department shall include in the draft or final permit a compliance schedule for the source owner to submit monitoring that satisfies OAR 340-028-1210 and 340-028-1220, but in no case shall the owner or operator submit revised monitoring more than 180 days from the date of issuance of the draft or final permit; and
 - (c) If the source owner or operator does not submit the monitoring in accordance with the compliance schedule as required in subsection (5)(b) of this rule or if the Department disapproves the monitoring submitted, the source owner or operator shall be deemed not in compliance with OAR 340-028-1200 through 340-028-1280, unless the source owner or operator successfully challenges the disapproval.

340-028-1250 Operation of approved monitoring.

- (1) Commencement of operation. The owner or operator shall conduct the monitoring required under OAR 340-028-1200 through 340-028-1280 upon issuance of an Oregon Title V Operating Permit that includes such monitoring, or by such later date specified in the permit pursuant to OAR 340-028-1240(4).
- (2) Proper maintenance. At all times, the owner or operator shall maintain the monitoring, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.
- (3) Continued operation. Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities shall not be used for purposes of OAR 340-028-1200 through 340-028-1280, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is

any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(4) Response to excursions or exceedances.

(a) Upon detecting an excursion or exceedance, the owner or operator shall restore operation of the pollutant-specific emissions unit (including the control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of an excursion or exceedance (other than those caused by excused startup or shutdown conditions). Such actions may include initial inspection and evaluation, recording that operations returned to normal without operator action (such as through response by a computerized distribution control system), or any necessary follow-up actions to return operation to within the indicator range, designated condition, or below the applicable emission limitation or standard, as applicable.

(b) Determination of whether the owner or operator has used acceptable procedures in response to an excursion or exceedance will be based on information available, which may include but is not limited to, monitoring results, review of operation and maintenance procedures and records, and inspection of the control device, associated capture system, and the process.

(5) Documentation of need for improved monitoring. After approval of monitoring under OAR 340-028-1200 through 340-028-1280, if the owner or operator identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not provide an indication of an excursion or exceedance while providing valid data, or the results of compliance or performance testing document a need to modify the existing indicator ranges or designated conditions, the owner or operator shall promptly notify the Department and, if necessary, submit a proposed modification to the Oregon Title V Operating Permit to address the necessary monitoring changes. Such a modification may include, but is not limited to, reestablishing indicator ranges or designated conditions, modifying the frequency of conducting monitoring and collecting data, or the monitoring of additional parameters.

340-028-1260 Quality improvement plan (QIP) requirements.

(1) Based on the results of a determination made under OAR 340-028-1250(4)(b), the Administrator or the Department may require the owner or operator to develop and implement a QIP. Consistent with OAR 340-028-1240(3)(c), the Oregon Title V Operating Permit may specify an appropriate threshold, such as an accumulation of exceedances or excursions exceeding 5 percent duration of a pollutant-specific emissions unit's operating time for a reporting period, for requiring the implementation of a QIP. The threshold may be set at a higher or lower percent or may rely on other criteria for purposes of indicating whether a pollutant-specific emissions unit is being maintained and operated in a manner consistent with good air pollution control practices.

(2) Elements of a QIP.

(a) The owner or operator shall maintain a written QIP, if required, and have it available for inspection.

(b) The plan initially shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the owner or operator shall modify the plan to include procedures for conducting one or more of the following actions, as appropriate:

(A) Improved preventive maintenance practices.

(B) Process operation changes.

(C) Appropriate improvements to control methods.

(D) Other steps appropriate to correct control performance.

(E) More frequent or improved monitoring (only in conjunction with one or more steps under paragraphs (A) through (D) above).

(3) If a QIP is required, the owner or operator shall develop and implement a QIP as expeditiously as practicable and shall notify the Department if the period for completing the improvements contained in the QIP exceeds 180 days from the date on which the need to implement the QIP was determined.

(4) Following implementation of a QIP, upon any subsequent determination pursuant to OAR 340-028-1250(4)(b) the Administrator or the Department may require that an owner or operator make reasonable changes to the QIP if the QIP is found to have:

(a) Failed to address the cause of the control device performance problems; or

(b) Failed to provide adequate procedures for correcting control device performance problems as expeditiously

- as practicable in accordance with good air pollution control practices for minimizing emissions.
- (5) Implementation of a QIP shall not excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act.

340-028-1270 Reporting and recordkeeping requirements.

(1) General reporting requirements.

- (a) On and after the date specified in OAR 340-028-1250(1) by which the owner or operator must use monitoring that meets the requirements of OAR 340-028-1200 through 340-028-1280, the owner or operator shall submit monitoring reports to the Department in accordance with OAR 340-028-2130(3)(c).
- (b) A report for monitoring under OAR 340-028-1200 through 340-028-1280 shall include, at a minimum, the information required under OAR 340-028-2130(3)(c) and the following information, as applicable:
- (A) Summary information on the number, duration and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective actions taken;
- (B) Summary information on the number, duration and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable); and
- (C) A description of the actions taken to implement a QIP during the reporting period as specified in OAR 340-028-1260. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.

(2) General recordkeeping requirements.

- (a) The owner or operator shall comply with the recordkeeping requirements specified in OAR 340-028-2130(3)(b). The owner or operator shall maintain records of monitoring data, monitor performance data, corrective actions taken, any written quality improvement plan required pursuant to OAR 340-028-1260 and any activities undertaken to implement a quality improvement plan, and other supporting information required to be maintained under OAR 340-028-1200 through 340-028-1280 (such as data used to document the adequacy of monitoring, or records of monitoring maintenance or corrective actions).
- (b) Instead of paper records, the owner or operator may maintain records on alternative media, such as microfilm, computer files, magnetic tape disks, or microfiche, provided that the use of such alternative media allows for expeditious inspection and review, and does not conflict with other applicable recordkeeping requirements.

340-028-1280 Savings provisions.

(1) Nothing in OAR 340-028-1200 through 340-028-1280 shall:

- (a) Excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act. The requirements of OAR 340-028-1200 through 340-028-1280 shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the Act, including monitoring in permits issued pursuant to title I of the Act. The purpose of OAR 340-028-1200 through 340-028-1280 is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of OAR 340-028-1200 through 340-028-1280.
- (b) Restrict or abrogate the authority of the Administrator or the Department to impose additional or more stringent monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any provision of the Act, including but not limited to sections 114(a)(1) and 504(b), or state law, as applicable.
- (c) Restrict or abrogate the authority of the Administrator or Department to take any enforcement action under the Act for any violation of an applicable requirement or of any person to take action under section 304 of the Act.

.....
340-028-2130

Standard Permit Requirements

Each permit issued under OAR 340-028-2100 through 340-028-2320 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance:

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(b) For sources regulated under the national acid rain program, the permit shall state that, where an applicable requirement of the FCAA or state rules is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable by the EPA;

(c) For any alternative emission limit established in accordance with OAR 340-028-1030, the permit shall contain an equivalency determination and provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. The Department shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources.

(3) Monitoring and related recordkeeping and reporting requirements:

(a) Each permit shall contain the following requirements with respect to monitoring:

(A) A monitoring protocol to provide accurate and reliable data that:

(i) Is representative of actual source operation;

(ii) Is consistent with the averaging time in the permit emission limits;

(iii) Is consistent with monitoring requirements of other applicable requirements; and

(iv) Can be used for compliance certification and enforcement.

(B) All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including OAR 340-028-1200 through 340-028-1280 and any other procedures and methods that may be promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(C) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to OAR 340-028-2130(3)(c). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Continuous monitoring and source testing shall be conducted in accordance with the Department's **Continuous Monitoring Manual (January, 1992)** and the **Source Sampling Manual (January, 1992)**, respectively. Other monitoring shall be conducted in accordance with Department approved procedures. The monitoring requirements may include but shall not be limited to any combination of the following:

(i) Continuous emissions monitoring systems (CEMS);

(ii) Continuous opacity monitoring systems (COMS);

(iii) Continuous parameter monitoring systems (CPMS);

(iv) Continuous flow rate monitoring systems (CFRMS);

(v) Source testing;

(vi) Material balance;

(vii) Engineering calculations;

(viii) Recordkeeping; or

(ix) Fuel analysis; and

(D) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(E) A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method;

(F) Methods used to determine actual emissions for fee purposes shall also be used for compliance determination and can be no less rigorous than the requirements of OAR 340-028-2160. For any assessable emission for which fees are paid on actual emissions, the compliance monitoring protocol shall include the method used to determine the amount of actual emissions;

(G) Monitoring requirements shall commence on the date of permit issuance unless otherwise specified in the permit.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses;

(vi) The operating conditions as existing at the time of sampling or measurement; and

(vii) The records of quality assurance for continuous monitoring systems (including but not limited to quality control activities, audits, calibrations drifts);

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(C) Recordkeeping requirements shall commence on the date of permit issuance unless otherwise specified in the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of four (4) copies of reports of any required monitoring at least every 6 months, completed on forms approved by the Department. Unless otherwise approved in writing by the Department, six month periods are January 1 to June 30, and July 1 to December 31. The reports required by this rule shall be submitted within 30 days after the end of each reporting period, unless otherwise approved in writing by the Department. One copy of the report shall be submitted to the Air Quality Division, two copies to the regional office, and one copy to the EPA. All instances of deviations from permit requirements shall be clearly identified in such reports:

(i) The semi-annual report shall be due on July 30, unless otherwise approved in writing by the Department, and shall include the semi-annual compliance certification, OAR 340-028-2160.

(ii) The annual report shall be due on February 15, unless otherwise approved in writing by the Department, but shall be due no later than March 15, and shall consist of the annual reporting requirements as specified in the permit; the emission fee report; the emission statement, if applicable, OAR 340-028-1520; the excess emissions upset log, OAR 340-028-1440; the annual certification that the risk management plan is being properly implemented, OAR 340-032-5400; and the semi-annual compliance certification, OAR 340-028-2160.

(B) Prompt reporting of deviations from permit requirements that do not cause excess emissions, including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. "Prompt" means within seven (7) days of the deviation. Deviations that cause excess emissions, as specified in OAR 340-028-1400 through 340-028-1460 shall be reported in accordance with OAR 340-028-1440;

(C) Submittal of any required source test report within 30 days after the source test;

(D) All required reports shall be certified by a responsible official consistent with OAR 340-028-2120(5);

(E) Reporting requirements shall commence on the date of permit issuance unless otherwise specified in the permit.

(d) The Department may incorporate more rigorous monitoring, recordkeeping, or reporting methods than required by applicable requirements in an Oregon Title V Operating Permit if they are contained in the permit application, are determined by the Department to be necessary to determine compliance with applicable requirements, or are needed to protect human health or the environment.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder:

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee shall comply with all conditions of the Oregon Title V Operating Permit. Any permit condition noncompliance constitutes a violation of the FCAA and state rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;

(b) The need to halt or reduce activity shall not be a defense. 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;

(c) The permit may be modified, revoked, reopened and reissued, or terminated for cause as determined by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(d) The permit does not convey any property rights of any sort, or any exclusive privilege;

(e) The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.

(7) A provision to ensure that an Oregon Title V Operating Permit program source pays fees to the Department consistent with the fee schedule.

(8) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the owner or operator in its application as approved by the Department. Such terms and conditions:

(a) Shall require the owner or operator, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield described in OAR 340-028-2190 to all terms and conditions under each such alternative operating scenario; and

(c) Shall ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of OAR 340-028-2100 through 340-028-2320.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with the PSELs. Such terms and conditions:

- (a) Shall include all terms required under OAR 340-028-2130 and OAR 340-028-2160 to determine compliance;
- (b) Shall extend the permit shield described in OAR 340-028-2190 to all terms and conditions that allow such increases and decreases in emissions;
- (c) Shall ensure that the trades are quantifiable and enforceable;
- (d) Shall ensure that the trades are not Title I modifications;
- (e) Shall require a minimum 7-day advance, written notification to the Department and the EPA of the trade that shall be attached to the Department's and the source's copy of the permit. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and
- (f) Shall meet all applicable requirements and requirements of OAR 340-028-2100 through 340-028-2320.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emission trade. Such terms and conditions:

- (a) Shall include all terms required under OAR 340-028-2130 and OAR 340-028-2160 to determine compliance;
- (b) Shall extend the permit shield described in OAR 340-028-2190 to all terms and conditions that allow such increases and decreases in emissions; and
- (c) Shall meet all applicable requirements and requirements of OAR 340-028-2100 through 340-028-2320.

(11) Terms and conditions allowing for off-permit changes, OAR 340-028-2220(2).

(12) Terms and conditions allowing for section 502(b)(10) changes, OAR 340-028-2220(3).

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

Stats. Implemented: ORS Ch. 468 & 468A

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95

.....
340-028-2160

Compliance Requirements

All Oregon Title V Operating Permits shall contain the following elements with respect to compliance:

(1) Consistent with OAR 340-028-2130(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

(2) A requirement that any document (including but not limited to reports) required by an Oregon Title V Operating Permit shall contain a certification by a responsible official or the designated representation for the acid rain portion of the permit that meets the requirements of OAR 340-028-2120(5).

(3) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Department or an authorized representative to perform the following:

- (a) Enter upon the permittee's premises where an Oregon Title V Operating Permit program source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the permit;
- (b) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (d) As authorized by the FCAA or state rules, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(4) A schedule of compliance consistent with OAR 340-028-2120(3)(n)(C).

(5) Progress reports consistent with an applicable schedule of compliance and OAR 340-028-2120(3)(n)(C) to be submitted at least semi-annually, or at a more frequent period if specified in the applicable requirement or by the Department. Such progress reports shall contain the following:

- (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
- (b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(6) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(a) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the Department) of submissions of compliance certifications;

(b) In accordance with OAR 340-028-2130(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under OAR 340-028-2130(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information;

(C) Whether compliance was continuous or intermittent. The status of compliance with terms and conditions of the permit for the period covered by the certification, based on the method or means designated in OAR 340-028-2120(6)(c)(B).

The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under OAR 340-028-0110; and

~~(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with OAR 340-028-2130(3);~~

~~(E) Any deviations from permit requirements, the probable cause of such deviations, and any corrective actions or preventive measures taken; and~~

(FD) Such other facts as the Department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Department; and

~~(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the FCAA.~~

(e) Notwithstanding any other provision contained in any applicable requirement, the owner or operator may use monitoring as required under OAR 340-028-2130(3) and incorporated into the permit, in addition to any specified compliance methods, for the purpose of submitting compliance certifications.

~~(7) Annual certification that the risk management plan is being properly implemented, OAR 340-032-5400.~~

(8) Such other provisions as the Department may require in order to protect human health or the environment.

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

Stats. Implemented: ORS Ch. 468 & 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95

Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for

Compliance Assurance Monitoring and Credible Evidence

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

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340-028-0110 through 2160

DATE:	TIME:	LOCATION:
July 15, 1998	6:00 pm	Austin Auditorium 100 La Sells Stewart Center Oregon State University Corvallis, OR 97331
July 16, 1998	3:00 pm	DEQ Headquarters Rm 3a 811 SW Sixth Avenue Portland, OR 97201

HEARINGS OFFICER(s): A professional hearings officer will preside

STATUTORY AUTHORITY: ORS 468.020 and 468A.025

or OTHER AUTHORITY:

STATUTES IMPLEMENTED: ORS 468.095 and 468A.310

ADOPT: OAR 340-028-0310, OAR 340-028-1200 through 1280

AMEND: OAR 340-028-0110, OAR 340-028-2130, OAR 340-028-2160

REPEAL:

RENUMBER:

(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER:

(prior approval from Secretary of State REQUIRED)

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

SUMMARY:

The proposed rules will adopt recent federal rules for Compliance Assurance Monitoring, specifying air monitoring requirements to assure on-going compliance with emissions limits and standards at major emissions units at major sources of air pollution. The proposed Compliance Assurance Monitoring rules update the Oregon Title V Air Operating Permits program. This proposal will also adopt changes to monitoring and other rules to allow the use of any credible evidence in proving or disproving violations of the Clean Air Act. The proposed Credible Evidence rule will be submitted to EPA as a revision to the Oregon State Implementation Plan (SIP) contained in OAR 340-020-0047. Finally, this proposal makes housekeeping changes to the definition of "Volatile Organic Compounds".

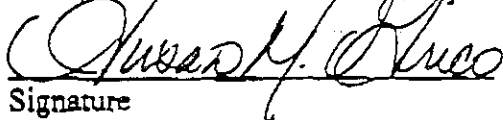
LAST DATE FOR COMMENT: July 22, 1998 at 5:00 pm

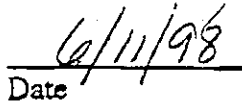
AGENCY RULES COORDINATOR:
AGENCY CONTACT FOR THIS PROPOSAL:
ADDRESS:

TELEPHONE:

Susan M. Greco, (503) 229-5213
Mark Fisher
811 S. W. 6th Avenue
Portland, Oregon 97204
541-388-6146 x 275/1-800-452-4011

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


Signature


Date

Attachment B-2
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Compliance Assurance Monitoring and Credible Evidence

Fiscal and Economic Impact Statement

Introduction

While it is expected that the proposed CAM rules will result in additional costs to both the regulated sources and the DEQ, the costs are a result of rules developed by EPA that must be incorporated into Oregon's Title V program in order to maintain approval of the program. Using the cost estimates from EPA's Regulatory Impact Analysis (RIA) and applying them to the number of affected sources in Oregon, the total annualized incremental cost is estimated as follows:

	<u>Number of Sources</u>	<u>Cost Per Source</u>	<u>Total Cost</u>
Affected sources	123	\$2,027	\$241,321
Agency	123	\$178	\$21,894

The Department does not expect that the Credible Evidence rules will result in any additional costs because they are not expected to change current practices. Industry has raised concerns about the potential for increased third party lawsuits using the new CAM data and credible evidence.

General Public

It is unlikely that the CAM rule will have any cost impact on the general public other than the possibility of small price increases for consumer products due to increased costs to affected businesses. The Credible Evidence rule is not expected to result in any increased cost to the general public.

Small Business

EPA concluded in the RIA that it is likely that the CAM Rule will not have a significant impact on a substantial number of small entities. The agency estimated 4,957 small and affected firms nationwide will be affected by CAM, with about 40 affected small firms in six SIC groups having a potential impact over the one percent level. In other words, EPA believes that less than one percent of all affected small businesses will have a cost of compliance greater than one percent (but less than 3 percent) of its sales receipts. Specific information on the number of small businesses affected by this rule in Oregon is not readily available, but it is estimated that of the 123 total sources subject to the proposed rule, approximately 17 percent, or 21, sources are small businesses. This is based on national averages.

The Credible Evidence rule is not expected to result in any increased costs to small businesses. However, industry representatives have expressed concern that the Credible Evidence rule applied to CAM data could result in an increase in third party lawsuits.

Large Business

Based on EPA's analysis, it is estimated that the CAM rule will result in an annualized average incremental cost of \$2,027 per affected facility. This would cover the cost of reviewing the requirements, developing monitoring plans, performing the monitoring, maintaining records, submitting reports, and reviewing and revising the plans, if necessary. The cost may be higher or lower, depending on the number of pollutant-specific emissions units at the facility and specific monitoring approaches. In Oregon, it is expected that in most cases, the cost will be lower because existing periodic monitoring in Title V permits may be used in part to satisfy the CAM requirements.

Because it pertains only to evidence, the Credible Evidence rule is not expected to increase costs for Large Businesses. Industry representatives have expressed concern that the Credible Evidence rule applied to CAM data could result in an increase in third party lawsuits.

Local Governments

EPA expects that for those small organizations that would experience an increase in operating costs, the increase in costs would be similar to the increase in costs described above for small businesses. Coos County Solid Waste Department is probably the only local government directly affected by the proposed CAM rule.

The Credible Evidence rule imposes no new implementation requirements, and is not expected to have any economic impact on local governments.

State Agencies

- DEQ

As stated above, the cost to the agency is estimated to be about \$21,894 per year. This amount translates into about 0.3 FTE using a labor rate of \$40.00 per hour. Since all of this cost is attributable to Title V activities, the cost will have to be covered by the Title V program fees. It is expected that this small increase in cost will be offset by the elimination of one time only costs associated with program startup during the past three years. Therefore, the Department is not requesting any change to the current fees.

The Credible Evidence rule is not expected to increase DEQ costs.

- Other Agencies

It is not expected that the proposed CAM rule will have any economic impact on other agencies within in the state, except LRAPA, which will also have to adopt similar rules to maintain approval of their Title V program.

The Credible Evidence rule is not expected to increase other agency costs, except that it will also require rulemaking by LRAPA.

Housing Cost Impact Statement

The Department has determined that these rules will have no effect on the cost of development of a 6000 square foot parcel or the construction of a 1200 square foot detached single family dwelling on that parcel.

Attachment B -3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Compliance Assurance Monitoring and Credible Evidence

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules will establish monitoring requirements for major industrial sources to assure compliance with the emissions limits and standards contained in Oregon Title V Air Operating Permits. The proposed rules also establish that any credible evidence, including non-reference test method information, may be used for determining violations at any source within the state.

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: Air Quality Stationary Source Permit Program.
- 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 which requires a local government land use compatibility determination before a DEQ 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.

NA

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

Gregory A. G. Nea
Division

V. J. [Signature]
Intergovernmental Coord.

5/18/98
Date

Attachment B-4
State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Compliance Assurance Monitoring and Credible Evidence

**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. EPA promulgated Credible Evidence and Compliance Assurance Monitoring Rules in the Federal Register on February 24, 1997 and October 22, 1997; respectively. The CAM rules are codified in 40 CFR Part 64 and the Credible Evidence rules are in 40 CFR Parts 51, 52, 60, and 61. The Department is not proposing any differences from the federal requirements.

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

This is not applicable because the rules do not establish emission limits and standards. The rules deal with monitoring requirements and the use of the monitoring information for compliance purposes.

- 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 Department has established periodic monitoring in Oregon Title V Air Operating Permits using, in part, the authority granted under the highest and best practicable treatment and control rules in OAR 340-028-0620. This approach and several monitoring examples from the Oregon permits were used by EPA to develop the CAM rule.

The Department wants the ability to use any probative information to determine a source's compliance. It's evidentiary concerns are aligned with the purpose of the federal Credible Evidence rule.

- 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?

NA

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

NA

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

NA

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

NA

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

NA

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?

NA

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

NA

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

NA

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 10, 1998

To: Interested Parties and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements

Compliance Assurance Monitoring (CAM) and Credible Evidence

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules/rule amendments regarding compliance assurance monitoring for major industrial sources and credible evidence for all sources within the state of Oregon. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

The US Environmental Protection Agency (EPA) recently promulgated federal rules for Compliance Assurance Monitoring as required by the Clean Air Act Amendments of 1990. Oregon must adopt similar rules to maintain approval of the Oregon Title V Air Operating Permit program for major sources. The CAM rules specify monitoring requirements for assuring on-going compliance with emissions limits and standards. The CAM rule will apply to major emissions units at major sources required to obtain Oregon Title V Air Operating Permits.

Also in response to federal rules, this proposal involves changes to existing general monitoring and other requirements within the Oregon Administrative Rules to allow for use of any credible evidence in proving or disproving violations of the Clean Air Act, instead of limiting the evidence to the results of reference test methods. The Department has always relied on both reference and non-reference test methods to prove compliance or non-compliance. While the Department's use of non-reference method data has never been challenged, as it was at the federal level, the Department believes it wise to safeguard air quality programs so the Department can continue to rely upon all evidence necessary to ensure compliance. The proposed rule for credible evidence (OAR 340-028-0310) will be submitted to EPA as a revision to the Oregon State Implementation Plan (SIP) contained in OAR 340-020-0047.

This proposal also makes housekeeping changes to the definition of "Volatile Organic Compounds" in OAR 340-28-0110 (139) to make it consistent with the same definition in OAR 340-22-0102(73).

The Department has the statutory authority to address this issue under ORS 468.095 (Investigatory authority; entry on premises; and status of records) and ORS 468A.310 (Title V Program).

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 CAM and Credible Evidence rules in OAR 340-028 (amendments).
- Attachment E A compilation of rule changes that make up the credible evidence amendments.

Hearing Process Details

The Department is conducting two public hearings at which comments will be accepted either orally or in writing*. The hearings will be held as follows:

Date: July 15, 1998
Time: 6:00 p.m.
Place: Austin Auditorium
100 LaSells Stewart Center
Oregon State University
Corvallis, Oregon 97331

Date: July 16, 1998
Time: 3:00 p.m.
Place: DEQ Headquarters room 3A
811 SW Sixth Avenue
Portland, OR 97204

* PLEASE NOTIFY DEQ ABOUT ANY SPECIAL PHYSICAL OR LANGUAGE ACCOMODATIONS YOU MAY NEED AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE. TO MAKE THESE ARRANGEMENTS, PLEASE CONTACT DEQ PUBLIC AFFAIRS AT 1-800-452-4011 IN OREGON, OR 503-229-5317. PEOPLE WITH HEARING IMPAIRMENTS MAY CALL DEQ'S TDD NUMBER AT 503-229-6993.

Deadline for submittal of Written Comments: July 22, 1998

A professional hearings officer will preside at the hearings.

Written comments can be presented at the hearing or to the Department any time prior to July 22, 1998 by 5:00 p.m. Comments should be sent to: Department of Environmental Quality, Attn: Mark Fisher, 811 SW 6th Avenue, Portland, Oregon 97204.

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 September 18, 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

Why is there a need for the rule?

The CAM rules must be adopted to maintain a fully approved Title V Operating Permit program. If the rules are not adopted, the Title V program would be deficient and the EPA could invoke sanctions and/or assume authority of the program.

The Credible Evidence rules are proposed for adoption to ensure that Oregon's SIP and Title V programs comply with federal requirements.

The housekeeping changes to the definition of "Volatile Organic Compounds" are necessary for consistency with corresponding rule language in Oregon Administrative Rules.

How was the rule developed

The rules were developed by Department staff based on federal rules. Staff recommends that the federal rules be adopted verbatim for the CAM rule, and adopted by reference for the Credible Evidence rules. The Credible Evidence rule is proposed to be effected in three areas: 1) new credible evidence language amending the Department's rules on compliance certification 2) adoption of enforcement language recommended by EPA and the Oregon Department of Justice, and, 3) two concurrent rule actions separate from this package, which will cause an adoption by reference of federal credible evidence language in the National Emission Standards for Hazardous Air Pollutants (NESHAPS) and the New Source Performance Standards (NSPS). See attachment E for a compilation of all of the rule changes related to credible evidence.

An advisory committee was not involved in the rulemaking, but the proposed rule was presented at a stakeholders meeting on March 4, 1998 which included invitations to representatives from the public, industry, and environmental interests. Copies of the Federal Register documents relied upon in the development of this rulemaking proposal can be reviewed at DEQ's office at 811 SW Sixth Avenue, Portland, Oregon. Please contact the staff person noted at the end of this memo 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 CAM rule will affect only those major sources subject to the Oregon Title V Operating Permit program. The CAM requirement will replace the periodic monitoring requirement for the largest emission units at Title V sources. The CAM rule is designed to ensure that pollution control equipment is operated at its best efficiency to reduce emissions. The CAM rule requires the owner or operators to monitor and record control equipment parameters that are indicators of

good of operation and maintenance. Because Oregon's current periodic monitoring requirement is similar to the CAM rule, sources are not expected to have a great additional burden in complying with CAM.

The Credible Evidence rule will affect all emissions sources subject to air quality regulations. This rule allows any credible evidence to prove or disprove a violation and to certify compliance. It is not expected to affect DEQ enforcement. Industry has raised concerns about increased third party lawsuits using the new CAM data and credible evidence. While CAM data may increase the amount of information upon which third party lawsuits may be based, it is not possible to predict whether there will be an actual increase in lawsuits. In Oregon, a broad range of information regarding compliance with air permits has always been available, and third party lawsuits have been infrequent.

How will the rule be implemented

The proposed rules will require DEQ staff to review and approve compliance assurance monitoring plans submitted by the owner or operators of major sources. In many cases, the plans will be based on EPA guidance or monitoring previously included in permits, so the amount of effort should be minimal. In some cases, a more detailed technical review will be necessary. Once the monitoring is incorporated into Title V permits, DEQ staff will have to inspect the monitoring systems and review pollution control equipment parameter data as part of their routine compliance inspections. This data may be used to identify violations of the emission limits and standards. During the summer and fall of 1998, DEQ will provide the following to assist in implementation of this rule:

- DEQ staff training sessions (at least two)
- One industry workshop
- Oversight review of initial CAM plans
- Revision to existing periodic monitoring guidance document

As a reinforcement to the Department's background legal authority, the credible evidence rule would not change the Department's compliance activities. It would require no implementation or training.

Are there time constraints

EPA will be issuing a "SIP call" requiring Oregon to modify the SIP to include the Credible Evidence rules. A SIP call is a request from EPA to a state with a federally-delegated air program to bring its rules in line with the federal program. While it is not known when this SIP call will be issued, the state usually only has about one year to comply with the request. Therefore, prompt action will ensure compliance with the requirements.

The CAM rules will apply to major sources when they are required to submit permit renewal applications or request significant permit modifications. Renewal applications are due beginning in July of this year. Therefore, it is important the rules be adopted as promptly as possible.

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 Mark Fisher, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204 (503) 229-5069. In Oregon: 1-800-452-4011.

THIS PUBLICATION IS AVAILABLE IN ALTERNATE FORMAT (e.g., LARGE PRINT, BRAILLE) UPON REQUEST. PLEASE CONTACT DEQ'S PUBLIC AFFAIRS AT 503-229-5317 TO REQUEST AN ALTERNATE FORMAT.

CAMINTPART.doc

Attachment C

Hearings Officer Report

For efficiency, the Department provided one public notice of combined hearings that were held on several rulemakings. General comments, as well as comments specific to this rule proposal, if any, are summarized in the following Hearings Officer Report

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 16, 1998

To: Environmental Quality Commission
From: Ruth Crowley, Hearings Officer *Ruth Crowley
by KC*
Subject: Presiding Officer's Report for Rulemaking Hearing

Combined rule adoption hearing:

1. Reasonably Available Control Technology (RACT): Stage I and II vapor recovery;
2. National Emission Standards for Hazardous Air Pollutants (NESHAP): standards for pulp and paper ("cluster rule"), polymers and resins production, off-site waste and recovery operations, printing and publishing, primary aluminum plants;
3. New Source performance Standards (NSPS): Hospitals/Medical/Infectious Waste incinerators;
4. Compliance Assurance Monitoring (CAM) for major industrial sources;
5. Credible Evidence for all sources in Oregon.

Two hearings were held on the above rules proposed for adoption. An announcement was made asking for signatures on the witness registration forms for anyone wanting to present testimony. All present were advised that the hearing was being recorded, and of the procedures to follow.

At the Corvallis, Oregon hearing on July 15, 1998, six people presented testimony. All comments were related to the pulp and paper "cluster" rule, item #2 in the above listing.

At the Portland, Oregon hearing on July 16, 1998, no one presented testimony.

Corvallis, Oregon. July 15, 1998; 6:00 p.m.

The following summarizes oral testimony presented at this hearing:

Linda Hunn*
1820 SE Bethel St
Corvallis 97333

Dioxins (toxic byproducts of industrial processes involving chlorine) attack our systems at very low doses. Ms. Hunn is concerned about the effect of dioxins on our immune and reproductive systems. She encourages the City of Corvallis to recommend to the DEQ that paper and pulp bleaching operations in Oregon shift from using chlorine products to using ozones, peracids, and enzymes to bleach their pulp. She believes this recommendation is especially pertinent to Pope & Talbot, which discharges pollutants into the Willamette, Corvallis's drinking water source.

W. Alfred Mukatis
2851 NW Monterey Pl.
Corvallis 97330

Mr. Mukatis recalled the time when Oregon was a leader in water quality issues. He expressed concern about how the water rule is worded. It is phrased in terms of x amount of pollution per kilogram of product. If the amount of product increases, pollutants also increase. Mr. Mukatis would like the water rule to echo the federal sulfur dioxide rule, under which a cap is placed on the level of permissible pollutants and the cap decreases each year.

Mary Slabaugh*
1800 SW Allen St.
Corvallis 97333

Ms. Slabaugh testified as a private citizen but has been a board member of Friends of the Upper Willamette for two years and has researched pulp bleaching technologies. She makes three requests to DEQ:

- 1) Adopt technology-based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters. The fact that Pope & Talbot has already incorporated oxygen delignification in its process, and the other two mills have partially substituted chlorine dioxide for elemental chlorine, belies the claim that ECF with oxygen delignification is not economically feasible.
- 2) Adopt as DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area that would trigger new, more stringent limits on effluents.
- 3) Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

The existing oxygen delignification/Monox-L process could be amended with ozone to achieve the new cluster rule limits while producing an acceptable product. Continued evolution of ozone and other bleaching technologies makes pursuit of this option attractive; it would avoid the major capital investment in chlorine dioxide-generating equipment.

Pope & Talbot should be allowed to design a special tier for its situation. A TCF process must be the ultimate goal for all of Oregon's pulp bleaching mills. Simple adoption of the April 1998 cluster rules is not good enough for Oregon.

Liz Frenkel (for Oregon League of Women Voters)*
1431 NW Vista Pl.
Corvallis 97330

The League of Women Voters (League) advocates the goal of TCF for the pulp and paper industry, because only with a TCF process is a closed loop water system possible, and only such a system protects the downstream users from pulp plant pollutants.

On 20 June Pope & Talbot announced plans to install ECF technology to meet the requirements of the April 1998 cluster rules. If DEQ's proposed rule--adopting the cluster rule with no changes—is approved, Pope and Talbot will have no incentive to move toward TCF bleaching. The process locks them into a chlorine discharge future of 15 to 20 years. The League's concerns are:

- Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution.
- Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet.
- Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.
- Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide.

Ashley Roorbach
626 SW Fifth St.
Corvallis 97333

Mr. Roorbach drinks, bathes in, and cooks with water containing Pope & Talbot's dioxin discharge. He advocates TCF rules for water discharge.

Sue Danver^
1021 NW 32nd St.
Corvallis 97330

Also a board member of the Friends of the Upper Willamette, Ms. Danver testified as a private citizen. She advocates exploring alternatives to chlorine dioxide for Pope and Talbot and believes, based on information at DEQ's June 30 information session, that it is possible to combine ozone with Monox-L technology. She requests that DEQ work with EPA to develop a tiered approach for Pope & Talbot.

Because we have only three pulp mills in Oregon, Ms. Danver believes we could work with them on a case by case basis and not lose the opportunity to have TCF in five years. At the June 30 informational meeting, DEQ said it would adopt the cluster rules as written absent new information. Ms. Danver supplied three political events that should be considered as new information:

- The Willamette River Task Force report on point and nonpoint source pollutants recommends providing incentives for MONOX-L and other new techniques.

- The Spring Chinook salmon is listed as a threatened species on some branches of the Willamette; Pope & Talbot is upstream.
- Pope & Talbot's NPDES water discharge permit expired on June 30. Renewal is one or two years off. Pope & Talbot will have chosen ECF technology before we have an opportunity to address their choice.

Ms. Danver requests a response from DEQ on this timing. Once the very expensive ECF technology is in place, the decision to implement it is irreversible.

Ms. Danver also birds in the Willamette National Forest and expressed dismay at the malformed birds she has seen lately.

* = submitted written statement as well as oral testimony

^ = will submit written comments

Portland, Oregon. July 16, 1998; 3:00 p.m.

There was no testimony given at this hearing.

Summary of Testimony by Subject Matter

Urge move to total chlorine free (TCF) bleaching (particular concern: Pope & Talbot mill):

**Linda Hunn
Mary Slabaugh
Liz Frenkel
Ashley Roorbach
Sue Danver**

Special concerns:

Effects of dioxin on human immune, reproductive systems

**Linda Hunn
Mary Slabaugh**

Implementation of ECF technology will preclude the better choice of TCF technology because of the investment (\$30 million)

**Liz Frenkel
Sue Danver**

Concerns re Pope & Talbot decision: Liz Frenkel

Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution

Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide

Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet

Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.

Concern re impact of pollutants on frogs and birds: Sue Danver

Concern about wording of water rule: x parts pollution per kg of product. If product output increases, pollution increases in an absolute sense. Wants cap on levels of pollutants in river, to be lowered each year, as with the sulfur dioxide rule.

W. Alfred Mukatis

Specific recommendations:

Mary Slabaugh:

1. Adopt technology based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters.

2. Adopt as Oregon DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area, that would trigger new and more stringent limits on effluents.

3. Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

Liz Frenkel:

DEQ rules should reflect goal of TCF technology by establishing appropriate timelines and regulations encouraging achievement of this goal (e.g., requiring Pope & Talbot to make analysis of alternatives to ECF technology dependent on chlorine dioxide).

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Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for Compliance Assurance Monitoring and Credible Evidence

Department's Evaluation of Public Comment

There were no comments related to the proposed Compliance Assurance Monitoring rules. There were two comments related to the proposed Credible Evidence rules and these are addressed below.

Comment: DEQ should consider arguments presented against the Credible Evidence rule in a pending lawsuit, and reconsider the rule if the court upholds industry's arguments.

Multiple legal actions have been consolidated into one federal action challenging the Credible Evidence Rule. A decision is expected sometime before the end of the year. In the event that a court upholds any of the arguments against the Credible Evidence Rule, commenters request that the Department reconsider the rule and its implementation in Oregon. One commenter stated that the federal litigation makes it "premature" for the Department to take final action on the Credible Evidence Rule, and states it should be withdrawn or held until the federal decision. Commenters stated that Oregon should consider some of the arguments being raised at the national level. Commenters cited the following arguments:

- The Clean Air Act limits the use of any credible evidence to establish the severity rather than the existence of a violation.
- The Credible Evidence Rule disables the Title V permit shield, removing certainty that compliance with permit conditions would assure overall compliance.
- The Credible Evidence Rule makes compliance obligations so vague that due process protections are violated. Members of the regulated community are entitled to know what requirements they need to meet and by what standards their performance will be measured.
- By allowing evidence of compliance, other than reference test methods, The Credible Evidence Rule increases the stringency of underlying numeric limits by converting them into "never-to-be-exceeded" requirements.

Department response: The Department has been aware of the legal action challenging the Credible Evidence rule. On August 14, 1998, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the industry challenge to EPA's Credible Evidence Rule. The Court's recent dismissal of this lawsuit makes it unnecessary to reconsider the rule at this time. The Court dismissed the case, deferring judicial review

until the issues become relevant in the context of a specific application of a regulation or an enforcement action.

Through STAPPA, the Department contributed information to the amicus brief in this action, supporting the Credible Evidence Rule. Because credible evidence has always been available for compliance purposes in Oregon, the Department expects no actual change in compliance activities once the credible evidence rule has been adopted. Despite past and potential future legal challenges to the Credible Evidence Rule, it is a final rule that has been in effect since February 1997. Many EPA rules governing delegated air programs are challenged. Unless the rules are stayed, it has been the air program's policy to fulfill its obligations under final EPA rules.

Comment: It is not necessary for DEQ to adopt the Credible Evidence Rule

There is support for using reasonable evidence in determining compliance. However, it is not reasonable to adopt the Credible Evidence Rule to justify DEQ's use of non-reference test data because it has never been challenged in a legal proceeding.

Department response: The Department has proposed to adopt the Credible Evidence Rule primarily to maintain its authority necessary to operate delegated and approved air programs. EPA has already issued one "SIP call" requesting states to adopt the Credible Evidence Rule, and will likely renew the SIP call if states fail to adopt the rule.

The Department believes that it has always had the ability to use any evidence to prove or disprove compliance. However, the Department has adopted by reference federal rules, such as the New Source Performance Standards (NSPS), and the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), where reference test methods have been specified. The Department could be subject to the same kind of challenge as was EPA, involving non-reference test data showing violations of NSPS or NESHAPS. The need to maintain all of its evidentiary options and compliance tools also supports DEQ's adoption of the Credible Evidence Rule.

General Comments: The general comments related to the combined rulemakings have been summarized as follows and the Department's response is provided in italics.

- If the Department is going to use a combined mailing, there should only be one contact person for receiving comments.

The Department agrees.

- The Department should continue to work with LRAPA to further refine the public comment process when adopting federal regulations by reference and that the delegation of authority to LRAPA for federal rules should be streamlined.

Current rules allow LRAPA to enforce the Department's Title V, NSPS and NESHAP rules directly. The Department plans to increase coordination with LRAPA on other rulemakings, but LRAPA is an independent agency and is authorized to adopt its own rules as long as they are at least as stringent as the Department's.

- The Department should continue to adopt federal regulations by reference or verbatim to ensure consistency with federal programs. The adoption by reference is preferred over the adoption by verbatim because it would prevent any need to make "housekeeping" rule changes in the event that minor differences between the federal and state language occur.

The Department's intention is to adopt federal rules that establish emission standards and permitting requirements by reference or verbatim unless there is a need to revise requirements to fit in the Oregon program or there is a scientifically defensible need to be more stringent. The Department adopts rules by reference when the federal rules apply directly to sources and verbatim when the federal rules are directions to the states on what to require of sources.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for Compliance Assurance Monitoring and Credible Evidence

Rule Implementation Plan

The proposed rules will require DEQ staff to review and approve compliance assurance monitoring plans submitted by the owner or operators of major sources. In many cases, the plans will be based on EPA guidance or monitoring previously included in permits, so the amount of effort should be minimal. In some cases, a more detailed technical review will be necessary. Once the monitoring is incorporated into Title V permits, DEQ staff will have to inspect the monitoring systems and review pollution control equipment parameter data as part of their routine compliance inspections. This data may be used to identify violations of the emission limits and standards. During the summer and fall of 1998, DEQ will provide the following to assist in implementation of this rule:

- DEQ staff training sessions (at least two)
- One industry workshop
- Oversight review of initial CAM plans
- Revision to existing periodic monitoring guidance document

As a reinforcement to the Department's background legal authority, the credible evidence rule would not change the Department's compliance activities. It would require no implementation or training.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D
September 17, 1998 Meeting

Title:

Amendments to Reasonably Available Control Technology (RACT) rules.

Summary:

RACT is the lowest emission limitation that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The Portland Ozone Maintenance Plan relies on RACT as a strategy to maintain compliance with the standard for the next ten years.

There are two types of RACT which are applicable to sources within the affected areas. The first is referred to as categorical which is for groups of sources which have similar or identical types of operations. Categorical RACT is specified in the rules as a limitation. The second type is referred to as non-categorical or source-specific. Non-categorical RACT is applicable to sources which do not fit into one of the established RACT categories but have potential VOC emissions in excess of 100 tons per year without consideration for add-on controls.

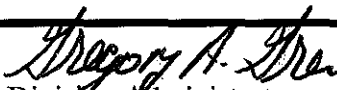
This rule making proposal is needed to change the applicability of non-categorical RACT which is based on the definition of potential to emit (PTE). In the past, the Department proposed and the EQC adopted a change to the definition of PTE, as it relates to non-categorical RACT sources, which was not approvable by EPA as a revision to the State Implementation Plan (SIP). In April 1997 the Department proposed and the EQC adopted a change to the PTE definition as a temporary rule as part of the Portland Ozone Maintenance Plan. The current rulemaking proposal will make the temporary rule permanent.

The housekeeping changes and changes to the Stage I and II vapor recovery rules are proposed to reduce the Department's workload by decreasing the frequency of permit issuance and fee collection and providing greater clarity and consistency in implementation.

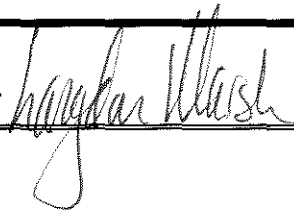
Department Recommendation:

The Department recommends that the Commission adopt the amendments to the RACT rules.


Report Author


Division Administrator

Director



State of Oregon
Department of Environmental Quality Memorandum

Date: August 31, 1998
To: Environmental Quality Commission
From: Langdon Marsh
Subject: Agenda Item D, Amendments to Reasonably Available Control Technology (RACT) rules, EQC Meeting September 17, 1998

Background

On June 5, 1998, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would address changes to Reasonably Available Control Technology (RACT) for existing sources of Volatile Organic Compounds (VOC) in the Portland, Salem and Medford areas. A major purpose of this proposal is to adopt changes required by EPA in the applicability of RACT. The EQC adopted these changes by temporary rule in April 1997 as part of the Portland Ozone Maintenance Plan and this rulemaking would make these changes permanent rules.

In addition, the Department proposes changes to the Stage I and II vapor recovery rules to clarify requirements, to allow permits to be issued for longer time periods, and allow fees to be collected on a bi-annual basis. This rule package also contains a number of housekeeping changes.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on July 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 June 10, 1998.

Public Hearings were held July 15, 1998 in Corvallis, Oregon and July 16, 1998 in Portland, Oregon with Ruth Crowley serving as Presiding Officer. Written comment was received through 5 P.M. on July 22, 1998. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.) Based upon that evaluation of comments received, no modifications to the initial rulemaking proposal are being recommended by the Department. None of the comments listed in Attachment C are specific to this rulemaking proposal.

Memo To: Environmental Quality Commission

Agenda Item D, Amendments to Reasonably Available Control Technology (RACT) rules, EQC Meeting September 17, 1998

Page 2

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

RACT is the lowest emission limitation that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The Portland Ozone Maintenance Plan relies on RACT as a strategy to maintain compliance with the standard for the next ten years.

There are two types of RACT which are applicable to sources within the affected areas. The first is referred to as categorical which is for groups of sources which have similar or identical types of operations and is specified in the rules as a limitation. The second type is referred to as non-categorical or source-specific and is applicable to sources which do not fit into one of the established RACT categories but have potential VOC emissions in excess of 100 tons per year without consideration for add-on controls.

This rule making proposal is needed to change the applicability of non-categorical RACT which is based on the definition of potential to emit (PTE). In the past, the Department proposed and the EQC adopted a change to the definition of PTE, as it relates to non-categorical RACT sources, which was not approvable by EPA as a revision to the State Implementation Plan (SIP). In April 1997 the Department proposed and the EQC adopted a change to the PTE definition as a temporary rule as part of the Portland Ozone Maintenance Plan. The current rulemaking proposal will make the temporary rule permanent.

The housekeeping changes and changes to the Stage I and II vapor recovery rules are proposed to reduce the Department's workload by decreasing the frequency of permit issuance and fee collection and providing greater clarity and consistency in implementation.

Currently stage I and II permits are issued on an annual basis with annual fee collection. This rule modification will allow permits to be issued for 10 years and fees to be collected on a bi-annual basis. This does not affect the requirements of the permits or the amount of the fees, only the duration and frequency of collection.

Memo To: Environmental Quality Commission

Agenda Item D, Amendments to Reasonably Available Control Technology (RACT) rules, EQC Meeting September 17, 1998

Page 3

Relationship to Federal Rules

The federal RACT rules are a minimal requirement for existing sources in ozone nonattainment areas. The federal new source review (NSR) program is a minimal requirement for new major sources. EPA leaves it up to the states to establish and implement minor new source review requirements such as applying RACT to new sources.

Existing (prior to November 15, 1990) Volatile Organic Compound (VOC) emitting sources within ozone nonattainment areas, which are not subject to a categorical Reasonably Available Control Technology (RACT) limit, are required to implement RACT if potential emissions before add-on control are 100 tons VOC per year or more. Part of this rulemaking would make a temporary rule, adopted to make current rules consistent with the federally approved SIP, permanent

Authority to Address the Issue

The Department has the statutory authority to address this issue under ORS 468A.040 and ORS 468.065.

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

The proposed rule changes were developed by the Department based on EPA requirements for ozone nonattainment areas and the requirements in the Portland ozone maintenance plan. An advisory committee was not involved in this rulemaking process, but the proposed rule changes were discussed at a stakeholders meeting on March 4, 1998, which included invitations to representatives from the public, industry and environmental interests.

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

The proposed rule amendments address the changes required by EPA concerning calculating potential to emit based on before add-on controls. The EQC adopted these changes by temporary rule in April 1997 and this rulemaking would make these changes permanent rules. The significance of this is that it affects who is subject to non-categorical RACT. The current rule, prior to the temporary rule, allowed sources to take credit for add-on controls when determining applicability. This rulemaking proposal require an analysis based on pre-control conditions. EPA required this change in order to approve the Portland Ozone Maintenance Plan.

Memo To: Environmental Quality Commission

Agenda Item D, Amendments to Reasonably Available Control Technology (RACT) rules, EQC Meeting September 17, 1998

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In addition, the Department proposes changes to the Stage I and II vapor recovery rules to eliminate ambiguities and confusion and to allow permits to be issued for longer time periods and fees to be collected on a bi-annual basis. This rule package also contains a number of housekeeping changes.

Summary of Significant Public Comment and Changes Proposed in Response

No public comment was received specific to this rule making proposal.

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

The rules will continue to be implemented under the existing Air Contaminant Discharge Permit (ACDP) and Title V permit programs for industrial sources, and the vapor recovery system permits for Stage I and II sources.

All known sources subject to non-categorical RACT are already in compliance or have submitted determinations under the temporary rule. Any additional sources found will be addressed through the existing permitting programs.

Implementation of the stage I and II permitting will continue with the current permitting program but with longer duration of permits and less frequent fee collection. This rule making proposal was based on requests from the Department staff responsible for implementing the program and is not expected to change the requirement to get a permit or exempt any facilities that are currently required to have a permit.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding Reasonably Available Control Technology as presented in Attachment A of the Department Staff Report as an amendment to the State Implementation Plan.

Memo To: Environmental Quality Commission

Agenda Item D, Amendments to Reasonably Available Control Technology (RACT) rules, EQC
Meeting September 17, 1998

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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

Approved:

Section:

Andrew Ginsburg

Division:

Gregory A. Green

Report Prepared By: David Kauth

Phone: (503) 229-5655

Date Prepared: August 11, 1998

DPK
Adoption report.doc
8/11/98

Attachment A

DIVISION 22

GENERAL GASEOUS EMISSIONS

General Emission Standards for Volatile Organic Compounds

340-022-0100

Introduction

(1) OAR 340-022-0100 through 340-022-0300 regulate sources of VOC which contribute to the formation of photochemical oxidant, mainly ozone.

(2) Since ozone standards are not violated in Oregon from October through April (because of insufficient solar energy), natural gas-fired afterburners may be permitted, on a case-by-case basis, to lay idle during the winter months.

(3) Sources regulated by OAR 340-022-0100 through 340-022-0300 are new and existing sources in the Portland and Medford AQMA's and in the Salem SATS listed in subsections (a) through (n) of this section, including:

- (a) Gasoline ~~dispensing facilities~~ ~~stations~~, ~~storage~~ ~~underground~~ tank filling;
- (b) Bulk gasoline plants and delivery vessels;
- (c) Bulk gasoline terminal loading;
- (d) Cutback asphalt;
- (e) Petroleum refineries, petroleum refinery leaks;
- (f) VOC liquid storage, secondary seals;
- (g) Coating including paper coating and miscellaneous painting;
- (h) Aerospace component coating;
- (i) Degreasers;
- (j) Asphaltic and coal tar pitch in roofing;
- (k) Flat wood coating;
- (l) Rotogravure and Flexographic printing;
- (m) Perchloroethylene dry cleaning;
- (n) Automotive Gasoline.

(4) ~~Emissions units~~ ~~Sources~~ not covered by the source categories listed in section (3) of this rule which emit or have the potential to emit over 100 tons of VOC per year are subject to OAR 340-022-0104(5).

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

340-022-0102

Definitions

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

(1) "Aerospace component" means the fabricated part, assembly of parts, or completed unit of any aircraft, helicopter, missile or space vehicle.

(2) "Air dried coating" means coatings which are dried by the use of air at ambient temperature.

(3) "Applicator" means a device used in a coating line to apply coating.

(4) "Bulk gasoline plant" means a gasoline storage and distribution facility which receives gasoline from bulk terminals by railroad car or trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and gasoline dispensing facilities ~~service stations~~.

(5) "Bulk gasoline terminal" means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck.

(6) "Can coating" means any coating applied by spray, roller, or other means to the inside and/or outside surfaces of metal cans, drums, pails, or lids.

(7) "Carbon bed breakthrough" means the initial indication of depleted adsorption capacity characterized by a sudden measurable increase in VOC concentration exiting a carbon adsorption bed or column.

(8) "Certified ~~Underground~~-storage device" means vapor recovery equipment for gasoline ~~underground~~ storage tanks as certified by the State of California Air Resources Board Executive Orders, copies of which are on file with the Department, or which has been certified by other air pollution control agencies and approved by the Department.

(9) "Class II hardboard paneling finish" means finishers which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

(10) "Clear coat" means a coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color.

(11) "Coating" means a material applied to a surface which forms a continuous film and is used for protective and/or decorative purposes.

(12) "Coating line" means one or more apparatus or operations which include a coating applicator, flash-off area, and oven or drying station wherein a surface coating is applied, dried, and/or cured.

(13) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.

(14) "Crude oil" means a naturally occurring mixture which consists of hydrocarbons and/or sulfur, nitrogen, and/or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

(15) "Custody transfer" means the transfer of produced petroleum and/or condensate after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(16) "Cutback asphalt" means a mixture of a base asphalt with a solvent such as gasoline, naphtha, or kerosene. Cutback asphalts are rapid, medium, or slow curing (known as RC, MC, SC), as defined in ASTM D2399.

(17) "Day" means a 24-hour period beginning at midnight.

(18) "Delivery vessel" means any tank truck or trailer used for the transport of gasoline from sources of supply to stationary storage tanks.

(19) "Dry cleaning facility" means any facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

(20) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation.

(21) "External floating roof" means a cover over an open top storage tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(22) "Extreme performance coatings" means coatings designed for extreme environmental conditions such as exposure to any one of the following: continuous ambient weather conditions, temperature consistently above 95 °C., detergents, abrasive and scouring agents, solvents, corrosive atmosphere, or similar environmental conditions.

(23) "Extreme performance interior topcoat" means a topcoat used in interior spaces of aircraft areas requiring a fluid, stain or nicotine barrier.

(24) "Fabric coating" means any coating applied on textile fabric. Fabric coating includes the application of coatings by impregnation.

(25) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(26) "Freeboard ratio" means the freeboard height divided by the width (not length) of the degreaser's air/solvent area.

(27) "Forced air dried coating" means a coating which is dried by the use of warm air at temperatures up to 90 °C. (194 °F.).

(28) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 27.6 kPa (4.0 psi) or greater which is used to fuel internal combustion engines.

(29) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle, boat, or airplane gasoline tanks from stationary storage tanks.

(30) "Gas service" means equipment which processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous phase.

(31) "Hardboard" is a panel manufactured primarily from inter-felted ligno-cellulosic fibers which are consolidated under heat and pressure in a hot press.

(32) "Hardwood plywood" is plywood whose surface layer is a veneer of hardwood.

(33) "High performance architectural coating" means coatings applied to aluminum panels and moldings being coated away from the place of installation.

(34) "Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floating upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

(35) "Large appliance" means any residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

(36) "Leaking component" means any petroleum refinery source which has a volatile organic compound concentration exceeding 10,000 parts per million (ppm) when tested in the manner described in method 31 and 33 on file with the Department. These sources include, but are not limited to, pumping seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains, and open-ended pipes. Excluded from these sources are valves which are not externally regulated.

(37) "Liquid-mounted" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.

(38) "Liquid service" means equipment which processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the liquid phase.

(39) "Low solvent coating" means a coating which contains a lower amount of volatile organic compound than conventional organic solvent borne coatings. Low solvent coatings include waterborne, higher solids, electrodeposition and powder coatings.

(40) "Major modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase for any pollutant subject to regulation under the Clean Air Act.

(41) "Major source" 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.

(42) "Maskant for chemical processing" means a coating applied directly to an aerospace component to protect surface areas when chemical milling, anodizing, aging, bonding, plating, etching and/or performing other chemical operations on the surface of the component.

(43) "Miscellaneous metal parts and products" means any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, magnet wires, automobiles, ships, and airplane bodies.

(44) "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(45) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

(46) "Oven-dried" means a coating or ink which is dried, baked, cured, or polymerized at temperatures over 90 °C. (194 °F.).

(47) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into pack-aging products and labels for articles to be sold.

(48) "Paper coating" means any coating applied on paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. Paper coating includes the application of coatings by impregnation and/or saturation.

(49) "Person" means the federal government, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(50) "Petroleum refinery" means any facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum, crude oil, or through redistillation, cracking, or reforming of unfinished petroleum derivatives. "Petroleum refinery" does not mean a re-refinery of used motor oils or other waste chemicals. "Petroleum refinery" does not include asphalt blowing or separation of products shipped together.

(51) "Plant site basis" means all of the sources on the premises (contiguous land) covered in one Air Contaminant Discharge Permit unless another definition is specified in a Permit.

(52) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitations on the capacity of a source to emit an air pollutant, excluding air pollution control equipment, shall be treated as part of its design if the limitation is enforceable by the Department ~~has the meaning as defined in OAR 340-028-0110.~~

(53) "Pretreatment wash primer" means a coating which contains a minimum of 0.5% acid by weight for surface etching and is applied directly to bare metal surfaces to provide corrosion resistance and adhesion.

(54) "Printed interior panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(55) "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage.

(56) "Prime coat" means the first of two or more films of coating applied in an operation.

(57) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(58) "Reasonably available control technology" or "RACT" means the lowest emission limitation that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

(59) "Roll printing" means the application of words, designs and pictures to a substrate by means of hard rubber or steel rolls.

(60) "Sealant" means a coating applied for the purpose of filling voids and providing a barrier against penetration of water, fuel or other fluids or vapors.

(61) "Specialty printing" means all gravure and flexographic operations which print a design or image, excluding publication gravure and packaging printing. Specialty Printing includes printing on paper plates and cups, patterned gift wrap, wallpaper, and floor coverings.

(62) "Splash filling" means the filling of a delivery vessel or stationary storage tanks through a pipe or hose whose discharge opening is above the surface level of the liquid in the tank being filled.

(63) "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.

(64) "Source category" means all sources of the same type or classification.

(65) "Submerged fill" means any fill pipe or hose, the discharge opening of which is entirely submerged when the liquid is 6 inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe, the discharge of which is entirely submerged when the liquid level is 18 inches, or is twice the diameter of the fill pipe, whichever is greater, above the bottom of the tank.

(66) "Thin particleboard" means a manufactured board 1/4 inch or less in thickness made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure.

(67) "Thirty-day rolling average" means any value arithmetically averaged over any consecutive thirty days.

(68) "Tileboard" means ~~paneling~~ ~~panelling~~ that has a colored waterproof surface coating.

(69) "Topcoat" means a coating applied over a primer or intermediate coating for purposes such as appearance, identification or protection.

(70) "True vapor pressure" means the equilibrium pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks", February, 1980.

(71) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(72) "Vapor-mounted" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the primary seal, the tank shell, the liquid surface, and the floating roof.

(73) "Volatile organic compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. Excluded from the definition of VOC are those compounds which the U.S. Environmental Protection Agency classifies as being of negligible photochemical reactivity, including: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HCFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); HCFC 225ca and cb; HFC 43-10mcc; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene; and perfluorocarbon compounds which fall into these classes:

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

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

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

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

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]
Stat. Auth.: ORS Ch. 468.020 & 468A.025

Stats. Implemented: ORS Ch. 478.065

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 6-1996, f. & cert. ef. 3-29-96; DEQ 9-1997, f. & cert. ef. 5-9-97

Limitations and Requirements

340-022-0104

General Requirements for New and Existing Sources

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

(2) All new and existing sources inside the following areas shall comply with the General Emission Standards for Volatile Organic Compounds:

- (a) Portland-Vancouver Air Quality Maintenance Area;
- (b) Medford-Ashland Air Quality Maintenance Area;
- (c) Salem Area Transportation Study (SATS) Area.

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

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

(5) All existing sources, operating prior to November 15, 1990, located inside the areas cited in sections (2)(a) and (2)(c) of this rule, containing emissions units or devices. Sources operating prior to November 15, 1990 for which no categorical RACT requirements exist and which have potential emissions before add-on controls of the potential to emit (as defined in OAR 340-028-0110) over 100 tons per year (TPY) of VOC from aggregated, non-regulated emission units, shall have RACT requirements developed on a case-by-case basis by the Department. Sources that have complied with New Source Review requirements per OAR 340-028-1900 through 340-028-2000 and are subject to Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements are presumed to have met RACT requirements. A source may request RACT not be applied by demonstrating to the Department that their potential emissions before add-on controls are to emit is below 100 tons per year. Once a source becomes subject to RACT requirements under OAR 340-022-0100 through 340-022-0300, it shall continue to be subject to RACT, unless VOC emissions fall below 100 tons per year and the source requests that RACT be removed, by demonstrating to the Department that their potential VOC emissions before add-on controls are to emit is below 100 tons per year.

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

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

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 7-1997(Temp), f. & cert. ef. 4-28-97

340-022-0106

Exemptions

Natural gas-fired afterburners needed to comply installed for the purpose of complying with OAR 340-022-0100 through 340-022-0300 shall be operated during the months of May, June, July, August, and September. During other months, the afterburners may be turned off with prior written Departmental approval, provided that the operation of such devices is not required for purposes of occupational health or safety, or for the control of toxic substances, malodors, or other regulated pollutants, or for complying with visual air contaminant limitations.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 4-1993, f. & cert. ef. 3-10-93

340-022-0107

Compliance Determination

(1) Certification and test procedures required by OAR 340-022-0100 through 340-022-0300 shall be conducted in accordance with the Department's **Source Sampling Manual**. Applicants are encouraged to submit designs approved by other air pollution control agencies where VOC control equipment has been developed. Construction approvals and proof of compliance will, in most cases, be based on Departmental evaluation of the source and controls.

(2) Approval by the Department of alternative methods for demonstrating compliance where specified and allowed in OAR 340-022-0100 through 340-022-0300, including approval of equivalent testing methods for determining compliance, shall be subject to review and approval by EPA.

~~(3) Sources subject to the requirements in OAR 340-022-0170 and 340-022-0175 which cannot meet these requirements upon the effective date of those rules, shall be exempted from the enforcement provisions in OAR 340-012-0041 through July 16, 1991. These sources may be placed on compliance schedules through issuance of permit addendums, pursuant to OAR 340-020-0032.~~

[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. 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; Renumbered from 340-22-106(3) & (4); DEQ 23-1980, f. & ef. 9-26-80; DEQ 12-1981(Temp), f. & ef. 4-29-81; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

340-022-0110

Gasoline Dispensing Facilities

(1) ~~No person may transfer or cause or allow the transfer of gasoline from any delivery vessel which was filled at a Bulk Gasoline Terminal or nonexempted Bulk Gasoline Plant into any gasoline dispensing facility tank of less than 40,000 gallon capacity unless:~~

~~(a) The tank is filled by submerged fill;~~

~~(b) A vapor balance system is used which consists of a certified gasoline Underground storage tank device capable of collecting the vapor from volatile organic liquids and gases so as to prevent their emission to the outdoor atmosphere. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;~~

~~(c) The vapors are processed by a system demonstrated to the satisfaction of the Department to be of equal effectiveness; and~~

~~(d) All equipment associated with the vapor balance system shall be maintained to be vapor tight and in good working order. No gasoline delivery shall take place unless the vapor return hose is connected by the delivery truck operator, if required by subsection (b) of this section.~~

(2) Exemptions and Limitations:

~~(a) In the Portland Vancouver AQMA, no person shall deliver gasoline to a gasoline dispensing facility unless the gasoline vapor is handled as required in subsections (1)(b) and (c) of this rule. Gasoline dispensing facilities with a monthly throughput of 10,000 gallons or less of gasoline (30 day rolling average) are exempt from these requirements;~~

~~(b) In the Medford Ashland AQMA, all existing storage tanks at gasoline dispensing facilities with a rated capacity of 1,500 gallons or less are exempt from the submerged fill and vapor balance system requirements in subsection (1)(a) of this rule;~~

(b) All new gasoline storage tanks with a rated capacity of 1500 gallons or less are exempt from the vapor balance system requirement in section (1)(b) of this rule;

(c) All new gasoline storage tanks of any capacity, installed after the effective date of this rule, shall have a submerged fill-tube system;

(d) Transfers made to storage tanks of gasoline dispensing facilities equipped with floating roofs or their equivalent shall be exempt from sections 1(a) and 1(b) of this rule OAR 340-022-0100 through 340-022-0300;

~~(d) Stationary gasoline storage containers of less than 2,085 liters (550 gallons) used for agricultural purposes shall be exempt from OAR 340-022-0100 through 340-022-0300;~~

~~(e) Stationary gasoline storage tanks with offset fill lines, welded in drop tubes, or fill pipes of less than 3" diameter, if installed before January 1, 1979, shall be exempt from OAR 340-022-0100 through 340-022-0300.~~

(3) Compliance with subsection (1)(b) of this rule shall be determined by verifications of use of equipment identical to equipment most recently approved and listed for such use by the Department or by testing in accordance with Method 30 on file with the Department.

(4) All persons subject to OAR 340-022-0100 and this rule shall obtain and maintain a current vapor balance system permit from the Department.

(a) All persons applying for this permit for any time period beginning after December 31, 1999 shall be subject to a bi-annual fee of \$100. shall obtain an annual vapor balance system permit from the Department. This permit shall be displayed or kept on file at the facility. Persons applying for this permit shall at the time of application pay a fee of \$50.

(b) The Department may issue vapor balance permits for up to 10 years.

(c) Persons applying for a new permit with an effective date beginning before December 31, 1999 or in an odd numbered year shall pay the annual fee of \$50 and then will be billed for the bi-annual fee for the next bi-annual period.

(d) Fees shall be paid at the time of application and by December 1 in odd numbered years for the next bi-annual period.

(5) When a facility changes ownership, the new owner shall obtain a new vapor balance system permit, as described in subsection (4) of this rule above, within 60 days of the change of ownership.

(6) No person shall cause or allow the installation of non-certified gasoline storage tank device equipment at any gasoline dispensing facility where a vapor balance system is required.

(7) Persons subject to this rule shall apply for a renewal vapor balance system permit not less than 60 days prior to the expiration date of the existing permit. The bi-annual fee shall be included with the application for renewal.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 12-1981(Temp), f. & ef. 4-29-81; DEQ 16-1983, f. & ef. 10-19-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1994, f. & cert. ef. 11-22-94

340-022-0120

Bulk Gasoline Plants and Delivery Vessel(s)

(1) No person shall transfer or allow the transfer of gasoline to or from a bulk gasoline plant unless:

(a) Each stationary storage tank and each delivery vessel uses submerged fill when transferring gasoline; and

(b) The displaced vapors from filling each tank and each delivery vessel are prevented from being released to the atmosphere through use of a vapor tight vapor balance system, or equivalent system as approved in writing by the Department. All equipment associated with the vapor balance system shall be maintained to be vapor tight and in good working order.

(2) Exemptions and Limitations:

~~— (a) Bulk gasoline plants located within the Portland-Vancouver AQMA which transfer less than 4,000 gallons of gasoline per day on a 30 day rolling average shall be exempt from the vapor balance requirement in OAR 340-022-0110(1)(b);~~

~~— (b) Bulk gasoline plants which deliver gasoline to dispensing facilities in the Portland-Vancouver AQMA with a monthly throughput of less than 10,000 gallons (30 day rolling average) of gasoline are exempt from the vapor balance requirement in OAR 340-022-0110(1)(b), providing the gasoline delivery trucks are used exclusively for the delivery of gasoline to dispensing facilities also exempt from this requirement;~~

~~— (c) Bulk gasoline plants located in the Medford-Ashland AQMA, or in the Salem SATS, are exempt from the requirements in OAR 340-022-0110(1)(b);~~

~~— (d) Each stationary gasoline storage tank may release vapor to the atmosphere through a pressure relief valve set to release at the highest possible pressure in accordance with state or local fire codes, or the National Fire Prevention Association guidelines and no less than 3.4 kPa (0.50 psi) or some other setting approved in writing by the Department;~~

~~(3e) Gasoline shall be handled in a manner to prevent spillage, discharging into sewers, storage in open containers, or handled in any other manner that would result in evaporation. If more than five gallons are spilled, the operator shall report the spillage in accordance with OAR 340-028-1400 to 340-028-1450 340-020-0350 to 340-020-0380.~~

340-022-0125

Gasoline Delivery Vessel(s)

(1) No person shall transfer or allow the transfer of gasoline to a delivery vessel from a bulk gasoline terminal; or a bulk gasoline plant, with a daily throughput of 4,000 or more gallons based on a 30 day-rolling average, located in the Portland-Vancouver AQMA, unless

(a) Each delivery vessel uses submerged fill when receiving gasoline; and

(b) The displaced vapors from filling each tank are prevented from being released to the atmosphere through use of a vapor tight vapor balance system, or equivalent system as approved in writing by the Department. All equipment associated with the vapor balance system shall be maintained to be vapor tight and in good working order.

(2) No person shall transfer or allow the transfer of gasoline from a delivery vessel, which was filled at a bulk gasoline terminal; or a bulk gasoline plant, with a daily throughput of 4,000 or more gallons based on a 30-day rolling average, located within the Portland-Vancouver AQMA; to a new or existing gasoline dispensing facility tank with a capacity of 1,500 gallons or more unless;

(a) Each gasoline dispensing facility tank uses submerged fill when receiving gasoline; and

(b) The displaced vapors from filling each tank are prevented from being released to the atmosphere through use of a vapor tight vapor balance system, or equivalent system as approved in writing by the Department. All equipment associated with the vapor balance system shall be maintained to be vapor tight and in good working order.

(3) No person shall transfer or allow the transfer of gasoline from a delivery vessel to a new gasoline dispensing facility tank unless the gasoline dispensing facility tank uses submerged fill when receiving gasoline.

(4) Gasoline shall be handled in a manner to prevent spillage, discharge into sewers, storage in open containers, or handled in any other manner that would result in evaporation. If more than five gallons are spilled, the operator shall report the spillage in accordance with OAR 340-028-1400 to 340-028-1450.

(53) Compliance with subsection (1)(a) and (2)(a) of this rule shall be determined by visual inspection to ensure minimal spillage of gasoline and proper installation of bottom loading couples.

(64) Compliance with subsection (1)(b) and (2)(b) of this rule shall be determined by verification of use of equipment approved by the Department and/or by testing and monitoring in accordance with applicable portions of OAR 340-022-0137 and/or Method 31 and/or 32 on file with the Department.

(75) The owner or operator of a gasoline delivery vessel shall maintain the vessel to be vapor tight at all times, in accordance with OAR 340-022-0137(1), if such vessel is part of a vapor balance system required by subsection (1)(b) or (2)(b) of this rule. OAR 340-022-0100 through 340-022-0300.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 12-1981(Temp), f. & ef. 4-29-81; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

340-022-0130

Bulk Gasoline Terminals

(1) No terminal owner or operator, shall allow volatile organic compounds (VOC) to be emitted into the atmosphere in excess of 80 milligrams of VOC per liter of gasoline loaded from the operation of loading truck tanks, and truck trailers at bulk gasoline terminals with a daily throughputs of greater than 76,000 liters (20,000 gallons) per day of gasoline (determined by a thirty-day rolling average);

(a) The owner or operator of a gasoline loading terminal shall only allow the transfer of gasoline between the facility and a truck tank or a truck trailer when a current leak test certification for the delivery vessel is on file with the terminal or a valid permit as required by OAR 340-022-0137(1)(c) is displayed on the delivery vessel;

(b) The owner or operator of a truck tank or a truck trailer shall not make any connection to the terminal's gasoline loading rack unless the gasoline delivery vessel has been tested in accordance with OAR 340-022-0137(1);

(c) The truck driver or other operator who fills a delivery truck tank and/or trailer tank shall not take on a load of gasoline unless the vapor return hose is properly connected;

(d) All equipment associated with the vapor balance recovery system shall be maintained to be vapor tight and in good working order.

(2) Compliance with section (1) of this rule shall be determined by testing in accordance with Method 33 on file with the Department. The method for determining compliance with section (1) of this rule are delineated in 40 CFR Part 60, Subpart XX, §60.503.

(3) Bulk Gasoline terminals shall comply with the following within the limits of section (1) of this rule:

(a) All displaced vapors and gases during tank truck gasoline loading operations shall be vented only to the vapor control system;

(b) The loading device must not leak when in use. The loading device shall be designed and operated to allow no more than 10 cubic centimeters drainage per disconnect on the basis of 5 consecutive disconnects;

(c) All loading liquid lines shall be equipped with fittings which make vapor-tight connections and which close automatically and immediately when disconnected;

(d) All vapor lines shall be equipped with fittings which make vapor-tight connections and which close automatically and immediately when disconnected or which contain vapor tight unidirectional valves;

(e) Gasoline shall be handled in a manner to prevent its being discarded in sewers or stored in open containers or handled in any manner that would result in evaporation. If more than 5 gallons are spilled, the operator shall report the spillage in accordance with OAR 340-028-1400 through 340-028-1450;

(f) The vapor ~~balance~~ ~~collection~~ system shall be operated in a manner to prevent the pressure therein from exceeding the tank truck or trailer pressure relief settings.

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

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

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 12-1981(Temp), f. & ef. 4-29-81; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; Sections (2) and (3) renumbered from 340-22-133 and 340-22-136; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1994, f. & cert. ef. 11-22-94; DEQ 26-1995, f. & cert. ef. 12-6-95

340-022-0170

Surface Coating in Manufacturing

(1) No person shall operate a coating line which emits into the atmosphere volatile organic compounds in excess of the limits in section (5) of this rule, expressed as pounds VOC per gallon of coating applied, excluding water and exempt solvents, unless an alternative emission limit is approved by the Department pursuant to section (3) of this rule or emissions are controlled to an equivalent level pursuant to section (7) of this rule.

(2) Exemptions:

(a) This rule does not apply to airplanes painted out of doors in open air; automobile and truck refinishing; customized top coating of automobiles and trucks, if production is less than 35 vehicles per day; marine vessels and vessel parts painted out in the open air; flat wood coating; wood furniture and wood cabinets; wooden doors, mouldings, and window frames; machine staining of exterior wood siding; high temperature coatings (for service above 500° F.); lumber marking coatings; potable water tank inside coatings; high performance inorganic zinc coatings, air dried, applied to fabricated steel; and markings by stencil for railroad cars;

(b) This rule does not apply to:

(A) Sources whose potential to emit from activities identified in section (5) of this rule of volatile organic compounds are less than 10 tons per year (or 3 lb. VOC/hr or 15 lb. VOC/day actual); or

(B) Sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance (such as research facilities, pilot plant operations, and laboratories) unless:

(i) The operation of the source is an integral part of the production process; or

(ii) The emissions from the source exceed 363 kilograms (800 pounds) in any calendar month.

(3) Exceptions:

(a) On a case-by-case basis, the Department may approve exceptions to the emission limits specified in section (5) of this rule, upon documentation by the source that an alternative emission limit would satisfy the federal criteria for reasonably available control technology (RACT);

(b) Included in this documentation must be a complete analysis of technical and economic factors which:

(A) Prevent the source from using both compliance coatings and pollution control equipment; and

(B) Justify the alternative emission limit sought by the source.

(c) The alternative emission limit approved by the Department shall be incorporated into the source's Air Contaminant Discharge Permit, or Title V operating permit, and shall not become effective until approved by EPA as a source specific SIP revision.

(4) Applicability: This rule applies to each coating line, which includes the application area(s), flashoff area(s), air and forced air drier(s), and oven(s) used in the surface coating of the parts and products in subsections (5)(a) through (j) of this rule.

(5) Process and Limitation: These emission limitations shall be based on a daily average except subsection (5)(e) of this rule shall be based on a monthly average. If more than one emission limitation in this rule applies to a specific coating, then the most stringent emission limitation shall be applied:

(a) Can Coating:

(A) Sheet basecoat (exterior and interior) and over-varnish; two-piece can exterior (basecoat and over-varnish) 2.8 lb/gal.

(B) Two- and three-piece can interior and exterior body spray, two-piece can exterior end (spray or roll coat) 4.2 lb/gal.

(C) Three-piece can side-seam spray 5.5 lb/gal.

(D) End sealing compound 3.7 lb/gal.

(E) End Sealing Compound for fatty foods 3.7 lb/gal.

(b) Fabric Coating 2.9 lb/gal.

(c) Vinyl Coating 3.8 lb/gal.

(d) Paper Coating 2.9 lb/gal.

(e) Existing Coating of Paper and Film in the Medford-Ashland AQMA 55 lb.*

*55 lb VOC per 1000 sq. yds. of material per pass.

(f) Auto and Light Duty Truck Coating:

(A) Prime 1.9 lb/gal.

(B) Topcoat 2.8 lb/gal.

(C) Repair 4.8 lb/gal.

(g) Metal Furniture Coating 3.0 lb/gal.

(h) Magnet Wire Coating 1.7 lb/gal.

- (i) Large Appliance Coating 2.8 lb/gal.
- (j) Miscellaneous Metal Parts and Products:
 - (A) Clear Coatings 4.3 lb/gal.
 - (B) Force Air Dried or Air Dried 3.5 lb/gal.
 - (C) Extreme Performance Coatings 3.5 lb/gal.
 - (D) Other Coatings (i.e., Powder, oven dried) 3.0 lb/gal.
 - (E) High Performance Architectural Coatings 3.5 lb/gal.

(6) Compliance Determination: Compliance with this rule shall be determined by testing in accordance with **40 CFR Part 60 EPA Method 18, 24, 25**, a material balance method, or an equivalent plant specific method approved by and on file with the Department. The limit in section (1) of this rule of VOC in the coating is based upon an assumed solvent density, and other assumptions unique to a coating line; where conditions differ, such as a different solvent density, a plant specific limit developed pursuant to the applicable Control Technology Guideline document may be submitted to the Department for approval.

(7) Reduction Method: The emission limits of sections (3) and (5) of this rule shall be achieved by:

(a) The application of low solvent content coating technology;

(b) An incineration system which oxidizes at least 90.0 percent of the nonmethane volatile organic compounds entering the incinerator (VOC measured as total combustible carbon) to carbon dioxide and water; or

(c) An equivalent means of VOC removal. The equivalent means must be approved by the Department and will be incorporated in the source's Air Contaminant Discharge Permit or Title V Permit, and shall not become effective until approved by EPA as a source-specific SIP revision. Other alternative emission controls approved by the Department and allowed by EPA may be used to provide an equivalent means of VOC removal.

(8) Recordkeeping Requirements:

(a) A current list of coatings shall be maintained which provides all the coating data necessary to evaluate compliance, including the following information, where applicable:

- (A) Coating catalyst and reducer used;
- (B) Mix ratio of components used;
- (C) VOC content of coating as applied; and
- (D) Oven temperature.

(b) Where applicable, a monthly record shall be maintained indicating the type and amount of solvent used for cleanup and surface preparation;

(c) Such records shall be retained and available for inspection by the Department for a period of two years.

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

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

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; Section (5) Renumbered from 340-22-173; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. ef. 10-22-96

340-022-0175

Aerospace Component Coating Operations

(1) No owner or operator of an aero-space component coating facility shall emit into the atmosphere volatile organic compounds in excess of the following limits, expressed as pounds VOC per gallon of coating applied, excluding water and exempt solvents, unless an alternative emission limit is approved by the Department pursuant to section (4) of this rule or emissions to the atmosphere are controlled to an equivalent level pursuant to section (10) of this rule:

- (a) Primer — 2.9 lb./gal.;
- (b) Interior Topcoat — 2.8 lb./gal.;
- (c) Electric or Radiation Effect Coating — 6.7 lb./gal.;
- (d) Extreme Performance Interior Topcoat — ~~3.55-0~~ lb./gal.;
- (e) Fire Insulation Coating — 5.0 lb./gal.;
- (f) Fuel Tank Coating — 6.0 lb./gal.;
- (g) High Temperature Coating* — 6.0 lb./gal.;
- (h) Sealant — 5.0 lb./gal.;
- (i) Self-Priming Topcoat — 3.5 lb./gal.;
- (j) Topcoat — ~~3.55-0~~ lb./gal.;
- (k) Pretreatment Wash Primer — ~~3.56-5~~ lb./gal.;
- (l) Sealant Bonding Primer — 6.0 lb./gal.;
- (m) Temporary Protective Coating — 2.1 lb./gal.

*(For conditions between 350° F. - 500° F.)

(2) ~~(reserved) After January 1, 1992, the emission limits for coatings in subsections (1)(d), (j), and (k) of this rule, shall not exceed 3.5 lb./gal.~~

(3) Exemptions: This rule does not apply to the following:

(a) The exterior of fully assembled airplanes painted out of doors, high temperature coatings (for conditions over 500° F.), adhesive bonding primer, flight test coatings, and space vehicle coatings;

(b) Sources whose potential emit from activities identified in section (1) of this rule before add on controls of volatile organic compounds are less than ten tons per year (or 3 lb. VOC/hr or 15 lb. VOC/day actual);

(c) The use of separate coating formulations in volumes of less than 20 gallons per calendar year. No source shall use more than a combined total of 250 gallons per calendar year of exempt coatings. Records of coating usage shall be maintained as per section (8) of this rule; or

(d) Sources used exclusively for chemical or physical analysis or determination of product quality and coating performance (such as research facilities and laboratories) unless:

- (A) The operation of the source is an integral part of the production process; or
- (B) The emissions from the source exceed 363 kilograms (800 pounds) in any calendar month.

(4) Exceptions:

(a) On a case-by-case basis, the Department may approve exceptions to the emission limits specified in section (1) of this rule, upon documentation by the source that an alternative emission limit would satisfy the federal criteria for reasonably available control technology (RACT);

(b) Included in this documentation must be a complete analysis of technical and economic factors which:

(A) Prevent the source from using both compliance coatings and pollution control equipment; and

(B) Justify the alternative emission limit sought by the source.

(c) The alternative emission limit approved by the Department shall be incorporated into the source's Air Contaminant Discharge Permit and shall not become effective until approved by EPA as a source-specific SIP revision.

(5) Applicability: This rule applies to each coating line, which includes the application area(s), flashoff area(s), air and force air drier(s), and oven(s) used in the surface coating of aerospace components in subsections (1)(a) through (m) of this rule. If more than one emission limitation in this rule applies to a specific coating, then the most stringent emission limitation shall be applied.

(6) Solvent Evaporation Minimization:

(a) Closed containers shall be used for the storage or disposal of cloth or paper used for solvent surface preparation and cleanup;

(b) Fresh and spent solvent shall be stored in closed containers;

(c) Organic compounds shall not be used for the cleanup of spray equipment unless equipment is used to collect the cleaning compounds and to minimize their evaporation;

(d) Containers of coating, catalyst, thinner, or solvent shall not be left open to the atmosphere when not in use.

(7) Stripper Limitations: No stripper shall be used which contains more than 400 grams/liter (3.3 lbs./gal.) of VOC or which has a true vapor pressure of 1.3 kPa (0.19 psia) at actual usage temperature.

(8) Maskant for Chemical Processing Limitation: No maskant shall be applied for chemical processing unless the VOC emissions from coating operations are reduced by 85 percent, or the coating contains less than 600 grams of VOC per liter (5.0 lbs./gal.) of VOC of coating excluding water, as applied.

(9) Compliance determination: Compliance with this rule shall be determined by testing in accordance with 40 CFR, Part 60, Appendix A, Method 24 for determining the VOC content of the coating materials. Emissions from the coating processes and/or VOC emissions control efficiencies shall be determined by testing in accordance with 40 CFR, Part 60, Appendix A, Method 18, 25, California Method ST-7, a material balance method, or an equivalent plant specific method approved by EPA and the Department and on file with the Department. The limit in section (1) of this rule of VOC in the coating is based upon an assumed solvent density, and other assumptions unique to a coating line; where conditions differ, such as a different solvent density, a plant specific limit may be submitted to the Department and EPA for approval.

(10) Reduction Method: The emission limits of section (1) of this rule shall be achieved by:

(a) The application of a low solvent content coating technology;

(b) A vapor collection and disposal system; or

(c) An equivalent means of VOC removal. The equivalent means must be approved by the Department and will be incorporated in the source's Air Contaminant Discharge Permit or Title V Operating Permit, and shall not become effective until approved by EPA as a source-specific SIP revision. Other alternative emission controls approved by the Department and allowed by EPA may be used to provide an equivalent means of VOC removal.

(11) Recordkeeping Requirements:

(a) A current list of coatings shall be maintained which provides all of the coating data necessary to evaluate compliance, including the following information, where applicable:

(A) A daily record indicating the mix ratio of components used; and

(B) The VOC content of the coating as applied.

(b) A monthly record shall be maintained indicating the type and amount of solvent used for cleanup and surface preparation;

(c) A monthly record shall be maintained indicating the amount of stripper used;

(d) Such records shall be retained and available for inspection by the Department for a period of two years.

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

Stat. Auth.: ORSCh. 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

340-022-0180

Degreasers

Cold cleaners, open top vapor degreasers, and conveyorized degreasers are exempt from this rule if they use fluids which are not photochemically reactive. These fluids are defined in the definition of Volatile Organic Compound (VOC) under OAR 340-022-0102: ~~C₂Cl₃F₃ trichlorotrifluoroethane, also known as Freon 113 or Freon TF; CH₂Cl₂ methylene chloride; 1, 1, 1 C₂H₃Cl₃, methyl chloroform, also known as 1, 1, 1 trichloroethane or chloroethene VG. Cold cleaners:~~

(1) The owner or operator of dip tank cold cleaners shall comply with the equipment specifications in this section ~~after April 1, 1980:~~

(a) Be equipped with a cover that is readily opened and closed. This is required of all cold cleaners, whether a dip tank or not;

(b) Be equipped with a drainrack, suspension basket, or suspension hoist that returns the drained solvent to the solvent bath;

(c) Have a freeboard ratio of at least 0.5;

(d) Have a visible fill line.

(2) An owner or operator of a cold cleaner shall be responsible for following the required operating parameters and work practices. The owner shall post and maintain in the work area of each cold cleaner a pictograph or instructions clearly explaining the work practices in this section:

(a) The solvent level shall not be above the fill line;

(b) The spraying of parts to be cleaned shall be performed only within the confines of the cold cleaner;

(c) The cover of the cold cleaner shall be closed when not in use or when parts are being soaked or cleaned by solvent agitation;
(d) Solvent-cleaned parts shall be rotated to drain cavities or blind holes and then set to drain until dripping has stopped;
(e) Waste solvent shall be stored in covered containers and returned to the supplier or a disposal firm handling solvents for final disposal, such that no greater than 20 percent of the waste by weight can evaporate into the atmosphere. Handling of the waste must also be done in accordance with the Department's solid and Hazardous Waste Rules, OAR Chapter 340, Division 100.

(3) The owner or operator shall maintain cold cleaners in good working condition and free of solvent leaks.

(4) If the solvent has a volatility greater than 2.0 kPa (0.3 psi) measured at 38° C. (100° F.), or if the solvent is agitated or heated, then the cover must be designed so that it can be easily operated with one hand or foot.

(5) If the solvent has a volatility greater than 4.3 kPa (0.6 psi) measured at 38° C. (100° F.), then the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(6) If the solvent has a volatility greater than 4.3 kPa (0.6 psi) measured at 38° C. (100° F.), or if the solvent is heated above 50° C. (120° F.), then one of the following solvent vapor control systems must be used:

(a) The freeboard ratio must be equal to or greater than 0.70; or

(b) Water must be kept over the solvent, which must be insoluble in and heavier than water; or

(c) Other systems of equivalent control, such as a refrigerated chiller.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

Standard for Automotive Gasoline

340-022-0300

Reid Vapor Pressure for Gasoline

~~(1)(a) No person shall sell or supply as a fuel for motor vehicles any gasoline which does not comply with the requirements of 40CFR80, during the period of May 15 through September 15 of each year, a gasoline having a Reid Vapor Pressure greater than ten and a half pounds per square inch (10.5 psi);~~

~~(b) This section shall apply to gasoline delivered to retail outlets more than 14 days immediately preceding the period established;~~

~~(c) Gasoline and ethyl alcohol blends of at least ten percent by volume (gasohol) are given a one pound per square inch allowance, so as not to exceed an RVP of 11.5 psi.~~

~~(2)(a) As used in this rule, "gasoline" means any blend of petroleum distillate sold as a motor fuel having a Reid Vapor Pressure of more than four pounds as defined by the most current method of ASTM Method D323, and meeting the other general specifications defined by the most current method of ASTM D439 or D4814;~~

~~(b) ASTM refers to the standards test methods and procedures published by the American Society for Testing and Materials.~~

~~(3) The Reid Vapor Pressure of gasoline sold or supplied, by bulk gasoline terminals and gasoline refiners, as fuel for motor vehicles specified in section (1) of this rule shall be measured according to the procedures established in the most current method of ASTM D323.~~

~~(4) The geographic coverage of this section shall be consistent with boundary specified in ASTM D439, specifically all of Oregon, west of 122 degrees Longitude.~~

~~(5) Test results from samples submitted to the Department by refiners or distributors of gasoline shall be sampled and tested pursuant to methods established by the most current method of ASTM D323. Analysis of all fuel from pipeline, tanker, or other sources outside of the state shall be summarized and forwarded to the Department on a monthly basis. Such reports will be supplied on a form supplied by the Department.~~

~~(6) The Department reserves the right to audit records and to sample gasoline for the purposes of compliance. Samples of petroleum shall be sampled pursuant and tested by methods established by the most current method of ASTM D323 or by methods established under the California Air Resources rule, Title 13, §2251 or Part 80 of Title 40 of the Code of Federal Regulations — Fuel and Fuel Additives.~~

~~(7) Pursuant to ORS 468.130, civil penalties of not more than \$10,000 per day may be assessed for violation of section (1) of this rule at wholesale fuel facilities, including terminals, fleet facilities, cardlocks, and not more than \$2,500 per day at retail.~~

[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. 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 11-1989, f. 6-12-89, cert. ef. 6-15-89; DEQ 4-1993, f. & cert. ef. 3-10-93

Gasoline Vapors from Gasoline Transfer and Dispensing Operations

340-022-0400

Purpose

(1) Gasoline vapors contribute to the formation of ozone. OAR 340-022-0400 through 340-022-0403 require the control of gasoline vapors from gasoline transfer and dispensing operations.

(2) OAR 340-022-0400 through 340-022-0403 apply to gasoline dispensing ~~sites~~ Facilities located within Clackamas, Multnomah and Washington Counties.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS Ch. 468A.025

Hist.: DEQ 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 16-1996, f. & cert. ef. 8-14-96

340-022-0401

Definitions

As used in OAR 340-022-0400 through 340-022-0403:

(1) "Equivalent control" means the use of alternate operational and/or equipment controls for the reduction of gasoline vapor emissions, that have been approved by the Department, such that the aggregate emissions of gasoline vapor from the facility do not exceed those from the application of defined reasonably available control technology.

(2) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch (28 kilopascals) or higher, used as a motor fuel.

(3) "~~Gasoline dispensing facility~~" means any site where gasoline is dispensed to motor vehicle, boat, or airplane gasoline tanks from stationary storage tanks. "~~Gasoline dispensing site~~" means any site where gasoline is dispensed into vehicle fuel tanks or into portable containers used to fuel any motor from any stationary storage container(s) larger than 550 gallons.

(4) "Annual throughput" means the amount of gasoline transferred into or dispensed from a gasoline dispensing ~~site~~ Facility during 12 consecutive months.

(5) "Stage I vapor collection system" means a system where gasoline vapors are forced from a tank into a vapor-tight holding system or vapor control system through direct displacement by the gasoline being loaded.

(6) "Stage II vapor collection system" means a system where at least 90 percent, by weight, of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.

(7) "Substantially modified" means a modification of an existing gasoline dispensing ~~facility~~ site which involves the addition of one or more new stationary gasoline storage tanks or the repair, replacement or reconditioning of an existing tank.

(8) "Vapor control systems" means a system that prevents emissions to the outdoor atmosphere from exceeding 4.7 grains per gallon (80 grams per 1,000 liters) of petroleum liquid loaded.

Stat. Auth.: ORS Ch. 468.020

Stats. Implemented: ORS Ch. 468A.025

Hist.: DEQ 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 16-1996, f. & cert. ef. 8-14-96

340-022-0402

General Provisions

(1) Notwithstanding the requirements of OAR 340-022-0110, no person shall transfer or allow the transfer of gasoline into storage tanks, at gasoline-dispensing ~~facilities~~ sites located in Clackamas, Multnomah or Washington Counties, whose annual throughput exceeds 120,000 gallons, unless the storage tank is equipped with:

(a) A stage I vapor collection system consisting of a vapor-tight return line from the storage tank, or its vent, to the gasoline transport vehicle;

(b) A properly installed on-site vapor control system connected to a vapor collection system; or

(c) An equivalent control system.

(2) ~~A stage I vapor collection system and submerged filling are not required for storage tanks with a capacity less than 550 gallons. A stage II vapor collection system is not required at gasoline-dispensing facilities~~ sites that are not subject to the stage I requirements of this section.

(3) No owner and/or operator of a gasoline-dispensing ~~facility~~ site shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at gasoline-dispensing ~~facilities~~ sites located in Clackamas, Multnomah or Washington Counties whose annual throughput exceeds 600,000 gallons, unless the gasoline dispensing ~~facility~~ site is equipped with a stage II vapor collection system which must be approved by the Department before it is installed.

NOTES:

-1- Underground piping requirements are described in OAR 340-150-001 through 340-150-003 and 40 CFR 280.20(d). Systems installed according to American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System" or Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" or American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System" are considered approved systems.

-2- Above-ground stage II equipment requirements are based on systems recently approved in other states with established stage II program. See the Oregon Department of Environmental Quality, Air Quality Division, for the list of approved equipment. Any other proposed equivalent systems must be submitted to the Department of Environmental Quality, Air Quality Division, for approval before installation.

(4) Owners and/or operators of gasoline storage tanks, gasoline transport vehicles and gasoline-dispensing ~~facilities~~ sites subject to stage I or stage II vapor collection requirements must:

(a) Install all necessary stage I and stage II vapor collection and control systems, and make any modifications necessary to comply with the requirements;

(b) Provide adequate training and written instructions to the operator of the affected gasoline dispensing ~~facility~~ site and the gasoline transport vehicle;

(c) Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I and stage II vapor collection systems; and

(d) Connect and ensure proper operation of the stage I and stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.

(5) Approval of a stage I or stage II vapor collection system by the Department does not relieve the owner and/or operator of the responsibility to comply with other applicable codes and regulations pertaining to fire prevention, weights and measures and safety matters.

(6) Regarding installation and testing of piping for stage I and stage II vapor collection systems:

(a) Piping shall be installed in accordance with standards in OAR 340 Division 150;

(b) Piping shall be installed by a licensed installation service provider pursuant to OAR 340 Division 160; and

(c) Piping shall be tested prior to being placed into operation by an installation or tank tightness testing service provider licensed pursuant to OAR 340 Division 160.

(7) Owners and/or operators of gasoline-dispensing ~~facilities~~ sites subject to stage II vapor collection requirements must obtain and maintain an current annual stage II vapor collection permit from the Department. This permit shall be displayed or kept on file at the facility.

(a) Persons applying for this permit for any time period beginning after December 31, 1999 shall be subject to a bi-annual fee of \$200 shall at the time of application pay a fee of \$100.

(b) The Department may issue stage II vapor collection permits for up to 10 years.

(c) Persons applying for a new permit with an effective date beginning before December 31, 1999 or in an odd numbered year shall pay the annual fee of \$100 and then will be billed for the bi-annual fee for the next bi-annual period.

(d) Fees shall be paid at the time of application and by December 1 in odd numbered years for the next bi-annual period.

(8) When a facility changes ownership, the new owner shall obtain a new stage II vapor collection permit, as described in subsection (7) of this rule above, within 60 days of the change of ownership.

(9) Persons subject to this rule shall apply for a renewal stage II vapor collection permit not less than 60 days prior to the expiration date of the existing permit. The bi-annual fee shall be included with the application for renewal.

NOTE: Test methods are based on methods used in other states with established stage II programs. See the Oregon Department of Environmental Quality, Air Quality Division, for copies of the approved test methods.

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

Stat. Auth.: ORS Ch. 468.020

Stats. Implemented: ORS Ch. 468A.025

Hist.: DEQ 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1994, f. & cert. ef. 11-22-94; DEQ 16-1996, f. & cert. ef. 8-14-96

340-022-0403

Compliance Schedules

~~(reserved)(1) Owners of gasoline dispensing sites subject to the stage I vapor collection requirements of this rule within the Portland Air Quality Maintenance Area are required to be in compliance with all stage I requirements by April 1, 1981.~~

~~(2) Owners of gasoline dispensing sites subject to the stage I vapor collection requirements of this rule outside the Portland Air Quality Maintenance Area but within Clackamas, Multnomah or Washington Counties must be in compliance with stage I vapor collection requirements by December 31, 1993, or at the time the gasoline dispensing site is required to install a stage II vapor collection system, whichever is sooner.~~

~~(3) Owners of gasoline dispensing sites subject to the stage II vapor collection requirements of this rule must be in compliance with stage II vapor collection requirements:~~

~~(a) For gasoline dispensing sites whose annual throughput exceeds 1,800,000 gallons, by no later than April 30, 1992;~~

~~(b) For gasoline dispensing sites whose annual throughput exceeds 1,080,000 gallons, by no later than April 30, 1993;~~

~~(c) For gasoline dispensing sites whose annual throughput exceeds 600,000 gallons, by no later than April 30, 1994; or~~

~~(d) At the time the gasoline dispensing site is substantially modified after May 7, 1991; whichever is sooner.~~

Stat. Auth.: ORS Ch. 468.020

Stats. Implemented: ORS Ch. 468A.025

Hist.: DEQ 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 16-1996, f. & cert. ef. 8-14-96

Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Reasonably Available Control Technology (RACT)

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

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340-022

DATE:	TIME:	LOCATION:
July 15, 1998	6:00 p.m.	Austin Auditorium, 100 LaSells Stewart Center, Oregon State University, Corvallis, Oregon 97331
July 16, 1998	3:00 p.m.	DEQ Headquarters, 811 SW 6 th Avenue, Room 3A, Portland, Oregon 97204

HEARINGS OFFICER(s): Professional hearings officer will preside

STATUTORY AUTHORITY: ORS 468.020 & 468A.025

or OTHER AUTHORITY:

STATUTES IMPLEMENTED: ORS 468A.025

ADOPT: 340-022-0125

AMEND: 340-022-0100, 340-022-0102, 340-022-0104, 340-022-0106, 340-022-0107, 340-022-0110, 340-022-0120, 340-022-0130, 340-022-0170, 340-022-0175, 340-022-0180, 340-022-0300, 340-022-0400, 340-022-0402

REPEAL: 340-022-0403

RENUMBER:

(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER:

(prior approval from Secretary of State REQUIRED)

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

SUMMARY:

The proposed rule amendments address the changes required by EPA concerning calculating potential to emit based on before add-on controls. The EQC adopted these changes by temporary rule in April 1997 and this rulemaking would make these changes permanent rules.

In addition, the Department proposes changes to the Stage I and II vapor recovery rules to eliminate ambiguities and confusion and to allow permits to be issued for longer time periods and fees to be collected on a bi-annual basis. This rule package also contains a number of housekeeping changes.

Adoption of these amendments will be submitted to the US Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) as required by the Clean Air Act

LAST DATE FOR COMMENT: July 22, 1998

AGENCY RULES COORDINATOR:

Susan M. Greco, (503) 229-5213

AGENCY CONTACT FOR THIS PROPOSAL:

ADDRESS:

TELEPHONE:

David Kauth
811 S. W. 6th Avenue
Portland, Oregon 97204
(503) 229-5655 /1-800-452-4011

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

David M. Kauth
Signature

6/11/98
Date

Attachment B2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Amendments to Reasonably Available Control Technology (RACT) rules

Fiscal and Economic Impact Statement

Introduction

The changes to the RACT and Stage I/II rules should have no fiscal or economic impact on the regulated community. Changes to the Stage I and II vapor recovery rules will reduce Department workload by allowing permits to be issued, and fees to be collected, less frequently.

General Public

It is not anticipated that there will be a fiscal or economic impact on the public.

Small Business

No potential economic impact has been identified. Permit fees will be collected on a bi-annual basis instead of annually. This will require payment of two years worth of permit fees at a time but only once every two years.

Large Business

No potential economic impact has been identified.

Local Governments

The proposed rule change is not anticipated to have an affect on local governments.

Attachment B2

State Agencies

- DEQ

The proposed rule change will reduce DEQ workload for Stage I and II permitting and fee collection. Revenues will not be affected in either a positive or negative way by this rule change.

- Other Agencies

The proposed rule change will have no affect on other agencies.

Assumptions

none

Housing Cost Impact Statement

The Department has determined that this rulemaking will have no effect on the cost of developing a 6000 square foot parcel or the construction of a 1200 square foot detached single family dwelling on that parcel.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Amendments to Reasonably Available Control Technology (RACT) rules

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.** The proposed rule amendments will update the Department's requirements for Reasonably Available Control Technology (RACT) for point sources of Volatile Organic Compounds (VOC) emissions in ozone nonattainment areas and former ozone nonattainment areas (Portland and Medford). Included are amendments that were formerly adopted by the Environmental Quality Commission (EQC) as temporary rules, amendments to clarify applicability and a number of housekeeping changes.

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:** ACDP and Title V permit; the existing permitting program will address the land use issues by continuing to require a Land Use Compatibility Statement from the affected local government before issuing an air quality permit

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

Yes No (if no, explain):

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

Alfred Borfit
Division

Robert Yoo
Intergovernmental Coordinator.

6/5/98
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?**

Yes. Existing (prior to 11/15/90) Volatile Organic Compound (VOC) emitting sources within ozone nonattainment areas, which are not subject to a categorical Reasonably Available Control Technology (RACT) limit, are required to implement RACT if potential emissions before add-on control are 100 tons VOC per year or more. Part of this rulemaking would make a temporary rule, adopted to make current rules consistent with the federally approved SIP, permanent.

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

RACT is a technology based standard which takes into account technical and economic feasibility in the analysis.

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

The federal RACT rules are a minimal requirement for existing sources in ozone nonattainment areas. The federal new source review (NSR) program is a minimal requirement for new major sources. EPA leaves it up to the states to establish and implement minor new source review requirements such as applying RACT to new sources.

- 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?**

NA

Attachment B4

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

NA

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

NA

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

NA

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

NA

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?

NA

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

NA

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

NA

**State of Oregon
Department of Environmental Quality**

Memorandum

Date: June 10, 1998
To: Interested Parties and Affected Public
Subject: Rulemaking Proposal and Rulemaking Statements

Amendments to Reasonably Available Control Technology (RACT) rules

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) for rule amendments regarding Reasonably Available Control Technology (OAR 340 Division 22). Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's (EQC) proposed rule adoption.

The proposed rule amendments address the changes required by EPA concerning calculating potential to emit based on before add-on controls. The EQC adopted these changes by temporary rule in April 1997 and this rulemaking would make these changes permanent rules.

In addition, the Department proposes changes to the Stage I and II vapor recovery rules to eliminate ambiguities and confusion and to allow permits to be issued for longer time periods and fees to be collected on a bi-annual basis. This rule package also contains a number of housekeeping changes.

The Department has the statutory authority to address this issue under ORS 468A.040 and ORS 468.065.

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 proposed rule language (**not included in public mailing due to length**). Copies of the proposed rule amendments are available by contacting the Department as listed at the end of this memorandum.

Hearing Process Details

The Department is conducting two public hearings at which comments will be accepted either orally or in writing*. The hearings will be held as follows:

Date:	July 15, 1998	July 16, 1998
Time:	6:00 p.m.	3:00 p.m.
Place:	Austin Auditorium 100 LaSells Stewart Center Oregon State University Corvallis, Oregon 97331	DEQ Headquarters 811 SW 6 th Avenue, Room 3A Portland, Oregon 97204

Deadline for submittal of Written Comments: July 22, 1998

A professional hearings officer will Preside at the hearing.

Written comments can be presented at the hearing or to the Department any time prior to July 22, 1998 by 5:00 p.m. above. Comments should be sent to: Department of Environmental Quality, Attn.: David Kauth, 811 SW 6th Avenue, Portland, Oregon 97204.

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

* PLEASE NOTIFY DEQ ABOUT ANY SPECIAL PHYSICAL OR LANGUAGE ACCOMMODATIONS YOU MAY NEED AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE. TO MAKE THESE ARRANGEMENTS, PLEASE CONTACT DEQ PUBLIC AFFAIRS AT 1-800-452-4011 IN OREGON OR 503-229-5317. PEOPLE WITH HEARING IMPAIRMENTS MAY CALL DEQ's TDD NUMBER AT 503-229-6993.

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 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 September 18, 1998. This date may be delayed in needed to provide additional time for evaluation and response to testimony received in the hearing process. Please note that this date is tentative and may change; if you want to be notified of the confirmed date/time/place please contact the individual listed at the end of this report.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

The housekeeping changes and changes to the Stage I and II vapor recovery rules are proposed to reduce the Department's workload by decreasing the frequency of permit issuance and fee collection and provide greater clarity and consistency in implementation. The changes in the definition to potential to emit is necessary to comply with EPA's requirements. The EQC adopted this change by temporary rule in April 1997 as part of the Portland Ozone Maintenance Plan, but it has to be adopted as a permanent rule.

How was the rule developed?

The proposed rule changes were developed by the Department based on EPA requirements for ozone nonattainment areas and the requirements in the Portland ozone maintenance plan. An advisory committee was not involved in this rulemaking process, but the proposed rule changes were discussed at a stakeholders meeting on March 4, 1998, which included invitations to representatives from the public, industry and environmental interests.

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 SW 6th Avenue, Portland, Oregon. Please contact the staff person noted at the end of this memo for times when the documents are available for review.

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

The proposed rule changes are expected to have no affect on the regulated community except for the frequency of permit issuance and fee payment for gasoline dispensing facilities. The proposed rule change would reduce the Department's workload by allowing permits to be issued for up to 10 years instead of one year and fees to be collected bi-annually instead of annually.

In addition, the proposed rule amendments will provide for more consistent implementation of the rules in all affected areas by making the trigger points for rule applicability consistent, and clarify the rule for interpretation purposes.

Currently the stage I and II vapor recovery rules have inconsistent trigger levels within the affected areas and require annual permits. The proposed rule changes will clarify the rules by making trigger levels consistent. Changing the trigger levels should not affect any sources.

How will the rule be implemented?

The rules will continue to be implemented under the existing Air Contaminant Discharge Permit (ACDP) and Title V permit programs for industrial sources, and the vapor recovery system permits for Stage I and II sources.

Are there time constraints?

There are no specific time deadlines associated with this rule change. However, the Department would like to have the amendments adopted expeditiously because the temporary rule has expired and clarifications will help streamline implementation.

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 David Kauth, Oregon Department of Environmental Quality, Air Quality Division, 811 SW 6th Avenue, Portland, OR 97204 (503) 229-5655. In Oregon: 800-452-4011.

THIS PUBLICATION IS AVAILABLE IN ALTERNATE FORMAT (E.G. LARGE PRINT, BRAILLE) UPON REQUEST. PLEASE CONTACT DEQ'S PUBLIC AFFAIRS AT 503-229-5317 TO REQUEST AN ALTERNATE FORMAT.

Attachment C

Hearings Officer Report

For efficiency, the Department provided one public notice of combined hearings that were held on several rulemakings. General comments, as well as comments specific to this rule proposal, if any, are summarized in the following Hearings Officer Report

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 16, 1998

To: Environmental Quality Commission

From: Ruth Crowley, Hearings Officer

*Ruth Crowley
by KC*

Subject: Presiding Officer's Report for Rulemaking Hearing

Combined rule adoption hearing:

1. Reasonably Available Control Technology (RACT): Stage I and II vapor recovery;
2. National Emission Standards for Hazardous Air Pollutants (NESHAP): standards for pulp and paper ("cluster rule"), polymers and resins production, off-site waste and recovery operations, printing and publishing, primary aluminum plants;
3. New Source performance Standards (NSPS): Hospitals/Medical/Infectious Waste incinerators;
4. Compliance Assurance Monitoring (CAM) for major industrial sources;
5. Credible Evidence for all sources in Oregon.

Two hearings were held on the above rules proposed for adoption. An announcement was made asking for signatures on the witness registration forms for anyone wanting to present testimony. All present were advised that the hearing was being recorded, and of the procedures to follow.

At the Corvallis, Oregon hearing on July 15, 1998, six people presented testimony. All comments were related to the pulp and paper "cluster" rule, item #2 in the above listing.

At the Portland, Oregon hearing on July 16, 1998, no one presented testimony.

Corvallis, Oregon. July 15, 1998; 6:00 p.m.

The following summarizes oral testimony presented at this hearing:

Linda Hunn*
1820 SE Bethel St
Corvallis 97333

Dioxins (toxic byproducts of industrial processes involving chlorine) attack our systems at very low doses. Ms. Hunn is concerned about the effect of dioxins on our immune and reproductive systems. She encourages the City of Corvallis to recommend to the DEQ that paper and pulp bleaching operations in Oregon shift from using chlorine products to using ozones, peracids, and enzymes to bleach their pulp. She believes this recommendation is especially pertinent to Pope & Talbot, which discharges pollutants into the Willamette, Corvallis's drinking water source.

W. Alfred Mukatis
2851 NW Monterey Pl.
Corvallis 97330

Mr. Mukatis recalled the time when Oregon was a leader in water quality issues. He expressed concern about how the water rule is worded. It is phrased in terms of x amount of pollution per kilogram of product. If the amount of product increases, pollutants also increase. Mr. Mukatis would like the water rule to echo the federal sulfur dioxide rule, under which a cap is placed on the level of permissible pollutants and the cap decreases each year.

Mary Slabaugh*
1800 SW Allen St.
Corvallis 97333

Ms. Slabaugh testified as a private citizen but has been a board member of Friends of the Upper Willamette for two years and has researched pulp bleaching technologies. She makes three requests to DEQ:

- 1) Adopt technology-based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters. The fact that Pope & Talbot has already incorporated oxygen delignification in its process, and the other two mills have partially substituted chlorine dioxide for elemental chlorine, belies the claim that ECF with oxygen delignification is not economically feasible.
- 2) Adopt as DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area that would trigger new, more stringent limits on effluents.
- 3) Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

The existing oxygen delignification/Monox-L process could be amended with ozone to achieve the new cluster rule limits while producing an acceptable product. Continued evolution of ozone and other bleaching technologies makes pursuit of this option attractive; it would avoid the major capital investment in chlorine dioxide-generating equipment.

Pope & Talbot should be allowed to design a special tier for its situation. A TCF process must be the ultimate goal for all of Oregon's pulp bleaching mills. Simple adoption of the April 1998 cluster rules is not good enough for Oregon.

Liz Frenkel (for Oregon League of Women Voters)*
1431 NW Vista Pl.
Corvallis 97330

The League of Women Voters (League) advocates the goal of TCF for the pulp and paper industry, because only with a TCF process is a closed loop water system possible, and only such a system protects the downstream users from pulp plant pollutants.

On 20 June Pope & Talbot announced plans to install ECF technology to meet the requirements of the April 1998 cluster rules. If DEQ's proposed rule--adopting the cluster rule with no changes—is approved, Pope and Talbot will have no incentive to move toward TCF bleaching. The process locks them into a chlorine discharge future of 15 to 20 years. The League's concerns are:

- Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution.
- Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet.
- Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.
- Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide.

Ashley Roorbach
626 SW Fifth St.
Corvallis 97333

Mr. Roorbach drinks, bathes in, and cooks with water containing Pope & Talbot's dioxin discharge. He advocates TCF rules for water discharge.

Sue Danver^
1021 NW 32nd St.
Corvallis 97330

Also a board member of the Friends of the Upper Willamette, Ms. Danver testified as a private citizen. She advocates exploring alternatives to chlorine dioxide for Pope and Talbot and believes, based on information at DEQ's June 30 information session, that it is possible to combine ozone with Monox-L technology. She requests that DEQ work with EPA to develop a tiered approach for Pope & Talbot.

Because we have only three pulp mills in Oregon, Ms. Danver believes we could work with them on a case by case basis and not lose the opportunity to have TCF in five years. At the June 30 informational meeting, DEQ said it would adopt the cluster rules as written absent new information. Ms. Danver supplied three political events that should be considered as new information:

- The Willamette River Task Force report on point and nonpoint source pollutants recommends providing incentives for MONOX-L and other new techniques.

- The Spring Chinook salmon is listed as a threatened species on some branches of the Willamette; Pope & Talbot is upstream.
- Pope & Talbot's NPDES water discharge permit expired on June 30. Renewal is one or two years off. Pope & Talbot will have chosen ECF technology before we have an opportunity to address their choice.

Ms. Danver requests a response from DEQ on this timing. Once the very expensive ECF technology is in place, the decision to implement it is irreversible.

Ms. Danver also birds in the Willamette National Forest and expressed dismay at the malformed birds she has seen lately.

* = submitted written statement as well as oral testimony

^ = will submit written comments

Portland, Oregon. July 16, 1998; 3:00 p.m.

There was no testimony given at this hearing.

Summary of Testimony by Subject Matter

Urge move to total chlorine free (TCF) bleaching (particular concern: Pope & Talbot mill):

Linda Hunn
Mary Slabaugh
Liz Frenkel
Ashley Roorbach
Sue Danver

Special concerns:

Effects of dioxin on human immune, reproductive systems

Linda Hunn
Mary Slabaugh

Implementation of ECF technology will preclude the better choice of TCF technology because of the investment (\$30 million)

Liz Frenkel
Sue Danver

Concerns re Pope & Talbot decision: Liz Frenkel

Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution

Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide

Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet

Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.

Concern re impact of pollutants on frogs and birds: Sue Danver

Concern about wording of water rule: x parts pollution per kg of product. If product output increases, pollution increases in an absolute sense. Wants cap on levels of pollutants in river, to be lowered each year, as with the sulfur dioxide rule.

W. Alfred Mukatis

Specific recommendations:

Mary Slabaugh:

1. Adopt technology based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters.

2. Adopt as Oregon DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area, that would trigger new and more stringent limits on effluents.

3. Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

Liz Frenkel:

DEQ rules should reflect goal of TCF technology by establishing appropriate timelines and regulations encouraging achievement of this goal (e.g., requiring Pope & Talbot to make analysis of alternatives to ECF technology dependent on chlorine dioxide).

NSPSmwihearingsum.doc

Environmental Quality Commission

- Rule Adoption Item
 Action Item
 Information Item

Agenda Item E
September 17, 1998 Meeting

Title:

Annual Update: Adoption of New Source Performance Standards:
Hospital/Medical and Infectious Waste Incinerators

Summary:

This proposal will adopt federal New Source Performance Standards (NSPS) for Hospital/Medical and Infectious Waste Incinerators. These regulations were promulgated by EPA to reduce air emissions from units whose primary purpose is the combustion of hospital waste and/or medical/infectious waste. This proposal will also update existing standards with any changes made to the federal rules since the last adoption by the Commission.

The Department adopted state regulations for solid and infectious waste incinerators and crematories in 1990. These regulations resulted in affected facilities discontinuing the combustion of this type of waste on-site and sending the waste to a large Municipal Waste Combustor (MWC). Municipal Waste Combustors are exempt from these requirements because they are subject to their own performance standards. Therefore, no facilities have been identified which are affected by this regulation at this time. One facility combusts a small amount of infectious waste on-site, but qualifies for an exemption from this regulation.

Although there are no facilities affected by this regulation at this time, adoption of this regulation is recommended for a number of reasons: 1) to regulate future new facilities or modifications of existing facilities; 2) to maintain approval of Oregon's Title V program; 3) to ensure Oregon retains delegation authority of the New Source Performance Standards program; and 4) to incorporate federal language allowing the use of any credible evidence to evaluate compliance with NSPS requirements.

In addition, minor housekeeping changes are proposed to rules affecting municipal solid waste landfills. These changes are editorial and do not represent changes to existing requirements.

Department Recommendation:

The Department recommends that the Commission adopts the rules regarding New Source Performance Standards for Hospital/Medical and Infectious Waste Incinerators and housekeeping changes to municipal solid waste landfill rules.


Report Author

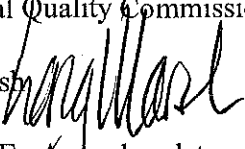

Division Administrator


Director

State of Oregon
Department of Environmental Quality Memorandum

Date: August 31, 1998

To: Environmental Quality Commission

From: Langdon Marsh 

Subject: Agenda Item E. Annual update - Adoption of New Source Performance Standards:
Hospital/Medical and Infectious Waste Incinerators
EQC Meeting September 17, 1998

Background

On June 5, 1998, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which will adopt federal New Source Performance Standards (NSPS) for Hospital/Medical and Infectious Waste Incinerators and update existing standards with any changes made to the federal rules since last adopted by the Environmental Quality Commission.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on July 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 June 10, 1998.

For efficiency, the Department held two hearings that combined several rulemakings, including this proposal. The hearings were held July 15, 1998 and July 16, 1998 with Ruth Crowley serving as Presiding Officer. Comments were received through July 22, 1998. The comments made as a result of the hearings, which are summarized in Attachment C, were exclusive to one rulemaking: National Emission Standards for Hazardous Air Pollutants (NESHAP's), also known as the "cluster rule". The Department responded to these comments under separate cover. No comments related to this rulemaking were made as a result of the hearings. Other public comments were received, in addition to those from the hearings, with the majority of comments focused on the NESHAP rulemaking. Some comments were made about the combined mailing and the rulemaking process in general, which are paraphrased in Attachment D; but no comments were specific to this rule proposal. Attachment D includes the Department's response, which was forwarded under separate cover to commenters. Based on the absence of public comment, the Department is not recommending any modification to the initial rulemaking proposal.

Memo To: Environmental Quality Commission

Agenda Item E. Annual update - Adoption of New Source Performance Standards:

Hospital/Medical and Infectious Waste Incinerators

EQC Meeting September 17, 1998

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Issue this Proposed Rulemaking Action is Intended to Address

The Clean Air Act directs EPA to develop performance standards for certain categories of industrial sources. The EPA develops these standards on a regular basis and Oregon adopts them annually to allow state implementation of the federal standards. EPA developed these specific NSPS requirements to reduce air emissions from units whose primary purpose is to combust hospital waste.

This action will adopt federal New Source Performance Standards for Hospital/Medical and Infectious Waste Incinerators by reference and will bring Oregon's New Source Performance Standards program up to date with federal regulations. Adoption of these regulations is a requirement of maintaining approval of Oregon's Title V program and will enable the Department to retain delegation authority of the New Source Performance Standards program. The adoption also incorporates federal rules allowing the use of any credible evidence in evaluating compliance with NSPS requirements.

In addition, some minor housekeeping changes (clarification to existing rules) for municipal solid waste landfills are proposed. These changes are editorial, and do not represent changes to existing requirements.

Relationship to Federal and Adjacent State Rules

The proposal is an adoption of federal rules verbatim. These rules apply to affected facilities in all states.

Authority to Address the Issue

The Commission has the authority to address this rulemaking under Oregon Revised Statutes (ORS) 468.020 and 468A.025.

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

The rules were developed by Department staff based on federal rules. An advisory committee was not involved in this proposed rulemaking, but a stakeholder's meeting was held on March 4, 1998 which included invitations to representatives from the public, industry and environmental interests.

Memo To: Environmental Quality Commission

Agenda Item E. Annual update - Adoption of New Source Performance Standards:

Hospital/Medical and Infectious Waste Incinerators

EQC Meeting September 17, 1998

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

This rulemaking will adopt an NSPS that is part of a series of standards promulgated by EPA that regulate combustion sources. This NSPS sets limits on the key criteria and hazardous air pollutants expected to be emitted from hospital/medical and infectious waste incinerators. Currently there are no known sources in Oregon affected by this NSPS.

This rulemaking also incorporates federal language allowing the use of any credible evidence to evaluate compliance with NSPS requirements.

The rulemaking proposal presented for public hearing is provided in Attachment B5. There are no significant issues identified and no comments were received that were specific to this rulemaking.

Summary of Significant Public Comment and Changes Proposed in Response

As summarized on the first page of this memo, there were no comments received that were specific to this rulemaking; therefore, no changes are recommended to the initial rule proposal.

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

There are no affected sources identified at this time; however, the rule requirements will be incorporated into air quality permits if sources are affected in the future. In addition, the Department will submit a delegation request to EPA for the proposed NSPS to retain delegation authority of the New Source Performance Standard program, and as a requirement of maintaining approval of the Title V program. Since there are no affected sources at this time, there are no plans for developing an implementation plan. There is one source in the state that combusts a small amount of hospital/medical/infectious waste that qualifies for an exemption from this regulation. The Department has drafted an amendment to the source's permit to include an enforceable condition limiting the amount of this type of waste and recordkeeping requirements to ensure the source continues to qualify for the exemption. The exemption request is submitted to EPA for approval.

Memo To: Environmental Quality Commission

Agenda Item E. Annual update - Adoption of New Source Performance Standards:
Hospital/Medical and Infectious Waste Incinerators
EQC Meeting September 17, 1998

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Recommendation for Commission Action

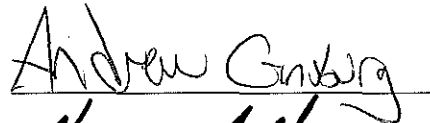
It is recommended that the Commission adopt the rules/rule amendments regarding New Source Performance Standards for Hospitals/Medical and Infectious Waste Incinerators, and housekeeping changes regarding municipal solid waste landfills as presented in Attachment A of the Department Staff Report.

Attachments

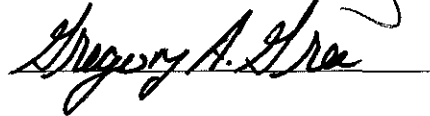
- A. Rule Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing
- D. General Comments Received in Addition to Comments from Public Hearings and Department's Response to Comments

Approved:

Section:



Division:



Report Prepared By: Kathleen Craig

Phone: 503-229-6833

Date Prepared: August 13, 1998

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Attachment A

Proposed Rule Language for New Source Performance Standards:
Hospital/Medical and Infectious Waste Incinerators

Also includes housekeeping changes to New Source Performance Standards:
Municipal Solid Waste Landfills

Attachment A

DIVISION 25

SPECIFIC INDUSTRIAL STANDARDS

[ED. NOTE: Administrative Order DEQ 37 repealed applicable portions of SA 22, filed 6-7-68.]

[ED. NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047 with the exception of OAR 340-025-0055 thru 340-025-0070 and 340-025-0450 thru 340-025-0805.]

Standards of Performance for New Stationary Sources

340-025-0505

Statement of Purpose

The U.S. Environmental Protection Agency has adopted in **Title 40, Code of Federal Regulations, Part 60**, Standards of Performance for certain new stationary sources. It is the intent of OAR 340-025-0505 through 340-025-0845 and OAR 340-025-0950 through 340-025-1010 to specify requirements and procedures necessary for the Department to implement and enforce the aforementioned Federal Regulation.

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0510

Definitions

As used in OAR 340-025-0505 through 340-025-0845 and OAR 340-025-0950 through 340-025-1010:

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

(2) "CFR" means Code of Federal Regulations as revised as of July 1, 1998 ~~July 1, 1996~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60** (July 1, 1998~~July 1, 1996~~).

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

(18) "State Plan" means a plan developed for the control of a designated pollutant provided under **40 CFR Part 60**.

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

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

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0515

Statement of Policy

It is the policy of the Commission to consider the performance standards for new and existing stationary sources contained in OAR 340-025-0505 through 340-025-08045 and OAR 340-025-0950 through 340-025-1010 to be minimum standards; and, as technology advances, conditions warrant, and Commission or regional authority rules require or permit, additional rules may be adopted.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0520

Delegation

(1) The Lane Regional Air Pollution Authority (LRAPA) is authorized to implement and enforce, within its boundaries, the provisions of OAR 340-025-0505 through 340-025-0845 and OAR 340-025-0950 through 340-025-1010.

(2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in OAR 340-025-0505 through 340-025-0845 and OAR 340-025-0950 through 340-025-1010. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of OAR 340-025-0505 through 340-025-0845 and OAR 340-025-0950 through 340-025-1010 upon receipt of delegation from EPA. Delegation may be withdrawn for cause by the Commission.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0525

Applicability

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

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

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97~~

340-025-0530

General Provisions

(1) Except as provided in section (2) of this rule, **40 CFR Part 60, Subpart A** (July 1, 1993~~68~~) is by this reference adopted and incorporated herein.

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

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97

Performance Standards

340-025-0535

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts DD through XX and BBB through NNN and PPP through VVV-WWW** (July 1, 1998~~July 1, 1996~~) are by this reference adopted and incorporated herein, and **40 CFR Part 60 Subpart OOO** (July 1, 1998~~July 1, 1996~~) is by this reference adopted and incorporated herein for major sources only.

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

(3) Where a discrepancy is determined to exist between OAR 340-025-0505 through 340-025-0845 and **40 CFR Part 60, 40 CFR Part 60** shall apply.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-25-550 thru 340-25-605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0740

Standards of Performance for Municipal Solid Waste Landfills that commenced construction, reconstruction or modification on or after May 30, 1991

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

(a) Landfills constructed after 5/30/91.

(b) Existing landfills with modifications after 5/30/91.
(c) Landfills that closed after 11/08/87 with modifications after 5/30/91.
(2) General Requirements. Landfills subject to this rule must comply with **40 CFR Part 60, Subpart WWW, 3/12/96** as adopted under OAR 340-025-0535, except as noted in Section 4 this rule.

(3) Permitting requirements. Landfills subject to this rule must comply with Federal Operating Permit Requirements (Title V) as specified in OAR 340-028-2100 through 340-028-2740 except as noted in (e) of this subsection.

(a) Existing large landfills with modifications after 5/30/91 must submit a complete Federal Operating Permit application by 3/12/97.

(b) Existing large landfills with modifications after 3/12/97 must submit a complete Federal Operating Permit application the earliest of one year from the date EPA approves the 111(d) State Plan for this rule, or within one year of the modification.

(c) New large landfills, which includes newly constructed large landfills after 3/12/96 and existing small landfills that become large landfills after 3/12/96 must submit a complete Federal Operating Permit application within one year of becoming subject to this requirement.

(d) New and modified existing small landfills that are major sources as defined in OAR 340-028-0110 must submit a complete Federal Operating Permit application within one year of becoming a major source.

(e) OAR 340-028-2110(4)(c) does not apply to sources subject to this rule.

(4) Reporting requirements. Landfills subject to this rule must comply with the following:

(a) Large landfills listed in Subsection (1)(a) through (c) of this rule must:

(A) Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 30 days of the effective date of this rule; and

(B) Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are 50 Mg/yr.

(b) Small landfills listed in Subsection (1)(a) through (c) of this rule must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 30 days of the effective date of this rule.

(c) Landfills subject to this rule after the effective date of this rule must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 30 days of becoming subject to this rule.

(5) Definitions. As used in this rule:

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0745

Emission Guidelines for Municipal Solid Waste Landfills that commenced construction, reconstruction or modification before May 30, 1991

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

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

(2) General Requirements. Landfills subject to this rule must comply with **40 CFR Section 60.751 through 60.759, July 1, 1998 Part 60, Subpart WWW, 3/12/96** as adopted under OAR 340-025-0535, except as noted in Section 4 of this rule.

(3) Permitting requirements. Landfills subject to this rule must comply with Federal Operating Permit Requirements (Title V) as specified in OAR 340-028-2100 through 340-028-2740 except as noted in (c) of this subsection.

(a) Existing large landfills must submit a complete Federal Operating Permit application one year after EPA approves the 111(d) State Plan associated with this rule.

(b) Existing small landfills that are major sources as defined in OAR 340-028-0110 must submit a complete Federal Operating Permit application within one year of becoming a major source.

(c) OAR 340-028-2110(4)(c) does not apply to sources subject to this rule.

(4) Reporting requirements. Landfills subject to this rule must comply with the following:

(a) Large landfills listed in Subsection (1)(a) through (c) of this rule must comply with:

(A) Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 90 days of the effective date of this rule.

(B) Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are 50 Mg/yr.

(b) Small landfills listed in Subsection (1)(a) through (c) of this rule must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within 90 days of the effective date of this rule.

(5) Definitions. As used in this rule:

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 8-1997, f. & cert. ef. 5-6-97

340-025-0746

Standards of Performance for Hospital/Medical/Infectious Waste Incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998

(1) Applicability. This rule applies to each individual hospital/medical/infectious waste incinerator for which construction is commenced after June 20, 1996 or for which modification is commenced after March 16, 1998 except as noted in section (2) of this rule.

(2) Exemptions:

(a) A combustor is not subject to this rule during periods when only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste is burned, provided the owner or operator of the combustor:

(A) Notifies the Administrator of an exemption claim; and

(B) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste and/or chemotherapeutic waste is burned.

(b) Any co-fired combustor is not subject to this rule if the owner or operator of the co-fired combustor:

(A) Notifies the Administrator of an exemption claim;

(B) Provides an estimate of the relative amounts of hospital waste, medical/infectious waste, and other fuels and wastes to be combusted; and

(C) Keeps records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under Section 3005 of the Solid Waste Disposal Act is not subject to this rule.

(d) Any combustor which meets the applicability requirements under Subpart Cb, Ea or Eb (relates to certain municipal waste combustors) is not subject to this rule.

(e) Any pyrolysis unit is not subject to this rule.

(f) Cement kilns firing hospital waste and/or medical/infectious waste are not subject to this rule.

(g) Physical or operational changes made to an existing hospital/medical/infectious waste incinerator solely for the purpose of complying with emission guidelines under Subpart Ce are not considered a modification and do not result in an existing hospital/medical/infectious waste incinerator becoming subject to this rule.

(h) Affected facilities subject to this rule are not subject to the requirements of 40 CFR Part 64.

(3) Definitions. As used in this rule, definitions shall have the meaning given in 40 CFR Section 60.51c including, but not limited to:

(a) "Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(b) "Co-fired combustor" means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

(c) "Hospital" means any facility which has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuous medical supervision.

(d) "Hospital/medical/infectious waste incinerator" means any device that combusts any amount of hospital waste and/or medical/infectious waste.

(e) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. This definition does not include human corpses, remains and anatomical parts intended for interment or cremation.

(f) "Infectious agent" means any organism such as a virus or bacteria that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

(g) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

(h) "Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in paragraphs (A) through (G) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of Chapter I; household waste as defined in Subsection 261.4(b)(1) of Chapter I; ash from incineration of medical/infectious waste once the incineration process is completed; human corpses, remains, and anatomical parts intended for interment or cremation and domestic sewage materials identified in Subsection 261.4(a)(1) of Chapter I.

(A) Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate and mix cultures.

(B) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

(C) Human blood and blood products including:

(i) Liquid waste human blood;

(ii) Products of blood;

(iii) Items saturated and/or dripping with human blood; or

(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

(D) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

(E) Animal waste including contaminated animal carcasses, body parts and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

(F) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

(G) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes and scalpel blades.

(i) "Modification or modified hospital/medical/infectious waste incinerator" means any change to a hospital/medical/infectious waste incinerator unit after the effective date of these standards such that:

(A) The cumulative costs of the modifications, over the life of the unit, exceed 50 per cent of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or

(B) The change involves a physical change or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under Section 129 or Section 111.

(j) "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material and animal bedding (if applicable).

(k) "Pyrolysis" means the endothermic gasification of hospital waste and/or medical/infectious waste using external energy.

(4) Requirements.

(a) Hospital/medical/infectious waste incinerators subject to this rule must comply with 40 CFR Part 60, Subpart Ee as adopted in OAR 340-025-0535.

(b) Beginning September 15, 2000 or on the effective date of an EPA-approved operating permit program under Clean Air Act Title V and the implementing

regulations under 40 CFR Part 70, whichever date is later, affected facilities shall operate pursuant to a permit issued under the EPA approved state operating permit program.

340-025-0750

Hospital/Medical/Infectious Waste Incinerators that commenced construction before June 20, 1996

(1) Applicability. This rule applies to each individual hospital/medical/infectious waste incinerator for which construction is commenced on or before June 20, 1996 except as noted in section (2) of this rule.

(2) Exemptions:

(a) A combustor is not subject to this rule during periods when only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste is burned, provided the owner or operator of the combustor:

(A) Notifies the Administrator of an exemption claim; and

(B) Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste and/or chemotherapeutic waste is burned.

(b) Any co-fired combustor is not subject to this rule if the owner or operator of the co-fired combustor:

(A) Notifies the Administrator of an exemption claim;

(B) Provides an estimate of the relative amounts of hospital waste, medical/infectious waste, and other fuels and wastes to be combusted; and

(C) Keeps records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired combustor.

(c) Any combustor required to have a permit under Section 3005 of the Solid Waste Disposal Act is not subject to this rule.

(d) Any combustor which meets the applicability requirements under Subpart Cb, Ea or Eb (relates to certain municipal waste combustors) is not subject to this rule.

(e) Any pyrolysis unit is not subject to this rule.

(f) Cement kilns firing hospital waste and/or medical/infectious waste are not subject to this rule.

(g) Physical or operational changes made to an existing hospital/medical/infectious waste incinerator solely for the purpose of complying with emission guidelines under Subpart Ce are not considered a modification and do not result in an existing hospital/medical/infectious waste incinerator becoming subject to this rule.

(h) Affected facilities subject to this rule are not subject to the requirements of 40 CFR Part 64.

(3) Definitions. As used in this rule, definitions shall have the meaning given in 40 CFR Section 60.51c including, but not limited to:

(a) "Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(b) "Co-fired combustor" means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

(c) "Hospital" means any facility which has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuous medical supervision.

(d) "Hospital/medical/infectious waste incinerator" or HMIWI means any device that combusts any amount of hospital waste and/or medical/infectious waste.

(e) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. This definition does not include human corpses, remains and anatomical parts intended for interment or cremation.

(f) "Infectious agent" means any organism such as a virus or bacteria that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

(g) "Large HMIWI", except as provided in Subsection (D)(i) and (ii) means:

(A) A HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or

(B) A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

(C) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

(D) The following are not large HMIWI:

(i) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

(ii) A batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

(h) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

(i) "Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production of testing of biologicals that is listed in paragraphs (A) through (G) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of Chapter I; household waste as defined in Subsection 261.4(b)(1) of Chapter I; ash from incineration of medical/infectious waste once the incineration process is completed; human corpses, remains, and anatomical parts intended for interment or cremation and domestic sewage materials identified in Subsection 261.4(a)(1) of Chapter I.

(A) Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate and mix cultures.

(B) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

(C) Human blood and blood products including:

(i) Liquid waste human blood;

(ii) Products of blood;

(iii) Items saturated and/or dripping with human blood; or

(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood, including serum, plasma, and other blood components, and their containers which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

(D) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

(E) Animal waste including contaminated animal carcasses, body parts and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

(F) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

(G) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes and scalpel blades.

(j) "Medium HMIWI", except as provided in (1) means:

(A) A HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(B) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(C) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(i) The following are not medium HMIWI:

(1) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(II) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

(k) "Modification or modified hospital/medical/infectious waste incinerator" means any change to a HMIWI unit after the effective date of these standards such that:

(A) The cumulative costs of the modifications, over the life of the unit, exceed 50 per cent of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or

(B) The change involves a physical change or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under Section 129 or Section 111.

(l) "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material and animal bedding (if applicable).

(m) "Pyrolysis" means the endothermic gasification of hospital waste and/or medical/infectious waste using external energy.

(n) "Small hospital/medical/infectious waste incinerator", except as provided in (i), means:

(A) A HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour; or

(B) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(C) A batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(i) The following are not small HMIWI:

(I) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour;

(II) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

(4) Requirements

(a) Except as provided in subsection (b) of this section, all HMIWI shall comply with the following requirements within one year after EPA approval of the State Plan:

(A) Emission limits

(i) Small HMIWI

(I) Particulate matter: 115 milligrams per dry standard cubic meter (mg/dscm)

(II) Carbon monoxide: 40 parts per million by volume (ppm)

(III) Dioxins/furans: 125 nanograms per dry standard cubic meter (ng/dscm)

(IV) Hydrogen chloride: 100 ppm or 93% reduction

(V) Sulfur dioxide: 55 ppm

(VI) Nitrogen oxides: 250 ppm

(VII) Lead: 1.2 mg/dscm or 70% reduction

(VIII) Cadmium: 0.16 mg/dscm or 65% reduction

(IX) Mercury: 0.55 mg/dscm or 85% reduction

(ii) Medium HMIWI

(I) Particulate matter: 69 mg/dscm

(II) Carbon monoxide: 40 ppm

(III) Dioxins/furans: 125 ng/dscm

(IV) Hydrogen chloride: 100 ppm or 93% reduction

(V) Sulfur dioxide: 55 ppm

(VI) Nitrogen oxides: 250 ppm

(VII) Lead: 1.2 mg/dscm or 70% reduction

(VIII) Cadmium: 0.16 mg/dscm or 65% reduction

(IX) Mercury: 0.55 mg/dscm or 85% reduction

(iii) Large HMIWI

(I) Particulate matter: 34 mg/dscm

(II) Carbon monoxide: 40 ppm

(III) Dioxins/furans: 125 ng/dscm

(IV) Hydrogen chloride: 100 ppm or 93% reduction

(V) Sulfur dioxide: 55 ppm

(VI) Nitrogen oxides: 250 ppm

(VII) Lead: 1.2 mg/dscm or 70% reduction

(VIII) Cadmium: 0.16 mg/dscm or 65% reduction

(IX) Mercury: 0.55 mg/dscm or 85% reduction

(B) Stack opacity requirements as provided in 40 CFR Section 60.52c(b) of Subpart E.c.

(C) Operator training and qualification requirements as provided in 40 CFR Section 60.53c of Subpart E.c.

(D) Waste management plan as provided in 40 CFR Section 60.55c of Subpart E.c.

(E) Compliance and performance testing as provided in 40 CFR Section 60.56c of Subpart Ec excluding the fugitive emissions testing requirements under Section 60.56c(b)(12) and (c)(3) of Subpart Ec.

(F) Monitoring requirements as provided in 40 CFR Section 60.57c of Subpart Ec.

(G) Reporting and recordkeeping requirements as provided in 40 CFR Section 60.58c(b) - (f) of Subpart Ec excluding fugitive emissions under Section 60.58c(b)(2)(ii) and siting under Section 60.58c(b)(7).

(H) Permit requirements. Beginning September 15, 2000 or on the effective date of an EPA-approved operating permit program under Clean Air Act Title V and the implementing regulations under 40 CFR Part 70, whichever date is later, affected facilities shall operate pursuant to a permit issued under the EPA approved state operating permit program.

(b) Small HMIWI that are located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burn less than 2,000 pounds per week of hospital/medical/infectious waste, shall comply with the following requirements within one year after EPA approval of the State plan in lieu of the requirements in subsection (a) of this section:

(A) Emission Limits.

(i) Particulate matter: 197 mg/dscm

(ii) Carbon monoxide: 40 ppm

(iii) Dioxins/furans: 800 ng/dscm

(iv) Hydrogen chloride: 3100 ppm

(v) Sulfur dioxide: 55 ppm

(vi) Nitrogen oxides: 250 ppm

(vii) Lead: 10 mg/dscm

(viii) Cadmium: 4 mg/dscm

(ix) Mercury: 7.5 mg/dscm

(B) Stack opacity requirements as provided in 40 CFR Section 60.52c(b) of Subpart Ec.

(C) Initial equipment inspection which, at a minimum includes the following:

(i) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation; clean pilot flame sensor, as necessary;

(ii) Ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

(iii) Inspect hinges and door latches, and lubricate as necessary;

(iv) Inspect dampers, fans, and blowers for proper operation;

(v) Inspect HMIWI door and door gaskets for proper sealing;

(vi) Inspect motors for proper operation;

(vii) Inspect primary chamber refractory lining; clean and repair/replace lining as necessary;

(viii) Inspect incinerator shell for corrosion and/or hot spots;

(ix) Inspect secondary/tertiary chamber and stack, clean as necessary;

(x) Inspect mechanical loader, including limit switches, for proper operation, if applicable;

(xi) Visually inspect waste bed (grates), and repair/seal, as appropriate;

(xii) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

(xiii) Inspect air pollution control device(s) for proper operation, if applicable;

(xiv) Inspect waste heat boiler systems to ensure proper operation, if applicable;

(xv) Inspect bypass stack components;

(xvi) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

(xvii) Generally observe that the equipment is maintained in good operating condition.

(D) Equipment repairs. Within 10 operating days following an equipment inspection all necessary repairs shall be completed unless the owner or operator obtains written approval from the Department establishing a date whereby all necessary repairs of the designated facility shall be completed.

(E) Equipment inspection. Equipment inspections shall be conducted annually (no more than 12 months following the previous annual equipment inspection), as outlined in (4)(b)(C) and (D) of this section.

(F) Compliance and performance testing requirements as follows:

(i) Compliance and performance testing requirements as provided in 40 CFR Section 60.56c(a)(b)(1) through (b)(9), (b)(11) (Hg only), and (c)(1) of Subpart Ec. The 2,000 lb/week limitation under (4)(b) of this section does not apply during performance tests.

(ii) Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits.

(iii) Following the date on which the initial performance test is completed or is required to be completed under 40 CFR Section 60.8, whichever date comes first, ensure that the designated facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s).

(iv) Except as provided in Subsection (v) of this section, operation of the designated facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a 3-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emission limits.

(v) The owner or operator of a designated facility may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emission limit(s). Repeat performance tests conducted pursuant to this paragraph must be conducted using the identical operating parameters that indicated a violation under Subsection (iv) of this section.

(G) Monitoring requirements as follows:

(i) Install, calibrate (to manufacturers' specifications), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.

(ii) Install, calibrate (to manufacturers' specifications), maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.

(iii) The owner or operator of a designated facility shall obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital waste and/or medical/infectious waste.

(H) Reporting and recordkeeping requirements as follows:

(i) Maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the Department; and

(ii) Submit an annual report containing information recorded under Subsection (i) of this section no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report, once the unit is subject to permitting requirements under Title V of the Act, the owner or operator must submit these reports semiannually. The report shall be signed by the facilities manager.

(5) Citations in this rule to 40 CFR, refer to The Code of Federal Regulations, Title 40 Part 60, revised as of July 1, 1998.

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental QualityOAR Chapter 340-025

DATE:	TIME:	LOCATION:
July 15, 1998	6:00 pm	Austin Auditorium 100 La Sells Stewart Center Oregon State University Corvallis, OR 97331
July 16, 1998	3:00 pm	DEQ Headquarters Room 3a 811 SW Sixth Avenue Portland, OR 97204

HEARINGS OFFICER(s): Professional hearings officer will presideSTATUTORY AUTHORITY: ORS 468.020, 468A.025

or OTHER AUTHORITY:

STATUTES IMPLEMENTED: ORS 468A.025

ADOPT: 340-025-0746, 340-025-0750

AMEND: 340-025-0505, 340-025-0510, 340-025-0515, 340-025-0520,
340-025-0530, 340-025-0535, 340-025-0740, 340-025-0745

REPEAL: 340-025-0525

RENUMBER:

(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER:

(prior approval from Secretary of State REQUIRED)

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

SUMMARY:

Annual update of New Source Performance Standards (NSPS) and emission guidelines. This proposal will adopt by reference NSPS for new hospital/medical/infectious waste incinerators, and will incorporate federal emission guidelines into state regulations for existing hospital/medical/infectious waste incinerators.

LAST DATE FOR COMMENT: July 22, 1998 at 5:00 pm

AGENCY RULES COORDINATOR:
AGENCY CONTACT FOR THIS PROPOSAL:
ADDRESS:

Susan M. Greco, (503) 229-5213
Kathleen Craig
811 S. W. 6th Avenue
Portland, Oregon 97204

TELEPHONE:

503-229-6833/1-800-452-4011

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

[Handwritten Signature]
Signature

6/11/98
Date

Attachment B2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for

New Source Performance Standards (NSPS) and
Emission Guidelines: Hospital/Medical/Infectious Waste Incinerators

Fiscal and Economic Impact Statement

Introduction

This proposal will adopt, verbatim, federal New Source Performance Standards (NSPS) for new hospital/medical/infectious waste incinerators and incorporate federal emission guidelines into state regulations for existing hospital/medical/infectious waste incinerators. This rulemaking will also adopt changes to the federal NSPS through July 1, 1998. The proposed adoption will bring Oregon's NSPS program current with federal NSPS standards and emission guidelines, which include recent federal regulations related to credible evidence.

In 1990, the Department adopted state regulations for solid and infectious waste incinerators and for crematories, which caused generators of hospital/medical/infectious waste to seek alternate disposal options. Incineration of hospital/medical and infectious waste generated in Oregon takes place at a large municipal solid waste combustor in Oregon, which is exempt from this regulation because this source is subject to New Source Performance Standards and emission guidelines for municipal waste combustors.

Presently, there are no hospitals in Oregon that incinerate hospital/medical/infectious waste. One research facility in Oregon incinerates a small amount of infectious waste generated on-site. This facility is subject to state regulations and will qualify for an exemption from the proposed regulation with a permit condition restricting the amount of infectious waste combusted, and by keeping records of the fuels and wastes combusted. Implementation of this rulemaking through existing permitting programs does not represent additional costs to sources because sources are subject to permitting requirements already.

General Public

This rulemaking should have no fiscal or economic impact to the general public.

Small Business

It is not anticipated that there will be an economic impact on existing small businesses as a result of this rulemaking. The economic impact on small businesses that become subject to an NSPS in the future would be the same as for large businesses.

Large Business

There are no sources that will be required to install control equipment as a result of this regulation at this time, although new hospital/medical/infectious waste incinerators will be subject to this regulation. However, sources must comply with federal standards when promulgated by EPA, whether states adopt the standards or not.

Local Governments

This rulemaking should have no fiscal or economic impact on local governments.

State Agencies

- DEQ: This rule will be implemented through existing air quality programs and is not expected to add incremental cost to the program.

- Other state agencies: There should be no fiscal or economic impacts on other state agencies.

Housing Cost Impact Statement

The Department has determined that this rulemaking will have no effect on the cost of developing a 6000 square foot parcel or constructing a 1200 square foot detached single family dwelling on that parcel.

Attachment B3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for

New Source Performance Standards (NSPS) and
Emission Guidelines: Hospital/Medical/Infectious Waste Incinerators

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purpose of this rulemaking is to comply with a federal requirement for states to either adopt federal NSPS and emission guidelines by reference, or verbatim, or to adopt equivalent regulations that are federally enforceable. In addition, adoption of federal NSPS and emission guidelines is necessary for Oregon to maintain approval of its Title V program. Adoption of these standards will bring Oregon's program up to date with federal NSPS and emission guidelines. The Department proposes to adopt the NSPS for Hospital/Medical/Infectious waste incinerators verbatim and to incorporate the Emission Guidelines into state regulations.

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 Department's air quality stationary source permitting program.

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 which requires a local government land use compatability determination before a DEQ 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.

Not applicable

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. Grea
Division

Robert G. [Signature]
Intergovernmental Coord.

5/18/98
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?

Yes. The federal New Source Performance requirements are proposed for adoption verbatim. Federal emission guidelines are proposed to be incorporated into state regulations. The proposed rulemaking does not differ from federal requirements.

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

NA

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

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?

NA

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

NA

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

NA

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

NA

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

NA

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?

NA

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

NA

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

NA

Attachment B5

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 10, 1998

To: Interested Parties and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements

Annual Update: New Source Performance Standards (NSPS) and
Emission Guidelines - Hospital/Medical/Infectious Waste Incinerators

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new federal rules for hospital/medical/infectious waste incinerators and to incorporate changes in other federal New Source Performance Standards. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal will adopt by reference federal New Source Performance Standards (NSPS) for new hospital/medical/infectious waste incinerators and incorporate federal emission guidelines into state regulations for existing hospital/medical/infectious waste incinerators. This rulemaking will also adopt federal changes to the NSPS program since the last state adoption of NSPS regulations in April, 1997. The proposed adoption will bring Oregon's NSPS program current with federal NSPS standards and emission guidelines through July 1, 1998, which includes recent federal regulations related to credible evidence. Additional information about the credible evidence rulemaking is included in a companion rulemaking proposal scheduled for adoption concurrently with this proposal.

In addition to the rulemaking related to hospital/medical/infectious waste incinerators, there are housekeeping changes to OAR 340-025-0740 and 340-025-0745, related to municipal solid waste landfills.

The Department has the statutory authority to address this issue under ORS 468.020 and 468A.025, 468A.305 and 468A.310.

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 proposed rule language.
Attachment E	Submittal to EPA regarding status of affected sources (available upon request)

Hearing Process Details

The Department is conducting two public hearings at which comments will be accepted either orally or in writing.¹ The hearings will be held as follows:

Date: July 15, 1998
Time: 6:00 p.m.
Place: Austin Auditorium
100 LaSells Stewart Center
Oregon State University
Corvallis, Oregon 97331

Date: July 16, 1998
Time: 3:00 p.m.
Place: DEQ Headquarters:
811 SW Sixth Avenue Room 3a
Portland, Oregon 97204

Deadline for submittal of Written Comments: July 22, 1998

¹ PLEASE NOTIFY DEQ ABOUT ANY SPECIAL PHYSICAL OR LANGUAGE ACCOMODATIONS YOU MAY NEED AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE. TO MAKE THESE ARRANGEMENTS, PLEASE CONTACT DEQ PUBLIC AFFAIRS AT 1-800-452-4011 IN OREGON OR 503-229-5317. PEOPLE WITH HEARING IMPAIRMENTS MAY CALL DEQ'S TDD NUMBER AT 503-229-6993.

A professional hearings officer will preside at the hearings.

Written comments can be presented at the hearing or to the Department any time prior to July 22, 1998 by 5:00 p.m. Comments should be sent to: Department of Environmental Quality, Attn: Kathleen Craig, 811 S.W. 6th Avenue, Portland, Oregon 97204.

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 September 18, 1998. *Please note that this date is tentative and may change.* This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

There are three main reasons there is a need for the rule:

1. Clean Air Act Requirement

Section 129 of the federal Clean Air Act directs EPA to develop numeric emission limits for combustion sources. Within one year of promulgation of federal standards, states must either adopt the standards by reference or develop equivalent state regulations that are federally enforceable.

2. Maintain approval of Title V program

Adoption of new federal standards is a required element of Oregon's Title V program. Therefore, adoption of federal NSPS and emission guidelines is necessary for the Department to maintain federal approval of its Title V program. It is important for the Department to maintain approval of the Title V program to give Oregon, versus EPA, the authority to implement this program.

3. Maintain current delegation status of New Source Performance Standards (NSPS) program

The Department must adopt federal NSPS and emission guidelines to retain delegation authority to implement New Source Performance Standards and emission guidelines. Adoption of these standards and guidelines will bring Oregon's program up to date with federal NSPS and guidelines.

How was the rule developed

There are no policy issues related to this adoption of federal standards by reference, therefore no advisory committee was involved in the rule development. However, the proposed rulemaking was presented at a stakeholder's meeting on March 4, 1998 which included invitations to the public, industry and environmental interests.

Copies of the Federal Register 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 the staff person noted at the end of this report for times when the document is available for review.

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

In 1990, the Department adopted state regulations for solid and infectious waste incinerators and for crematories, which caused generators of hospital/medical/infectious waste to seek alternate disposal options. Incineration of hospital/medical and infectious waste generated in Oregon takes place at a large municipal solid waste combustor in Oregon, which is exempt from this regulation because this source is already subject to New Source Performance Standards and emission guidelines for municipal waste combustors under OAR 340-025-0556 through 340-025-0557 and OAR 340-025-0950 through 340-025-1010.

Whom does this rule affect (continued)

Presently, there are no hospitals in Oregon that incinerate their own hospital/medical/infectious waste. One research facility in Oregon incinerates a small amount of infectious waste generated on-site. This facility is subject to state regulations and will qualify for an exemption from the proposed regulation with a permit condition restricting the amount of infectious waste combusted, and by keeping records of the fuels and wastes combusted. Therefore, no existing sources will be required to install control equipment as a result of this regulation, although new hospital/medical/infectious waste incinerators constructed in Oregon will be subject to the requirements. This rulemaking should have no effect on the public or other agencies.

How will the rule be implemented

The proposed rule will be implemented through existing air quality permitting programs. Permitted sources that are on regular Department mailing lists have been notified of this rulemaking, and the facility required to submit an exemption and to keep records has been contacted by the Department. Department staff who will be responsible for implementing the proposed rule through the permitting program will be briefed on the requirements of this rule adoption. Permit changes, as necessary, will be made to reflect this rule adoption.

Are there time constraints

EPA rules require states to adopt emission guidelines within one year of EPA promulgation, which is September, 1998.

Contact for more information

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

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

THIS PUBLICATION IS AVAILABLE IN ALTERNATE FORMAT (E.G. LARGE PRINT, BRAILLE) UPON REQUEST. PLEASE CONTACT DEQ'S PUBLIC AFFAIRS AT 503-229-5317 TO REQUEST AN ALTERNATE FORMAT.

Mwiintpart.doc

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 16, 1998

To: Environmental Quality Commission

From: Ruth Crowley, Hearings Officer

*Ruth Crowley
by KC*

Subject: Presiding Officer's Report for Rulemaking Hearing

Combined rule adoption hearing:

1. Reasonably Available Control Technology (RACT): Stage I and II vapor recovery;
2. National Emission Standards for Hazardous Air Pollutants (NESHAP): standards for pulp and paper ("cluster rule"), polymers and resins production, off-site waste and recovery operations, printing and publishing, primary aluminum plants;
3. New Source performance Standards (NSPS): Hospitals/Medical/Infectious Waste incinerators;
4. Compliance Assurance Monitoring (CAM) for major industrial sources;
5. Credible Evidence for all sources in Oregon.

Two hearings were held on the above rules proposed for adoption. An announcement was made asking for signatures on the witness registration forms for anyone wanting to present testimony. All present were advised that the hearing was being recorded, and of the procedures to follow.

At the Corvallis, Oregon hearing on July 15, 1998, six people presented testimony. All comments were related to the pulp and paper "cluster" rule, item #2 in the above listing.

At the Portland, Oregon hearing on July 16, 1998, no one presented testimony.

Corvallis, Oregon. July 15, 1998; 6:00 p.m.

The following summarizes oral testimony presented at this hearing:

Linda Hunn*
1820 SE Bethel St
Corvallis 97333

Dioxins (toxic byproducts of industrial processes involving chlorine) attack our systems at very low doses. Ms. Hunn is concerned about the effect of dioxins on our immune and reproductive systems. She encourages the City of Corvallis to recommend to the DEQ that paper and pulp bleaching operations in Oregon shift from using chlorine products to using ozones, peracids, and enzymes to bleach their pulp. She believes this recommendation is especially pertinent to Pope & Talbot, which discharges pollutants into the Willamette, Corvallis's drinking water source.

W. Alfred Mukatis
2851 NW Monterey Pl.
Corvallis 97330

Mr. Mukatis recalled the time when Oregon was a leader in water quality issues. He expressed concern about how the water rule is worded. It is phrased in terms of x amount of pollution per kilogram of product. If the amount of product increases, pollutants also increase. Mr. Mukatis would like the water rule to echo the federal sulfur dioxide rule, under which a cap is placed on the level of permissible pollutants and the cap decreases each year.

Mary Slabaugh*
1800 SW Allen St.
Corvallis 97333

Ms. Slabaugh testified as a private citizen but has been a board member of Friends of the Upper Willamette for two years and has researched pulp bleaching technologies. She makes three requests to DEQ:

- 1) Adopt technology-based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters. The fact that Pope & Talbot has already incorporated oxygen delignification in its process, and the other two mills have partially substituted chlorine dioxide for elemental chlorine, belies the claim that ECF with oxygen delignification is not economically feasible.
- 2) Adopt as DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area that would trigger new, more stringent limits on effluents.
- 3) Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

The existing oxygen delignification/Monox-L process could be amended with ozone to achieve the new cluster rule limits while producing an acceptable product. Continued evolution of ozone and other bleaching technologies makes pursuit of this option attractive; it would avoid the major capital investment in chlorine dioxide-generating equipment.

Pope & Talbot should be allowed to design a special tier for its situation. A TCF process must be the ultimate goal for all of Oregon's pulp bleaching mills. Simple adoption of the April 1998 cluster rules is not good enough for Oregon.

Liz Frenkel (for Oregon League of Women Voters)*
1431 NW Vista Pl.
Corvallis 97330

The League of Women Voters (League) advocates the goal of TCF for the pulp and paper industry, because only with a TCF process is a closed loop water system possible, and only such a system protects the downstream users from pulp plant pollutants.

On 20 June Pope & Talbot announced plans to install ECF technology to meet the requirements of the April 1998 cluster rules. If DEQ's proposed rule--adopting the cluster rule with no changes—is approved, Pope and Talbot will have no incentive to move toward TCF bleaching. The process locks them into a chlorine discharge future of 15 to 20 years. The League's concerns are:

- Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution.
- Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet.
- Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.
- Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide.

Ashley Roorbach
626 SW Fifth St.
Corvallis 97333

Mr. Roorbach drinks, bathes in, and cooks with water containing Pope & Talbot's dioxin discharge. He advocates TCF rules for water discharge.

Sue Danver^
1021 NW 32nd St.
Corvallis 97330

Also a board member of the Friends of the Upper Willamette, Ms. Danver testified as a private citizen. She advocates exploring alternatives to chlorine dioxide for Pope and Talbot and believes, based on information at DEQ's June 30 information session, that it is possible to combine ozone with Monox-L technology. She requests that DEQ work with EPA to develop a tiered approach for Pope & Talbot.

Because we have only three pulp mills in Oregon, Ms. Danver believes we could work with them on a case by case basis and not lose the opportunity to have TCF in five years. At the June 30 informational meeting, DEQ said it would adopt the cluster rules as written absent new information. Ms. Danver supplied three political events that should be considered as new information:

- The Willamette River Task Force report on point and nonpoint source pollutants recommends providing incentives for MONOX-L and other new techniques.

- The Spring Chinook salmon is listed as a threatened species on some branches of the Willamette; Pope & Talbot is upstream.
- Pope & Talbot's NPDES water discharge permit expired on June 30. Renewal is one or two years off. Pope & Talbot will have chosen ECF technology before we have an opportunity to address their choice.

Ms. Danver requests a response from DEQ on this timing. Once the very expensive ECF technology is in place, the decision to implement it is irreversible.

Ms. Danver also birds in the Willamette National Forest and expressed dismay at the malformed birds she has seen lately.

* = **submitted written statement as well as oral testimony**

^ = **will submit written comments**

Portland, Oregon. July 16, 1998; 3:00 p.m.

There was no testimony given at this hearing.

Summary of Testimony by Subject Matter

Urge move to total chlorine free (TCF) bleaching (particular concern: Pope & Talbot mill):

**Linda Hunn
Mary Slabaugh
Liz Frenkel
Ashley Roorbach
Sue Danver**

Special concerns:

Effects of dioxin on human immune, reproductive systems

**Linda Hunn
Mary Slabaugh**

Implementation of ECF technology will preclude the better choice of TCF technology because of the investment (\$30 million)

**Liz Frenkel
Sue Danver**

Concerns re Pope & Talbot decision: Liz Frenkel

Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution

Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide

Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet

Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.

Concern re impact of pollutants on frogs and birds: Sue Danver

Concern about wording of water rule: x parts pollution per kg of product. If product output increases, pollution increases in an absolute sense. Wants cap on levels of pollutants in river, to be lowered each year, as with the sulfur dioxide rule.

W. Alfred Mukatis

Specific recommendations:

Mary Slabaugh:

1. Adopt technology based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters.

2. Adopt as Oregon DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area, that would trigger new and more stringent limits on effluents.

3. Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

Liz Frenkel:

DEQ rules should reflect goal of TCF technology by establishing appropriate timelines and regulations encouraging achievement of this goal (e.g., requiring Pope & Talbot to make analysis of alternatives to ECF technology dependent on chlorine dioxide).

NSPSmwihearingsum.doc

Attachment D

General Comments Received in Addition to Comments from Public Hearings And Department's Response to Comments

General comments were received, in addition to comments made in response to the public hearings. These comments are paraphrased below with the Department's response in italics. The Department formally responded to all commenters. There were no comments that were specific to this rulemaking:

If the Department is going to use a combined mailing, there should only be one contact person for receiving comments.

The Department agrees.

The Department should continue to work with Land Regional Air Pollution Authority (LRAPA) to further refine the public comment process when adopting federal regulations by reference and that delegation of authority to LRAPA for federal rules be streamlined.

Current rules allow LRAPA to enforce the Department's Title V, NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules directly. The Department plans to increase coordination with LRAPA on other rulemakings, but LRAPA is an independent agency and is authorized to adopt its own rules as long as they are at least as stringent as the Department's.

The Department should continue to adopt federal regulations by reference or verbatim to ensure consistency with federal programs. The adoption by reference is preferred over the adoption by verbatim because it would prevent any need to make "housekeeping" rule changes in the event that minor differences between the federal and state language occur.

The Department's intention is to adopt federal rules that establish emission standards and permitting requirements, by reference or verbatim, unless there is a need to revised requirements to fit the Oregon program or there is a scientifically defensible need to be more stringent. The Department adopts rules by reference when the federal rules apply directly to sources and by verbatim when the federal rules are directions to states on what to require of sources.

TO: The Environmental Quality Commission
RE: Agenda Item F: Implementation of the Federal Pulp & Paper
Cluster Rule.
September 17, 1998 Portland, Oregon

Thank you for this opportunity to testify.

I and all Oregonians need a DEQ which advocates for strict environmental standards. Historically, the State of Oregon is known for having environmental regulations more stringent than those of the nation. The blanket adoption of the EPA Cluster Rule could set the precedence of Oregon accepting weaker national standards. The DEQ and Oregon citizens have similar environmental goals - to protect Oregon's environment to the best of our ability. I believe the EQC should direct the DEQ to maintain this tradition.

Industry seeks Oregon's clean water. If Oregon protects its clean water, industry will continue to seek residence in our state. There is value in retaining strict standards. People and industry are now flocking to Oregon for its quality of life. Clean lakes, streams and rivers are contributing components to Oregonian's high quality of life. Clean water represents hope; it nourishes the soul. It is the foundation of a healthy ecosystem, a healthy State of Oregon. Please remember the importance of clean water to Oregonians when deciding how to implement the Cluster Rules.

Therefore, I ask the Oregon EQC to expand upon the EPA Cluster Rules. Please direct the DEQ to review any potentially applicable bleaching alternative that could have significant environmental benefit and also be economically feasible. The City of Corvallis made a similar request of DEQ. Their public comments ask that the DEQ:

"... adopt a definition of 'economically achievable' as referenced in the EPA cluster rule. In addition, that DEQ commit, within the rules that are adopted, to initiating a review of those rules if a technology or process meets the economically achievable criteria."

The City Council of Corvallis passed this recommendation unanimously indicating a high level of support of the Corvallis citizenry.

The response that the "DEQ does not have the staff or the expertise to develop technology standards separate from the EPA process" is a poor excuse given the increased understanding of the gravity of organochlorines on living systems and the long range impact of this decision. The State of Oregon could also allocate time to analyze particular bleaching alternatives when they arise. We are an exceptional state with exceptional rivers and we should aspire to acquiring the "Best Alternative Technology" for the pulp and paper industry.

My efforts this past year were to develop a win-win situation for the citizens of Corvallis/State and Pope and Talbot. I tried to find a technical solution in which Pope and Talbot could still produce a marketable pulp and not preclude a totally chlorine free future. It turns out the chlorine free pulp production is a young and promising field. Breakthroughs with ozone, peracids and enzymes in pulp production are occurring rapidly. Competitive, strong and bright paper is likely in the near future--all this without organochlorine wastes in water, air or sludge.

The growing concern about the harmful effects of organochlorines on living systems explains my persistence in arguing for their reduction and/or elimination, especially when economically possible. I have attached two important related articles. One is a copy of Rachel's Newsletter #612 summarizing the International Joint Commission's concerns about the persistent toxic substances in the Great Lakes. The second is a review of a Washington Department of Ecology strategy to eliminate the production and release of 27 toxic "bioaccumulative" pollutants into the environment by 2025. It underscores how concerned our neighboring state to the north is about specific organochlorines.

Unfortunately, Pope and Talbot insisted and still insists that Totally Chlorine Free (TCF) paper does not have a market. They claim it cannot simultaneously meet both strength and brightness market requirements. However, in researching the TCF issue, I discovered a well regarded pulp chemist, Dr. Norm Liebergott. As an employee of Canada Pulp and Paper, Dr. Liebergott has worked for Pope and Talbot in the past.

Dr. Liebergott suggests that Pope and Talbot could use ozone with their existing Monox-L (contains chlorine) system and obtain pulp of equal quality as that produced by Pope and Talbot's newly selected chlorine dioxide bleaching process (EPA's new minimum bleaching process requirement.) With an addition to their current oxygen delignification tower, which Pope and Talbot is considering for their chlorine dioxide process, Dr. Liebergott believes that all EPA water quality standards could be met. The advantage of this ozone solution is that at time when TCF paper meets strength and brightness market requirements, the plant economically could convert to a TCF process. In contrast, Pope and Talbot's chlorine dioxide process would lock them into twenty years of organochlorine wastes to the downstream ecosystem.

I spoke with Art Vosberg of Pope and Talbot on September 15. He disagrees with Dr. Liebergott's conclusions. The major discrepancy deals with the chemical makeup of the initial material with which the final pulp is made. Two respected scientists disagree.

It is in this particular situation that a government body can play a major role. In a cutthroat business climate, bottom lines generally drive corporations decisions. Ideally, government can analyze discrepancies in assumptions and conclusions in a neutral environment. With the potential of more people drinking Willamette River water, the likely listing of the salmon on the endangered species list, and fertilizing our fields with Willamette River water, the DEQ could and should play an analytically important neutral role.

Thus, specifically, at this time I believe that an analysis by DEQ of an ozone with Monox-L bleaching alternative for the Pope and Talbot plant in Halsey, Oregon is justified.

In response to a similar request for the State to develop criteria to evaluate pulp bleaching technology as it evolves, the DEQ responded that it would rely on EPA research. I find such reliance on EPA research inadequate. The DEQ stated that EPA reviews its technology standards for industries every ten years. Since the draft of the Cluster Rules was prepared by 1993, I assume much of the information was collected in earlier years. Many, many advances in bleaching processes have occurred around and after 1993. A more recent analysis is needed.

I believe an independent review of the alternative technology is merited given the economic and environmental benefits the alternative would provide. And in their decision, DEQ might be able to grant some leeway for the adoption of the ozone alternative similar to the Tier Systems in the Cluster Rules provided for Totally Chlorine Free bleaching methods.

It all comes down to risk. How much are Oregonians and the State of Oregon willing to risk to satisfy industry? What guarantees can industry provide? What permanent sacrifices may be required of Oregonians as a result of your decision today?

I believe that both Art Vosberg and Norm Liebergott are committed to a safe future for Oregonians. I sense an understanding of the underlying problem when in dialogue with DEQ employees. I hear a governor calling for improving the health of the Willamette River Ecosystem. I believe a shared vision, the grace of more time and leniency at logical junctures provided to the industry by the state and an investment in mutual trust would go a long way in securing a TCF plant in Halsey in the near future.

Respectfully submitted by Susan Danver
1021 NW 32nd St.
Corvallis, OR 97330
541-754-7517

Susan Danver

From: rachel@rachel.org[SMTP:rachel@rachel.org]
Reply To: rachel@rachel.org
Sent: Wednesday, August 12, 1998 3:20 PM
To: rachel-weekly@world.std.com
Subject: Rachel #611: Bad News From the IJC

=====**Electronic Edition**=====

RACHEL'S ENVIRONMENT & HEALTH WEEKLY #611

---August 13, 1998---

HEADLINES:

BAD NEWS FROM THE IJC

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Environmental Research Foundation
P.O. Box 5036, Annapolis, MD 21403
Fax (410) 263-8944; Internet: erf@rachel.org

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BAD NEWS FROM THE IJC

The International Joint Commission (IJC) was created by treaty between the U.S. and Canada in 1909, to resolve problems in the Great Lakes. Since 1972, the IJC has been working aggressively to improve water quality in the Lakes, with some success. Initially the concern was phosphorus, a farm fertilizer that can degrade water quality by causing excessive growth of algae and other plants, thus depleting the oxygen supply for fish. The IJC --and the two national governments that it represents --tackled the phosphorus problem and made considerable progress. However in 1978 the IJC began to focus on another, more difficult, problem: persistent toxic chemicals injuring wildlife and humans in and around the Great Lakes.[1,pg.7]

In their joint Water Quality Agreement of 1978, the U.S. and Canada defined a "toxic substance" as "a substance which can cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological or reproductive malfunctions or physical deformities in any organism or its offspring, or which can become poisonous after concentration in the food chain or in combination with other substances."

The IJC subsequently adopted a definition of a "persistent toxic substance:" any toxic substance that bioaccumulates, or any toxic chemical that has a half-life greater than eight weeks in any medium (water, air, sediment, soil, or living things).

The "half life" of a substance is the time it takes for half of it to disappear. For example, DDT has a "half-life" of about 20 years in soil; if a pound of DDT is released into soil today, half of it will still exist 20 years from now.

A substance bioaccumulates if its concentration increases as it moves through the food chain. For example, DDT may be found at one ppm (part per million) in fish and at 10 ppm in fish-eating birds. Thus DDT bioaccumulates.

In Annex 2 of the Great Lakes Water Quality Agreement of 1978 (amended), the IJC defined persistent toxic substances to include these: DDT and its metabolites (including DDE), aldrin and dieldrin, chlordane, endrin, heptachlor and heptachlor epoxide, lindane, methoxychlor, mirex, toxaphene, phthalic acid esters, polychlorinated biphenyls (PCBs), plus the metals arsenic, cadmium, chromium, copper, iron, lead, mercury, nickel, selenium, zinc, and fluoride, and other "unspecified organic compounds." (See www.ijc.org/agree/quality.html.)

During the period 1988 to 1992, under the leadership of Republican Gordon Durnil [see REHW #423, #424, #453], the IJC developed an approach to persistent toxic substances that seemed commensurate with the size and nature of the problem. The Commission turned its back on risk assessment and on numerical standards, instead calling for the ELIMINATION of persistent toxic substances. In its 6th biennial report in 1992, the IJC wrote,

"It is clear to us that persistent toxic substances have caused widespread injury to the environment and to human health. As a society we can no longer afford to tolerate their presence in our environment and in our bodies.... Hence, if a chemical or group of chemicals is persistent, toxic and bioaccumulative, we should immediately begin a process to eliminate it. Since it seems impossible to eliminate discharges of these chemicals through other means, a policy of banning or sunseting their manufacture, distribution, storage, use and disposal appears to be the only alternative." The IJC defines "sunseting" as "a comprehensive process to restrict, phase out, and eventually ban the manufacture, generation, use and disposal of a persistent toxic substance." (See www.ijc.org/comm/6bre.html and REHW #284.)

In its 7th and 8th biennial reports, in 1994 and 1996, the IJC confirmed and deepened its commitment to the ELIMINATION of toxic substances as the only way to solve the problems they create. (See www.ijc.org/comm/7bre.html and www.ijc.org/comm/8bre.html.) Last month the IJC released its 9th biennial report[1] and once again reaffirmed its commitment to the elimination of persistent toxic substances from the Great Lakes ecosystem. The new report says,

"The first evidence of injury by persistent toxic substances was reported more than 50 years ago." [1, pg.9]

The new report says that progress was made by banning the most obvious offenders, such as DDT and PCBs, but "evidence [has] continued to build of subtle, more insidious injury, especially

But there is bad news in the report as well: Public concern about the environment remains high, but industrial corporations, and the governments they largely control, have dug in their heels and have killed progress toward cleaning up the Great lakes.

The new report says, "Public opinion polls continually show that people support a clean environment, but governments appear to be less receptive and responsive to advice and to the wishes of their citizens regarding the environment. Opposition to further environmental measures --indeed to retaining successes to date --is mounting." [1,pg.13]

The new report says, "The ability of governments at all levels to deliver... is being stressed, and programs to restore and protect the Great Lakes have drastically slowed or halted, especially initiatives for Areas of Concern [specific pollution hotspots identified by the IJC in the early 1990s] and those directed toward persistent toxic substances...." [1,pg.18]

As a consequence of opposition by industrial corporations and governments (federal, state, and provincial), "Energy and interest are flagging. Funding and resource cutbacks for environmental programs and supporting science have a domino effect on the public's sense of empowerment and mood." [1,pg.13]

The new report goes on, "Recent budget cuts have resulted in wholesale elimination of surveillance and monitoring programs, especially tributary programs in several major watersheds. Consequently, it is impossible to make [pollution] load estimates, even for phosphorus, suspended solids and other contaminants." [1,pg.34]

Indeed, the new 9th biennial report from the IJC is all but an admission of defeat: "Despite years of effort to stop inputs, clean up contamination and eliminate the use of chemicals that have long been known to cause injury, all remain widespread in the ecosystem and many continue to be used," the IJC says. [1,pg.7]

The IJC says that the public is asking, "Why are we unable to effectively deal with these persistent toxic substances?" The citizenry, which is eager to stop the poisoning, now has a sense of "hopelessness or disengagement," the IJC says. [1,pg.6]

Unfortunately, the new report never clearly states what has gone wrong, even though most people grasp the situation quite well. Industrial corporations are simply refusing to eliminate persistent toxic substances. [2] Furthermore, elected officials, who are reliant on corporations and corporate elites for campaign contributions, have created agencies, such as U.S. Environmental Protection Agency, that are enforcing the law less and less while relying more and more on "voluntary compliance" by industrial corporations. Wink, wink. Thus, the industrial corporations have succeeded in derailing progress toward cleaning up the Great Lakes, and indeed the larger environments of the U.S. and Canada. [3]

Because environmental advocacy organizations, for the most part, refuse to tackle the power relationships that block environmental

***6 TOXICS: WASHINGTON STATE TO BAN MANY CHEMICAL RELEASES**

Washington state regulators have unveiled a strategy to eliminate the release of dioxin and other toxic, persistent chemicals into the environment by 2025 (Jon Savelle, Seattle Daily Journal of Commerce, 8/21).

The plan announced last week coincides with the release of the state's first-ever dioxin-release inventory, which identifies the facilities releasing dioxin and the amounts produced (Karen Dorn Steele, Spokane Spokesman-Review, 8/21).

The Dept. of Ecology's goal is to eliminate the production and release of 27 toxic, "bioaccumulative" pollutants by banning their discharge from new facilities in 2005. The state would stop dioxin emissions from existing facilities in 2020 and stop dioxin releases from cleanup sites by 2025.

The action was "immediately applauded" by environmental groups. Carol Dansereau, director of the Washington Toxics Coalition, said she knows of no other state that has taken similar action on persistent pollution.

The state's pulp and paper industry, a source of dioxin as a pollution, has not opposed the strategy, saying federal standards already require the elimination of dioxin releases (Savelle, Seattle Daily Journal of Commerce).

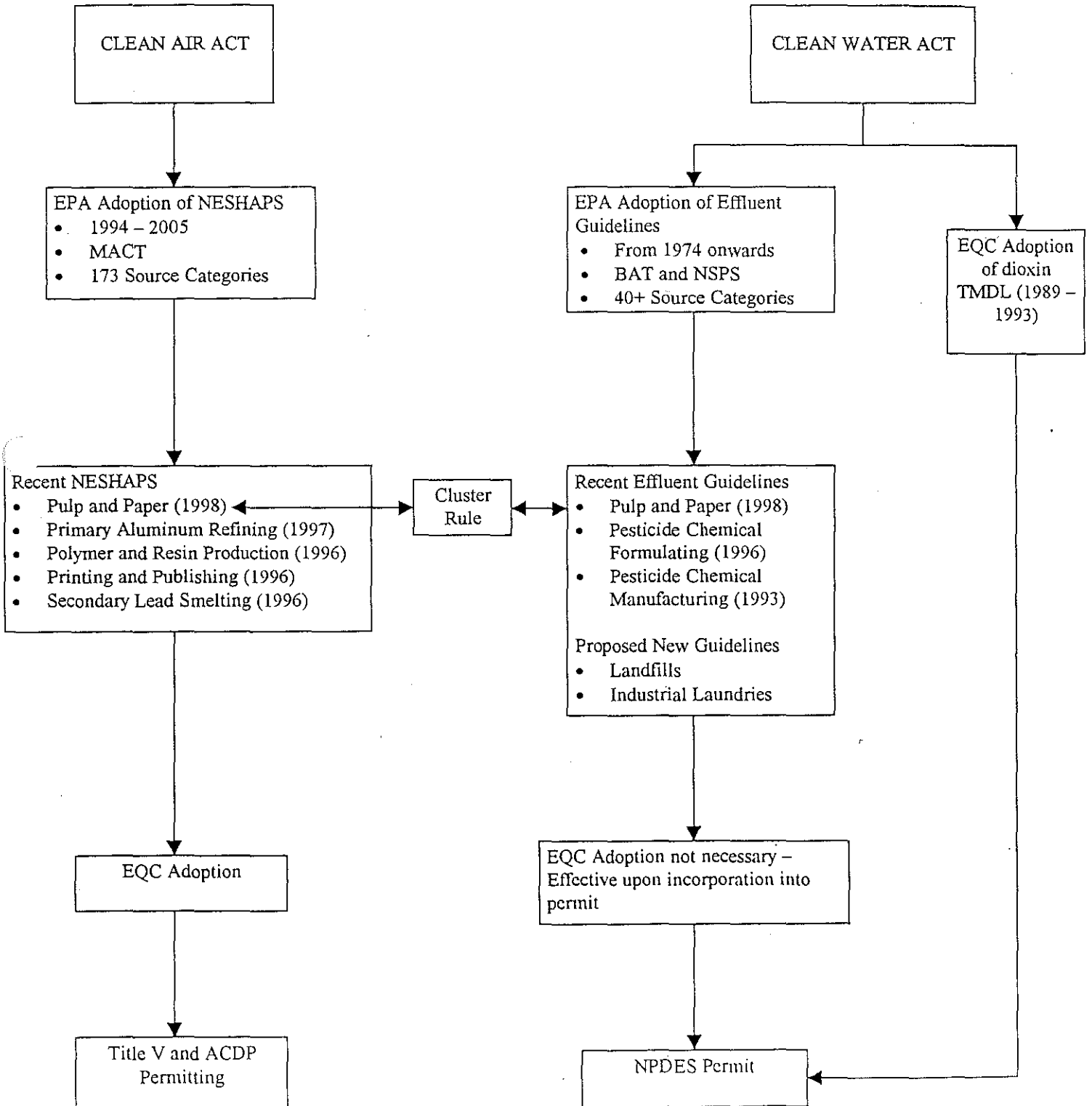
MORE DATA COULD HELP STRATEGY

Even as Washington officials warn of the hazards of dioxin, they admit "they know little about how much is produced and how it gets into the environment," despite the new inventory (Hal Spencer, AP/Vancouver [WA] Columbian, 8/21).

The inventory attempted to identify hundreds of dioxin sources but it contains "good" data for just 25 of the state's biggest industrial facilities, six of which have already been shut down. Only one of 250 municipal waste water plants has recorded dioxin discharges. The uncertainty of how much dioxin exists "highlight the need" for more testing and monitoring, according to Ecology Director Tom Fitzsimmons (Savelle, Seattle Daily Journal of Commerce).

State officials say their efforts have been hindered by the US EPA's failure to complete a dioxin reassessment, promised in 1991 (Steele, Spokane Spokesman-Review, 8/21). The Ecology Dept.'s Bill Backous: "We don't have the national document to say what [dioxin releases] might mean from a health perspective" (Karen Dorn Steele, Spokane Spokesman-Review, 8/20).

Agenda Item F
NESHAP Adoption and Cluster Rules Implementation



Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item F

September 17, 1998 Meeting

Title:

Annual Update: Adoption of National Emission Standards for Hazardous Air Pollutants (NESHAPs), Revision of Division 25 Standards, and Implementation of Federal Cluster Rule.

Summary:

EPA's new technology standards for the control of hazardous air pollutants are termed National Emission Standards for Hazardous Air Pollutants, or NESHAPs. These standards set emission standards for 188 toxic chemicals and compounds emitted from 173 industrial source categories. EPA's timeline for these new standards began in 1994 and will extend through the year 2005.

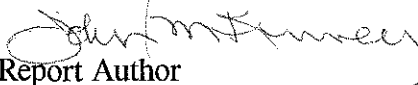
This rulemaking is needed so that DEQ rather than EPA can implement the NESHAP standards for affected sources in Oregon. The major impact of this rulemaking is to transfer implementation to the state level of NESHAP standards for specified source and equipment categories.

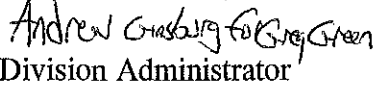
This rulemaking also describes the Department's implementation of the pulp and paper cluster rule, 40 CFR Part 63, Subpart S, and conforming changes to the Department's existing aluminum refining rules in Division 25.


This rulemaking also incorporates current federal language on the use of credible evidence in determining compliance.

Department Recommendation:

The Department recommends an EQC adoption of the rulemaking as proposed. The Department proposes an adoption by reference of all new NESHAP standards, and permitting of Oregon Pulp and Paper facilities in accordance with the provisions of the Pulp and Paper NESHAP, 40 CFR, Part 63, Subpart S.


Report Author


Division Administrator


Director

State of Oregon
Department of Environmental Quality Memorandum

Date: August 31, 1998
To: Environmental Quality Commission
From: Langdon Marsh
Subject: Agenda Item F, Annual Update: Adoption of National Emission Standards for Hazardous Air Pollutants (NESHAPs), Revision of Division 25 Standards, and Implementation of the federal pulp and paper cluster rule, EQC Meeting September 17, 1998

Background

On June 5, 1998, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would update the Department's hazardous air pollutant rules, modify existing rules to eliminate redundancy or conflict, and describe the Department's proposed implementation of the federal cluster rule.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on July 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 June 10, 1998.

Public Hearings were held July 15, 1998 and July 16, 1998 with Ms. Ruth Crowley serving as Presiding Officer. The Department also participated in a June 30, 1998 public forum on pulp and paper bleaching sponsored by the City of Corvallis. Written comment was received through July 22, 1998. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and lists all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, no modifications to the initial rulemaking proposal are being recommended by the Department.

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

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

Memo To: Environmental Quality Commission

Agenda Item F, Annual Update: Adoption of National Emission Standards for Hazardous Air Pollutants (NESHAPs), Revision of Division 25 Standards, and Implementation of federal cluster rule, EQC Meeting

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

Issue this Proposed Rulemaking Action is intended to Address

This rulemaking is needed so that DEQ, rather than EPA, can implement the NESHAP standards for affected sources in Oregon. The major impact of this rulemaking is to transfer implementation to the state level of NESHAP standards for specified source categories and equipment categories. Without this rulemaking, sources would remain subject to the federal standards implemented and enforced directly by EPA.

This rulemaking also describes the Department's proposed implementation of the water quality section of the pulp and paper cluster rule, 40 CFR Part 63, Subpart S. The cluster rule combines effluent limits and air quality technology requirements in one rulemaking.

Relationship to Federal and Adjacent State Rules

With respect to the annual update of the NESHAP standards, all adoptions of new or revised language are by reference. Therefore, at the conclusion of this rulemaking, the federal and state rules will be identical.

With respect to the water quality effluent limitations of the 'cluster rule', the Department will incorporate the water requirements of the cluster rule into National Pollutant Discharge Elimination System (NPDES) permits for the three affected bleach Kraft Oregon pulp mills. The Department anticipates that the permits for these facilities will be renewed over the next two years.

Authority to Address the Issue

ORS 468.015, 468.095, 468A.025, and 468A.310, 468B.050.

Memo To: Environmental Quality Commission

Agenda Item F, Annual Update: Adoption of National Emission Standards for Hazardous Air Pollutants (NESHAPs), Revision of Division 25 Standards, and Implementation of the federal pulp and paper cluster rule, EQC Meeting

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

The rules were developed by Department staff based on federal rules. Consistent with all previous Division 32 rulemakings, staff recommended an adoption of the federal rules by reference.

The Department did not use a formal advisory committee. However, this proposed rulemaking was presented at a March 4, 1998 Air Quality Stakeholders meeting. Industrial, environmental, and public representatives attended this stakeholders meeting.

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

This Rulemaking proposal was to:

- Adopt new NESHAP standards for a number of source and equipment categories
- Update previously adopted hazardous air pollutant regulations by adopting the most recent federal version of these rules.
- Reorganize the structure of the Oregon hazardous air pollutant regulations for greater clarity, consistency, and ease of use.
- Incorporate current federal language on the use of credible evidence in determining compliance.
- Makes conforming changes to the primary aluminum refining standards in Division 25. These changes will eliminate redundancy and conflict between the Department's existing aluminum rules and the new primary aluminum refining NESHAP standard.

In addition, the proposal presented the Department's proposed implementation of the federal 'cluster rule' for three affected Oregon facilities. EPA promulgated the cluster rules on April 15, 1998. These rules establish air and water quality standards for the pulp, paper and paperboard industry.

The proposal is more completely discussed in Attachment B-5.

Memo To: Environmental Quality Commission

Agenda Item F, Annual Update: Adoption of National Emission Standards for Hazardous Air Pollutants (NESHAPs), Revision of Division 25 Standards, and Implementation of federal cluster rule, EQC Meeting

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Summary of Significant Public Comment and Changes Proposed in Response

All comments regarding the proposed NESHAP adoption and Division 25 amendments were administrative in nature. Therefore, there are no rule language changes proposed in response to these comments. The Department's response is included in Attachment D-1.

With respect to the Department's proposed implementation of the water quality requirements of the cluster rule, six (6) people provided oral testimony at the Corvallis hearing, and nineteen (19) people provided written testimony before the close of the public comment period. Many of these comments stated that the Department should require the use of pulp bleaching technology that does not use chlorine. By not using chlorine, the formation of chlorinated organic compounds is avoided. Other commenters endorsed the Department's adoption of the cluster rule by reference.

After considering these comments, the Department does not plan to change the original proposed implementation of the water quality portion of the cluster rule. This is because the Department does not believe that new information was presented during the public comment period that had not been previously considered by the Commission or EPA. Department responses to individual comments on this issue are presented in Attachment D-2.

Summary of How the Proposed Rule Will Work and how it will be implemented

The NESHAP standards for affected source categories will be placed in Title V permits for major sources, and Air Contaminant Discharge (ACDP) permits for area sources. These standards are initially placed in Title V or ACDP permit on permit issuance. An issued permit must then be 'reopened' for a new NESHAP standard that was not finalized at the time of permit issuance if the permit renewal date is three or more years in the future. Training will be provided to permitting staff on these new and revised standards.

The Department will implement the water quality requirements of the cluster rule at the time of individual permit renewal for the three affected Oregon facilities.

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Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the annual update of NESHAP standards, and the revision of Division 25 primary aluminum standards as presented in Attachment A of the Department Staff Report. The information about the Department's implementation of the Water Quality provisions of the pulp and paper cluster rule is informational and does not require Commission action at this time.

Attachments

- A. Rule (Amendments) Proposed for Adoption
 - A-1 Proposed Division 32 Revisions
 - A-2 Proposed Division 25 Revisions
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
 - 6. Pulp and Paper Industry Cluster Rules – Water Issues
- C. Presiding Officer's Report on Public Hearing
- D. Department's Evaluation of Public 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:

Andrew Ginsburg

Division:

Andrew Ginsburg for Greg Green

Report Prepared by: John M. Kinney

Phone: 503-229-6819

Date Prepared: August 13, 1998

Attachment A-1
DIVISION 32
HAZARDOUS AIR POLLUTANTS

General Provisions for Stationary Sources

340-032-0120

Definitions

As used in this Division:

(1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) "Actual Emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) Actual emissions shall equal the average rate at which the source actually emitted the pollutant and which is representative of normal source operation. 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 and types of materials processed, stored, or combusted during the specified time period.

(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 OAR 340-032-0300 through OAR 340-032-0380 actual emissions shall equal the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction.

(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) "Artificially or Substantially Greater Emissions" means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

(6) "Base Year Emissions" for purposes of Early Reductions only (OAR 340-032-0300), means actual emissions in the calendar year 1987 or later.

(7) "Commission" means the Oregon Environmental Quality Commission.

(8) "Construct a major Source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria a through f of this paragraph:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this subpart will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b)(A) The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT) or MACT abased on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or

(B) The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) The permitting authority determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) The permitting authority has provided notice and an opportunity for public comment concerning its determination hat criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the permitting authority are predicated will be construed by the permitting authority as applicable requirements under section 504(a) and either have been incorporated into any existing title V permit for the affected facility or will be incorporated into such permit upon issuance.

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

(9) "Director" means the Director of the Department or Regional authority, and authorized deputies or officers.

(10) "Early Reductions Unit" means a single emission point or group of emissions points defined as a unit for purposes of an alternative emissions limit issued under OAR 340-032-0300 through 340-032-0380.

~~(11) "Effective Date of the Program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of EPA approval of that portion.~~

~~(11) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.~~

~~(12) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or regional authority, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.~~

(13) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described

in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-028-1930, 340-028-1940, or 340-028-2270, or for purposes of determining the applicability of a New Source Performance Standard (NSPS).

(145) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(156) "EPA Conditional Method" means any method of sampling and analyzing for air pollutants which has been validated by the EPA but which has not been published as an EPA reference method.

(167) "EPA Reference Method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR Part 60, 61, or 63 (July 1, 1998).

(178) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(189) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(1920) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(204) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.

(212) "Generally Available Control Technology (GACT)" means an alternative emission standard promulgated by EPA for non-major sources of hazardous air pollutants which provides for the use of control technology or management practices which are generally available.

(223) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(234) "High-Risk Pollutant" means any air pollutant listed in Table 2 of OAR 340-032-0340 for which exposure to small quantities may cause a high risk of adverse public health effects.

(245) "Major Source" means 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 considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(256) "Manufacture" as used in OAR 340-032-0240 means to produce, prepare, compound, or import a substance. This includes the coincidental production of a substance as a byproduct or impurity.

(267) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(278) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(289) "Not Feasible to Prescribe or Enforce a Numerical Emission Limit" means a situation in which the Department determines that a pollutant or stream of pollutants listed in OAR 340-032-0130 cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any state or federal law or regulation; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

(2930) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(304) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(312) "Process" as used in OAR 340-032-0240 means the preparation of a substance, including the intentional incorporation of a substance into a product after its manufacture, for distribution in commerce.

(323) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(334) "Regional Authority" means Lane Regional Air Pollution Authority.

(345) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-032-0130 or OAR 340-032-5400; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(356) "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 shall be specific, well defined, and

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 offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(367) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.

(378) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(389) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.

(3940) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(404) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(412) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(423) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.

(434) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(445) "Stationary Source":

(a) As used in OAR 340-032-0100 through 340-032-5000 and 340-032-5500 through 340-032-5650 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

(b) As used in OAR 340-032-5400 means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(A) That belong to the same industrial group;

(B) That are located on one or more contiguous properties;

(C) That are under the control of the same person (or persons under common control); and

(D) From which an accidental release may occur.

(456) "Use" as used in OAR 340-032-0240 means the consumption of a chemical that does not fall under the definitions of "manufacture" or "process". This may include the use of a chemical as a manufacturing aid, cleaning or degreasing aid, or waste treatment aid.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97

National Emission Standards for Hazardous Air Pollutants for Source Categories

NOTE: OAR 340-032-0505 is Renumbered From OAR 340-032-2500

Emissions Limitation for Existing Sources

340-032-0505

(1) Federal MACT Existing major and area sources shall comply with the applicable emissions standards for existing sources promulgated by the EPA pursuant to section 112(d), section 112(n), or section 129 of the FCAA and adopted by rule within this Division.

(2) State MACT. After January 3, 1995 if the EPA fails to meet its schedule for promulgating a MACT standard for a source category, the Department shall approve HAP emissions limitations for existing major sources within that category on a case-by-case basis.

(a) Within 18 months of written notification by the Department of the applicability of a MACT standard the owner or operator of each existing major source within that category shall notify the Department whether that source will:

(A) achieve at least the maximum degree of emissions reduction that is achieved in practice by the best controlled similar source, using measures listed in, but not limited to, OAR 340-032-0500(2); or

(B) achieve at least the average emissions limitation achieved in practice by the best performing 12 percent of existing sources for sources in a category or subcategory with 30 or more sources nationwide, or at least the average emissions limitation achieved by the best performing five sources in a category or subcategory with fewer than 30 sources nationwide, using measures listed in, but not limited to, OAR 340-032-0500(2).

(b) Within 18 months of notification by the Department of the applicability of a MACT standard the owner or operator of each existing major source within that category shall file a permit application in accordance with OAR 340-032-240, proposing an emissions limitation. In addition to the permit application requirements of OAR 340-032-0220 the applicant shall include an analysis of:

(A) each reduction technique considered;

(B) the emissions reduction it would provide; and

(C) its technical and economic feasibility.

(c) If, after a permit has been issued, the EPA promulgates a MACT standard applicable to a source which is more stringent than the one established pursuant to this section, the Department shall revise the permit upon the next renewal to reflect the standard promulgated by the EPA. The source shall be given a reasonable time to comply, but no longer than 8 years after the standard is promulgated.

(d) The Department shall not establish a case-by-case State MACT:

(A) for existing solid waste incineration units where an emissions standard will be established for these units by the EPA pursuant to section 111 of the FCAA. These sources are subject to applicable emissions standards under OAR Chapter 340, Division 25.

(B) for existing major HAP sources where an emissions standard or alternative control strategy will be established by the EPA pursuant to section 112(n) of the FCAA.

(3) Compliance schedule.

(a) The owner or operator of the source shall comply with the emission limitation:

(A) within the time frame established in the applicable Federal MACT standard, but in no case later than three years from the date of federal promulgation of the applicable MACT requirements; or

(B) within the time frame established by the Department where a State determined MACT has been established or a case-by-case determination has been made.

(b) The owner or operator of the source may apply for, and the Commission may grant, a compliance extension of up to one year if such additional period is necessary for the installation of controls.

(c) Notwithstanding the requirements of this section, no existing source that has installed Best Available Control Technology (defined in Division 28) or been required to meet Lowest Achievable Emission Rate (defined in Division 28) prior to the promulgation of a federal MACT applicable to that emissions unit shall be required to comply with such MACT standard until 5 years after the date on which such installation or reduction has been achieved, as determined by the Department.

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

Stat. Implemented: ORS 468A.310

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 7-1998, f. & cert. ef. 5-5-98;

340-032-0510

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 63, Subpart A, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, CC, DD, EE, GG, II, and JJ, KK, LL, OO, PP, QQ, RR, VV and JJJ** (July 1, 1998) are by reference adopted and incorporated herein.

(2) Where "Administrator" or "EPA" appears in **40 CFR Part 63, Subpart A, F, G, H, I, L, M, N, O, Q, R, T, W, X, Y, CC, EE, GG, II and JJ**, "Department" shall be substituted, except in any section of **40 CFR Part 63, Subpart A, F, G, H, I, L, M, N, O, Q, R, T, W, X, Y, CC, EE, GG, II and JJ** for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:

- | | |
|---|--|
| (a) <u>Subpart A - General Provisions</u> | (q) <u>Subpart Y - Marine Tank Vessel Loading Operations</u> |
| (b) <u>Subpart F - SOCFMI</u> | (r) <u>Subpart CC - Petroleum Refineries</u> |
| (c) <u>Subpart G - SOCFMI - Process Vents, Storage Vessels, Transfer Operations</u> | (s) <u>Subpart DD - Off-Site Waste and Recovery Operations</u> |
| (d) <u>Subpart H - SOCFMI - Equipment Leaks</u> | (t) <u>Subpart EE - Magnetic Tape Manufacturing Operations</u> |
| (e) <u>Subpart I - Certain Processes Subject to the Negotiated Regulation for Equipment Leaks</u> | (u) <u>Subpart GG - Aerospace Manufacturing Operations</u> |
| (f) <u>Subpart I - Coke Oven Batteries</u> | (v) <u>Subpart II - Shipbuilding and Ship Repair (Surface Coating)</u> |
| (g) <u>Subpart M - Dry Cleaning Facilities using Perchloroethylene</u> | (w) <u>Subpart JJ - Wood Furniture Manufacturing Operations</u> |
| (h) <u>Subpart N - Hard and Decorative Electroplating and Anodizing</u> | (x) <u>Subpart KK - Printing and Publishing Industry</u> |
| (i) <u>Subpart O - Ethylene Oxide Sterilization</u> | (y) <u>Subpart LL - Primary Aluminum Reduction Plants</u> |
| (j) <u>Subpart Q - Industrial Process Cooling Towers</u> | (z) <u>Subpart OO - Tanks - Level 1</u> |
| (k) <u>Subpart R - Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations)</u> | (aa) <u>Subpart PP - Containers</u> |
| (l) <u>Subpart S - Pulp and Paper Industry</u> | (bb) <u>Subpart QQ - Surface Impoundments</u> |
| (m) <u>Subpart T - Halogenated Solvent Cleaning</u> | (cc) <u>Subpart RR - Individual Drain Systems</u> |
| (n) <u>Subpart U - Group I Polymers and Resins</u> | (dd) <u>Subpart VV - Oil-Water Separators and Organic-Water Separators</u> |
| (o) <u>Subpart W - Epoxy Resins and Non-Nylon Polyamides Production</u> | (ee) <u>Subpart JJJ - Group IV Polymers and Resins</u> |
| (p) <u>Subpart X - Secondary Lead Smelting</u> | |

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

340-32-520 -

~~— (1) Applicability. This rule applies to any source which is a new or existing source subject to 40 CFR Part 63 Subpart A.~~

~~— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart A as adopted under OAR 340-32-510.~~

~~— [Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart A under authority retained by EPA.]~~

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Impl.: ORS 468A.310

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

340-32-530 -

~~— (1) Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart F.~~

~~— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart F as adopted under OAR 340-032-0510.~~

~~— [Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart F under authority retained by EPA.]~~

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Impl.: ORS 468A.310

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater

340-032-0540 -

~~— (1) Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart G.~~

~~— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart G as adopted under OAR 340-032-0510.~~

~~— [Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart G under authority retained by EPA.]~~

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Impl.: ORS 468A.310

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

340-032-0550 -

~~— (1) Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart H.~~

~~— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart H as adopted under OAR 340-032-0510.~~

—— [Note: Other sources which are not major sources may be subject to ~~40 CFR Part 63, Subpart H~~ under authority retained by EPA.]

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Impl.: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

340-32-0560 -

—— (1) ~~Applicability.~~ This rule applies to any federal operating permit source which is a major source as defined in ~~OAR 340-032-0120~~ that is a new source subject to ~~40 CFR Part 63 Subpart I~~.

—— (2) ~~Requirements.~~ Sources subject to this rule shall comply with ~~40 CFR Part 63 Subpart I~~ as adopted under ~~OAR 340-032-0510~~.

—— [Note: Other sources which are not major sources may be subject to ~~40 CFR Part 63, Subpart I~~ under authority retained by EPA.]

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Impl.: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

340-032-0570 -

—— (1) ~~Applicability.~~ This rule applies to any source subject to ~~40 CFR Part 63 Subpart M~~.

—— (2) ~~Requirements.~~ Sources subject to this rule shall comply with ~~40 CFR Part 63 Subpart M~~ as adopted under ~~OAR 340-032-0510~~.

—— [Note: ~~40 CFR Part 63 Subpart M~~ applies to both major and area sources as defined in ~~OAR 340-032-0120~~]

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Impl.: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Ethylene Oxide Commercial Sterilization and Fumigation Operations

340-032-0580 - (1) ~~Applicability.~~ This applies to any source subject to ~~40 CFR Part 63 Subpart O~~.

—— (2) ~~Requirements.~~ Sources subject to this rule shall comply with ~~40 CFR Part 63 Subpart O~~ as adopted under ~~OAR 340-032-0510~~.

—— [Note: ~~40 CFR Part 63 Subpart O~~ applies to both major and area sources as defined in ~~OAR 340-032-0120~~]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 28 1996, f. & cert. ef. 12-19-1996; DEQ 7 1998, f. & cert. ef. 5-5-98 Repealed by DEQ]

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

340-032-0590 -

—— (1) ~~Applicability.~~ This rule applies to any federal operating permit source which is a major source as defined in ~~OAR 340-032-0120~~ that is a new source subject to ~~40 CFR Part 63 Subpart Q~~.

~~————(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart Q as adopted under OAR 340-032-0510.~~

~~————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart Q under authority retained by EPA.]~~

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6 21 95; DEQ 7 1998, f. & cert. ef. 5 5 98

National Emission Standards for Hazardous Air Pollutants from Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

~~340-032-0600 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart R.~~

~~————(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart R as adopted under OAR 340-032-0510.~~

~~————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart R under authority retained by EPA.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6 21 95; DEQ 28 1996, f. & cert. ef. 12 19 96; DEQ 7 1998, f. & cert. ef. 5 5 98

National Emission Standards for Hazardous Air Pollutants from Halogenated Solvent Cleaning

~~340-032-0610 - (1) Applicability. This applies to any source subject to 40 CFR Part 63 Subpart T.~~

~~————(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart T as adopted under OAR 340-032-0510.~~

~~————[Note: 40 CFR Part 63 Subpart T applies to both area and major sources as defined in OAR 340-032-0120]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6 21 95; DEQ 28 1996, f. & cert. ef. 12 19 96; DEQ 7 1998, f. & cert. ef. 5 5 98

National Emission Standards for Hazardous Air Pollutants: from Magnetic Tape Manufacturing Operations

~~340-032-0620 -~~

~~————(1)Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart EE.~~

~~————(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart EE as adopted under OAR 340-032-0510.~~

~~————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart EE under authority retained by EPA.]~~

Stat. Auth.: ORS Ch. 468.020 & 468A.310

Stat. Implemented: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6 21 95; DEQ 7 1998, f. & cert. ef. 5 5 98

National Emission Standards for Hazardous Air Pollutants from Coke Oven Batteries

~~340-032-0630 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart L.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart L as adopted under OAR 340-032-0510.~~

~~[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart L under authority retained by EPA]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

~~340-032-0640 - (1) Applicability. This applies to any source subject to 40 CFR Part 63 Subpart N.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart N as adopted under OAR 340-032-0510.~~

~~[Note: 40 CFR Part 63 Subpart N applies to both area and major sources as defined in OAR 340-032-0120]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutant for Epoxy Resins Production and Non-Nylon Polyamides Production

~~340-032-0650 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart W.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart W as adopted under OAR 340-032-0510.~~

~~[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart W under authority retained by EPA]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelters

~~340-032-0660 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart X.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart X as adopted under OAR 340-032-0510.~~

~~[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart X under authority retained by EPA]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Marine Tank Vessel Loading Operations

~~340-032-0670 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart Y.~~

~~————— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart Y as adopted under OAR 340-032-0510.~~

—————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart Y under authority retained by EPA]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries

~~340-032-0680 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart CC.~~

~~————— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart CC as adopted under OAR 340-032-0510.~~

—————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart CC under authority retained by EPA]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Aerospace Manufacturing and Rework Facilities

~~340-032-0690 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart GG.~~

~~————— (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart GG as adopted under OAR 340-032-0510.~~

—————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart GG under authority retained by EPA]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Shipbuilding and Ship Repair (Surface Coating)

~~340-032-0700 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is a new source subject to 40 CFR Part 63 Subpart H.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart H as adopted under OAR 340-032-0510.~~

~~[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart H under authority retained by EPA.]~~

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

~~Stat. Auth.: ORS 468.020~~

~~Stat. Implemented: 468A.025~~

~~Hist.: IDEQ 28-1996, f. & cert. of. 12-19-96; DEQ 7-1998, f. & cert. of. 5-5-98~~

National Emission Standards for Hazardous Air Pollutants from Wood Furniture Manufacturing

~~340-032-0710~~

~~(1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-028-0110 that is a new source subject to 40 CFR Part 63 Subpart JJ.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart JJ as adopted under OAR 340-032-0510.~~

~~Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart JJ under authority retained by EPA.~~

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

~~Stat. Auth.: ORS 468.020~~

~~Stat. Implemented: 468A.025~~

~~Hist.: IDEQ 28-1996, f. & cert. of. 12-19-96~~

Emissions Limitation for Existing Sources

~~340-032-2500~~

[Renumbered to OAR 340-032-0505]

~~(1) Federal MACT. Existing major and area sources shall comply with the applicable emissions standards for existing sources promulgated by the EPA pursuant to section 112(d), section 112(n), or section 129 of the FCAA and adopted by rule within this Division.~~

~~(2) State MACT. After the effective date of the program, if the EPA fails to meet its schedule for promulgating a MACT standard for a source category, the Department shall approve HAP emissions limitations for existing major sources within that category on a case-by-case basis.~~

~~(a) Within 18 months of written notification by the Department of the applicability of a MACT standard the owner or operator of each existing major source within that category shall notify the Department whether that source will:~~

~~(A) achieve at least the maximum degree of emissions reduction that is achieved in practice by the best controlled similar source, using measures listed in, but not limited to, OAR 340-032-0500(2); or~~

~~(B) achieve at least the average emissions limitation achieved in practice by the best performing 12 percent of existing sources for sources in a category or subcategory with 30 or more sources nationwide, or at least the average emissions limitation achieved by the best performing five sources in a category or subcategory with fewer than 30 sources nationwide, using measures listed in, but not limited to, OAR 340-032-0500(2).~~

~~(b) Within 18 months of notification by the Department of the applicability of a MACT standard the owner or operator of each existing major source within that category shall file a permit application in accordance with OAR 340-032-240, proposing an emissions limitation. In addition to the permit application requirements of OAR 340-032-0220 the applicant shall include an analysis of:~~

~~(A) each reduction technique considered;~~

~~(B) the emissions reduction it would provide; and~~

~~(C) its technical and economic feasibility.~~

~~(c) If, after a permit has been issued, the EPA promulgates a MACT standard applicable to a source which is more stringent than the one established pursuant to this section, the Department shall revise the permit upon the next renewal to reflect the standard promulgated by the EPA. The source shall be given a reasonable time to comply, but no longer than 8 years after the standard is promulgated.~~

~~(d) The Department shall not establish a case-by-case State MACT:~~

~~(A) for existing solid waste incineration units where an emissions standard will be established for these units by the EPA~~

pursuant to section 111 of the FCAA. These sources are subject to applicable emissions standards under OAR Chapter 340, Division 25.

~~——(B)for existing major HAP sources where an emissions standard or alternative control strategy will be established by the EPA pursuant to section 112(n) of the FCAA.~~

~~——(3)Compliance schedule.~~

~~——(a)The owner or operator of the source shall comply with the emission limitation:~~

~~——(A)within the time frame established in the applicable Federal MACT standard, but in no case later than three years from the date of federal promulgation of the applicable MACT requirements; or~~

~~——(B)within the time frame established by the Department where a State determined MACT has been established or a case-by-case determination has been made.~~

~~——(b)The owner or operator of the source may apply for, and the Commission may grant, a compliance extension of up to one year if such additional period is necessary for the installation of controls.~~

~~——(c)Notwithstanding the requirements of this section, no existing source that has installed Best Available Control Technology (defined in Division 28) or been required to meet Lowest Achievable Emission Rate (defined in Division 28) prior to the promulgation of a federal MACT applicable to that emissions unit shall be required to comply with such MACT standard until 5 years after the date on which such installation or reduction has been achieved, as determined by the Department.~~

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

Stat. Implemented: ORS 468A.310

Hist.: [DEQ 13 1993, f. & cert. ef. 9 24 93; DEQ 7 1998, f. & cert. ef. 5 5 98; renumbered to 340-028-0505]

Federal Regulations Adopted by Reference

~~340-032-2600 _ (1) Except as provided in section (2) of this rule, 40 CFR Part 63, Subpart A, F, G, H, I, L, M, N, O, Q, R, T, W, X, Y, CC, EE, GG, H and JJ are by reference adopted and incorporated herein.~~

~~——(2) Where “Administrator” or “EPA” appears in 40 CFR Part 63, Subpart A, F, G, H, I, L, M, N, O, Q, R, T, W, X, Y, CC, EE, GG, H and JJ, “Department” shall be substituted, except in any section of 40 CFR Part 63, Subpart A, F, G, H, I, L, M, N, O, Q, R, T, W, X, Y, CC, EE, GG, H and JJ for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6 21 95; DEQ 28 1996, f. & cert. ef. 12 10 96; DEQ 7 1998, f. & cert. ef. 5 5 98]

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

340-032-2610 _

~~——(1)Applicability. This rule applies to source subject to 40 CFR Part 63 Subpart A.~~

~~——(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart A as adopted under OAR 340-032-2600.~~

~~—— [Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart A under authority retained by EPA.]~~

Stat. Auth.: ORS Ch. 468.020 & 468A.310

Stat. Implemented: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6 21 95; DEQ 7 1998, f. & cert. ef. 5 5 98]

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

340-032-2620 _

~~——(1)Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart F.~~

~~——(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart F as adopted under OAR 340-032-2600.~~

— [Note: Other sources which are not major sources may be subject to **40 CFR Part 63, Subpart F** under authority retained by EPA.]

Stat. Auth.: ORS Ch. 468.020 & 468A.310

Stat Implemented: ORS 468A.310

Hist.: IDEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98

National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater

340-032-2630 -

— (1) ~~Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart G.~~

— (2) ~~Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart G as adopted under OAR 340-032-2600.~~

[Note: Other sources which are not major sources may be subject to **40 CFR Part 63, Subpart G** under authority retained by EPA.]

Stat. Auth.: ORS 468.020 & 468A.310

Stat Implemented: ORS 468A.310

Hist.: IDEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98

National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

340-032-2640 -

— (1) ~~Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart H.~~

— (2) ~~Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart H as adopted under OAR 340-032-2600.~~

— [Note: Other sources which are not major sources may be subject to **40 CFR Part 63, Subpart H** under authority retained by EPA.]

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

Stat Implemented: ORS 468A.310

Hist.: IDEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98

National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

340-032-2650 -

— (1) ~~Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-28-0120 that is also subject to 40 CFR Part 63 Subpart I.~~

— (2) ~~Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart I as adopted under OAR 340-032-2600.~~

— [Note: Other sources which are not major sources may be subject to **40 CFR Part 63, Subpart I** under authority retained by EPA.]

Stat. Auth.: ORS 468.020 & 468A.310

Stat Implemented: ORS 468.310

Hist.: IDEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 7-1998, f. & cert. ef. 5-5-98

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

340-032-2660 -

— (1) ~~Applicability. This rule applies to any source subject to 40 CFR Part 63 Subpart M.~~

~~————(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart M as adopted under OAR 340-032-2600.~~

~~————[Note 40 CFR Part 63 Subpart M applies to both major and area sources as defined in OAR 340-032-0120.]~~

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Implemented: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 7 1998, f. & cert. ef. 5-5-98

National Emission Standards for Hazardous Air Pollutants from Ethylene Oxide Commercial Sterilization and Fumigation Operations

340-032-2670 ~~————(1)Applicability. This applies to any source subject to 40 CFR Part 63 Subpart O.~~

~~————(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart O as adopted under OAR 340-032-2600.~~

~~————[Note: 40 CFR Part 63 Subpart O applies to both major and area sources as defined in OAR 340-0320-0120.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

340-032-2680 ~~————~~

~~————(1)Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart Q.~~

~~————(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart Q as adopted under OAR 340-032-2600.~~

~~————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart Q under authority retained by EPA.]~~

Stat. Auth.: ORS 468.020 & 468A.310

Stat. Implemented: ORS 468A.310

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 7 1998, f. & cert. ef. 5-5-98

National Emission Standards for Hazardous Air Pollutants from Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

340-032-2690 ~~————(1)Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart R.~~

~~————(2)Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart R as adopted under OAR 340-032-2600.~~

~~————[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart R under authority retained by EPA.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95; DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98

National Emission Standards for Hazardous Air Pollutants from Coke Oven Batteries

~~340-032-2700 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart L.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart L as adopted under OAR 340-032-2600.~~

~~[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart L under authority retained by EPA.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

~~340-032-2710 - (1) Applicability. This applies to any source subject to 40 CFR Part 63 Subpart N.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart N as adopted under OAR 340-032-2600.~~

~~[Note: 40 CFR Part 63 Subpart N applies to both major and area sources as defined in OAR 340-032-0120.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutant for Epoxy Resins Production and Non-Nylon Polyamides Production

~~340-032-2720 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart W.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart W as adopted under OAR 340-032-2600.~~

~~[Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart W under authority retained by EPA.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants: Secondary Lead Smelters

~~340-032-2730 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart X.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart X as adopted under OAR 340-032-2600.~~

—————[~~Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart X under authority retained by EPA~~]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Marine Tank Vessel Loading Operations

~~340-032-2740 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart Y.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart Y as adopted under OAR 340-032-2600.~~

—————[~~Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart Y under authority retained by EPA~~]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries

~~340-032-2750 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart CC.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart CC as adopted under OAR 340-032-2600.~~

—————[~~Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart CC under authority retained by EPA~~]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: [DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 7-1998, f. & cert. ef. 5-5-98]

National Emission Standards for Hazardous Air Pollutants from Aerospace Manufacturing and Rework Facilities

~~340-032-2760 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart GG.~~

~~(2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart GG as adopted under OAR 340-032-2600.~~

—————[~~Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart GG under authority retained by EPA~~]

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: ~~[DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]~~

National Emission Standards for Hazardous Air Pollutants from Shipbuilding and Ship Repair (Surface Coating)

~~340-032-2770 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart H.~~

~~_____ (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart H as adopted under OAR 340-032-2600.~~

~~_____ [Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart H under authority retained by EPA.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: ~~[DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]~~

National Emission Standards for Hazardous Air Pollutants from Wood Furniture Manufacturing

~~340-032-2780 - (1) Applicability. This applies to any federal operating permit source which is a major source as defined in OAR 340-032-0120 that is also subject to 40 CFR Part 63 Subpart JJ.~~

~~_____ (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart JJ as adopted under OAR 340-032-2600.~~

~~_____ [Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart JJ under authority retained by EPA.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: ~~[DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]~~

National Emission Standards for Hazardous Air Pollutants from Halogenated Solvent Cleaning

~~340-032-3000 - (1) Applicability. This applies to any source subject to 40 CFR Part 63 Subpart T.~~

~~_____ (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63 Subpart T as adopted under OAR 340-032-2600.~~

~~_____ [Note: 40 CFR Part 63 Subpart T applies to both major and area sources as defined in OAR 340-032-0120.]~~

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

Stat. Auth.: ORS 468.020

Stat. Implemented: 468A.025

Hist.: ~~[DEQ 28 1996, f. & cert. ef. 12-19-96; DEQ 7 1998, f. & cert. ef. 5-5-98]~~

National Emission Standards for Hazardous Air Pollutants: from Magnetic Tape Manufacturing Operations

~~340-032-3010 - (1) Applicability. This rule applies to any federal operating permit source which is a major source as defined in OAR 340-028-0110 that is also subject to 40 CFR Part 63, Subpart EE.~~

~~_____ (2) Requirements. Sources subject to this rule shall comply with 40 CFR Part 63, Subpart EE as adopted under OAR 340-032-2600.~~

~~_____ Note: Other sources which are not major sources may be subject to 40 CFR Part 63, Subpart EE under authority retained by EPA.]~~

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

~~Stat. Auth.: ORS 468.020 & 468A.310~~

~~Stat. Implemented: ORS 468A.310~~

~~Hist.: [DEQ 16 1995, f. & cert. ef. 6-21-95]~~

Requirements for Area Sources

340-032-5000 -

~~(1) Applicability. After the effective date of the program the requirements of sections (2) and (3) of this rule shall apply to:~~

~~(a) Area sources for which EPA has promulgated, and the Department has adopted, a GACT standard; or~~

~~(b) Area sources for which an emissions limitation has been developed and adopted by the Department.~~

~~(2) Emissions Limitation for Area Sources~~

~~(a) Generally Available Control Technology (GACT) may take the form of control technology requirements or performance standards. GACT may include, but is not limited to, work practice modifications, material substitutions, pollution prevention techniques, alternative technology, process changes, or other options, as well as emissions control technologies. In some cases GACT may be identical to MACT for major HAP sources in the same source category.~~

~~(b) Any person who proposes to operate an area source after a GACT standard has been promulgated by EPA shall comply with the applicable GACT requirements.~~

~~(c) Any person who proposes to operate an area source after the Commission has adopted an emissions limitation, shall comply with the applicable requirements.~~

Stat. Auth.: ORS 468.020

Stat Implemented: ORS 468A.310

Hist.: DEQ 13-1993, f. & cert. of. 9-24-93; DEQ 22-1995, f. & cert. of. 10-6-95; DEQ 7-1998, f. & cert. of. 5-5-98

Accidental Release Prevention

340-032-5400

(1) List. For purposes of this rule the Commission adopts by reference the List of Regulated Substances and Thresholds for Accidental Release Prevention **40 CFR Part 68 Subpart F (July 1, 1998)** dated ~~January 31, 1994~~ which includes the Department of Transportation Division 1.1 Explosive Standards List (49 CFR 172.101). **(Table 3)**

(2) Risk Management Plan. The owner or operator of a stationary source at which a substance listed in **Table 3** is present in greater than the threshold quantity shall prepare and implement a written risk management plan to detect and prevent or minimize accidental releases, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

(3) Compliance. The owner or operator of a stationary source required to prepare and implement a risk management plan under section (2) of this rule shall:

(a) Register the risk management plan with the EPA;

(b) Submit copies of the risk management plan to the U.S. Chemical Safety and Hazard Identification Board, the Department, and the Oregon Office of Emergency Management; and

(c) Submit as part of the compliance certification required under OAR 340-028-2160, annual certification to the Department that the risk management plan is being properly implemented.

(4) Compliance schedule:

(a) The owner or operator of a stationary source shall prepare and implement a risk management plan under section (2) of this rule according to the schedule promulgated by the EPA;

(b) The owner or operator of a stationary source that adds a listed substance or exceeds the threshold shall prepare and implement a risk management plan according to the schedule promulgated by the EPA.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Department of Environmental Quality.]

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & cert. of. 9-24-93; DEQ 18-1993, f. & cert. of. 11-4-93; DEQ 24-1994, f. & cert. of. 10-28-94

Attachment A-2
Conforming Amendments to Division 025
Primary Aluminum Plant Standards

340-025-0260

Definitions

As used in OAR 340-025-0255 through 340-025-0285:

- (1) "All Sources" means sources including, but not limited to, the reduction process, alumina plant, anode plant, anode baking plant, cast house, and collection, treatment, and recovery systems. Except for the purposes of 340-025-0265(1)(c) and (3)(d), "all sources" does not include sources of fugitive emissions.
- (2) "Ambient Air" means the air that surrounds the earth, excluding the general volume of gases contained within any building or structure.
- (3) "Annual Average" means the arithmetic average of the monthly averages reported to the Department during the twelve most recent consecutive months.
- (4) "Anode Baking Plant" means the heating and sintering of pressed anode blocks in oven-like devices, including the loading and unloading of the oven-like devices.
- (5) "Anode Plant" means all operations directly associated with the preparation of anode carbon except the anode baking operation.
- (6) "Commission" means Environmental Quality Commission.
- (7) "Cured Forage" means hay, straw, ensilage that is consumed or is intended to be consumed by livestock.
- (8) "Department" means Department of Environmental Quality.
- (9) "Emission" means a release into the outdoor atmosphere of air contaminants.
- (10) "Emission Standards" means the limitation on the release of contaminant or multiple contaminants to the ambient air.
- (11) "Fluorides" means matter containing fluoride ion emitted to the ambient air as measured by EPA Method 13A or 13B and Method 14 in accordance with the Department's Source Sampling Manual or an equivalent test method approved in writing by the Department.
- (12) "Forage" means grasses, pasture, and other vegetation that is consumed or is intended to be consumed by livestock.
- (13) "Fugitive emissions" means emissions of any air contaminant that escapes to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.
- (14) "Monthly Average" means the summation of the arithmetic average of all representative test results obtained during any calendar month and the emission rates established for sources not subject to routine testing.

(15) "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background as measured by EPA Method 9 in accordance with the Department's Source Sampling Manual.

(16) "Particulate Matter" means a small discrete mass of solid or liquid matter, but not including uncombined water emitted to the ambient air as measured by EPA Method 5 in accordance with the Department's Source Sampling Manual or an equivalent test method approved in writing by the Department.

(17) "Primary Aluminum Plant" means those plants which will or do operate for the purpose of, or related to, producing aluminum metal from aluminum oxide (alumina).

(18) "Pot Line Primary Emission Control Systems" means the system which collects and removes contaminants prior to the emission point. If there is more than one such system, the primary system is that system which is most directly related to the aluminum reduction cell.

(19) "Regularly Scheduled Monitoring" means sampling and analyses in compliance with a program and schedule approved pursuant to OAR 340-025-0280.

(20) "Source test" means a minimum of three (3) individual test runs with the pollutant emissions determined from the arithmetic average of the three tests.

(21) "Standard Dry Cubic Foot of Gas" means that amount of the gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 P.S.I.A. and a temperature of 68° F.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

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

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 60, f. 12-5-73, ef. 12-25-73; DEQ 10-1982, f. & ef. 6-18-82; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1995, f. & cert. ef. 12-6-95

340-025-0265

Emission Standards

(1) The emissions from all sources at each primary aluminum plant constructed after January 1, 1973, shall be collected and treated as necessary so as not to exceed the following minimum requirements:

(a) Total fluoride emissions shall not exceed:

(A) A monthly average of 1.2 pounds of fluoride ion per ton of aluminum produced; and

(B) An annual average of 1.0 pound of fluoride ion per ton of aluminum produced; and

(C) 12.5 tons of fluoride ion per month from any single aluminum plant without prior written approval by the Department.

(b) The total of organic and inorganic particulate matter emissions shall not exceed:

(A) A monthly average of 7.0 pounds of particulate per ton of aluminum produced; and

(B) An annual average of 5.0 pounds of particulate per ton of aluminum produced.

(c) Visible emissions from any source shall not exceed ten (10) percent opacity at any time.

(2) Each primary aluminum plant constructed and operated after January 1, 1973, shall be in full compliance with OAR 340-025-0255 through 340-025-0285 no later than 180 days after completing potroom start-up and shall maintain full compliance thereafter.

(3) The emissions from all sources at each primary aluminum plant constructed on or before January 1, 1973, shall be collected and treated as necessary so as not to exceed the following minimum requirements:

(a) Total fluoride emissions shall not exceed:

(A) A monthly average of 3.5 pounds of fluoride ion per ton of aluminum produced until one of the following compliance dates, upon which time this limit shall be rescinded and the total fluoride emission limits in 40 CFR 63.843 are effective:

- (i) October 7, 1999, for an owner or operator of a plant built before September 26, 1996;
- (ii) October 9, 2000 for a plant built before September 26, 1996, provided the owner or operator demonstrates to the satisfaction of the Department that additional time is needed to install or modify the emission control equipment;
- (iii) October 8, 2001 for a plant built before September 26, 1996, that is granted an extension by the Department under section 112(i)(3)(B) of the Clean Air Act Amendments of 1990; or
- (iv) upon startup for an owner or operator of a plant built or modified after September 26, 1996; and

(B) An annual average of 2.5 pounds of fluoride ion per ton of aluminum produced.

(b) The total of organic and inorganic particulate matter emissions from all sources at plants using vertical stud Soderberg cells shall not exceed:

(A) A monthly average of 13.0 pounds of particulate per ton of aluminum produced; and

(B) An annual average of 10.0 pounds of particulate per ton of aluminum produced.

(c) The total of organic and inorganic particulate matter emissions from all sources at plants using prebake cells shall not exceed:

(A) A monthly average of 15.6 pounds of particulate per ton of aluminum produced; and

(B) An annual average of 13.5 pounds of particulate per ton of aluminum produced.

(d) Visible emissions from any source shall not exceed 20 percent opacity at any time.

(e) In addition to the standards and requirements contained in OAR 340-025-0155 through OAR 340-025-0285, each primary aluminum plant shall be in full compliance with 40 CFR Part 63, Subpart LL, National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

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

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 60, f. 12-5-73, ef. 12-25-73; DEQ 4-1980, f. & ef. 1-28-80; DEQ 10-1982, f. & ef. 6-18-82; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 26-1995, f. & cert. ef. 12-06-96; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1995, f. & cert. ef. 12-6-95

340-025-0270

Special Problem Areas

The Department may require more restrictive emission limits than the numerical emission standards contained in OAR 340-025-0265 for an individual plant upon a finding by the Commission that the individual plant is located, or is proposed to be located, in a special problem area. Such more restrictive emission limits for special problem areas may be established on the basis of allowable emissions per ton of aluminum produced or total maximum daily emissions to the atmosphere, or a combination thereof, and may be applied on a seasonal or year-round basis.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 60, f. 12-5-73, ef. 12-25-73; DEQ 4-1993, f. & cert. ef. 3-10-93

340-025-0280

Monitoring

- (1) Each primary aluminum plant constructed and operated on or before January 1, 1973, shall submit and conduct a detailed, effective monitoring program. The program shall include regularly scheduled monitoring and testing by the plant of emissions of gaseous and particulate fluorides and total particulates.
 - (a) Each plant shall test emissions from each operating potline once per calendar month except as allowed in 340-025-0280(1)(b). A minimum of three (3) representative test runs shall be taken each month. All such testing shall include simultaneous sampling of control system(s) and/or roof vents unless otherwise authorized in writing by the Department. Anode bake oven control systems shall be tested at least once per month.

- (b) Reduced sampling frequency in accordance with 40 CFR 63.848(e) and emissions monitoring frequency for the pot line primary emission control system and the anode baking plant in accordance with 40 CFR 63.848(a) and (c) may be approved by the Department upon the applicable compliance date in OAR 340-025-0265(3)(a)(A).
- (c) All tests shall be taken on prespecified dates. A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted. The Department shall establish a monitoring program for each plant which shall be placed in effective operation within ninety (90) days after written notice to the plant by the Department of the established monitoring program.

(2) Each primary aluminum plant proposed to be constructed and operated after January 1, 1973, shall submit a detailed pre-construction and post-construction monitoring program as a part of the air contaminant discharge permit application.

(3) All monitoring methods used to demonstrate compliance with OAR 340-025-0255 through 340-025-0285, including sampling and analytical procedures, must be filed with and approved by the Department. Where applicable, methods in the Department Source Sampling Manual, including, but not limited to, EPA Methods 5 and 7 for particulates and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849, shall be used.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-020-0047.]

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

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

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 60, f. 12-5-73, ef. 12-25-73; DEQ 10-1982, f. & ef. 6-18-82; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 26-1995, f. & cert. ef. 12-06-95

340-025-0285

Reporting

(1) Unless otherwise authorized in writing by the Department, data for each source and station included in the approved monitoring program shall be reported by each primary aluminum plant within 30 days of the end of each calendar month as follows:

- (a) Ambient air: 12-hour concentrations of gaseous fluoride in ambient air expressed in micrograms per cubic meter of air, and in parts per billion (ppb);
- (b) Forage: Concentrations of fluoride in forage expressed in parts per million (ppm) of fluoride on a dried weight basis, if applicable;
- (c) Particulate emissions: Results of all emission sampling conducted during the month for particulates, expressed in pounds per ton of aluminum produced. The method of calculating pounds per ton shall be as specified in the approved monitoring programs. Particulate data shall be reported as total particulates and percentage of fluoride ion contained therein;

(d) Gaseous emissions: Results of all sampling conducted during the month for gaseous fluorides. All results shall be expressed as fluoride ion in pounds of fluoride ion per ton of aluminum produced;

(e) Total fluoride: Results of all sampling conducted during the month for total fluoride. All results shall be expressed as fluoride ion in pounds of fluoride ion per ton of aluminum produced;

(f) Other emission and ambient air data as specified in the approved monitoring program;

(g) Changes in collection efficiency of any portion of the collection or control system that resulted from equipment or process changes.

(2) Each primary aluminum plant shall furnish, upon request of the Department, such other data as the Department may require to evaluate the plant's emission control program. Each primary aluminum plant shall report the value of each emission test performed during that reporting period, and shall also immediately report abnormal plant operations which result in increased emission of air contaminants.

(3) No person shall construct, install, establish, or operate a primary aluminum plant without first applying for and obtaining an air contaminant discharge permit from the Department. Addition to, or enlargement or replacement of, a primary aluminum plant or any major alteration thereof shall be construed as construction, installation, or establishment.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 60, f. 12-5-73, ef. 12-25-73; DEQ 10-1982, f. & ef. 6-18-82; DEQ 4-1993, f. & cert. ef. 3-10-93

Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for

Annual Update: Adoption of National Emission Standards for Hazardous
Air Pollutants (NESHAPs). Implementation of federal cluster rule.

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

Attachment B-1

NOTICE OF PROPOSED RULEMAKING HEARING

Department of Environmental Quality

OAR Chapter 340-032 and 340-025 -----

DATE:	TIME:	LOCATION:
July 15, 1998	6:00 PM	Austin Auditorium 100 La Sells Stewart Center Oregon State University Corvallis, OR 97331
July 16, 1998	3:00 PM	DEQ Headquarters Room 3A, 811 SW Sixth Avenue, Portland, OR

HEARINGS OFFICER(s): A professional hearings officer will preside.

STATUTORY AUTHORITY: ORS 468.020 & 468A.025 -----

or OTHER AUTHORITY:

STATUTES IMPLEMENTED:

ADOPT:

AMEND: 340-032-0120, 340-032-0510, 340-032-5400, 340-025-0260, 340-025-0280, 340-025-0285.

REPEAL: 340-032-0520, 340-032-0530, 340-032-0540, 340-032-0550, 340-032-0560, 340-032-0570, 340-032-0580, 340-032-0590, 340-032-0600, 340-032-0610, 340-032-0610, 340-032-0610, 340-032-0620, 340-032-0630, 340-032-0640, 340-032-0650, 340-032-0650, 340-032-0660, 340-032-0670, 340-032-0670, 340-032-0680, 340-032-0690, 340-032-0700, 340-032-0710, 340-032-2600, -340-032-2610, 340-032-2620, 340-032-2630, 340-032-2640, 340-032-2650, 340-032-2660, 340-032-2670, 340-032-2680, 340-032-2690, 340-032-2700, 340-032-2710, 340-032-2720, 340-032-2730, 340-032-2740, 340-032-2750, 340-032-2760, 340-032-2770, 340-032-2780, 340-032-3000, 340-032-3010, 340-032-5000.

RENUMBER:

340-032-2500 to 340-032-0505

(prior approval from Secretary of State REQUIRED)

AMEND & RENUMBER:

(prior approval from Secretary of State REQUIRED)

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

SUMMARY:

Proposal by the Department of Environmental Quality to adopt new rules/rule amendments regarding hazardous air pollutants. In addition, includes the Department's intended implementation of the federal 'cluster' rule for pulp and paper manufacturers, both for air quality and water quality requirements.

LAST DATE FOR COMMENT: _____ July 22, 1998 by 5:00 pm.

AGENCY RULES COORDINATOR:	Susan M. Greco, (503) 229-5213
AGENCY CONTACT FOR THIS PROPOSAL:	John M. Kinney
ADDRESS:	811 S. W. 6th Avenue
	Portland, Oregon 97204
TELEPHONE:	(503)-229-6819

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

Signature

Date

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Major and Area Source NESHAP Adoption

Fiscal and Economic Impact Statement

Introduction

This proposal:

- adopts new NESHAPs for a number of source and equipment categories;
- updates the hazardous air pollutant regulations by adopting changes to the federal NESHAP rules through July 1, 1998.
- reorganizes the structure of the Oregon hazardous air pollutant regulations for greater clarity, consistency, and ease of use.
- incorporates current federal language on the use of credible evidence in determining compliance.

This rulemaking does not establish new fees. The rulemaking adopts newly promulgated federal emission standards for major and area sources, and implements the existing fee authority for the assessment of fees for these source categories at OAR 340-028-1750 (Table 4) and 340-028-2580 through 340-028-2600.

General Public

There would be no known economic impact to the general public as a result of these proposed rules. The only costs to the general public would be possible pass-through costs to customers, but the cost is assumed to be negligible.

Small Business

Small businesses can be either area sources or major sources of hazardous air pollutants. Small businesses that are area or major sources of hazardous air pollutants will be subject to the same financial impacts as large businesses discussed below.

Large Business

The economic impact of the NESHAPs was imposed by EPA when they adopted the standards. Implementing the NESHAPs through DEQ's existing permit program will not add additional cost. Major sources subject to the NESHAPs are already subject to Title V permit fees. Area sources subject to the NESHAP may be required to obtain an ACDP and pay existing ACDP fees. Table 4 of OAR 340-028-1750 describes the overall financial costs associated with the ACDP program, and lists the additional cost incurred for specific activity. In particular, categories 73 and 74 of Table 4 describe the initial permit and annual inspection costs associated with the different types of NESHAP standards.

Local Governments

There is no known or projected fiscal or economic impact of these rules on local governments.

State Agencies

There is no known or projected fiscal or economic impact of this proposed rulemaking on state agencies. In particular, all associated fees or economic impacts of this proposed rulemaking have been previously considered and documented at the time of the Department's Title V permit program design; January, 1993.

Housing Cost Impact Statement

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

Attachment B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Major and Area Source NESHAP Adoption

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

This proposal:

- adopts new NESHAPs for a number of source and equipment categories;
- updates the hazardous air pollutant regulations by adopting changes to the federal NESHAP rules through July 1, 1998.
- reorganizes the structure of the Oregon hazardous air pollutant regulations for greater clarity, consistency, and ease of use.
- incorporates current federal language on the use of credible evidence in determining compliance.

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? X Yes No

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

The issuance of air permits has been deemed a DEQ Land Use program. The proposed NESHAPs for major source categories will be implemented through the Department's Title V permit program and the NESHAP for area source secondary lead smelters will be implemented through the Department's Air Contaminant Discharge Permit (ACDP) permit program.

The proposed National Emission Standards for the listed equipment apply whenever another standard under 40 CFR parts 60, 61, or 63 references the use of these standards. Therefore, these standards will be implemented through the Department's Title V or ACDP permit program, as appropriate.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? X Yes No (if no, explain):


Current procedures require local government to provide a land use compatibility determination before an air permit is issued or before approval of a Notice of Construction.

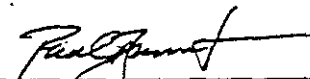
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

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


Division for EO


Intergovernmental Coordinator

June 3, 1998
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?**

Yes. The National Emission Standards for hazardous air pollutant are proposed for adoption by reference. The Department is not proposing to differ from the federal rule.

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

The standards are a combination of technology, work practice, and material substitution. Rather than most stringent controlling, the regulations allow owner/operator discretion in the selection of the particular combination necessary to maintain compliance with the rules. Specifically, the pulp and paper NESHAP allows for emission averaging and control of non-regulated emission sources as an alternative to controlling certain regulated emission sources.

- 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. These federal requirements specifically address the control of hazardous air pollutants, which are of concern in Oregon. Data and information representative of human health and environmental effects of hazardous air pollutants and available emission control technology were considered in the federal process that established these rules.

- 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 which 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

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 10, 1998

To: Interested and Affected Public

Subject: **Rulemaking Proposal and Rulemaking Statements -
Annual Update: Incorporation of National Emission Standards for
Hazardous Air Pollutants (NESHAPs) and; implementation of federal
cluster rule**

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding hazardous air pollutants. In addition, this memorandum discusses the Department's intended implementation of the federal "cluster rule" for pulp and paper manufacturers, both for air quality and water quality requirements. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal:

- adopts new NESHAPs for a number of source and equipment categories;
- updates the hazardous air pollutant regulations by adopting changes to the federal NESHAP rules through July 1, 1998.
- discusses proposed implementation of the federal "cluster rule" for pulp and paper manufacturers.
- reorganizes the structure of the Oregon hazardous air pollutant regulations for greater clarity, consistency, and ease of use.
- incorporates current federal language on the use of credible evidence in determining compliance. Additional information about the credible evidence rulemaking is included in a companion rulemaking proposal scheduled for adoption with this proposal.
- makes conforming changes to the primary aluminum refining standards in Division 025

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

What's in this Package?

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

- Attachment A The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
- Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
- Attachment D1 The actual language of the proposed Division 32 rule (amendments).
- Attachment D2 The actual language of the proposed Division 25 rule (amendments).
- Attachment E Pulp and Paper Industry cluster rules - Water Issues

Hearing Process Details

The Department is conducting two public hearings at which comments will be accepted either orally or in writing¹. The hearings will be held as follows:

Date: July 15, 1998
Time: 6:00 p.m.
Place: Austin Auditorium
100 LaSells Stewart Center
Oregon State University
Corvallis, Oregon 97331

Date: July 16, 1998
Time: 3:00 p.m.
Place: DEQ Headquarters room 3A
811 SW Sixth Avenue
Portland, OR 97204

Deadline for submittal of Written Comments: July 22, 1998

A professional hearings officer will preside at the hearings.

¹ PLEASE NOTIFY DEQ ABOUT ANY SPECIAL PHYSICAL OR LANGUAGE ACCOMODATIONS YOU MAY NEED AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE. TO MAKE THESE ARRANGEMENTS, PLEASE CONTACT DEQ PUBLIC AFFAIRS AT 1-800-452-4011 IN OREGON, OR 503-229-5317. PEOPLE WITH HEARING IMPAIRMENTS MAY CALL DEQ'S TDD NUMBER AT 503-229-6993.

Written comments can be presented at the hearing or to the Department any time prior to July 22, 1998 by 5:00 p.m. Comments should be sent to:

Department of Environmental Quality
Attn.: John M. Kinney
811 SW 6th Avenue
Portland, Oregon 97204.

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 September 18, 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

Why is there a need for the rule?

Oregon's Title V program imposes an obligation to adopt new and revise existing NESHAP standards in an expeditious manner. This proposed rulemaking is consistent with that obligation. This rulemaking will bring Oregon's hazardous air pollutant program up to date with the federal hazardous air pollutant program. This rulemaking is also needed so that DEQ, rather than EPA, can implement existing and newly promulgated NESHAP standards.

The updating of existing NESHAP standards will align existing Oregon rules in OAR Chapter 340 Division 032 with current federal rules which have been revised since last adopted by the Commission. The adoption of new NESHAP standards will include standards for the following major source categories:

- Pulp and Paper Industry
- Polymers and Resins Production
- Off-Site Waste and Recovery Operations
- Printing and Publishing Industry
- Primary Aluminum Reduction Plants

This rulemaking also adopts by reference federal NESHAP standards for the following area source category:

- Secondary Lead Smelting

In addition, this rulemaking adopts by reference federal National Emission Standards for the following equipment:

- Tanks
- Containers
- Surface Impoundments
- Individual Drain Systems
- Oil-Water Separators and Organic-Water Separators.

This rulemaking proposes changes to the primary aluminum plant rules in OAR 340-025-0255 through 340-025-0285. These changes are necessary to align the Division 025 rules with the proposed adoption of the primary aluminum NESHAP in Division 032. The changes include alignment of corresponding emission limits, sampling frequencies and test methods, as well as a number of housekeeping revisions.

Finally, this rulemaking proposes a number of housekeeping changes to eliminate duplication

and renumber rules.

How was the rule developed?

Because the proposal is to adopt federal rules by reference, the Department did not use an advisory committee process in the development of this rulemaking proposal. However, the proposed rulemaking was presented at a stakeholder's meeting on March 4, 1998, which included invitations to the public, industry, and environmental interests.

The Department is seeking public comment on its proposal to adopt the federal standards by reference. In particular, DEQ wishes to solicit public comment on the pulp and paper NESHAP, often referred to as the cluster rule. The cluster rule is EPA's first integrated, multi-media regulation to control the release of pollutants to water and air from one industry. It is DEQ's intent to draft air quality and water quality permits for pulp and paper facilities based on the cluster rules as promulgated by EPA. Please see attachment E for further background on this issue.

Copies of the documents, including the federal rules, relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon. Please contact Mr. John Kinney, (503) 229-6819 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 rules will primarily impact the regulated community in effected source categories.

The following table lists existing and revised federal standards in 40 CFR Part 63, together with the Federal Register citation of the original promulgation and any subsequent revisions. Those Source Category NESHAPs which have been revised by EPA subsequent to DEQ's last adoption date are highlighted in **bold**.

Subpart	Source Category	Promulgation Date	FR Citation	Revisions	FR Citation
A	General Provisions	3/16/94	59 FR 12430	4/20/94	59 FR 19453
				12/6/94	59 FR 62589
				1/25/95	60 FR 4963

	General Provisions			6/27/95	60 FR 33122
				9/1/95	60 FR 45980
				5/21/96	61 FR 25399
F	SOCMI	4/22/94	59 FR 19454	1/27/95	60 FR 5321
				4/10/95	60 FR 18023
				2/29/96	61 FR 7718
				6/20/96	61 FR 31439
				12/5/96	61 FR 64574
				1/17/97	62 FR 2729
G	SOCMI Process Vents, Storage Vessels, Transfer Operations, and Wastewater	4/22/94	59 FR 19468	6/6/94	59 FR 29201
				1/27/95	60 FR 5321
				4/10/95	60 FR 18024
				2/29/96	61 FR 7718
				12/5/96	61 FR 64575
				0/17/97	62 FR 2742
H	SOCMI Equipment	4/22/94	59 FR 19568	1/27/95	60 FR 5321
				4/10/95	60 FR 18024
	Leaks			1/17/97	62 FR 2788
I	Certain Processes Subject to the Negotiated Regulation for Equipment Leaks	4/22/94	59 FR 19587	10/28/94	59 FR 54159
				1/27/95	60 FR 5321
				4/10/95	60 FR 18025
				2/29/96	61 FR 7718
				1/17/97	62 FR 2792

I	Coke Oven Batteries	10/27/93	58 FR 57911		
M	Dry Cleaning	9/22/93	58 FR 49376	12/20/93	58 FR 66289
				6/3/96	61 FR 27788
				6/11/96	61 FR 29485
N	Hard and Decorative Electroplating and Anodizing	1/25/95	60 FR 4963	6/3/96	61 FR 27787
				1/30/97	62 FR 4465
				8/11/97	62 FR 42920
O	Ethylene Oxide Sterilization	12/6/94	59 FR 62589	6/3/96	61 FR 27788
				12/9/97	62 FR 64736
Q	Industrial Process Cooling Towers	9/8/94			
		12/14/94	59 FR 64318	6/26/95	60 FR 32913
				8/18/95	60 FR 43260
R	Gasoline Distribution			2/29/96	61 FR 7723
				2/28/97	62 FR 9092
				1/16/98	63 FR 2630
S	Pulp and Paper	4/15/98			

T	Halogenated Solvent Cleaning	12/2/94	59 FR 61805	5/5/98	63 FR 24749- 24751
U	Group I	9/5/96	61 FR 46924	1/14/97	62 FR 1837
	Polymers and Resins			3/17/97	62 FR 12549
W	Epoxy Resins and Non-Nylon Polyamides Production	3/8/95	60 FR 12676		
	Secondary	6/23/95	60 FR	6/3/96	61 FR

X	Lead Smelting		32594		27788
				12/12/96	61 FR 65336
				6/13/97	62 32216
Y	Marine Tank Vessel Loading Operations	9/15/95	60 FR 48399		
CC	Petroleum Refineries	8/18/95	60 FR 43260	2/21/97	62 FR 7938
				3/20/98	63 FR 13537
				5/18/98	63 FR 27212
DD	Off-Site Waste and Recovery Operations	7/1/96	61 FR 34158		
EE	Magnetic Tape Manufacturing Operations	12/15/94	59 FR 64596		
GG	Aerospace Manufacturing and Rework	9/1/95	60 FR 45956	3/27/98	63 FR 15016
II	Shipbuilding and Ship Repair (Surface Coating)	12/15/95	60 FR 64336	6/18/96	61 FR 30816

JJ	Wood Furniture Manufacturing Operations	12/7/95	60 FR 62936	6/9/97	62 FR 31363
KK	Printing and Publishing Industry	5/30/96	61 FR 27140		
LL	Primary Aluminum Reduction Plants	10/7/97	62 FR 52407		
OO	Tanks - Level 1	7/1/96	61 FR 34184		
PP	Containers	7/1/96	61 FR 34186		
QQ	Surface Impoundments	7/1/96	61 FR 34190		
RR	Individual Drain Systems	7/1/96	61 FR 34193		

VV	Oil-Water Separators and Organic-Water Separators	7/1/96	61 FR 34195		
JJJ	Group IV	9/12/96	61 FR 48229	1/14/97	62 FR 1838
	Polymers and Resins			6/6/97	62 FR 30995
					3/31/98

How will the rule be implemented?

The Department will utilize the Oregon Title V Operating Permit and Air Contaminant Discharge Permit programs to implement NESHAP standards. Following this rule adoption process, DEQ's air quality development section will conduct internal workshops with DEQ's regional inspection staff to present the new standards, with particular emphasis on effective inspection procedures. Continued collaboration with regional permitting staff will result in the placement of these standards in air quality permits for effected sources.

Are there time constraints?

No, there are no time constraints associated with this proposed rulemaking. Each particular NESHAP standard has an associated compliance schedule for new and existing sources which is unique to the particular standard.

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:

Mr. John M. Kinney
811 SW Sixth Avenue
Portland, OR 97204
(503) 229-6819
In Oregon 1-800-452-4011

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-6
Pulp and Paper Industry Cluster Rules – Water Issues
Cluster Rules - Water Issues

Background

The cluster rules were promulgated by EPA on April 15, 1998. These rules establish air and water technology standards for the pulp, paper and paperboard industry. The cluster rules were developed over a ten year period. For the first five years, EPA gathered information and conducted testing at mills in this industrial category. EPA proposed rules for this industrial category in December 1993. During the comment period for the proposed rules, EPA received a substantial number of comments. The final rules promulgated by EPA reflect those comments and additional studies conducted by EPA over the last four years.

There are three bleached Kraft mills in Oregon that are affected by these rules. These include Fort James - Wauna, Pope & Talbot - Halsey, and Boise Cascade - St. Helens. For the bleached Kraft subcategory of the pulp, paper and paperboard industry, the final rules establish "bleach plant effluent" limitations for chlorinated phenolics, chloroform, 2,3,7,8 - TCDD (dioxin), and 2,3,7,8 - TCDF (furan). In addition, these rules establish a "final effluent" limitation for AOX (adsorbable organic halides). The limitations for these parameters are based on conducting bleaching operations with the use of chlorine dioxide instead of elemental chlorine. This technology is called ECF (Elemental Chlorine Free). These rules also identify in-plant controls that need to be implemented for facilities to comply with these rules.

Bleaching Technology

In developing the cluster rules, EPA evaluated three different technologies for bleaching pulp as a basis for establishing limits. They included the following:

- **ECF technology** - Elemental chlorine used in the bleaching process is replaced with chlorine dioxide. In addition, the rules specify nine additional in-plant controls that need to be implemented.
- **ECF technology with oxygen delignification** - Elemental chlorine used in the bleaching process is replaced with chlorine dioxide. In addition, this particular option called for an extended cooking process or oxygen delignification prior to bleaching. The nine in-plant controls also apply to this option. The *proposed* rules for the bleached Kraft mills were based on this technology.
- **Total Chlorine Free (TCF)** - No chlorine is used in the bleaching process. Ozone or hydrogen peroxide would be used as the bleaching agents.

After evaluating these three technologies, EPA chose ECF technology as its basis for developing technology based limitations. EPA concluded that ECF technology is technically feasible, economically achievable, and provides greater environmental benefits than any other economically achievable technology. EPA concluded that ECF with oxygen delignification was not an economically achievable technology for existing bleached Kraft mills but is applicable for new mills. With respect to TCF, EPA concluded that TCF is an available, demonstrated technology. However, TCF processes were not economically achievable, and could not produce the full range of market products produced by ECF processes.

EPA did include ECF with oxygen delignification and TCF technologies in its voluntary tier program. In this particular program, EPA offers incentives for going beyond standards specified in the rule. The incentives include additional time to install the technology and a lower sampling frequency.

Effluent Limitations

EPA has promulgated the following limitations for bleached Kraft mill subcategory :

Parameter	Daily Maximum	Monthly Average
2,3,7,8 - TCDD (dioxin)	Less than Minimum Level*	Not Applicable
2,3,7,8 - TCDF (furan)	31.9 picograms per liter	Not Applicable
12 chlorinated phenolics	Less than Minimum Level**	Not Applicable
Chloroform	6.92 g/kg***	4.14 g/kg
AOX	0.951 kg/kg****	0.623 kg/kg

* For analysis of dioxin, EPA has defined the minimum level as 10 picograms per liter

** For the 12 chlorinated phenolics, EPA has specified minimum levels that range from 2.5 - 5.0 micrograms per liter.

*** grams per 1,000 kilograms of product

**** kilograms per 1,000 kilograms of product

In addition to the limits above, EPA had already developed effluent limits for biochemical oxygen demand (BOD), total suspended solids (TSS) and pH in previous rulemaking efforts. No changes were made to these limits during this particular rulemaking effort. However, EPA reserved the development of effluent limitations for chemical oxygen demand (COD) that would apply to the three mills for a later date.

Nationwide, EPA estimates the reduction in the pollutants for the bleached Kraft subcategory as follows:

Parameter	Mid 1995 Baseline Levels	After Achieving Limits	Percent Reduction
2,3,7,8 - TCDD (dioxin)	14.0 grams/year	4.1 grams/year	70%
2,3,7,8 - TCDF (furan)	105 grams/year	7 grams/year	93%
12 chlorinated phenolics	51.7 kkg/year	9.4 kkg/year	82%
Chloroform	43.6 kkg/year	8.1 kkg/year	81%
AOX	33,300 kkg/year	11,200 kkg/year	66%

Since the three mills in Oregon have installed technology to reduce dioxin and AOX levels in their discharge prior to 1995, the major reduction of these pollutants has already occurred and will not be as great as the nationwide estimates.

Water Quality Issues

The Pope & Talbot facility discharges to the Willamette River at river mile 147.2, thirteen miles upstream of a drinking water intake for the City of Corvallis. This segment of the Willamette River exceeds state water quality standards for bacteria and temperature. The Boise Cascade facility discharges to the City of St. Helens wastewater treatment plant which discharges to the Columbia River at river mile 86.0. The Fort James facility also discharges to the Columbia River at river mile 47.0. This segment of the Columbia River exceeds state water quality standards for bacteria, dissolved oxygen, temperature, pH, total dissolved gas, and toxics (pesticides & PCB).

In 1991, DEQ established a Total Maximum Daily Load (TMDL) for dioxin in the Willamette and Columbia Rivers. The three bleached Kraft mills were allocated a portion of the TMDL. Since 1991, these three facilities have made substantial modifications to their bleaching process to meet the TMDL requirements. At present, these facilities are in compliance with the TMDL for dioxin.

In addition to developing technology based limits, the Department will also develop water quality based limits for pollutants of concern at each facility. The permit will include the more stringent of the two limitations.

Status of Affected Facilities

In 1991, Oregon was the first state in the nation to establish limits and controls for AOX and dioxin. As a result, the Fort James mill is already in substantial compliance with these new standards.

The Boise Cascade facility currently operates at 70% substitution of elemental chlorine with chlorine dioxide. Over the next three years, the mill anticipates substituting 100% of the elemental chlorine with chlorine dioxide to meet the technology based requirements in the cluster rules.

The Pope & Talbot facility installed oxygen delignification with elemental chlorine bleaching to meet the AOX and dioxin limits established in their permit in 1991. However, this technology will not enable Pope & Talbot to meet the effluent limitations in the cluster rules. As a result, Pope & Talbot is considering installing ECF technology to meet the limitations in the cluster rules. As with the other mills, the technology must be installed and the facility must be in compliance with the limitations in the cluster rules upon renewal of their National Pollutant Discharge Elimination System (NPDES) permit but by no later than April 2001 (three years from the date of promulgation of the regulations).

Public Involvement

It is DEQ's intent to draft permits for these three facilities based on the cluster rules promulgated by EPA. Prior to drafting these permits, DEQ is seeking substantive, factual information that should be considered in drafting permits for these three facilities. Specifically, we are seeking information that was not considered by EPA in its rule development process in establishing the technology based standards for this industrial category.

Attachment C

Hearings Officer Report

For efficiency, the Department provided one public notice of combined hearings that were held on several rulemakings. General comments, as well as comments specific to this rule proposal, if any, are summarized in the following Hearings Officer Report

Attachment C

State of Oregon

Department of Environmental Quality

Memorandum

Date: July 16, 1998

To: Environmental Quality Commission

From: Ruth Crowley, Hearings Officer

*Ruth Crowley
by KC*

Subject: Presiding Officer's Report for Rulemaking Hearing

Combined rule adoption hearing:

1. Reasonably Available Control Technology (RACT): Stage I and II vapor recovery;
2. National Emission Standards for Hazardous Air Pollutants (NESHAP): standards for pulp and paper ("cluster rule"), polymers and resins production, off-site waste and recovery operations, printing and publishing, primary aluminum plants;
3. New Source performance Standards (NSPS): Hospitals/Medical/Infectious Waste incinerators;
4. Compliance Assurance Monitoring (CAM) for major industrial sources;
5. Credible Evidence for all sources in Oregon.

Two hearings were held on the above rules proposed for adoption. An announcement was made asking for signatures on the witness registration forms for anyone wanting to present testimony. All present were advised that the hearing was being recorded, and of the procedures to follow.

At the Corvallis, Oregon hearing on July 15, 1998, six people presented testimony. All comments were related to the pulp and paper "cluster" rule, item #2 in the above listing.

At the Portland, Oregon hearing on July 16, 1998, no one presented testimony.

Corvallis, Oregon. July 15, 1998; 6:00 p.m.

The following summarizes oral testimony presented at this hearing:

Linda Hunn*
1820 SE Bethel St
Corvallis 97333

Dioxins (toxic byproducts of industrial processes involving chlorine) attack our systems at very low doses. Ms. Hunn is concerned about the effect of dioxins on our immune and reproductive systems. She encourages the City of Corvallis to recommend to the DEQ that paper and pulp bleaching operations in Oregon shift from using chlorine products to using ozones, peracids, and enzymes to bleach their pulp. She believes this recommendation is especially pertinent to Pope & Talbot, which discharges pollutants into the Willamette, Corvallis's drinking water source.

W. Alfred Mukatis
2851 NW Monterey Pl.
Corvallis 97330

Mr. Mukatis recalled the time when Oregon was a leader in water quality issues. He expressed concern about how the water rule is worded. It is phrased in terms of x amount of pollution per kilogram of product. If the amount of product increases, pollutants also increase. Mr. Mukatis would like the water rule to echo the federal sulfur dioxide rule, under which a cap is placed on the level of permissible pollutants and the cap decreases each year.

Mary Slabaugh*
1800 SW Allen St.
Corvallis 97333

Ms. Slabaugh testified as a private citizen but has been a board member of Friends of the Upper Willamette for two years and has researched pulp bleaching technologies. She makes three requests to DEQ:

- 1) Adopt technology-based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters. The fact that Pope & Talbot has already incorporated oxygen delignification in its process, and the other two mills have partially substituted chlorine dioxide for elemental chlorine, belies the claim that ECF with oxygen delignification is not economically feasible.
- 2) Adopt as DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area that would trigger new, more stringent limits on effluents.
- 3) Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

The existing oxygen delignification/Monox-L process could be amended with ozone to achieve the new cluster rule limits while producing an acceptable product. Continued evolution of ozone and other bleaching technologies makes pursuit of this option attractive; it would avoid the major capital investment in chlorine dioxide-generating equipment.

Pope & Talbot should be allowed to design a special tier for its situation. A TCF process must be the ultimate goal for all of Oregon's pulp bleaching mills. Simple adoption of the April 1998 cluster rules is not good enough for Oregon.

Liz Frenkel (for Oregon League of Women Voters)*
1431 NW Vista Pl.
Corvallis 97330

The League of Women Voters (League) advocates the goal of TCF for the pulp and paper industry, because only with a TCF process is a closed loop water system possible, and only such a system protects the downstream users from pulp plant pollutants.

On 20 June Pope & Talbot announced plans to install ECF technology to meet the requirements of the April 1998 cluster rules. If DEQ's proposed rule--adopting the cluster rule with no changes—is approved, Pope and Talbot will have no incentive to move toward TCF bleaching. The process locks them into a chlorine discharge future of 15 to 20 years. The League's concerns are:

- Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution.
- Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet.
- Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.
- Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide.

Ashley Roorbach
626 SW Fifth St.
Corvallis 97333

Mr. Roorbach drinks, bathes in, and cooks with water containing Pope & Talbot's dioxin discharge. He advocates TCF rules for water discharge.

Sue Danver^
1021 NW 32nd St.
Corvallis 97330

Also a board member of the Friends of the Upper Willamette, Ms. Danver testified as a private citizen. She advocates exploring alternatives to chlorine dioxide for Pope and Talbot and believes, based on information at DEQ's June 30 information session, that it is possible to combine ozone with Monox-L technology. She requests that DEQ work with EPA to develop a tiered approach for Pope & Talbot.

Because we have only three pulp mills in Oregon, Ms. Danver believes we could work with them on a case by case basis and not lose the opportunity to have TCF in five years. At the June 30 informational meeting, DEQ said it would adopt the cluster rules as written absent new information. Ms. Danver supplied three political events that should be considered as new information:

- The Willamette River Task Force report on point and nonpoint source pollutants recommends providing incentives for MONOX-L and other new techniques.

- The Spring Chinook salmon is listed as a threatened species on some branches of the Willamette; Pope & Talbot is upstream.
- Pope & Talbot's NPDES water discharge permit expired on June 30. Renewal is one or two years off. Pope & Talbot will have chosen ECF technology before we have an opportunity to address their choice.

Ms. Danver requests a response from DEQ on this timing. Once the very expensive ECF technology is in place, the decision to implement it is irreversible.

Ms. Danver also birds in the Willamette National Forest and expressed dismay at the malformed birds she has seen lately.

*** = submitted written statement as well as oral testimony**

^ = will submit written comments

Portland, Oregon. July 16, 1998; 3:00 p.m.

There was no testimony given at this hearing.

Summary of Testimony by Subject Matter

Urge move to total chlorine free (TCF) bleaching (particular concern: Pope & Talbot mill):

**Linda Hunn
Mary Slabaugh
Liz Frenkel
Ashley Roorbach
Sue Danver**

Special concerns:

Effects of dioxin on human immune, reproductive systems

**Linda Hunn
Mary Slabaugh**

Implementation of ECF technology will preclude the better choice of TCF technology because of the investment (\$30 million)

**Liz Frenkel
Sue Danver**

Concerns re Pope & Talbot decision: Liz Frenkel

Upstream industrial chlorine discharges may constrain city of Corvallis from necessary use of chlorine to prevent bacterial pollution

Adoption of EPA cluster rules without change will hinder plant owners from looking at alternatives requiring less capital expenditure and not dependent on chlorine dioxide

Timing of Pope & Talbot decision now, before DEQ and EQC hearings on the new cluster rules, might make issuance of Pope & Talbot's permit in two years simply an allowance for standards they can meet

Pope & Talbot's costly investment decision may require increased production with increased effluent to pay for the investment.

Concern re impact of pollutants on frogs and birds: Sue Danver

Concern about wording of water rule: x parts pollution per kg of product. If product output increases, pollution increases in an absolute sense. Wants cap on levels of pollutants in river, to be lowered each year, as with the sulfur dioxide rule.

W. Alfred Mukatis

Specific recommendations:

Mary Slabaugh:

1. Adopt technology based limitations on chlorinated phenolics, chloroform, 2,3,7,8-TCDD and 2,3,7,8-TCDF, and AOX based on ECF with oxygen delignification rather than ECF alone for mills discharging to Oregon waters.

2. Adopt as Oregon DEQ policy the goal of achieving chlorine-free bleaching of paper pulp as it becomes technically and economically feasible. Establish benchmarks for technical and economic progress in this area, that would trigger new and more stringent limits on effluents.

3. Provide additional incentives for the Pope & Talbot mill to substitute ozone for a portion of the elemental chlorine presently used in its Monox-L process, under the EPA VAT Tier Program.

Liz Frenkel:

DEQ rules should reflect goal of TCF technology by establishing appropriate timelines and regulations encouraging achievement of this goal (e.g., requiring Pope & Talbot to make analysis of alternatives to ECF technology dependent on chlorine dioxide).

NSPSmwihearingsum.doc

Attachment D-1

Department's evaluation of comments addressing NESHAP update and revision

There were no specific comments received regarding the NESHAP proposal. The general comments relative to the combined rulemakings have been summarized as follows and the Department's response is provided in italics.

- If the Department is going to use a combined mailing, there should only be one contact person

The Department agrees and will modify future rulemaking accordingly.

- The Department should continue to work with the Lane Regional Air Pollution Authority (LRAPA) to further refine the public comment process when adopting federal regulations by reference. Delegation of authority to LRAPA should be streamlined.

Current rules allow LRAPA to enforce the Department's Title V, NSPS and NESHAP rules directly. The Department plans to increase cooperation with LRAPA on other future rulemakings. However, LRAPA is an independent agency and is authorized to adopt its own rules as long as they are least as stringent as the Department's.

- The Department should continue to adopt federal regulations by reference or verbatim to ensure consistency with federal programs. The adoption by reference is preferred over the adoption by verbatim because it prevents any need to make "housekeeping" rule changes in the event that minor differences between federal and state rule occur.

The Department intends to adopt federal rules that establish emission standards and permitting requirements by reference or verbatim, unless there is a science based need to adopt stricter limitations. The Department adopts rules by reference when the federal rules apply directly to sources. The Department adopts rules verbatim when the federal rules are regulatory directions to states

Attachment D-2
Department's evaluation of water quality cluster rule comments

The following is a summary of written comments received during the public comment period on the proposed implementation of the pulp and paper cluster rules adopted by EPA. The City of Corvallis sponsored a public information meeting on pulp & paper bleaching technologies on June 30, 1998. In addition, public hearings were held in Corvallis on July 15th, 1998 and Portland on July 16th, 1998. The Hearings Officer's report summarizes the testimony received at the hearings. The Department's response to both written and oral comments received during the public participation period begins on page 7 of this document.

SUMMARY OF WRITTEN COMMENTS

Written comments were submitted by the following people and are summarized below.

1. Karen A. Garrett, P. O. Box 1370, Corvallis, OR 97339

Due to the risks associated with dioxins and other byproducts of chlorine bleaching, DEQ should require TCF (Totally Chlorine Free) bleaching as the standard for industries in Oregon.

2. Mark & Nadya Garfein, 1455 NW Greenwood Place, Corvallis, OR 97330

Pope & Talbot should not be allowed to pollute the air we breathe, the water we drink and the environment that we live in. The permit for Pope & Talbot should not be renewed.

3. Chris Maser, Social/Environmental Sustainability
3303 NW Tyler Street, Corvallis, OR 97330

DEQ must require that the Pope & Talbot mill in Halsey and other mills in Oregon use the most advanced technology available (TCF) to eliminate toxins in waterways in Oregon. We cannot afford to pollute the waterways which ultimately pollute the oceans that have no outlets and cannot flush themselves and cannot dilute the toxins.

4. Mark Simenclinger, 264 Rennie Place, Corvallis, OR 97330

DEQ must address the problems associated with water quality. The change in the Willamette River at the location where Pope & Talbot discharges is dramatic. The river is visibly discolored for several miles below the discharge. This area is low in oxygen and not conducive to fishing/swimming. DEQ must do its job to protect the river quality.

5. Jeanne Riha, 904 NW 34th Street, Corvallis, OR 97330

Dioxin in any amount is dangerous and there has been no information presented about the levels of dioxin and AOX (adsorbable organic halogens) in the discharge from Pope & Talbot's Halsey mill. There was no information presented about the TMDL (total maximum daily load) for dioxin in the Willamette River and whether medical opinion agrees that the established load is not harmful.

6. Kevin Godbout, Weyerhaeuser
Corporate Headquarters, Tacoma, WA 98477

Weyerhaeuser is pleased that DEQ is proposing to adopt the EPA cluster rules for the pulp & paper industry. These rules were developed over a long period of time and with a considerable amount of input from many people. The resulting rule establishes environmentally protective effluent limits and technology requirements based on sound science. There is no new information that would justify different technologies or effluent limits.

7. Llewellyn Mathews, Executive Director, Northwest Pulp & Paper Association
1300 114th Avenue Southeast, Suite 110, Bellevue, WA 98004

The cluster rule represents the most extensive and costly regulatory effort undertaken by EPA. This rule represents EPA's first effort to develop and adopt combined air emission and water discharge standards. NWPPA supports DEQ adoption of the cluster rule for the air and water programs. Given that this rule is an integrated approach at controlling air and water discharges from pulp and paper mills, DEQ should make every effort to adopt the federal rule across all Oregon jurisdictions.

Mills in Oregon have made a substantial investment in technology to address water discharges in anticipation of the new EPA requirements. Additional investments are necessary to meet the air and water requirements in the cluster rule. As a result of earlier improvements, dioxin discharges from pulp & paper mills have been reduced dramatically and the levels in fish and sediment is declining. The Columbia River is no longer listed as exceeding water quality standards for dioxin. After extensive review, EPA adopted standards that allowed the use of 100% chlorine dioxide substitution referred to as ECF (elemental chlorine free). Numerous scientific studies show that there are no additional environmental benefits from using TCF instead of ECF. No state or country has required TCF for this reason. TCF is two to five times more costly than ECF, uses 5-10% more wood, and has a very limited market. The supporting documentation for selection of ECF is presented in EPA's documents on the cluster rule.

8. William Dameworth, Environmental Manager, Pope & Talbot
P. O. Box 400, Halsey, OR 97348

Pope & Talbot supports DEQ's proposal to implement the water limits as written by EPA. In developing this rule EPA examined several different pulp bleaching processes including TCF, ECF, and options to include oxygen delignification. Pope & Talbot also spent quite a bit of time and money investigating bleaching alternatives. Pope & Talbot considered filling a niche market for TCF pulp, however, the market never grew and the TCF process produced unacceptably low quality pulp at this mill.

We also investigated the use of current bleaching system with ozone and found that the mill would not be able to meet EPA standards in the rules. Of the bleaching alternatives investigated, tests show that only chlorine dioxide bleaching will enable to meet the standards in the cluster rule and produce an acceptable product. We plan to continue to use the oxygen delignification system along with chlorine dioxide bleaching to meet the rules. EPA has included facilities with this technology in its Voluntary Advanced Technology program (Tier I). It is Pope & Talbot's goal to meet the limits established for this tier, however, we will not know whether we can meet these limits until the equipment is installed and operational. We expect that installation of the equipment will take about 18 months and it will take an additional 6 months to get it running and collect environmental data.

9. Sue Danver, 1021 NW 32nd Street, Corvallis, OR 97330

Ms. Danver comments are summarized in the hearing officer's report.

10. Carol Whitaker, Manager, Environmental Field Services, Fort James Corporation
349 NW 7th Avenue, Camas, WA 98607

Fort James supports DEQ's efforts to provide additional opportunities for the public to comment on the pulp & paper cluster rule. Fort James believes that the effluent limitations adopted by EPA are comprehensive, fair and protective. This rule represents EPA's first attempt to promulgate combined air and water standards into a single rulemaking. This rule represents a culmination of over 10 years of data collection and research on the part of EPA and industry. Extensive opportunities for public input were provided during this process. Concerning arguments that mills in Oregon should be required to install oxygen delignification or TCF technology, Fort James offers the following comments:

- If forced to install oxygen delignification, the mill would have to replace its existing boiler with a larger one at a capital expense of \$60 million, which would be in addition to the \$30 million required to install the oxygen delignification equipment.
- The three bleached kraft mills in Oregon were the first in the country to install technology to dramatically reduce the discharge of chlorinated compounds. These mills have been operating at a distinct cost disadvantage when compared to competing mills around the U.S. With the implementation of the cluster rule, mills in other regions of the country will be held to the same technology standard

that has existed in Oregon since 1991 and the mills in Oregon will be able to recover the competitive position in the marketplace.

- The Fort James Wauna mill has operated as an ECF mill for the past five years and has not detected measurable levels of dioxins or furans in the bleached pulp, sludges, or effluent in that time. Research organizations worldwide have shown the levels of chlorinated resin acids, phenolics, dioxins, and furans are no different between ECF mills and TCF mills. These compounds cannot be detected using even with the most sophisticated analytical equipment available.
- No TCF softwood kraft pulp is commercially available with both the full brightness and strength required for products manufactured by the Wauna mill.
- The cluster rule requires all U.S. mills to meet stringent requirements for control of spent liquor spills. These requirements are specified under "Best Management Practices" and will force better monitoring, control and retrieval of spills than exist today. To say that Oregon mills will not be forced to improve as a result of these new regulations is not true.

11. Nancy Sieglitz, Director, Corvallis Environmental Center
P. O. Box 2189, Corvallis, OR 97339-2189

We encourage DEQ to adopt stricter standards for effluent discharge, which would be in line with the evolution of the pulp bleaching technology. We strongly support working towards a closed loop TCF pulp bleaching technology. We also recommend a cap on pollutants such as AOX in addition to the amount allowed per unit of product produced.

12. Darlene Schanfald, Olympic Environmental Council
3632 O'Brien Road, Port Angeles, WA 98362

Two water bodies in Washington contain so much PCBs that adults would be told to eat no more than one fish meal a day. It is time for governments to "bite the bullet" and implement regulations that truly protect life on earth. One way to accomplish this is to demand that pulp and paper mills use TCF and oxygen delignification. Another way is to force these industries to invest, immediately, in closed loop systems and stop discharging effluent into waterways.

13. Mary Slabaugh, 1800 SW Allen Street, Corvallis, OR 97333

Ms. Slabaugh's comments are summarized in the hearings officer's report.

14. Jane Haley, President, Oregon Center for Environmental Health
No address given

The state should reconsider its position on the use of chlorine in any form for the production of paper. TCF processes are available and in a short time industry will be forced to make capital improvements to use this cleaner technology. We urge DEQ to stand on the side of environmental and public health protection. Defending the

industry's right to pollute is not the agency's purpose. We urge DEQ to adopt standards that will compel the industry to switch to more benign practices for bleaching paper.

15. Helen Berg, Mayor, City of Corvallis
P. O. Box 1083, Corvallis, OR 97339-1083

Pope & Talbot's Halsey mill discharges to the Willamette River, 13 miles upstream of Corvallis. The Willamette River provides approximately 65% of the City's drinking water. Corvallis citizens are concerned about the impacts of the discharge from the mill on human, wildlife, and aquatic communities. Pope & Talbot proposes to retain their oxygen delignification system and install ECF bleaching technology by April, 2001. These efforts exceed federal standards and could qualify the mill for EPA's voluntary advanced technology incentives program.

The Corvallis City Council requests that new effluent discharge standards evolve as pulp bleaching technology evolves. This would ensure a timely transition by the industry to technologies that help improve the environment such as TCF pulp bleaching. The citizens of Corvallis want to be assured that the pulp industry implements technically feasible alternatives that maximizes environmental benefits as quickly as possible. Industry action to implement new technology should be prompted through DEQ rules. We request that DEQ adopt a definition of "economically achievable" as referenced in the EPA cluster rule. In addition, we request that DEQ commit, within the rules that are adopted, to initiating a review of those rules if a technology or process meets the economically achievable criteria.

The ultimate goals of the Corvallis City Council are as follows:

- The pulp bleaching process ultimately become closed loop process meaning that mills recycle and reuse water to eliminate or minimize discharges to public waters and the resulting wastes be free of toxic compounds
- Timelines are made a part of the DEQ rules for implementing new standards that ensure that pulp bleaching processes keep pace with evolving technologies.
- DEQ will conduct studies to establish mass load limits for AOX as was done for dioxin in 1991.
- DEQ will develop chemical oxygen demand (COD) effluent limits for this industry.

16. John Ledger, Susan Mulholland, & David Bartz, Associated Oregon Industries (AOI)
1149 Court Street, NE, Salem, OR 97301-4030

AOI supports the DEQ's position to implement the cluster rules. Oregon's standards should be consistent with national standards. Oregon law requires that DEQ must follow the federal program, except in those rare cases based on scientific need, Oregon needs to be more stringent than the federal program. Adopting the federal standards will enable our members to plan for the future with confidence.

The debate over pulp bleaching technology has been engaged at the national level for more than a decade. The cluster rule was the result of a high quality national debate and the choices made in the rules must be reaffirmed and adopted in Oregon. Science supports the proposed action by DEQ and there is nothing new to justify a radical course change to require TCF bleaching.

17. Linda Hunn, 1820 SE Bethel Street, Corvallis, OR 97333

Ms. Hunn's comments are summarized in the hearings officer's report.

18. Laurie Valeriano, Policy Analyst, Washington Toxics Coalition
4649 Sunnyside Avenue, N., Suite 540 East, Seattle, WA 98103

We strongly urge DEQ to reconsider adoption of the cluster rule, which identifies ECF as the best available technology. We urge you instead to base standards on TCF and oxygen delignification, which are the best available technologies to meet the legal requirements of the Clean Water Act. The Northwest is home to a dozen mills that use chlorine for bleaching and we are facing serious problems as a result of discharges from these mills. Some of these problems include organochlorine pollution, impacts on aquatic life and wildlife, and safety issues associated with the use of chlorine.

We strongly object to EPA's and Oregon's decision to base standards on chlorine dioxide substitution rather than TCF technologies. Chlorine dioxide is an inadequate long-term solution to the problems we face from mill pollution. Use of chlorine dioxide will perpetuate organochlorine contamination. Experts have stated that phasing out elemental chlorine is not sufficient to protect the environment. There are 1,000 different chlorinated and non-chlorinated substances present in pulp mill effluent. Only some of these have been identified chemically and very few have been assessed for toxicity and environmental impact. Many of the chemicals are toxic and persistent chemicals. Toxic effects linked to organochlorines such as long-term effects on reproduction, and ability to resist disease have not been addressed. Oregon's proposal will not eliminate organochlorine pollution and is inconsistent with the Clean Water Act.

Use of chlorine dioxide does not eliminate dioxin contamination. Although levels of dioxin are not measurable, they are being released to the environment when chlorine dioxide substitution is employed. Chlorine dioxide substitution only reduces the rate at which dioxins and furans bioaccumulate. Given the persistent nature of dioxins, this is an unacceptable choice. The use of chlorine dioxide merely shifts the pollution to another media. Data from the Wauna mill shows decreases of dioxins and furans from bleach plant to final sewer effluent because in all probability the organochlorines are transferred into the sludge. Chlorine dioxide is a toxic, corrosive and unstable gas and the use of this substance poses a significant accident risk. Chlorine dioxide also poses a danger to worker health and safety.

Chlorine dioxide prevents a mill from going completely closed loop. TCF bleaching is a prerequisite for a closed loop mill. Chlorine dioxide closed loop systems simply shift the discharge of pollutants from one media to another. Elemental chlorine free is an inaccurate designation because chlorine gas is produced as a side reaction, sometimes in substantial amounts. Up to 30% of chlorine dioxide can be converted to chlorine gas during bleaching. If Oregon adopts the cluster rule as is, mills such as the Pope & Talbot will be locked into an obsolete technology for 15 to 20 years.

The technology standards adopted by EPA were based on incorrect brightness standards. Based on this, EPA concluded that TCF technology is not yet available to make the full range of products produced by ECF technology. Voluntary actions will not move the pulp and paper industry closer to zero discharge goal of the Clean Water Act. The Clean Water Act mandates best available technology. We demand that DEQ require the technology that is best and available - TCF.

DEQ should adopt a comprehensive plan for phasing out chlorine based bleaching and installation of closed loop recycling systems. Regulations should include consumer education, market development for alternative bleached products, measures to protect worker health, family wage jobs, financial incentives and assistance for the mills.

19. Billy Stern, Western North America Coordinator, Native Forest Network
Box 8251, Missoula, MT 59807

Mr. Stern urges the Department to reconsider adoption of the cluster rule. He supports comments presented by the Washington Toxics Coalition and submitted them for the record.

Department's response

On June 10, 1998, the Department distributed a public notice for the adoption of air quality rules. The public notice also included information regarding the DEQ Water Quality Division's proposal to implement EPA's cluster rule for the pulp and paper industry. The Department requested submission of substantive and factual information not previously considered by EPA in the development of the cluster rule. This information was sent to more than 1400 interested persons on a variety of DEQ mailing lists.

The following is the Department's response to comments on the proposal to implement EPA's cluster rule for the pulp and paper industry:

Rule Development Process/Bleaching Technology Selection

other toxic pollutants into the environment. TCF bleaching process is the best available technology and DEQ must select this particular technology to meet the legal requirements in the Clean Water Act. Furthermore, only TCF bleaching processes can make it possible for a mill to install closed loop recycle system for the wastewater, which is the ultimate goal of the Clean Water Act.

Response: EPA spent over 10 years investigating bleaching processes in the pulp & paper industry. While EPA believed that TCF pulp bleaching processes would likely be the choice of the future, they concluded that this technology had not evolved sufficiently to warrant its selection as the Best Available Technology Economically Achievable (BAT). EPA concluded that TCF bleaching processes, at present, are not economically feasible and cannot produce the full range of market products produced by ECF (elemental chlorine free) processes.

EPA did select TCF bleaching processes as an alternate technology in the Voluntary Advanced Technology (VAT) incentives program. For mills that implement TCF, EPA allows until April, 2004, to meet effluent limits in the cluster rule. TCF mills do not have to sample for organochlorines, dioxin and furan. In addition, tiered incentive options are available for TCF mills that reduce lignin content and those that institute water conservation and recycling programs.

Comment 2: Two commenters recommended that Oregon should adopt ECF with oxygen delignification as the minimum bleaching technology for mills in Oregon. DEQ should have a stated policy goal to adopt chlorine free bleaching technology as it becomes technically and economically feasible. DEQ should adopt rules that include a timeline for implementing standards that ensure that pulp bleaching processes keep pace with evolving technologies.

Response: Another bleaching technology that was investigated by EPA is ECF with oxygen delignification. This particular technology calls for the reduction of lignin content of the pulp using oxygen delignification or extended cooking followed by a bleaching process with 100% substitution of elemental chlorine with chlorine dioxide. In fact, the proposed rules published in 1993 were based on this technology. After further study, EPA concluded that this bleaching technology was not economically achievable for existing bleached Kraft mills on an industry wide basis. EPA also considered delaying the implementation of this option for five years but concluded that this would not appreciably reduce the economic impacts on existing bleached Kraft mills. However, for new bleached Kraft mills, EPA did base effluent limits on this technology. All new bleached Kraft mills have to install ECF with oxygen delignification or equivalent technology to meet the effluent limits in the cluster rule.

EPA selected ECF (without oxygen delignification) as the Best Available Technology Economically Achievable (BAT) because it was technically feasible, economically achievable, and "provides greater environmental benefits than any other economically achievable bleaching technology." In evaluating economic achievability, EPA examined both the air and water aspects of the cluster rule. EPA believed that bleached

Kraft mills are subject to “significant additional costs” as a result of the air rule. EPA took these costs into consideration in determining the total impact of the pulp bleaching options being considered. EPA believed that this procedure is consistent with the purpose of the cluster rules. On a nationwide basis, EPA expects that ECF bleaching processes will substantially reduce the levels of toxic pollutants discharged by bleached Kraft mills.

EPA estimates the reduction in the pollutants for the bleached Kraft mills as follows:

Parameter	Mid 1995 Baseline Levels	After Achieving Limits	Percent Reduction
2,3,7,8 - TCDD (dioxin)	14.0 grams/year	4.1 grams/year	70%
2,3,7,8 - TCDF (furan)	105 grams/year	7 grams/year	93%
12 chlorinated phenolics	51.7 kkg/year	9.4 kkg/year	82%
Chloroform	43.6 kkg/year	8.1 kkg/year	81%
AOX	33,300 kkg/year	11,200 kkg/year	66%

Since the three mills in Oregon have installed technology to reduce dioxin and AOX levels in their discharge prior to 1995, the major reduction of these pollutants has already occurred and will not be as great as the nationwide estimates.

EPA also believes that bleached Kraft mills can make substantial improvements in management practices. As a result, they have required that all mills implement nine additional in-plant controls. EPA believes that implementing these controls will improve the efficiency of the treatment system, and further reduce the discharge of conventional pollutants such as biochemical oxygen demand (BOD) and total suspended solids (TSS), as well as toxic pollutants.

Regarding the development of standards as pulp bleaching technology evolves, it should be noted that DEQ relies on EPA to develop and adopt national standards for industries. This is one of EPA’s primary functions. Developing technology standards enables EPA to assess technological and economic issues on a nationwide scale. Typically EPA reviews its technology standards for industries every ten years. For the pulp & paper industry, this is the third set of technology standards established by EPA over the past 25 years. Improvements in treatment and/or bleaching technology were necessary with the development of each standard and this lowered the amount of pollutants being discharged.

At this time, DEQ does not have the staff or the expertise to develop technology standards separate from the EPA process. To encourage evolving pulp bleaching technologies, EPA has developed an incentive program as part of the cluster rule for facilities that institute water conservation/recycling, reduction of lignin content of pulp, and TCF processes. These incentives include additional time for complying with standards and reduced monitoring requirements.

Comment 3: The cluster rule was developed by EPA over several years and with extensive public involvement. The final rules promulgated by EPA are comprehensive, fair, and protective. Given that the rule is an integrated approach at controlling air and water discharges from bleached Kraft mills, DEQ should adopt these rules as developed by EPA. The cluster rule was the result of a national debate and the choices made in the rules must be reaffirmed and adopted in Oregon. There is no new information that would justify the use of different technologies or effluent limits.

Response: Comment noted. We agree.

Comment 4: Oregon's standards should be consistent with national standards. Except in rare instances, based on scientific need, Oregon law requires that DEQ follow the federal program.

Response: Comment noted. We agree that the standards developed by EPA will be protective of Oregon's environment.

Alternative Bleaching Methods

Comment 5: Many commenters urged DEQ to require that Pope & Talbot install ozone with its existing oxygen delignification system and MONOX-L bleaching. This bleaching methodology would be cheaper, and would enable Pope & Talbot to keep the option open to go to TCF at a later date. If Pope & Talbot chooses ECF bleaching and invests the capital to construct a chlorine dioxide generator, they will be committed to this bleaching technology for 15 to 20 years.

Response: EPA's cluster rule does not require the installation of a particular technology to meet the limitations in the rule. The rule establishes standards that are based on a particular technology. The National Pollutant Discharge Elimination System (NPDES) permit includes these standards as enforceable effluent limits. Neither EPA nor DEQ can require facilities to install a particular technology to meet these effluent limits.

In their comment letter, Pope & Talbot stated that they have investigated the above-referenced method for bleaching pulp. Based on the tests conducted, they have concluded that using ozone with the existing oxygen delignification/MONOX-L system will not enable them to meet the limits in the cluster rule. If Pope & Talbot wishes to investigate this process further, the Department will support their efforts, however, we cannot require the use of this particular technology. From a practical viewpoint, it is hard for an industry to commit to the uncertainty of an unproven technology, where the possibility exists that the technology will not enable them to produce a marketable product and/or to meet the limits established in the rule.

Effluent Limits

Comment 6: DEQ should develop standards for Chemical Oxygen Demand (COD) that would apply to bleached Kraft mills.

Response: When EPA adopted the cluster rule, EPA did not have adequate information to develop a limit for COD and they reserved the development of effluent limits for COD for a later date. When EPA promulgates the limits for COD, DEQ will place them into permits for the bleached Kraft mills. Note that EPA had already developed effluent limits for biochemical oxygen demand (BOD), total suspended solids (TSS) and pH in previous rulemaking efforts. The Department has already established limits for these pollutants in the permits for the three bleached Kraft mills.

Comment 7: These mills must not be allowed to increase production and thereby increase the amount of pollutants that are discharged to defray capital expenditures. DEQ should also include mass load limits for AOX (adsorbable organic halides) that would in effect be a "cap" for the amount of pollutants that would be discharged from these mills.

Response: When preparing permits that have production based limits (i.e., pounds of AOX discharged per thousand pounds of product or kilograms of AOX per thousand kilograms of product) such as those for Pope & Talbot and the other bleached Kraft mills in Oregon, the Department does include mass based limits. The mass limits are based on the anticipated production at the facility during the permit cycle. The current permit for Pope & Talbot includes mass based limits for BOD, TSS, and AOX. Pope & Talbot is not planning on expanding the facility to increase production. If a facility expects to increase production, they must request that the permit be modified to recognize the higher production levels and higher mass limits be incorporated into the permit. If the request meets the requirements in the rules, DEQ will draft a public notice and seek public comment. This information would then be forwarded to the Environmental Quality Commission (EQC) for action.

Comment 8: The Department should develop a Total Maximum Daily Load (TMDL) for AOX similar to that developed for dioxin.

Response: TMDLs are developed for streams that exceed water quality standards. Since there is no water quality standard for AOX, a TMDL for AOX cannot be developed. A water quality standard for AOX does not exist because AOX measures a large group of chlorinated organic pollutants. Toxicity due to AOX would be a function of the pollutants present in the wastewater. Since toxicity varies with the characteristics of the wastewater, it is difficult to develop a water quality standard for AOX. Since many toxic pollutants cannot be measured in wastewater from pulp bleaching operations (dioxin, furan, and chlorinated phenolics), AOX has been used as a monitoring parameter to determine the level of chlorinated organic pollutants in the wastewater and the effectiveness of the various controls outlined in the rules.

The Department does have water quality standards for several chlorinated organic pollutants. Where data indicates that these standards are being exceeded, the Department will list these sections of the river as being "water quality limited" and will develop a

TMDL. The 1998 list of streams that exceed water quality standards includes the Willamette and the Columbia Rivers. The stretch of the Willamette River where Pope & Talbot discharges exceeds water quality standards for bacteria and temperature. The Columbia River where the other two mills discharge exceeds water quality standards for bacteria, temperature, dissolved oxygen, pH, total dissolved gas, and toxic pollutants (pesticides and polychlorinated biphenyls (PCBs)).

Comment 9: Dioxin in any amount is dangerous. There was no information that was presented about the levels of dioxin and AOX in the discharge from the Pope & Talbot mill. There was no information that was presented about the TMDL for dioxin and whether medical opinion agrees that the established load is not harmful.

Response: The information that was distributed during the public participation period dealt with the implementation of the cluster rule and the mills that are affected by this rule. It did not include information on the compliance status of the Pope & Talbot mill. To comply with the limits in the permit, dioxin in the effluent from the bleach plant must be “not detectable”, (i.e., less than 10 ppq (parts per quadrillion)) and AOX must be 2.5 kg/ADMT (Air Dried Metric Ton). At present, Pope & Talbot is in compliance with the limits for dioxin and AOX. During the permit renewal process, DEQ will conduct a comprehensive review of the compliance status of this mill and summarize information on effluent quality in the permit evaluation report.

The TMDL for dioxin was based on the water quality standards for protection of human health. These standards were developed by EPA in the mid-1980's and published in the document titled, “Quality Criteria for Water 1986”. These standards were subsequently adopted by DEQ as part of its water quality standards. For dioxin, the water quality standard for human health protection are based on carcinogenic properties. In the case of suspected or proven carcinogens, the Department adopted standards based on an incremental increase in cancer risk over the lifetime of 1×10^{-6} or “one in a million”.

The TMDL for dioxin in the Willamette and Columbia Rivers was set using the water quality standard for protection of human health along with information on river flow. The three bleached Kraft mills in Oregon were allocated a portion of the TMDL. Since 1991, these three facilities have made substantial modifications to their bleaching process to meet the TMDL requirements. At present, these facilities are in compliance with the TMDL for dioxin. It should be noted that the implementation of the cluster rule will further reduce the amount of dioxin, furan, and AOX discharged from the three mills in Oregon.

Comment 10: The permit for Pope & Talbot is slated for renewal in two years. Many of the decisions regarding the selection of bleaching technology will be made before action is taken on the permit. The Department must provide an opportunity to allow for meaningful comment on the permit at a time when the comments matter.

Response: Because of the anticipated delay in processing the Pope & Talbot permit, DEQ provided this opportunity to comment on the implementation issues associated with the cluster rule. The information distributed to interested parties stated that it was DEQ's intent to draft National Pollutant Discharge Elimination System (NPDES) permits for the three bleached Kraft mills in Oregon using the cluster rule *unless* new information was presented during the public participation period that was not previously considered by EPA or DEQ. It is the Department's conclusion that no new information was presented during the public participation process. Therefore, the Department intends to draft permits for the three mills using the cluster rules. A detailed evaluation on each of the mills will be conducted during the renewal of their permit. This evaluation will include processes, effluent quality, water quality impacts, and compliance status.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
NESHAP implementation and
Cluster rule water quality requirements

Rule Implementation Plan

NESHAP IMPLEMENTATION

The proposed rules will require DEQ staff to place NESHAP standards in new and renewal Title V and ACDP permits. In many cases, the incorporation of these standards into permits will be based on EPA guidance or previous permit conditions. Therefore, the amount of effort should be consistent or slightly less than effort previously expended on these permits.

In other cases, a more detailed technical review will be necessary. Once the NESHAP is incorporated into Title V permits, DEQ staff will have to inspect the monitoring systems and review pollution control equipment data as part of their routine compliance inspections. This data may be used to identify violations of the emission limits and standards. During the summer and fall of 1998, DEQ will provide the following to assist in implementation of this rule:

- DEQ staff training of permit writers.
- Development of consistent language for incorporation in Title V permits.
- Development of consistent procedure for reopening of existing permits for NESHAP insertion.
- Assistance on demand to specific questions from staff and industry.

Cluster Rule Water Quality Requirements

The Department intends to draft National Pollutant Discharge Elimination System (NPDES) permits for the three bleached Kraft mills in Oregon in accordance with the cluster rule. A detailed evaluation of each of the mills will be conducted during the permit renewal period. This evaluation will include an examination of processes, effluent quality, water quality impacts, and compliance status.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 2, 1998

To: Environmental Quality Commission
From: Langdon Marsh, Director *Langdon Marsh*
Subject: Agenda Item G, 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, EQC Meeting: September 17, 1998

Attached to this memorandum is staff report from the August EQC meeting on this matter. At that meeting, the Commission set over this matter and also made several preliminary rulings on procedural matters.

First, the Commission determined that Mr. Ferguson's representative was neither a licensed attorney at law nor did he meet the definition of an authorized representative under ORS 183.457(4). The Commission set the oral arguments in this matter over so that Mr. Ferguson could either appear in person or retain a licensed attorney to represent him.

The Commission then denied Mr. Ferguson's motion to dismiss the Department's appeal based on the late filing of the Department's brief. The Chair then granted extension motions for both the Department and Mr. Ferguson.

Finally the Commission determined that it would not reopen the record, on its own motion, to consider whether OSHA regulations may be relevant to this proceeding.

Attachments

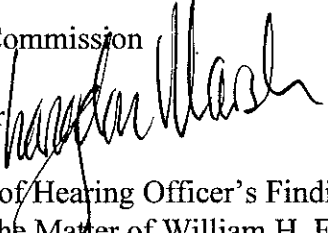
Memorandum from Langdon Marsh to the Environmental Quality Commission, dated July 21, 1998

Report Prepared By: Susan M. Greco
Phone: (503) 229-5213
Date Prepared: September 2, 1998

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 21, 1998

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item M, 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, EQC Meeting: August 7, 1998

Statement of Purpose

The Department of Environmental Quality (hereinafter "Department") appealed from the Hearing Officer's Findings of Fact and Conclusions of Law, dated December 11, 1997. In that order, the hearing officer found that William H. Ferguson (hereinafter "Ferguson") violated OAR 340-032-5620(1), OAR 340-032-5600(4), OAR 340-032-5650, OAR 340-033-0030(2) and OAR 340-033-0030(4) and was liable for a civil penalty in the amount of \$1,000.

Background

On December 5, 1996 the Department issued a Notice of Assessment of Civil Penalty to Ferguson citing violations of:

- (1) OAR 340-032-5620(1) for failing to employ required work practices for handling and removal of asbestos-containing waste material;
- (2) OAR 340-032-5600(4) by openly accumulating asbestos-containing waste material;
- (3) OAR 340-032-5650 by failing to properly dispose of asbestos-containing waste material;
- (4) OAR 340-032-5620(1) by failing to notify the Department of an asbestos abatement project;
- (5) OAR 340-033-0030(2) by allowing uncertified persons to perform asbestos abatement on property owned by Ferguson; and
- (6) OAR 340-033-0030(4) by supervising an asbestos abatement project without being certified as an asbestos abatement project supervisor.

The Department imposed a civil penalty for violation #1 in the amount of \$5400.

The Findings of Fact made by the hearing officer are summarized as follows:

On October 2, 1996 an Asbestos Control Analyst (Keith Tong) observed what appeared to be asbestos-containing material on a building renovation site in Medford. Ferguson owned the site. He informed the person in charge of the site, Joel Ferguson (Ferguson's son), that the material appeared to contain asbestos, that proper steps should be taken to accomplish the asbestos removal, and not to disturb the materials. Tong then left to attend a meeting. Joel Ferguson contacted his father who phoned a disposal company. The company informed him that the

Memo To: Environmental Quality Commission

Agenda Item M, 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, EQC Meeting:
August 7, 1998

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material needed to be double bagged and secured. The material was then placed in bags by Joel Ferguson and stored in an utility trailer. The other renovation workers were sent home.

When Tong returned to the site, he noted that the materials had been moved. He also observed some still on the ground. After this meeting, the building was encapsulated and an abatement contractor was hired to remove the material. Testing of the material revealed that it contained 10 percent asbestos. Neither William or Joel Ferguson were licensed asbestos removal workers or project supervisors.

The hearing officer held that violations listed above are strict liability and that any "reasonableness" in Ferguson's conduct was irrelevant in determining if the violations had occurred. The hearing officer also concluded that since Ferguson did not know that the material could potentially contain asbestos until the site visit, liability for the violations did not attach until the visit. The hearing officer affirmed all the violations in the Assessment of Civil Penalty except violation #4, OAR OAR 340-032-5620(1) (failing to notify the Department of an asbestos abatement project). He then assessed a penalty of \$1000 for violation #1. The hearing officer reduced the penalty by reclassifying the violation to a Class I, minor magnitude violation. The Department had classified the violation as a Class I, moderate magnitude violation because OAR 340-012-0090(1)(d)(D) allows for the magnitude to be raised by one level of magnitude if the percentage of asbestos content is greater than 5%. The hearing officer also reduced several other factors in the assessment calculation.

On January 8, 1998, the Department filed a timely appeal of the Hearing Officer's Findings of Fact, Conclusions of Law and Final Order. The Department filed the following exceptions to the Order:

- (1) The hearing officer's finding that Ferguson was not liable for any violations until after the Department informed him that the material may contain insulation. The Department contends that liability attaches when the removal is commenced and strict liability should be applied.
- (2) The hearing officer's reduction of the magnitude of the violation because of Ferguson's conduct was not intentional. The magnitude of the violation should be based on the percentage of asbestos in the material.
- (3) The hearing officer's finding that the occurrence factor in the penalty calculation should be 0 because the violation occurred for only one day. The Department contends there were two separate violations during that day, the removal of the material from the building and the moving of the material to the trailer.
- (4) The hearing officer's finding that Ferguson was cooperative and that the cooperativeness factor in the penalty assessment should be -2 instead of 0. The Department contends that Ferguson was not either wholly cooperative or uncooperative in correcting the violation.

Memo To: Environmental Quality Commission

Agenda Item M, 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, EQC Meeting:
August 7, 1998

Page 3

Ferguson responded to the Department's exceptions by first requesting that the Environmental Quality Commission dismiss the Department's appeal since the exceptions and brief were not filed within the 30 day time limitation. Ferguson also requests that the Environmental Quality Commission extend the time for the filing of his brief. Ferguson then addressed each exception as follows:

- (1) The finding that liability did not attach until he had notice that the material may be asbestos containing was correct since the Department has not sought to impose liability on other property owners who unknowingly encounter asbestos containing material.
- (2) The hearing officer's reduction of the penalty was within his discretion and was proper since the Department has the option to raise the magnitude of the violation if the material contains more than 5% asbestos. Furthermore, it was not Ferguson's "conscious objective" to cause a violation so the violation was, at most, negligent and the zero value to the "O" factor was correct. Finally, the assignment of -2 to the "C" factor was correct since Ferguson took all necessary steps to comply with the law once it was known that the material contained asbestos.

The Department replied that the Commission does not have the authority to dismiss the Department's appeal based on a late filing of its brief, since the filing is not a jurisdictional requirement to the appeal. The Department has no objection to the request for an extension of time for Ferguson to file his brief provided the Commission also extend the time for the Department's filing.

Authority of the Commission with Respect to the Issue

The Commission has the authority to hear this appeal under OAR 340-11-132.

Alternatives

Late filing of briefs

The Commission can:

- (1) Dismiss the Department's appeal, as requested by Ferguson, based on the Department's failure to timely file its exceptions and brief;
- (2) Grant extensions to both the Department and Ferguson for filing of the briefs, as requested by the Department;
- (3) Deny either or both requests for extension, in the Commission's discretion.

Appeal of Final Order

The Commission can:

Memo To: Environmental Quality Commission

Agenda Item M, 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, EQC Meeting:
August 7, 1998

Page 4

- (1) Reverse the conclusions of law finding that liability did not attach for violating the rules until Ferguson was informed of the materials potentially contained asbestos, and uphold the Department's assessment of civil penalty contained in the Notice of Assessment of Civil Penalty as requested by the Department;
- (2) Uphold the Hearing Officer's Findings of Fact, Conclusions of Law and Order; or
- (3) Remand the matter to the hearing officer for more proceedings as determined necessary by the Commission.

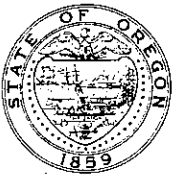
Attachments

- A. Letter dated July 9, 1998 to William H. Ferguson and Jeff Bachman
- B. Letter dated May 4, 1998 to William H. Ferguson and Jeff Bachman
- C. Motion to Extend Time Limit and Reply to Respondent's Motions and Brief, dated April 21, 1998
- D. Motion to Dismiss, Alternative Motion for Relief from Default and Respondent's Brief, dated April 1, 1998
- E. Department's Exceptions and Brief, dated February 9, 1998
- F. Letter dated January 13, 1998 to Jeff Bachman and William H. Ferguson
- G. Department's Notice of Appeal, dated January 8, 1998
- H. Hearing Officer's Finding of Fact and Conclusion of Law, dated December 11, 1997
- I. Hearing Officer's Final Order, dated December 11, 1997
- J. Respondent's Post-Hearing Memorandum
- K. Department's Hearing Memorandum, dated September 10, 1997
- L. Exhibits from September 10, 1997 hearing, as follows:
 - A. Request for Analysis and Test Results
 - B. Photographs, dated October 2, 1996
 - C. Letter from William H. Ferguson to Keith R. Tong, dated October 22, 1996
 1. Notice of Assessment of Civil Penalty, dated December 5, 1996
 2. Answer and Request for Hearing, dated December 20, 1996
 3. Hearing Notice, dated August 14, 1997
 4. Newspaper Article, dated August 28, 1997

Reference Documents (available upon request)

OAR Chapter 340, Division 11, 12, 32 and 33; Chapter ORS 468

Report Prepared By: Susan M. Greco
Phone: (503) 229-5213
Date Prepared: July 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

July 10, 1998

Via Certified Mail

William H. Ferguson
5200 Pioneer Road
Medford OR 97501

Jeff Bachman
Department of Environmental Quality
2020 S.W. 4th Avenue
Portland OR 97201

RE: William H. Ferguson
Case No. AQAB-WR-96-351

The appeal in the above referenced matter has been set for the regularly scheduled Environmental Quality Commission meeting on Friday, August 7, 1998. The meeting will convene at 9:00 a.m. and this matter will be heard in the regular course of the meeting. The meeting will be held at the Department's headquarters at 811 S.W. 6th Avenue, Room 3A, Portland, Oregon. As soon as the agenda and 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

Attachment A - 2 page



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

William H. Ferguson
5200 Pioneer Road
Medford OR 97501

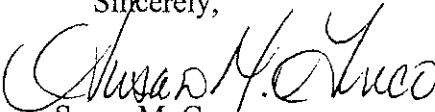
Jeff Bachman
Department of Environmental Quality
2020 S.W. 4th Avenue
Portland OR 97201

RE: William H. Ferguson
Case No. AQAB-WR-96-351

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

Attachment B - 7 page

Received
APR 20 1998

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OFFICE OF THE DIRECTOR OF THE STATE OF OREGON

IN THE MATTER OF:
WILLIAM H. FERGUSON,
Respondent/Appellee

MOTION TO EXTEND
TIME LIMIT AND REPLY TO
RESPONDENT'S MOTIONS
AND BRIEF
No. AQAB-WR-96-315
JACKSON COUNTY

I. MOTION TO EXTEND TIME
FOR FILING DEPARTMENT BRIEF

The Department of Environmental Quality (the Department or DEQ) moves the Environmental Quality Commission to extend the time for filing its Exceptions and Brief (Brief) in this case from February 9, 1998, to February 10, 1998. Oregon Administrative Rule (OAR) 340-011-132(4)(f) authorizes the Chair of the Commission to extend the time for filing of a Brief. The rule does not limit when such a request may be made or the Chair's discretion to grant an extension.

The Department was one day late in filing its Brief because its lay representative misinterpreted the rules establishing the time limit by confusing service of process with filing. OAR 340-011-005(6) defines "filing" "as receipt in the Office of the Director". The Department's Brief was served on the Commission on February 9, 1998, in accordance with OAR 340-011-097(2), when it was posted by certified mail that day. See Exhibit 1. The Brief, however, was not received in the Director's office until February 10. See Exhibit 1. Mr. Ferguson contends in his motion that the Department's Brief was not filed until February 11. The certified mail receipt, however, attached as Exhibit 1, indicates that the Department's Brief was received in the Director's Office on February 10.

While the Department was in error, it contends that the error was harmless because the Respondent, Mr. Ferguson, was not prejudiced in any manner as a result of the late filing, nor were the proceedings in this case unduly delayed.

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Attachment C - 13 pages

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II. REPLY TO RESPONDENT'S MOTION TO
DISMISS THE DEPARTMENT'S APPEAL

Mr. Ferguson has moved the Commission to dismiss the Department's appeal because the Department missed the filing deadline for its Brief. Even if the Chair denies the Department's request for an extension of time to file its Brief, the Commission cannot dismiss the Department's appeal because the timely filing of the Brief is not a jurisdictional requirement. Jurisdiction attached when the Department filed its Notice of Appeal on January 9, 1998. Please see the attached Memorandum prepared by the Oregon Attorney General.

III. REPLY TO RESPONDENT'S ALTERNATIVE MOTION
TO EXTEND TIME FOR FILING BRIEF

Mr. Ferguson was required, pursuant to OAR 340-011-132(4)(b), to file his Exceptions and Brief by March 13, 1998. Mr. Ferguson's Brief was not filed until April 1, 1998, and he has requested an extension of the time for filing. The Department does not oppose Respondent's request for extension if the Chair of the Commission grants the Department's request for extension, made above in Section I. If, however, the Chair denies the Department's request, the Department moves the Chair to also deny Respondent's request.

OAR 340-011-132(4)(f) grants the Chair complete discretion to grant or deny requests for extensions. In exercising her discretion, the Department suggests the Chair look to the Commission rules concerning late filings for guidance. The Commission, except as provided for in OAR 340-011-132, has adopted the Oregon Attorney's Model Rules of Procedure, OAR 137-003-0001 through -0093, governing contested case proceedings. See OAR 340-011-098. OAR 137-003-0003(1) states that a late filing may be accepted if the presiding officer determines that the cause of the failure to timely file "was beyond the reasonable control of the party".

Mr. Ferguson received the Department's Brief via certified mail on February 12, 1998. See Exhibit 2. Mr. Ferguson was expressly informed of the March 13, 1998 deadline for his Brief in a letter sent to him by Susan Greco, Rules Coordinator for the Department, on February 18, 1998. See Exhibit 3. After Mr. Ferguson missed the filing deadline, Ms. Greco sent him a second letter on March

1 18, 1998, which informed him that he had missed his deadline and giving him until April 1 to submit a
2 Brief. See Exhibit 4. Mr. Ferguson filed his Brief on April 1.

3 In his motion, Mr. Ferguson states that he failed to timely file his appeal because he asked an
4 employee to determine when a transcript of a contested case hearing would be available, and the
5 employee failed to do so, and because he was preparing his family for a trip overseas, which took place
6 from March 10 to March 27, 1998. His employee's negligence and his travel planning did not make
7 timely filing of his Brief beyond Mr. Ferguson's reasonable control.

8 IV. REPLY TO RESPONDENT'S BRIEF

9 A. Liability Attached When Respondent First Disturbed Asbestos

10 Mr. Ferguson argues that he cannot be held liable for any violation of the asbestos rules which
11 occurred when his son first disturbed the duct insulation because neither he nor his son had yet learned
12 that the Department suspected that the insulation contained asbestos. Mr. Ferguson, however, bases
13 his argument on different grounds than did the Hearing Officer. The flaws in the Hearing Officer's
14 reasoning are addressed in the Department's Exceptions and Brief.

15 Mr. Ferguson claims that liability did not attach until the Department informed him of its
16 suspicions, because the evidence at the contested case hearing allegedly showed that the Department
17 does not assess property owners civil penalties for unknowing disturbance of asbestos-containing
18 material (ACM). The evidence Mr. Ferguson introduced at the hearing was a newspaper article
19 reporting that DEQ had not assessed a fine against the City of Medford for its failure to discover and
20 report an underground storage tank release. Mr. Ferguson also elicited testimony from the
21 Department's Keith Tong that ACM had also been disturbed during the same renovation that resulted
22 in discovery of the UST leak.

23 From these scant facts, and these scant facts alone, Mr. Ferguson argues that the Department
24 does not penalize parties for asbestos violations stemming from unknowing disturbance. At the hearing
25 the Department offered to submit proof, in the form of other Notices of Civil Penalty Assessment, that
26 it has in a number of instances assessed civil penalties for unwitting asbestos violations, but the Hearing
27 Officer declined this offer of proof. The Department makes the same offer here and asks the

1 Commission to take notice of the cases listed in Exhibit 5. Copies of the Notices in these cases will be
2 made available to the Commission at its request.

3 B. The Magnitude of the Violation is Moderate

4 Mr. Ferguson argues that it is within the Hearing Officer's discretion to reduce the magnitude,
5 because in the Hearing Officer's opinion, the violation was not caused by Respondent's intentional
6 conduct. As stated in the Department's Brief, the cause of the violation is a factor considered
7 separately in the calculating the size of civil penalties. Causation is not a element in determining
8 magnitude; magnitude is a measure of the actual or potential adverse environmental impact of the
9 violation. See OAR 340-12-045(1)(a)(ii) and -045(1)(c)(D). The rules do not permit the Hearing
10 Officer or the Department to consider causation when determining magnitude, and the Hearing's
11 Officer decision to do so in this case was in error.

12 C. The Cause of the Violation was Mr. Ferguson's Intentional Conduct

13 In his Brief, Mr. Ferguson argues that the violation did not result from intentional conduct
14 because it was not his "conscious objective" to cause a violation of any statute or rule. Mr. Ferguson
15 misapplies the definition in OAR 340-12-030(9), which states that "intentional" means "conduct by a
16 person with the conscious objective to cause the result of the conduct". Knowledge of legal
17 requirements or prohibitions is an element of "flagrant" conduct, defined in OAR 340-12-030(7), not
18 intentional conduct. To read a knowledge element into "intentional" conduct makes "flagrant" conduct
19 redundant, which could not have been the intent of the Commission in enacting these definitions. To
20 prove intentional conduct, all the Department must show is that Mr. Ferguson had the conscious
21 objective for his son to further disturb the suspected ACM after it was removed from the building.
22 Both Mr. Ferguson and Joel Ferguson testified that Mr. Ferguson, knowing that duct wrap was
23 suspected ACM, told Joel to pick up the material, wrap it, and place it in the trailer.

24 Mr. Ferguson attempts to defend his conduct by arguing that it was reasonable. Even if
25 reasonableness were a valid defense, Mr. Ferguson's actions were not reasonable. At the hearing, Mr.
26 Tong testified that he instructed Joel Ferguson not to further disturb the material, but to cover it with a
27 tarp until a licensed asbestos abatement contractor could be brought in to clean up the material. Joel

1 Ferguson testified that Mr. Tong did not so instruct him. Mr. Tong is the more credible witness as
2 there is no evidence that he had a motivation to lie. Mitigation or elimination of the civil penalty,
3 however, provides Joel Ferguson with a motivation to either lie or fail to remember Mr. Tong's
4 instructions.

5 Mr. Ferguson also argues that his actions were reasonable because he relied on the advice of
6 someone he terms an expert, Rogue Disposal and Recycling (Rogue Disposal), a solid waste disposal
7 company, in deciding to further disturb the suspected ACM. Mr. Ferguson's reliance on the advice of
8 Rogue Disposal was not reasonable. Rogue Disposal is not a licensed asbestos abatement contractor¹
9 or otherwise qualified to give Mr. Ferguson advice on asbestos abatement. When Mr. Ferguson
10 directed Joel Ferguson to pick up the suspected ACM, he was engaged in asbestos abatement and only
11 an asbestos abatement contractor or the Department is qualified to provide advice on proper handling
12 of ACM.

13 Mr. Ferguson's conduct meets the definition of "intentional" set forth in OAR 340-12-030(9).
14 Regardless of whether Mr. Tong instructed Joel Ferguson not to further disturb the suspected ACM,
15 Mr. Ferguson's reliance on Rogue Disposal and his own judgment was not reasonable and in fact
16 exacerbated the threat to public health and safety by increasing the risk that asbestos fibers were
17 released into the open air.

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19 4/21/98
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Date

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Jeffrey R. Bachman
Environmental Law Specialist

¹ The Department asks the Commission to take notice that there is no record in Department files of Rogue Disposal being licensed to perform asbestos abatement.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) MEMORANDUM OF AUTHORITIES IN
WILLIAM H. FERGUSON,) OPPOSITION TO RESPONDENT'S
) MOTION TO DISMISS
Respondent/Appellee.) No. AQAB-WR-96-315
) JACKSON COUNTY

The literal language of the applicable administrative rules clearly indicates that Respondent's motion to dismiss has no legal foundation. The two pertinent subsections of OAR 340-011-132 are:

(2)(b) — The timely filing and service of a Notice of Appeal is a *jurisdictional requirement* for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served late shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect;

* * *

(4)(f) — Extensions — The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. *Any request for an extension may be granted or denied in whole or in part.*

(Emphases added.)

The first subsection, OAR 340-011-132(2)(b), expressly states that the timely filing of the Notice of Appeal is a jurisdictional requirement that cannot be waived. By contrast, the second subsection, OAR 340-011-132(4)(f), states that the decision to grant an extension presumably on other matters, including the filing of a brief, is placed within the sound discretion of the EQC. The Notice of Appeal and the brief are separately filed. Timely Notice of Appeal establishes the jurisdiction of the Commission, and the brief becomes part of the administrative record. Thus, once the Notice of Appeal has established the parties' intent to appeal the decision, the EQC has discretion to grant necessary extensions for the filing of documents to the administrative record.

The best evidence of the purpose of a statute is its language, and the object to be accomplished. *Roberts v. Gray's Crane & Rigging, Inc.*, 73 Or. App. 29, 697 P2d 985

1 (1985); *Sunshine Dairy v. Peterson* 183 Or. 305, 193 P2d 543 (1948). The same principles
2 of statutory construction apply equally to administrative rules. In this case, there is nothing
3 in the language of the applicable administrative rules to support Respondent's motion to
4 dismiss. To the contrary, the rules make it clear that extension of the deadline for filing a
5 brief is within the sound discretion of the EQC.

6 Administrative hearings do not match the rigors of a criminal or civil trial. Rather,
7 the primary purpose of an administrative hearing is simply to create a complete and full
8 record that will facilitate an informed decision. *Trueblood v. Health Division, Dep't of*
9 *Human Resources*, 28 Or App 433, 559 P2d 931 (1977).

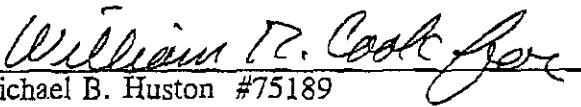
10 Our research of prior EQC/DEQ enforcement proceedings, as well as similar
11 proceedings by other state agencies, revealed no instance in which a late brief has resulted in
12 dismissal of a case.

13 In short, Respondent Ferguson's motion to dismiss has no basis in the applicable rules
14 or in relevant administrative law.

15 DATED this 21st day of April, 1998.

16 Respectfully submitted,

17 HARDY MYERS
18 Attorney General

19 
20 Michael B. Huston #75189
21 Assistant Attorney General
22 Of Attorneys for DEQ
23 Department of Justice
24 1515 SW Fifth Avenue, Suite 410
25 Portland, OR 97201
26 Telephone: (503) 229-5725

MH:kr/MBH0183.PLE

PAGE 2 - MEMORANDUM OF AUTHORITIES IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS



CERTIFICATE OF MAILING

I hereby certify that I served Exceptions and Brief of Hearing Officer's Findings of Fact, Conclusions of Law, and Final Order No. AQAB-WR-96-315 upon

Susan Greco
Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

William H. Ferguson
5200 Pioneer Road
Medford, OR 97501

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 February 9, 1998.

Deborah Nashit
Department of Environmental Quality

P 506 425 412

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

SUSAN GRECO
ENVIRONMENTAL QUALITY COMM.
811 SW SIXTH AVENUE
PORTLAND OR 97204

Form with sections: SENDER, 3. Article Addressed to, 4a. Article Number, 4b. Service Type, 5. Received-By, 6. Signature, 7. Date of Delivery, 8. Addressee's Address, and a section for 'I also wish to receive the following services'.

Table with 2 columns: Fee/Postmark and Amount. Rows include Certified Fee, Special Delivery Fee, Restricted Delivery Fee, Return Receipt Showing to Whom & Date Delivered, Return Receipt Showing to Whom, Date, & Addressee's Address, TOTAL Postage & Fees, and Postmark or Date.

PS Form 3800, April 1995

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.



CERTIFICATE OF MAILING

I hereby certify that I served Exceptions and Brief of Hearing Officer's Findings of Fact, Conclusions of Law, and Final Order No. AQAB-WR-96-315 upon

Susan Greco
Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

William H. Ferguson
5200 Pioneer Road
Medford, OR 97501

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 February 9, 1998.

Deborah Nesbitt
Department of Environmental Quality

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is your RETURN RECEIPT completed on the reverse side?

SENDER: <ul style="list-style-type: none"> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. Print your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece, or on the back if space does not permit. Write "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered. 		I also wish to receive the following services (for an extra fee): 1. <input checked="" type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: WILLIAM H FERGUSON 5200 PIONEER ROAD MEDFORD OR 97501		4a. Article Number P 506 425 411	
		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
5. Received By: (Print Name) <i>Dranson</i>		7. Date of Delivery 2-12	
6. Signature: (Addressee or Agent) X <i>Dranson</i>		8. Addressee's Address (Only if requested and fee is paid)	

Thank you for using Return Receipt Service.

P 506 425 411

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Str:	WILLIAM H FERGUSON
Po:	5200 PIONEER ROAD
Po:	MEDFORD OR 97501
Certified fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, April 1995



February 18, 1998

William H. Ferguson
5200 Pioneer Road
Medford, OR 97501-9314

RE: Case No. AQAB-WR-96-351

Dear Mr. Ferguson:

On February 11, 1998, the Environmental Quality Commission received the Department's Exceptions and Brief in the above referenced matter. Pursuant to OAR 340-11-132(4)(a), you must file an answer within thirty days from the filing of the Notice of Appeal (March 13, 1998). Once your answer has been received, the Department may file a reply brief.

To file your answer, please send to Susan Greco, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon, 97204, with a copy to Jeff Bachman, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon, 97201.

If you should have any questions or need further time to file your answer, please feel free to call me at (503) 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,

Susan M. Greco
Susan M. Greco
Rules Coordinator



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1

TO: cc: Jeff Bachman, NWR



Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED MAR 19 1998

March 18, 1998

William H. Ferguson
5200 Pioneer Road
Medford, OR 97501-9314

RE: Case No. AQAB-WR-96-351

Dear Mr. Ferguson:

On February 18, 1998, I sent you a letter (see the attached copy) which stated that your answering brief in the above matter was due to the Environmental Quality Commission on March 13, 1998. Oregon Administrative Rule 340-011-0132(4)(b) requires your answering brief to be filed within 30 days of the filing of the appellant's exceptions and brief. To this date, I have not received your answering brief.

The rules do allow for extensions to be granted of any time limits in the rules but such a request must be in writing and should explain the reason for the delay in the filing of your brief. The Commission will consider the filing of your brief, if it is received prior to April 1, 1998, as a request for an extension to file the brief and may deny this request at a later time. If the Commission does not receive your brief before April 1, 1998, the Commission will schedule the matter for one of its regularly scheduled Commission meetings without inclusion of the brief in the record.

Your answering brief should be sent to: Susan Greco, Department of Environmental Quality, 811 S.W. 6th Avenue, Portland, Oregon, 97204 with a copy to Jeff Bachman, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon, 97201.

If you should have any questions, please feel free to call me at (503) 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,

Handwritten signature of Susan M. Greco
Susan M. Greco
Rules Coordinator



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1

TO: cc: Jeff Bachman, NWR

Department's Exhibit 5
Case No. AQAB-WR-96-315

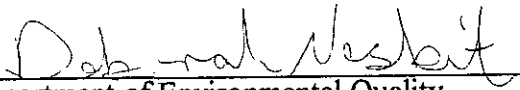
Barry Brey, AQAB-WR-96-015. Issued February 9, 1996.
Horton Brothers, Inc., AQAB-WR-96-014. Issued February 9, 1996.
Oregon Home Improvement Co., AQAB-NWR-96-080. Issued April 15, 1996
Pacific Wallboard & Plaster Co., AQAB-NWR-96-091. Issued May 17, 1996.
Daniel Riehl, AQAB-NWR-96-095. Issued May 30, 1996.
Lee Hafner, AQAB-WR-96-198. Issued September 18, 1996.
Grants Pass BPOE #1584, AQAB-WR-96-197. Issued September 18, 1996.
Columbia Excavating, Inc., AQAB-NWR-96-282
Ochoco Lumber Co., AQ/V-ER-97-179. Issued September 12, 1997.
Deans Enterprises, Inc., AQ/A-ER-97-191. Issued October 10, 1997.
Beverly Suniga, AQ/A-WR-97-217. Issued November 18, 1997.
Billy J. Blom, AQ/A-NWR-97-211. Issued November 26, 1997.
Eveready Ventures International, AQ/A-NWR-97-209. Issued November 26, 1997.

CERTIFICATE OF MAILING

1
2 I hereby certify that I served Motion to Extend Time Limit and Reply to Respondent's
3 Motions and Brief in Case No. AQAB-WR-97-315 upon

4
5 William Ferguson
6 5200 Pioneer Road
7 Medford, OR 97501

8 by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid at the
9 U.S. Post Office in Portland, Oregon, on April 21, 1998.

10
11 
12 Department of Environmental Quality

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

State of Oregon
Department of Environmental Quality

Received
APR 03 1998

OFFICE OF THE DIRECTOR

In the matter of:

William H. Ferguson,

Respondent.

No. AQAB-WR-96-315
Jackson County

**MOTION TO DISMISS; ALTERNATIVE MOTION FOR
RELIEF FROM DEFAULT AND RESPONDENT'S BRIEF**

Respondent, William H. Ferguson, moves the Commission for an order dismissing this appeal on the ground that appellant failed to file its "Exceptions and Brief" within the time required by OAR 340-11-132(4)(a). Alternatively, Respondent moves the Commission for relief from default from time to file respondent's brief.

MOTION TO DISMISS

On December 11, 1997, Hearings Officer Melvin M. Menegat issued "Findings of Fact and Conclusions of Law" and "Hearings Officer's [Final] Order" in the above-captioned case. (Ex 1). On January 9, 1998, the Environmental Quality Commission (the "Commission") received a Notice of Appeal from the Department of Environmental Quality (the "Department"). The Notice of Appeal was timely filed since it was filed within thirty (30) days of the date of the Hearings Officer's final order. OAR 340-11-132(2)(a).

OAR 340-11-132(4)(a) required the Department to file "...written exceptions, brief and proof of service" within thirty (30) days from the date of filing of the Notice of Appeal. Since the Notice of Appeal was filed January 9, 1998, the Department's exceptions and brief were required

to be filed by January 9 (the 30th day, January 8, fell upon a Sunday, a legal holiday). In fact, the Department's "Exceptions and Brief" were not filed with the Commission until February 11, 1998, thirty-two (32) days after the Notice of Appeal was filed. Accordingly, the appeal should be dismissed.

ALTERNATIVE MOTION TO EXTEND TIME FOR FILING RESPONDENT'S BRIEF

Alternatively, respondent moves the Commission for relief from default from the time to file respondent's answering brief and requests the Commission to accept respondent's brief, below, on the merits. This motion is based upon the fact that respondent anticipated the filing of a transcript of the proceedings before the Hearings Officer and instructed an employee to determine when the transcript might be available. The employee, who also had other tasks assigned, neglected for follow-up on my request. At the time, I was also busy preparing my family for a foreign trip. I was outside of the United States, in the middle-east, from March 10 to 27, 1998 and did not discover the failure to file a brief until my return.

RESPONDENT'S BRIEF ON THE MERITS

PROCEDURAL BACKGROUND

On December 5, 1996, the Director of the Department of Environmental Quality (the "Department") notified William H. Ferguson of the assessment of a civil penalty in the amount of \$5,400, stemming from Ferguson's alleged removal and handling of "suspected asbestos-containing material" from a building in downtown Medford. Ferguson requested a hearing and one was held before Hearings Officer Melvin M. Menegat in Medford on September 10, 1997. Post-hearing briefs were submitted by the parties and, on December 11, 1997, the Hearings Officer issued findings of fact and conclusions of law along with his proposed final order. After

reviewing the evidence in the record and considering the arguments of the parties, the Hearings Officer found that respondent violated OAR 340-32-5620(1), -5600(4)(4), -5650, OAR 340-33-030(2) and (4), and imposed a civil penalty of \$1,000.

The Department, on January 9, 1998, filed a notice of appeal from the Hearings Officer's final order. On February 11, 1998, it filed its exceptions and brief and respondent submits this brief in response.

FACTS

The facts, as established by the findings of the Hearings Officer who heard and reviewed all of the evidence, are summarized as follows:

Respondent purchased the building in question (the "Morse" building) from the YMCA, which had received the property as a gift from the previous owners, Mr. and Mrs. Morse. During the time Mr. Morse was considering disposing of the property, he had obtained an environmental assessment at the request of the Salvation Army. When Mr. Ferguson purchased the property, he was neither given or shown a copy of the assessment. He was told however, both by Mr. Morse and by a member of the Board of Directors of the YMCA—that the report was "clean".

In late September, 1996, respondent began renovating to the building. In the process, on October 1, 1996, Ferguson's workers decided to remove old heat ducting from above the ceiling. The evidence showed, (1) that removal of the ducting was optional, and (2) that none of the personnel involved in the decision to remove the ducting—including the workers and the architect—knew or suspected that wrapping on the ducting contained asbestos. The Hearings Officer specifically found:

"...respondent was not aware that there was any asbestos-containing materials in the building or that would be affected by the demolition or renovation..." Final Order, p 5.

Joel Ferguson, respondent's son, took down a short portion of wrapped ducting. The evidence showed that tiny portions of the wrap fell in the building and in the parking lot outside. All told, wrap was no more than perhaps 12 square feet in area, and most of it was still attached to the ducting. As the Hearings Officer specifically found,

“[t]he type of wrap used on the length of duct work that had been removed was manufactured in asbestos-containing and non asbestos containing products, and the wrap had no distinguishing marks or colors to accurately determine whether it contained asbestos or not.” *Id.*, p 3.

Mr. Tong walked by the building on his way to appointment. The Hearings Officer found

“Tong stopped at the site, inspected the materials he had observed, and contacted Joel Ferguson who was in charge of the demolition project, and advised him that the duct wrap appeared to be asbestos-containing material, and that proper steps should be taken to accomplish the asbestos removal, and not to disturb the materials” *Id.*, p 2.

It is important to note that, according to Joel Ferguson, *Tong did not tell him that he could not seal and package the material.*

Joel Ferguson contacted respondent and informed him that Tong had “shut-down” the job. William Ferguson had dealt with Tong before when Tong had declared that material he found in the basement of Ferguson's office building, where DEQ rents space, contained asbestos. After much ado and at considerable expense to Ferguson, the material was found to have been ordinary dry wall.

William Ferguson immediately tried to contact Tong at the local DEQ office. Tong was not available. Ferguson decided that, if the wrapping in question did contain asbestos, it should not be left under a tarp in the parking lot approximately 30 feet from the public sidewalk. Unable to speak with Tong, Ferguson did two things. First, he caused a sample of the material to be sent to a local lab for analysis. Second, he called the local solid waste disposer, *Rogue Disposal and*

Recycling, and inquired how must dispose of material which might contain asbestos. He was told that the material should be double-wrapped in a specified thickness of plastic-wrap, then sealed with duct tape. William Ferguson instructed Joel Ferguson to secure the specified plastic and wrap and seal the material in question. Joel Ferguson did as told, even triple-wrapping the material. He then placed the plastic-wrapped material into respondent's mobile trash container on the property which was enclosed on all sides except the top.

When, later, it was confirmed that the duct wrapping did contain asbestos, respondent contacted *Alpha Environmental, Inc.*, ("Alpha") a licensed asbestos abatement contractor, and a professional environmental engineer. On October 4, 1996, Alpha provided DEQ with the appropriate notice and commenced removal of the asbestos. Ferguson paid approximately \$5,160 for the asbestos removal and environmental engineering.

ARGUMENT

The Hearings Officer Properly Determined that no Liability Attached Until Respondent Was Given Notice of the Potential of Asbestos-Containing Material

The Department contends that the legislature intended Oregon's environmental liability laws to impose strict liability. Thus, it claims, the Hearings Officer erred when he found:

"[p]rior to Mr. Tong's notification, respondent was not involved in an "Asbestos abatement project", notwithstanding the definition of the rule and the strict liability interpretation of its provisions. Prior to Mr. Tong's notification of potential asbestos-containing material, respondent had taken all reasonable and necessary steps to proceed with his demolition and remodeling project. Liability, in this case, did not attach prior to notification." Final Order, p 4.

According to the Department, the Hearings Officer should have held that liability attached when the asbestos-containing duct wrap was removed from the building.

The evidence before the Hearings Officer showed that the Department—at least in southern Oregon—has not sought to impose liability on property owners for unknowing

encounters with asbestos-containing materials. There was testimony during the hearing that the City of Medford, during excavation for a downtown parking structure, encountered both underground oil/petroleum tanks *and asbestos*. Respondent introduced a newspaper article in which local DEQ officials confirmed the department did not intend to pursue a fine against the City *because its discoveries were not made prior to demolition and excavation*.¹ While deference to agency expertise is not automatic or unreasoning, *Springfield Education Assn. V. School Dist.*, 290 Or 217, 621 P2d 547 (1980), it is proper to look to agency interpretations for guidance in discerning the meaning of DEQ rules:

“...[I]n ‘interpreting [an] administrative regulation whose meaning is in doubt, we must necessarily look to the construction given the regulation by the agency responsible for its promulgation.’ *Bone v. Hibernia Bank*, 493 F2d 135 (9th Cir 1974). Agency rulings, interpretations and opinions ‘...do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.’ *Skidmore v. Swift and Co.*, 323 US 134, 65 S Ct 161, 164 L Ed 124 (1944).”

Aside from the obvious disparate treatment involved in imposing a civil penalty on the respondent but not the City of Medford, it is difficult to understand the relevance of the Department’s argument. According to the Director’s Notice of Assessment of Civil Penalty:

“The Department imposes a civil penalty of \$5,400 for the Violation of No. 1 in Section II, above. The findings and determinations of Respondent’s civil penalty, pursuant to OAR 340-12-045, are attached and incorporated as Exhibit 1.” Notice, p 2.

In short, the Director originally assessed respondent a civil penalty of \$5,400 for *the first alleged violation only*—failing to employ required work practices for handling and removal of asbestos-containing material in violation of OAR 340-32-5620(1).

¹ Although the news clipping mentioned only the underground tanks, Tong testified that the City had also disturbed asbestos-containing material.

Despite his holding as to when liability attached, the Hearings Officer *agreed* that respondent violated OAR 340-32-5620(1). Final Order, p 3. The only alleged violation upon which the Hearings Officer *disagreed* with the Director was whether respondent violated OAR 340-32-5620(1) by failing to notify the Department of an asbestos abatement project. The Hearings Officer found no violation because he concluded that respondent innocently encountered the material; the same conclusion the Department reached in the case involving the City of Medford. Thus, except for clarifying apparently inconsistent enforcement policies, the Hearings Officer's decision with respect to when liability attached is irrelevant until one addresses the appropriate civil penalty.

**The Hearings Officer Properly Determined
the Appropriate Civil Penalty to be \$1,000**

The Department objects to the Hearings Officer's final order to the extent it imposes a civil penalty of only \$1,000. The Hearings Officer used the formula contained in OAR 340-12-045(c) and found the appropriate penalty to be:

$$\text{Penalty} = \text{BP} + [(.1 \times \text{BP}) (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB}.$$

The Hearings Officer assigned a value of \$1,000 (minor magnitude) to the base penalty (BP), whereas the Department argues the base penalty should be \$3,000 (moderate magnitude). In so doing, he found:

“... While the Department does have the option of raising the magnitude of the violation one level under OAR 340-12-090(1)(d)(D), it is not appropriate to do so in this case. As discussed in the earlier paragraphs, respondent's involvement in this matter was not intentional and does not warrant increasing the magnitude of the violation in this matter.” Final Order, p 6.

The Department contends that the Hearings Officer had no authority to reduce the magnitude of the violation from “moderate” to “minor” because the material was comprised of more than 5% asbestos.

The Department’s argument ignores the permissive language of OAR 340-12-090(1)(d)(D):

“The magnitude of the asbestos violation *may be increased* by one level if the material was comprised of more than five percent asbestos.”

The rule does not *require* that the magnitude be increased; it provides that the magnitude *may* be increased. Anyone dealing with the rule—the Department or a Hearings Officer included—has discretion to determine when an increase in magnitude is appropriate. Respondent contends that the Hearings Officer acted well within his discretion in determining that the small amount of material, and respondent’s prompt response to the unforeseen encounter with asbestos, should be considered and the discretionary increase in magnitude should be set aside.

The Department next argues that the Hearings Officer erred when he assigned a zero value to the “O” factor. Respondent contends that the Hearings Officer properly determined that the single violation for which the Department elected to assess respondent occurred on a single day and zero is the appropriate value to be assigned the “O” factor.

Next, the Department urges that the appropriate value for the “R” factor is 6, because respondent acted intentionally. This is based on Tong’s report in which he indicated that he advised Joel Ferguson to lay a tarp over the suspect material until lab tests were returned. Further, Tong indicated that Joel Ferguson was told that only a licensed asbestos contractor could handle the material. Joel Ferguson testified differently; he said Tong did not tell him the material could not be wrapped nor that only a licensed contractor could handle the suspect material. Ironically, it was respondent’s reliance on the advice of *Rogue Disposal and Recycling*, to wrap the material in multiple layers of plastic and bind it with duct tape upon which DEQ seized to employ the 6-fold multiplier. The evidence clearly shows that respondent was concerned that—if Tong was right this time—if the material in fact contained asbestos, it should be taken from harm’s way rather than left within a few feet of a public sidewalk. Out of this caution, respondent relied upon expert advice and told his son to wrap and bind the material as directed. The

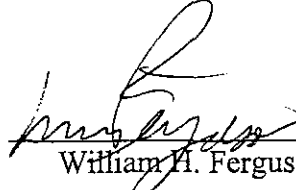
packaged material was not discarded, it was placed in a five-sided trailer and left at the site, available when Tong returned later on the day of October 1. Respondent's "conscious objective" was not to cause a violation of any statute or rule; rather it was to protect the public from exposure to what was only *suspected* at the time of being a potentially hazardous material. As the Hearings Officer—who was able to hear and assess all of the evidence—found, the correct value for "R" is "2", because respondent's actions were, at most, negligent.

The last issue concerns the appropriate value to be assigned the "C" factor. The Hearings Officer found that respondent was cooperative and assigned a value of -2 whereas the Department contends a factor of zero is appropriate because respondent was "neither wholly cooperative nor uncooperative". Respondent contends that the Commission should defer to the findings and conclusions of the Hearings Officer who had the opportunity to hear and assess all of the evidence. That evidence showed that respondent, after being advised that Tong suspected asbestos might be present, (1) took samples to be tested, and (2) contacted the local disposal company to determine how to wrap and dispose of the suspect material in order to protect the public. Moreover, once the material was positively identified, respondent took all necessary and appropriate steps to comply with the law, including the hiring of two experts to proceed with removal and clean-up. It is clearly overreaching for the Department to enhance the civil penalty in this case by failing to credit respondent for his cooperation.

CONCLUSION

For the reasons discussed above, the appeal should (1) be dismissed, or, in the alternative (2) the final order of the Hearings Officer should be adopted as the order of the Commission in this matter.

DATED: April 1, 1998.




William A. Ferguson, *pro per*

CERTIFICATES

I certify that I, (1) sent a copy of the above document by facsimile to the Department of Environmental Quality at 503-229-5850 on April 1, 1998; (2) filed the original with the Department of Environmental Quality, 811 S.W. 6th Avenue, Portland, OR 97204 by depositing the same with the United States Postal Service in Medford, Oregon, properly address and with postage thereon fully prepaid; and (3) served a copy, certified as true by me, upon Jeff Bachman, Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, Oregon 97201, 97204 by depositing the same with the United States Postal Service in Medford, Oregon, properly address and with postage thereon fully prepaid.

DATED: April 1, 998



William H. Ferguson, *pro per*

Received
FEB 11 1993

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

OFFICE OF THE DIRECTOR

IN THE MATTER OF:
WILLIAM H. FERGUSON,

Respondent/Appellee.

EXCEPTIONS AND BRIEF

No. AQAB-WR-96-315
JACKSON 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.

I. CASE HISTORY

On December 5, 1996, the Department issued Respondent a Notice of Assessment of Civil Penalty. The Notice assessed a civil penalty of \$5,400 for violating Oregon Administrative Rule (OAR) 340-32-5620(1) by failing to follow the required work practices for asbestos abatement projects set forth in OAR 340-32-5640. The Notice also cited violations of, but did not assess penalties for, open accumulation of asbestos-containing waste material, OAR 340-32-5600(4); asbestos handling and disposal requirements, OAR 340-32-5650; asbestos abatement project notification requirements, OAR 340-32-5630; and asbestos abatement project worker and supervisor certification requirements, OAR 340-33-030(2 and (4).

On December 20, 1996, Respondent appealed the Notice of Assessment of Civil Penalty and requested a contested case hearing. On January 21, 1997, the Department held an informal discussion with Respondent. The discussion failed to resolve the case and a contested case hearing was held on September 10, 1997. In his decision, the Hearing Officer found that Respondent had violated OAR 340-32-5620(1), but reduced the penalty from \$5,400 to \$1,000.

II. RELEVANT FACTS

At the hearing, the Respondent testified to the following: Sometime before October 1, 1996, Respondent, a retired attorney who now engages in the purchase, management, and sale of real property, purchased a corner lot commercial building, known as the Morris Building, located at 421

Attachment E - 10 pages

1 West Sixth and 37 North Ivy Streets in Medford, Oregon. Respondent acquired the building from the
2 Medford YMCA, which had received the property through a donation.

3 While the donation was still being considered, the YMCA requested that an environmental
4 assessment be performed to identify any environmental liabilities associated with the property. The
5 assessment was performed and a report of the results written and provided to the YMCA. Prior to
6 Respondent's purchase of the property, the donor told him that an environmental assessment had been
7 performed, and that the report found no "contamination". Respondent did not obtain a copy of, or
8 otherwise review, the report prior to his purchase of the property, although a copy was available to him.

9 After purchasing the property, Respondent commenced remodeling and renovating the
10 building, during which asbestos-containing duct insulation was disturbed. When the Department began
11 investigating the disturbance of the insulation, Respondent obtained a copy of the environmental
12 assessment report and found that the report expressly stated that ducting in the Morris Building was
13 wrapped with suspected asbestos-containing insulation.

14 At the hearing, Department Asbestos Control Analyst Keith Tong testified to the following:
15 On October 2, 1996, Mr. Tong conducted an inspection of the Morris Building during renovation
16 work being conducted by Respondent's son, Joel Ferguson. Mr. Tong observed torn pieces of
17 suspected asbestos-containing corrugated duct insulation scattered on the property's parking area
18 within 15 feet of the public sidewalk and street and still attached to duct work stacked nearby. Mr.
19 Tong spoke with Joel Ferguson who told Mr. Tong that the insulation debris was generated when he
20 removed the duct from the building. From the amount of duct removed, Mr. Tong estimated that
21 approximately 60 square feet of insulation had been disturbed. He further observed that the insulation
22 was dry.

23 Mr. Tong informed Joel Ferguson that the insulation probably contained asbestos and that it
24 should be covered with a tarp and not disturbed further until a licensed asbestos abatement contractor
25 could be brought in to remove and dispose of it properly. Mr. Tong then gave Joel Ferguson some
26 asbestos hazard warning labels and asked him to cordon off the parking area, seal off the building, and
27 post the warning labels. Joel Ferguson asked Mr. Tong if he could bag the insulation and place in it an

1 open trailer being used to dispose of demolition debris. Mr. Tong informed Joel Ferguson that it was
2 highly likely the insulation contained asbestos, and if so, that it could only be further disturbed by a
3 licensed asbestos abatement contractor. Mr. Tong then left the site.

4 Later that day, Mr. Tong returned to the site and found that the insulation had been picked up,
5 wrapped in plastic, and placed in the open trailer. Mr. Tong asked Joel Ferguson why the material had
6 been disturbed. Joel Ferguson told Mr. Tong that Respondent insisted that Joel wrap and place the
7 insulation in the trailer. Mr. Tong observed that the insulation had not been wetted prior to placement
8 in the plastic bags and that the bags were not at least 6 mils thick or labeled as containing asbestos
9 waste. During the second inspection, Mr. Tong collected a sample of the insulation, which laboratory
10 analysis on October 10, 1996, found to contain 10 percent asbestos.

11 From October 4 to October 18, 1996, Alpha Environmental, Inc., a licensed asbestos
12 abatement contractor hired by Respondent completed removal of the insulation debris and
13 decontamination of the property.

14 III. EXCEPTIONS

15 A. Liability Attached when Respondent Removed the Ducting from the Building and First 16 Disturbed Asbestos

17 On page 4 of the Hearing Officer's Findings of Facts and Conclusions of Law, the Hearing
18 Officer concluded that Respondent was not liable for any violations of the rules governing asbestos
19 abatement projects until Mr. Tong informed Joel Ferguson that he suspected the duct insulation
20 contained asbestos. The Hearing Officer's ruling is erroneous in that he failed to apply the standard of
21 strict liability to Respondent's conduct. The Oregon Legislature's intent that violation of the state's
22 environmental laws be strict liability is manifest in Oregon Revised Statute 468.140(1)(f), which makes
23 the cause of a violation, whether an unavoidable accident, negligence, or an intentional act, a factor to
24 be considered in calculation of civil penalties. Therefore, causation is a factor only in the size of a
25 penalty for a violation, and not in determining whether a violation has occurred. Please also see
26 Department's Memorandum of Authorities, attached.
27

1 The Hearing Officer did acknowledge that asbestos violations are strict liability, but expressly
2 chose not to apply it because, in his opinion, "Respondent had taken all reasonable and necessary steps
3 to proceed with his demolition and remodeling project". Page 4, Hearing Officer's Findings of Fact and
4 Conclusion of Law. In so doing, the Hearing Officer applied a negligence standard for liability under
5 the asbestos abatement rules. The Hearing Officer exceeded his authority. He cannot reject the strict
6 liability standard established by the Oregon Legislature and substitute his own negligence standard.

7 Even if the standard for liability were negligence, Respondent would still be liable for the
8 violations that occurred prior to Mr. Tong's arriving at the Morris Building. The Hearing Officer states
9 that "Respondent is an experienced property owner and manager who has been involved in the
10 acquisitions, renovation, and maintenance of commercial properties. He has been involved in situations
11 potential asbestos-containing materials..." Page 4, Hearing Officer's Findings of Fact and Conclusions
12 of Law. Before purchasing the building, Respondent was aware of the existence of the environmental
13 assessment report, but did not obtain a copy. If he had reviewed the report himself, Respondent
14 would have learned that the consultant who prepared the report suspected that the duct insulation
15 contained asbestos. By failing to obtain and review a copy of the report prior to commencing
16 demolition and renovation at the Morris Building, Respondent, a retired attorney and experienced
17 property investor and manager, failed to exercise reasonable care and was therefore, at a minimum,
18 negligent.

19
20 B. The Hearing Officer Does not have the Authority to Reduce the Magnitude of Respondent's
21 Violation

22 On page 6 of his Findings of Fact and Conclusion of Law, the Hearing Officer reduced the
23 magnitude of Respondent's violation from moderate to minor. In calculating the civil penalty, the
24 Department, in accordance with Oregon Administrative Rule (OAR) 340-12-090(1)(d)(D), elevated
25 the magnitude from minor to moderate because the material involved in the violation contained more
26 than 5 percent asbestos. The Hearing Officer ruled that elevation of the magnitude was "not
27 appropriate" because "respondent's involvement in this matter was not intentional".

1 Oregon Administrative Rule (OAR) 340-12-090(1)(d)(D) states "The magnitude of the
2 asbestos violation may be increased by one level if the material was comprised of more than 5 percent
3 asbestos." The rule does not require the Department to prove that the cause of the violation was
4 Respondent's intentional conduct in order to elevate the magnitude. Under the plain language of the
5 rule, the Department is only required to prove that the material involved in the violation contained
6 more than 5 percent asbestos, which it did in this case. If the Commission wanted the cause of the
7 violation to be considered in determining magnitude for asbestos violations, it would have said so in
8 OAR 340-12-090(1)(d)(D). Instead, the Commission chose to make causation a factor to be
9 considered separately from magnitude in calculating civil penalties. See OAR 340-12-045. The rules
10 do not authorize the Hearing Office or the Department to consider causation when determining
11 magnitudes for asbestos violations and his decision to do so in this case was improper.

12 C. Respondent's Violated OAR 340-32-5620(1) on Two Separate Occasions on the Same Day
13 and the "O" Value is Therefore 2

14 On page 6 of his Findings of Fact and Conclusions of Law, the Hearing Officer ruled that the
15 "O" or occurrence factor in the calculation of Respondent's civil penalty should be 0 because the
16 "occurrence that results in the violation and penalty occurred during a period in one day where material
17 were moved and stored." The Hearing Officer's ruling is in error.

18 Oregon Administrative Rule.340-12-045(1)(c)(C)(ii) provides that the value for the O factor
19 shall be 2 "if the violation occurred for more than one day or if it recurred on the same day. In this
20 case, the violation recurred on the same day". The initial violation occurred when, on October 2, 1996,
21 Joel Ferguson removed the insulated duct work from the building and disturbed the asbestos-
22 containing insulation. See Paragraph III.A above. The violation recurred when Joel Ferguson
23 disturbed the insulation a second time when, after learning the insulation was suspected asbestos-
24 containing material, he picked it up, put it in plastic bags, and placed it in an open trailer.
25
26
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1 D. The Cause of the Violation was Respondent's Intentional Conduct and the Correct Value for
2 the "R" Factor is 6

3 On page 6 of the Hearing Officer's Findings of Fact and Conclusions of Law, he ruled that the
4 "R" or causation factor in Respondent's civil penalty should be assigned a value of 2 because he "was at
5 most negligent for the purposes of this element". The correct value for the R factor in Respondent's
6 penalty is 6, pursuant to OAR 340-12-45(1)(c)(D)(iii), because the cause of the violation was
7 Respondent's intentional conduct.

8 Oregon Administrative Rule 340-12-030(9) states that "intentional" "means conduct by a
9 person with a conscious objective to cause the result of the conduct". This definition does not require
10 that a person have a conscious intent to violate the law, or to know that they are dealing with
11 regulated material, only that a person intend to cause the result of their conduct. Respondent directed
12 Joel Ferguson to disturb the asbestos-containing insulation by bagging it and putting it in the trailer
13 after Mr. Tong had told Joel Ferguson not to further disturb the material. Mr. Tong expressly
14 directed Joel Ferguson not to bag the material and place it in the trailer, but to cover it with a tarp
15 until a licensed asbestos abatement contractor could clean up the material. Respondent, intended the
16 result of his conduct which was to have his son further disturb the material, which Respondent then
17 knew was suspected of containing asbestos, and by so doing increased the risk that asbestos fibers
18 were released to the open air. Respondent's conduct meets the definition set forth in the
19 Commission's rule and the correct value for the R factor is therefore 6.

20 E. Respondent was Neither Cooperative nor Uncooperative in Correcting the Violation and the
21 Correct Value for the "C" Factor is 0

22 On page 6 of the Hearing Officer's Findings of Fact and Conclusions of Law, he ruled that
23 the "C" or cooperativeness factor in the calculation of Respondent's civil penalty should be -2
24 because Respondent was "cooperative after it was determined that the materials were asbestos-
25 containing". The correct value for the C factor is 0 because Respondent was neither wholly
26 cooperative nor uncooperative in correcting the violation.
27

1 Oregon Administrative Rule 340-12-045(1)(c)(E) sets forth the following possible values for
2 the C factor: -2 if the Respondent was cooperative and took reasonable efforts to correct the
3 violation or minimize the effects of the violation; 0 if there is insufficient information to make a
4 finding, or if the violation or the effects of the violation could not be corrected; or 2 if Respondent
5 was uncooperative and did not take efforts to correct the violation or minimize the effects of the
6 violation." While acknowledging that Respondent continued to disturb the insulation after being
7 directed not to by Mr. Tong, the Hearing Officer nevertheless found him to be cooperative because
8 Respondent "took what he felt were reasonable steps to minimize the effects of the violation".

9 The Hearing Officer's reasoning is disturbing because it would in essence approve a
10 member of the regulated community's decision to substitute his judgment for the Department's as to
11 what action is necessary to protect public health and the environment. Respondent disturbed the
12 asbestos a second time after being instructed by the Department's asbestos specialist not to do so.
13 That is not being cooperative, nor did Respondent's actions minimize the effects of the violation.
14 Instead, Respondent's conduct exacerbated the risk to public health because he increased the risk
15 that fibers would be released by disturbing the insulation a second time without following required
16 work practices. Furthermore, the actions the Hearing Officer describes as being cooperative
17 constituted the violation for which he was penalized, disturbing the insulation after being instructed
18 not to by Mr. Tong.

19 The Hearing Officer also stated that the C factor should be -2 because "Respondent was
20 cooperative after it was determined that the materials were asbestos containing". If upheld, this
21 reasoning also places public health and the environment at greater risk of harm. Under this
22 interpretation, a person who has been informed that he or she may be in violation would not be
23 required to cooperate with the Department until the violation is confirmed. If Respondent was truly
24 cooperative, he would have complied with the Department's direction immediately upon being
25 informed that the insulation was suspected of containing asbestos.

26 The proper value for the C factor is 0. While Respondent initially ignored the
27 Department's direction to leave the insulation undisturbed until a licensed asbestos abatement

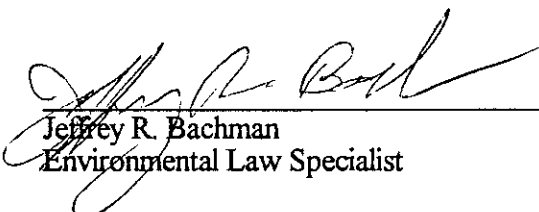
1 contractor could be brought in, he later hired a licensed contractor who cleaned up the property and
2 properly disposed of the asbestos waste. Because Respondent was neither wholly uncooperative nor
3 wholly cooperative, 0 is the most appropriate value for the O factor.

4 IV. ALTERNATIVE CONCLUSION OF LAW AND ORDER

5 The Department requests that the Commission reverse the Hearing Officer's conclusion of
6 law that Respondent was not liable for violating the asbestos abatement rules until he was informed
7 by Mr. Tong that the insulation was suspected of containing asbestos. In the alternative, the
8 Department asks that the Department find Respondent liability attach from the moment that
9 Respondent first disturbed the insulation by removing the ducting from the Morris building.

10 The Department further requests the Commission reverse the Hearing Officer's conclusions
11 of law regarding calculation of Respondent's civil penalty, uphold the \$5,400 civil penalty assessed
12 Respondent, and as calculated by the Department in the Notice of Assessment of Civil Penalty, and
13 issue a Final Order to that effect.

14
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16 2/9/98
17 Date


18 Jeffrey R. Bachman
19 Environmental Law Specialist
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
WILLIAM H. FERGUSON,

Respondent/Appellee.

) MEMORANDUM OF AUTHORITIES
) IN SUPPORT OF DEQ'S EXCEPTIONS
) AND BRIEF
) No. AQAB-WR-96-315
) JACKSON COUNTY

A. A Showing of Negligence Not Required. Liability Attaches as a Matter of Law.

In the context of asbestos related violations, the EQC has previously examined the issue of negligence only as an aggravating factor, not as a precursor to liability. *DEQ v. Fuel Processors Inc.*, No. AQAB-NWR-90-81, 1992 WL 474576 (March 20, 1992). The Commission is not required to define negligence by rule for violations within the statutory framework of ORS chapter 468. *See Pratt v. Real Estate Division*, 76 OrApp 483 (1985).

ORS chapter 468 was not enacted to codify tort law, and negligence is a standard by which DEQ may aggravate the penalty, not one upon which penalty assessment is based. *DEQ v. Excel Environmental Inc.*, No. AQAB-NWR-89-215, 1990 WL 117933 (May 25, 1990). Where a statute applies a strict liability standard, "knowledge or intent is relevant only regarding the amount of the penalty." *In The Matter of David McInnis*, No. WQIW-NWR-94-311, 1996 WL 465204 (January 18, 1996).

B. Strict Liability Statutes Should be Construed as Written.

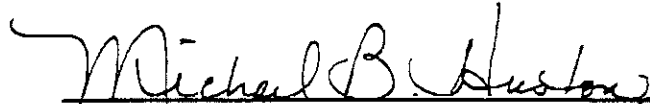

ORS 174.010 directs the courts "not to insert what has been omitted" when they interpret a statute. That rule of construction applies equally to agencies when they interpret an agency's administrative rules and regulations. *See Columbia Steel Castings Co. v. City of Portland*, 314 Or 424, 430, 840 P2d 71 (1992). In construing statutes the court's task is to "discern the intent of the legislature" and "construe provisions of a statute so as to give

///
///

1 effect to each." *Henderson v. Dept of Agriculture*, 128 Or App 169,176-177, 875 P2d 487
2 (1993).

3 Respectfully submitted,

4 HARDY MYERS
5 Attorney General

6 
7 Michael B. Huston #75189 

8 Assistant Attorney General
9 Of Attorneys for DEQ
10 Department of Justice
11 1515 SW Fifth Avenue, Suite 410
12 Portland, Oregon 97201
13 Telephone: (503) 229-5725

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PAGE 2 - DEPARTMENT'S MEMORANDUM OF AUTHORITIES

January 13, 1998

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Jeff Bachman
Department of Environmental Quality
2020 SW 4th Avenue, #400
Portland OR 97201

RE: Case No. AQAB-WR-96-351

Dear Mr. Bachman:

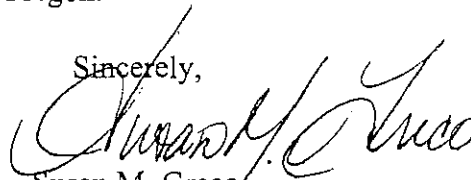
On January 9, 1998, the Environmental Quality Commission received the Department of Environmental Quality's timely request for administrative review by the Commission in this matter.

Pursuant to OAR 340-11-132(4)(a), you must file exceptions and brief within thirty days from the filing of the Notice of Appeal (February 9, 1998). The exceptions must specify those findings and conclusions that you object to and include alternative proposed findings. Once your exceptions have been received, William H. Ferguson may file an answer brief. The Department will then be allowed to file a reply brief to their answer.

To file exceptions and brief, please send to Susan Greco, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon, 97204, with a copy to William H. Ferguson, 5200 Pioneer Road, Medford, Oregon 97501.

After the parties file exceptions and briefs, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and the parties will be notified of the date and location. If you have any questions on this process, or need additional time to file exceptions and briefs, please call me at 229-5213 or (800) 452-4011 ext. 5213 within the state of Oregon.

Sincerely,



Susan M. Greco
Rules Coordinator

cc: William H. Ferguson
5200 Pioneer Road
Medford OR 97501-9314



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1

Attachment F- 1 page



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
WILLIAM H. FERGUSON

NOTICE OF APPEAL OF
HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND FINAL ORDER

No. AQAB-WR-96-351
JACKSON COUNTY

Pursuant to Oregon Administrative Rule 340-11-132(2) the Department of Environmental Quality hereby provides notice that the Department intends that the Environmental Quality Commission review the Hearings Officer's Findings of Fact, Conclusions of Law, and Final Order in Case No. AQAB-WR-96-351.

DATED this 8th Day of January, 1998



Jeffrey Bachman
Environmental Law Specialist
Department of Environmental Quality
Representative for Appellant

State of Oregon
Department of Environmental Quality

RECEIVED

JAN 09 1998

OFFICE OF THE DEPUTY DIRECTOR

Ref No.: G50087

STATE OF OREGON

Dec Mailed: 12/12/97

Case No: 97-GAP-00027

Mailed by: BGS

Case Type: DEQ

HEARING DECISION

WILLIAM H. FERGUSON
5200 PIONEER RD

MEDFORD OR 97501 9314

DEPART. OF ENVIRONMENTAL QUALITY
811 SW 6TH AVE

PORTLAND OR 97204 1334

JEFF BACHMAN, DEQ ENFORCEMENT

2020 SW 4TH STE 400
PORTLAND OR 97201

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)	HEARING OFFICER'S
VIOLATION AND ASSESSMENT OF)	FINDING OF FACT AND
CIVIL PENALTY FOR FAILURE TO)	CONCLUSION OF LAW
FOLLOW REQUIRED WORK PRACTICES)	No. AQFB-WR-96-351
FOR ASBESTOS ABATEMENT)	Jackson County, Oregon
 WILLIAM H. FERGUSON)	
Respondent.)	

Background

William H. Ferguson has appealed from a December 5, 1996 Notice of Violation 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 340-32-5620(1) by failing to employ required work practices for handling and removal of asbestos-containing waste material; that respondent violated OAR 340-32-5600(4) by opening accumulating asbestos-containing waste material; that respondent violated OAR 340-32-5650 by failing to properly dispose of asbestos-containing waste material; that respondent violated OAR 340-32-5620(1) by failing to notify the Department of an asbestos abatement project; that respondent violated OAR 340-33-030(2) by allowing uncertified persons to perform asbestos abatement; and that respondent violated OAR 340-33-030(4) by supervising an asbestos abatement project without being certified.

A civil penalty of \$5,400 was assessed pursuant to OAR 340-12-045.

William H. Ferguson requested a hearing on December 20, 1996.

A hearing was conducted in Medford, Oregon on September 10, 1997. The respondent William H. Ferguson appeared with witnesses Joel Ferguson, A. K. Morris, April Sevack, Gary Breeden, and William Corelle. Jeff Bachman represented the Department with witness Keith Tong.

RESPONDENT'S CONTENTIONS

Respondent William H. Ferguson contends that he had taken reasonable steps to assure the property was free from contaminants when he purchased the property, that he was not aware there were asbestos-containing materials in the building when he started the renovation, and that when he became aware that there might be a problem he took reasonable measures to protect the public and others from exposure, and that once he determined the materials were asbestos-containing he complied with all statutes and rules regarding the removal of such materials.

FINDINGS OF FACT

1. On October 2, 1996, Keith Tong (Tong), Department Asbestos Control Analyst, was driving by a building renovation project being conducted at 421 W. Sixth Street-37 North Ivy Street, Medford, Oregon, when he observed what appeared to be asbestos-containing material on the site.

2. Tong stopped at the site, inspected the materials he had observed, and contacted Joel Ferguson who was in charge of the renovation project, and advised him that the duct wrap appeared to be asbestos-containing material, and that proper steps should be taken to accomplish the asbestos removal, and not to disturb the materials.
3. Tong was on his way to a meeting and advised Joel Ferguson that he would return after the meeting and conduct a more detailed inspection, and left the premises.
4. After Tong left, Joel Ferguson called his father, William H. Ferguson, respondent herein, and reported his contact with Tong.
5. Respondent contacted the disposal company that was authorized to dispose of asbestos-containing materials and was advised that the materials needed to be double bagged and the bags secured for disposal.
6. Respondent went to the renovation project and obtained a sample of the material and took it in for testing.
7. Respondent advised Joel Ferguson to bag the material so that there would be no further disbursement of the materials if it was asbestos-containing and not to remove further ducting.
8. Joel Ferguson placed the ducting in double black plastic bagging and placed it in a utility trailer on the premises and also sent other workers home until it could be determined whether the duct wrap did contain asbestos.
9. When Tong returned after the meeting he found that the ducting and wrap containing what appeared to be asbestos-containing material had been removed from where he first observed it and placed in black plastic garbage bags and placed in a utility trailer on the premises.
10. Tong did observe pieces of the material on the ground where the ducting had been located.
11. After the second meeting with Tong, respondent and Joel Ferguson did encapsulate the building and taped off the premises from public passage.
12. The materials did test positive for asbestos and respondent contracted for the services of an abatement engineer and then with an abatement contractor for the actual removal of the material.
13. Respondent paid approximately \$5,160 for the services of the engineer and actual removal of the material.
14. Joel Ferguson is not a certified asbestos removal worker.
15. Respondent is not certified as an asbestos abatement project supervisor.
16. When respondent purchased the property, the environmental investigation and study of the building did not reveal any active or current contamination problems although did indicate that there could be asbestos on the premises.
17. Respondent had removed a false ceiling and was removing a length of old heating duct so that new heating ducts could be installed, when the asbestos-containing material was discovered by Tong.
18. The ducting situation had been reviewed by the heating and air-conditioning contractor and the contractor who worked with respondent on a number of renovation or construction projects and

neither observed any conditions or materials that caused them concern that asbestos was a factor in the renovation project.

19. The type of wrap used on the length of duct work that had been removed was manufactured in asbestos-containing and non asbestos containing products, and the wrap had no distinguishing marks or colors to accurately determine whether it contained asbestos or not.
20. Respondent had been involved in the renovation of another building where a similar type of wrap was suspected of containing asbestos, but after testing, it was determined that it in fact did not.
21. Respondent did not believe that the duct wrap was asbestos containing, but wanted to take some precautions in case it was and had directed Joel Ferguson to bag the wrapped ducting and to put it in the trailer.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction.
2. William H. Ferguson violated OAR 340-32-5620(1), OAR 340-32-5600(4), OAR 340-32-5650, OAR 340-33-030(2) and OAR 340-33-030(4).
3. William H. Ferguson is subject to a civil penalty of \$1,000.

OPINION

1. The Commission has jurisdiction.

The Environmental Quality Commission is directed by ORS Chapters 468 and 468A to adopt rules and policies to establish an asbestos abatement program that assures the proper and safe abatement of asbestos hazards through contractor licensing and worker training and to establish work practice standards regarding the abatement of asbestos hazards and the handling and disposal of waste materials containing asbestos. The Commission did that, and these proceedings are under those rules. The Commission has jurisdiction to proceed with the notice of violation herein and the assessment of civil penalty.

2. William H. Ferguson violated OAR 340-32-5620(1) by failing to employ required work practices for handling and removal of asbestos-containing waste.

OAR 340-32-5620(1) provides that any person conducting an asbestos abatement project shall comply with notification and asbestos abatement work practices and procedures of OAR 340-32-5630 and OAR 340-32-5640 (1) through (11).

OAR 340-032-5590(3) defines an "Asbestos abatement project" as 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 asbestos-containing material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

OAR 340-32-5640(1) provides that if asbestos containing materials were not discovered prior to demolition, upon discovery of the materials, the owner should stop demolition work immediately, notify the department of the occurrence, keep the exposed material adequately wet until a licensed abatement contractor begins removal, and have a licensed asbestos abatement contractor remove and dispose of the materials.

Respondent is an experienced property owner and manager who has been involved in the acquisition, renovation and maintenance of commercial properties. He has been involved in situations involving potential asbestos-containing materials, and took reasonable steps to assure that the building in question was free from any hazardous materials or contaminants that would cause costs for removal or containment. He was not aware of the nature of the duct work above the false ceiling, and when the false ceiling was removed, took additional steps to assure that he was not dealing with any materials that would require special handling or removal processes. He was conducting the demolition portion of the renovation project accordingly.

Respondent became aware of there might be concerns when Mr. Tong informed respondent's son that the insulation wrap on some of the duct work that had been removed might contain asbestos. Upon becoming aware of Mr. Tong's concerns, he immediately took a sample to a testing laboratory to be tested and did advise his son to place the removed ducting in plastic bags and put them in a trailer that was on the site. He also advised his son to stop all removal operations.

Prior to Mr. Tong's notification, respondent was not involved in an "Asbestos abatement project", notwithstanding the definition of the rule and the strict liability interpretation of its provisions. Prior to Mr. Tong's notification of potential asbestos-containing material respondent had taken all reasonable and necessary steps to proceed with his demolition and remodeling project. Liability, in this case, did not attach prior to notification.

It is clear from the testimony and evidence that respondent was aware of the problems associated with properties with contaminates or other materials that would require special handling or removal procedures, and that he probably would not have acquired this particular property had he been aware of any potential problems. Further, he had dealt specifically with potential asbestos-containing materials and took further steps to assure that the insulation wrap on the ducting was not asbestos-containing material. Respondent was not attempting to avoid compliance with the law and rules regarding the removal of asbestos-containing material.

Mr. Tong gave notice of potential asbestos-containing material. At that point liability attached. While there was still question at that point as to whether the wrap was asbestos-containing material or not, until it was determined that it was not, respondent was required to conform to the provisions of the rule regarding asbestos abatement projects. At that point, respondent was required to immediately stop the demolition, notify the Department, and keep the suspected asbestos-containing materials in a wetted condition until such time as a licensed asbestos abatement contractor could begin removal.

Respondent immediately stopped the demolition. The Department, although not formally notified of the project as provided by the rule, was aware of the project through Mr. Tong's involvement. Respondent, after stopping the demolition, however, continued to handle the suspected asbestos-containing material in violation of the rule.

While respondent's actions may have been a good faith effort to protect the public, the statutes and rules involving the removal and disposal of asbestos-containing materials impose a strict liability on the property owner, and non-compliance, even based on good faith effort does not excuse violation of the rules.

Respondent's testing of the sample was reasonable. Mr. Tong's observations were hurried and in passing, and there was no definitive means by which to visually determine whether that particular type of insulation wrap contained asbestos or not. Further, respondent had been recently involved in a situation where a similar appearing wrap of suspected asbestos-containing material turned out not to contain asbestos. Notwithstanding the reasonableness of the testing and the delay in notification or contact with an asbestos removal engineer or contractor, the strict liability of the rule required that nothing transpire with the material other than wetting down the material and keeping it in that condition until removal.

The respondent did not do that and is in violation of the rule.

The respondent, in proceeding with the bagging and removal of the duct work with the wrap from where it was stacked to the trailer also violated the following provisions of the rules.

William H. Ferguson violated OAR 340-32-5600(4) by openly accumulating asbestos-containing waste material.

OAR 340-32-5600(4) provides that open accumulation of friable asbestos-containing waste material is prohibited.

Again, the stacking of the material, prior to Mr. Tong's notification does not result in liability in this specific case. However, once the notice was given respondent was responsible to conform to the rule. The insulating wrap materials were not bagged and sealed in accordance with the rule and therefore created an open accumulation of those materials.

William H. Ferguson violated OAR 340-32-5650 by failing to properly package and store asbestos-containing waste material.

OAR 340-32-5650 provides for standards for the packaging, storage, transport and disposal of asbestos-containing waste material and requires that all asbestos-containing waste material shall be adequately wetted to ensure that they remain wet until disposed of and packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil and labeled as provided in the rule.

Respondent did call the disposal company and then triple bagged the materials as was suggested, however the materials were not wetted and respondent did not use the 6 mil bags required by the rule. Respondent did not properly package and store the asbestos-containing materials.

William H. Ferguson did not violate OAR 340-32-5620(1) by failing to notify the Department of an asbestos abatement project.

OAR 340-32-5620(1) requires that any person who conducts an asbestos abatement project shall comply with OAR 340-032-5630 which requires that any person conducting such project shall provide notification within a specific time prior to the abatement project being started.

In this case, respondent was not aware that there was any asbestos-containing materials in the building or that would be affected by the demolition or renovation, and then, other than the bagging and moving of the materials was not actively involved in the actual abatement project that was conducted through the abatement engineer and abatement contractor. At the time of the bagging and removal to the trailer it had not been determined that the materials were in fact asbestos-containing. It is not appropriate to assess violation under this provision of the rule.

William H. Ferguson violated OAR 340-33-030(2) by allowing uncertified persons to perform asbestos abatement.

OAR 340-33-030(2) provides that an owner of a facility shall not allow any person who is not certified to removal asbestos-containing waste material to perform asbestos abatement projects.

Joel Ferguson was not a certified asbestos abatement worker.

William H. Ferguson violated OAR 340-33-030(4) by supervising an abatement project without being certified.

OAR 340-33-030(4) provides that each person acting as a supervisor for any asbestos abatement project must be certified.

Respondent was not a certified asbestos abatement project supervisor.

3. William H. Ferguson is subject to a civil penalty of \$1000.

Violation 1. Failing to employ required work practices for handling and removal of asbestos containing waste.

Penalty = BP + [(1 x BP) (P + H + O + R + C)] + BE.

"BP" is the base penalty which is \$1000 for a Class I, minor 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.

The Department classified the magnitude of the violation as moderate because of the asbestos content of the materials involved. While the Department does have the option of raising the magnitude of the violation one level under OAR 340-12-090(1)(d)(D), it is not appropriate in this case to do so. As discussed in the earlier paragraphs, respondent's involvement in this matter was not intentional and does not warrant increasing the magnitude of the violation in this matter.

The Department assigned a values of 0 to "P" and "H", because respondent had no prior violations or past history regarding violations.

The Department assigned "O" a value of 2 because the violation occurred for more than one day. As far as this decision, it is found that the occurrence that results in the violation and penalty occurred during a period in one day where materials were moved and stored. "O" is assigned a value of 0 for this penalty calculation.

The Department assigned a value of 6 for "R" on the basis that violation was intentional. As set forth earlier, for the purposes of this decision, liability did not attach until respondent was notified that the material might contain asbestos. At that time, respondent to steps to ascertain whether the material in fact contained asbestos and also took steps which he felt were appropriate to protect the public if it were asbestos-containing. He was at most negligent for the purposes of this element and "R" is assigned a value of 2.

The Department assigned "C" a value of 0 because respondent continued abatement proceedings after being advised that the materials might contain asbestos. The rule provides for a value of -2 if a respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation. Respondent was skeptical. He had taken steps to assure that the building did not contain contaminates. He had been involved with suspected asbestos-containing materials before which had been tested and found not to contain asbestos. Notwithstanding those facts, he did stop demolition immediately, took what he felt were reasonable steps to minimize the effects of the violation, and then hired an engineer and contractor to perform the removal and disposal tasks. "C" is assigned a value of -2. Respondent was cooperative after it was determined that the materials were asbestos-containing.

"EB" is assigned a value of \$0 because respondent did not gain any economic benefit by his actions after determining that the materials were asbestos-containing.

The rule is specific as to the values to be assigned under the varying circumstance and there is no provision for assigning values other than those set forth in the rule.

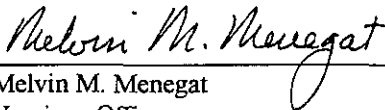
The civil penalty as calculated under the rule for violation 1 is \$1,000.

Penalties are not calculated or assessed for the additional violations because each is based on the same fact situation and circumstances that resulted in the penalty assessment for the penalty 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. William H. Ferguson is liable for a civil penalty of \$1,000.

Dated this 11th 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 AND ASSESSMENT OF)
CIVIL PENALTY FOR FAILURE TO)
FOLLOW REQUIRED WORK PRACTICES)
FOR ASBESTOS ABATEMENT)

HEARING OFFICER'S
ORDER

No. AQFB-WR-96-351
Jackson County, Oregon

WILLIAM H. FERGUSON)
Respondent.)

The Commission, through its hearings officer, finds that the Commission has subject matter and personal jurisdiction in this proceeding: That William H. Ferguson violated OAR 340-32-5620(1) by failing to employ required work practices for handling and removal of asbestos-containing waste material; OAR 340-32-5600(4) by opening accumulating asbestos-containing waste material; OAR 340-32-5650 by failing to properly dispose of asbestos-containing waste material; OAR 340-33-030(2) by allowing uncertified persons to perform asbestos abatement; and OAR 340-33-030(4) by supervising an asbestos abatement project without being certified; and that respondent is liable for a \$1,000 civil penalty.

Review of this 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.

Dated this 11th 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 I - 7 page

William H. Ferguson

5200 Pioneer Road
Medford, OR 97501
541-772-9545

Melvin M. Menegat
P O Box 1027
Eugene, OR 97440

Jeff Bachman
Department of Environmental Quality
2020 SW Fourth Avenue
Suite 400
Portland, OR 97201-4987

Re: *DEQ v. William H. Ferguson*
AQAB-WR-96-315
Jackson County

Gentlemen:

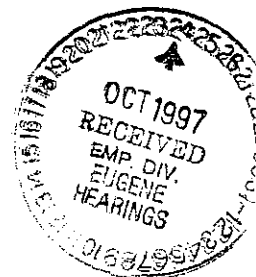
Enclosed herewith for Mr. Menegat is the original of Respondent's Post-hearing Brief in the above-captioned matter. A copy is being sent Mr. Bachman as well. Copies were also sent each of you by FAX this date.

Very truly yours,



WILLIAM H. FERGUSON

WHF.me
Encl. (1)



Attachment J - 10 pages

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3
4 In the matter of:

5
6 William H. Ferguson,

7
8 Respondent.
9
10

**Respondent's Post-Hearing
Memorandum**

No. AQAB-WR-96-315
Jackson County

11 **INTRODUCTION**

12 On December 5, 1997, the Director of the Department of Environmental Quality ("DEQ")
13 notified William H. Ferguson of the assessment of a civil penalty in the amount of \$5,400,
14 stemming from Ferguson's alleged removal and handling of "suspected asbestos-containing
15 material" from a building in downtown Medford. Ferguson requested a hearing and one was held
16 before Hearings Officer Melvin M. Menegat in Medford on September 10, 1997.

17 At the conclusion of the hearing, Jeff Bachman, representing DEQ, asked for the
18 opportunity to submit a post-hearing brief addressing various legal and factual issues raised by
19 Ferguson during the hearing. Subsequently, Bachman submitted a document entitled "Hearing
20 Memorandum", bearing the same date as the hearing. Although the memorandum does not
21 address any of the legal issues raised during the hearing, Ferguson assumes that it was intended
22 to serve as DEQ's post-hearing memorandum and offers this reply.

23 **FACTS**

24 DEQ's memorandum—to the extent it purports to recite facts—is based entirely upon the
25 written report of Keith Tong, the DEQ employee who investigated and reported the incident. As

1 the Hearings Officer will recall however, the evidence adduced during the hearing differed in
2 significant respects from Tong's report.

3 **Respondent Acquires and Begins Renovation of Structure**

4 Respondent Ferguson purchased the building in question from the YMCA, which had
5 been gifted the property by the previous owners, Mr. and Mrs. Morse. During the time Mr. Morse
6 was considering disposing of the property, he had obtained an environmental assessment at the
7 request of the Salvation Army. When Mr. Ferguson purchased the property, he was not given or
8 shown a copy of the assessment. He was merely told—both by Mr. Morse and by a member of
9 the Board of Directors of the YMCA—that the report was “clean”.

10 In late September, 1996, Ferguson began renovations to the building. In the process, on
11 October 1, 1996, Ferguson's workers decided to remove old heat ducting from above the ceiling.
12 The evidence showed, (1) that removal of the ducting was optional, and (2) that none of the
13 personnel involved in the decision to remove the ducting—including the workers and the
14 architect—knew or suspected that wrapping on the ducting contained asbestos.

15 Joel Ferguson, William Ferguson's son, took down a short portion of wrapped ducting.
16 The evidence showed that tiny portions of the wrap fell in the building and in the parking lot
17 outside. All told, the area of the removed wrap constituted no more than, perhaps, 12 square feet,
18 almost all of which was still attached to the ducting.

19 By apparent coincidence, Keith Tong walked by the building and spotted what he thought
20 might be asbestos-containing wrap. He told Joel Ferguson that he suspected the material might
21 contain asbestos and instructed Ferguson to cease work, close-off the building, and lay a plastic
22 tarp over the pieces of wrap in the parking lot. It is important to note that, according to Ferguson,
23 *Tong did not tell him that he could not seal and package the material.*

1 Joel Ferguson contacted respondent and informed him that Tong had "shut-down" the
2 job. William Ferguson had dealt with Tong before when Tong had declared that material he
3 found in the basement of Ferguson's office building, where DEQ rents space, contained asbestos.
4 After much ado and at considerable expense to Ferguson, the material was found to have been
5 ordinary dry wall.

6 William Ferguson immediately tried to contact Tong at the local DEQ office. Tong was
7 not available. Ferguson reasoned that, if the wrapping in question did contain asbestos it should
8 not be left under a tarp in the parking lot, approximately 30 feet from the public sidewalk. Unable
9 to speak with Tong, Ferguson did two things. First, he caused a sample of the material to be sent
10 to a local lab for analysis. Second, he called the local solid waste disposer, *Rogue Disposal and*
11 *Recycling*, and inquired how one could dispose of material which might contain asbestos. He was
12 told that the material should be double-wrapped in a specified thickness of plastic-wrap, then
13 sealed with duct tape. William Ferguson instructed Joel Ferguson to secure the specified plastic
14 and wrap and seal the material in question. Joel Ferguson did as told, even triple-wrapping the
15 material. He then placed the plastic-wrapped material into respondent's mobile trash container on
16 the property which was enclosed on all sides except the top.

17 Later that day, respondent obtained a copy of the environmental assessment from Mr.
18 Morse and took the report to Mr. Tong's office. Tong refused to look at the report, saying it did
19 not matter. Respondent and one of Mr. Tong's assistants continued to review the report. To
20 respondent's surprise, buried in the report was a passage suggesting that one of the ducts might
21 contain asbestos. Respondent immediately contacted *Alpha Environmental, Inc.*, ("Alpha") a
22 licensed asbestos abatement contractor, and a professional environmental engineer. On October
23 4, 1996, Alpha provided DEQ with the appropriate notice and commenced removal of the

1 asbestos. Ferguson paid approximately \$5,160 for the asbestos removal and environmental
2 engineering.

3 **Notice of Assessment of Civil Penalty**

4 By notice dated December 5, 1996, DEQ advised respondent of six (6) violations arising
5 from the incident. The alleged violations were:

- 6 1. Failing to employ required work practice (OAR 340-32-5620(1));
- 7 2. open accumulation of asbestos-containing waste material (OAR 340-32-5600(4));
- 8 3. failure to properly dispose of asbestos-containing waste material (OAR 340-32-5650);
- 9 4. failure to notify DEQ of an asbestos abatement project (OAR 340-32-5620(1));
- 10 5. allowing uncertified persons to perform asbestos abatement (OAR 340-33-030(2));
- 11 6. supervising asbestos abatement project without being certified (OAR 340-33-030(4)).

12 DEQ imposed a civil penalty of \$5,400 for the first alleged violation only. The \$5,400
13 figure was arrived at as follows:

- 14 1. The alleged violation was adjudged a Class I violation pursuant to OAR 340-12-
15 050(1)(o). That determination triggered application of the \$10,000 matrix of OAR
16 340-12-0042(1).
- 17 2. DEQ judged that alleged violation to be of “moderate” magnitude. Although the
18 amount of asbestos-containing material was found to be less than 80 square feet—an
19 amount determined to involve only a violation of “minor” magnitude—DEQ took
20 advantage of permissive language in OAR 340-12-090(1)(d)(D) to increase the

1 magnitude by one level because the material was allegedly comprised of more than
2 5% asbestos.¹

- 3 3. The base penalty for a Class I violation of moderate magnitude is \$3,000. To the base
4 penalty, DEQ's added \$2,400 after multiplying 10% of the base penalty by a factor of
5 eight (\$300 x 8 = \$2,400). The factor of eight was arrived at by adding an "O" value
6 of two (because the alleged violation occurred for two days), and an "R" value of six
7 for an intentional violation (because "...Respondent continued asbestos abatement
8 after his son relayed to him a warning by a Department staff member that the
9 asbestos-containing material (ACM) should only be handled by a licensed
10 contractor.").

11 RESPONDENT'S ARGUMENT

12 **Asbestos Was Not Discovered Before Demolition of the Heat Ducting**

13 It is essential to remember that respondent did not *know* of the presence of asbestos-
14 containing material until the results of laboratory tests were provided. The evidence shows that
15 the presence of asbestos was not discovered when Tong spoke to Joel Ferguson; Tong only
16 suspected the presence of such material. Respondent was justifiably uncertain whether asbestos
17 was present. First, he had been told by the previous owners of the building that the environmental
18 assessment had indicated the building was "clean". Second, Tong had previously erred—at
19 respondent's expense—when he thought ordinary dry wall contained asbestos.

20 By the time respondent "knew" of the presence of asbestos-containing material, he did
21 everything required under OAR 340-32-5640. That is, he stopped work, hired an environmental
22 engineer and an asbestos removal contractor. The contractor notified DEQ, properly treated the

¹ OAR 340-12-090(1)(d)(D) says the magnitude of an asbestos violation "...*may* be increased by one level if the

1 exposed asbestos-containing material, and removed and disposed of the material as required by
2 law.

3 **DEQ Does Not Fine Owners for Unanticipated**
4 **Encounters with Asbestos-Containing Materials**
5

6 DEQ's memorandum implies that liability for penalties is a matter of strict liability.

7 However, that's not what the statutes or rules say. Moreover, the evidence shows that the DEQ
8 has interpreted the statutes and rules so as not to fine property owners who encounter asbestos-
9 containing materials during the course of demolition.

10 The Hearings Officer will recall the hearing testimony regarding the City of Medford's
11 downtown parking structure project. During excavation, Medford encountered both underground
12 oil/petroleum tanks *and asbestos*. Respondent introduced a newspaper article in which local
13 DEQ officials confirmed the department did not intend to pursue a fine against the City because
14 its discoveries were not made prior to demolition and excavation.²

15 While deference to agency expertise is not automatic or unreasoning, *Springfield*
16 *Education Assn. V. School Dist.*, 290 Or 217, 621 P2d 547 (1980), it is proper to look to agency
17 interpretations for guidance in discerning the meaning of DEQ rules:

18 "...[I]n 'interpreting [an] administrative regulation whose meaning is in doubt, we
19 must necessarily look to the construction given the regulation by the agency
20 responsible for its promulgation.' *Bone v. Hibernia Bank*, 493 F2d 135 (9th Cir
21 1974). Agency rulings, interpretations and opinions '...do constitute a body of
22 experience and informed judgment to which courts and litigants may properly
23 resort for guidance.' *Skidmore v. Swift and Co.*, 323 US 134, 65 S Ct 161, 164 L
24 Ed 124 (1944)."

25
26 Not only has DEQ interpreted its rules not to impose strict liability upon a property owner
27 who encounters asbestos-containing materials, respondent affirmatively demonstrated the

material was comprised of more than five percent asbestos". (Emphasis added)

1 contrary. The hearing in this case was held in the Medford offices of DEQ. There was ample
2 opportunity for DEQ staff to offer evidence to show that it typically assesses fines to owners who
3 unintentionally encounter and disturb asbestos-containing material. DEQ did not do so. On this
4 record, it would clearly be inequitable for DEQ to assess a \$5,400 fine against respondent for
5 encountering asbestos in this case when it chose not to pursue a fine against the City of Medford
6 for a similar encounter.

7 **Assuming Respondent is Subject to Fine for this Encounter,**
8 **the Fine was Excessive Under DEQ Rules**
9

10 Even assuming DEQ could, consistent with its interpretation and application of the rules
11 and statutes, assess respondent a fine for this encounter, the proposed fine of \$5,400 is excessive.
12 First, OAR 340-12-090(1)(d)(C) specifies that an asbestos violation is of only “minor”
13 magnitude if it involves less than 80 square feet of asbestos-containing material. The base fine for
14 a “minor” magnitude Class I violation is \$1,000, rather than the \$3,000 used in this case.

15 Although OAR 340-12-090(1)(d)(D) provides that the magnitude *may* be increased one
16 level (in this case, to “moderate”) if the material was comprised of more than 5% asbestos,
17 respondent suggests that a 300% increase in the base fine (from \$1,000 to \$3,000) in this case is
18 unwarranted. The small amount of material and respondent’s prompt response to the unforeseen
19 encounter with asbestos should be considered and the discretionary increase in magnitude should
20 be set aside.

21 The next unwarranted increase in the fine occurred when DEQ multiplied the 10% of
22 base fine by a factor of 6. Recall that this multiplier resulted from DEQ’s determination that

² Although the news clipping mentioned only the underground tanks, Tong testified that the City had also disturbed asbestos-containing material.

1 respondent's violation was "intentional". OAR 340-12-030(9) defines "intentional" as
2 "...conduct by a person with a conscious objective to cause the result of the conduct".

3 The record clearly indicates that DEQ's determination of "intentional" was based solely
4 on Tong's report in which he indicated that he advised Joel Ferguson to lay a tarp over the
5 suspect material until lab tests were returned. Further, Tong indicated that Joel Ferguson was told
6 that only a licensed asbestos contractor could handle the material. Joel Ferguson testified
7 differently; he said Tong did not tell him the material could not be wrapped nor that only a
8 licensed contractor could handle the suspect material. Ironically, it was respondent's reliance on
9 the advice of *Rogue Disposal and Recycling*, to wrap the material in multiple layers of plastic
10 and bind it with duct tape upon which DEQ seized to employ the 6-fold multiplier. The evidence
11 clearly shows that respondent was concerned that—if Tong was right this time—if the material in
12 fact contained asbestos, it should be taken from harm's way rather than left within a few feet of a
13 public sidewalk. Out of this caution, respondent relied upon expert advice and told his son to
14 wrap and bind the material as directed. The packaged material was not discarded, it was placed in
15 a five-sided trailer and left at the site, available when Tong returned later on the day of October
16 1. Respondent's "conscious objective" was not to cause a violation of any statute or rule; rather it
17 was to protect the public from exposure to what was only *suspected* at the time of being a
18 potentially hazardous material.

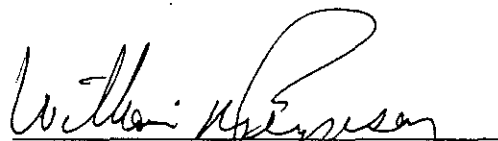
19 Under this analysis of the facts, the only appropriate fine would have been no more than
20 \$1,200 (= \$1,000 + [(\$100) x (2)] + \$0)—not the \$5,400 fine imposed by DEQ. Respondent
21 urges the Hearings Officer to impose this lower fine if, after considering DEQ's interpretation of
22 the statutes and rules in the *City of Medford* case, he determines than any fine is appropriate.

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CONCLUSION

For the reasons fully discussed above, respondent respectfully requests the Hearings Officer to find and conclude that no fine should be imposed upon the facts of this case. Alternatively, if some fine is appropriate, it should not exceed \$1,200 for the reasons set forth herein.

Respectfully submitted,



William H. Ferguson, Respondent

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON



IN THE MATTER OF:
WILLIAM H. FERGUSON

HEARING MEMORANDUM

No. AQAB-WR-96-315
JACKSON COUNTY

This Hearing Memorandum is offered in support of the Notice of Civil Penalty Assessment (Notice) No. AQAB-WR-96-315, issued December 5, 1996, to William H. Ferguson (Mr. Ferguson) by the Department of Environmental Quality (the Department).

I. APPLICABLE STATUTES AND ADMINISTRATIVE RULES

1. Oregon Administrative Rule (OAR) 340-32-105(2) states that:

"The owner or operator of the following types of sources shall comply with the applicable standards set forth in ...OAR 340-32-5500 through 340-32-5650.

...(f) any area source of hazardous air pollutant for which a standard has been adopted.

2. OAR 340-32-120(4) states that "area source" means:

"any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants".

3. OAR 340-32-5620(1) states that:

"Any person who conducts an asbestos abatement project shall comply with OAR 340-32-5630 and OAR 340-32-5640(1) through (11).

4. Oregon Revised Statute (ORS) 468A.700(4) states that "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 materials into the air".

5. OAR 340-32-5640 states that:

"The following procedures shall be employed during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

Attachment K - 9 pages

1 (1) Remove asbestos containing materials before any wrecking or
2 dismantling that would break up the materials or preclude access to the
3 materials for subsequent removal ...

4 (2) Asbestos-containing materials shall be adequately wetted when they
5 are being removed."

6 6. OAR 340-32-5590(1) states that "adequately wet";

7 "Means to sufficiently mix or penetrate asbestos-containing material with
8 liquid to prevent the release of particulate asbestos materials. The absence
9 of visible emissions is not sufficient evidence of being adequately wet."

10 7. OAR 340-32-5600(4) states that:

11 "Open accumulation of friable asbestos-containing material or asbestos-
12 containing waste material is prohibited."

13 8. OAR 340-32-5590(21) states that "open accumulation":

14 "Means any accumulation, including storage of friable asbestos-containing
15 waste material, other than material securely enclosed and stored as required
16 by OAR 340-32-5650."

17 9. OAR 340-32-5650 states that:

18 "The owner or operator of a source or an activity covered under the
19 provisions of OAR 340-32-5600 through OAR 340-32-5650 or any other
20 source of friable asbestos containing waste material shall meet the following
21 standards:

22 ... (2) All asbestos containing waste materials shall be adequately wetted
23 to ensure that they remain wet when disposed of, and:

- 24 (a) Processed into non-friable pellets or other shapes; or
25 (b) Packaged in leak tight containers such as two plastic bags with a
26 minimum thickness of 6 mil., or fiber or metal drum.

27 ... (4) The interim storage of asbestos-containing waste material shall
protect the waste from dispersal into the environment and provide
physical security from tampering by unauthorized persons."

10. OAR 340-32-5630 states that:

"Written notification of any asbestos abatement project shall be provided to
the Department on a Department form..."

11. ORS 468A.730(1) states that:

"... [N]o worker shall work on an asbestos abatement project unless the
person holds a certificate issued by the Department of Environmental
Quality or the department's authorized representative..."

12. OAR 340-33-030(4) states that:

1 "Each person acting as the supervisor for any asbestos abatement project
2 must be certified by the Department as a supervisor under the provisions of
3 OAR 340-33-050.

4 II. FACTS AND EVIDENCE

5 13. Sometime before October 1, 1996, Mr. Ferguson purchased a corner lot commercial
6 building located at 421 West Sixth and 37 North Ivy Streets in Medford, Oregon. Mr. Ferguson
7 acquired the building from the local YMCA who had received the property through a donation.
8 While the donation was still being considered, the YMCA requested that an environmental
9 assessment be performed to identify any environmental liabilities associated with the property. The
10 assessment was performed and a report of the results written and provided to the YMCA. Prior to
11 Mr. Ferguson's purchase of the property, the donor told him that an assessment had been performed
12 and that the report found no environmental liabilities. Mr. Ferguson did not obtain a copy of or
13 otherwise review the report prior to his purchase of the property. After purchasing the property,
14 Mr. Ferguson commenced remodeling and renovating the building.

15 On October 2, 1996, Keith Tong, an Asbestos Control Analyst in the Department's Medford
16 office, conducted an inspection of the property. Mr. Tong observed torn pieces of suspected
17 asbestos-containing corrugated duct work insulation scattered on the property's parking area in
18 close proximity to the public sidewalk and street. Mr. Tong spoke with Joel Ferguson, William
19 Ferguson's son, who had been working on the renovation. Joel Ferguson told Mr. Tong that the
20 insulation debris was generated during removal of duct work inside the building. From the amount
21 of duct work removed, Mr. Tong estimated that approximately 60 square feet of insulation had been
22 disturbed. He further observed that the insulation was dry.

23 Mr. Tong collected a sample of the insulation, which laboratory analysis on October 10,
24 1996, found to contain 10 percent asbestos. After collecting the sample, Mr. Tong informed Joel
25 Ferguson that the insulation probably contained asbestos and that it should be covered with a tarp
26 and not disturbed further until a licensed asbestos abatement contractor could be brought in to
27 remove and dispose of it properly. Mr. Tong then gave Joel Ferguson some asbestos hazard
warning labels and asked him to cordon off the parking area, seal off the building, and post the

1 warning labels. Joel Ferguson asked Mr. Tong if he could bag the insulation and place in it an open
2 trailer being used to dispose of demolition debris. Mr. Tong informed Joel Ferguson that it was
3 highly likely the insulation contained asbestos, and if so, that it could only be further disturbed by a
4 licensed asbestos abatement contractor. Mr. Tong then left the site.

5 Later that day, Mr. Tong returned to the site and that found that the insulation had been
6 picked up, wrapped in plastic, and placed in the open trailer. Mr. Tong asked Joel Ferguson why
7 the material had been disturbed. Joel Ferguson told Mr. Tong that he relayed Mr. Tong's
8 instructions to his father, William Ferguson, but that William Ferguson insisted that Joel wrap and
9 place the insulation in the trailer. Mr. Tong observed that the insulation had not been wetted prior to
10 placement in the plastic bags and that the bags were not at least 6 mils thick or labeled as containing
11 asbestos waste.

12 Sometime on October 2, 1996, William Ferguson obtained a copy of the environmental
13 assessment report for the building from the YMCA. Mr. Tong reviewed the report with Mr.
14 Ferguson and that the report did state that the duct work's insulation contained asbestos. From
15 October 4 to October 18, 1996, Alpha Environmental, Inc., a licensed asbestos abatement
16 contractor completed removal of the insulation debris and decontamination of the property.

17 III. VIOLATIONS

18 14. On or about October 2, 1996, William Ferguson violated OAR 340-32-5620(1) by
19 failing to employ required work practices for handling and removal of asbestos-containing waste
20 material. Specifically, William Ferguson failed to follow the work practices set forth in OAR 340-
21 32-5640(1) and (2) when conducting an asbestos abatement project at buildings he owned at the
22 corner of West Sixth Street and North Ivy Street (421 W. Sixth and 37 N. Ivy), Medford. The
23 improper abatement resulted in potential public exposure to asbestos or release of asbestos fibers
24 into the air. This is a Class I violation pursuant to OAR 340-12-050(1)(o).

25 15. On or about October 2, 1996, William Ferguson violated OAR 340-32-5600(4) by
26 openly accumulating asbestos-containing waste material. Specifically, William Ferguson failed to
27 properly contain asbestos-containing waste material generated in accordance with the requirements

1 of OAR 340-32-5650, creating the potential for public exposure to asbestos or the release of
2 asbestos fibers to the air. This is a Class I violation pursuant to OAR 340-12-050(1)(p).

3 16. On or about October 2, 1996, William Ferguson violated OAR 340-32-5650 by
4 failing to properly dispose of asbestos-containing waste material . Specifically, William Ferguson
5 failed to dispose of asbestos-containing waste material, generated by removal of asbestos duct
6 insulation removed from the building in accordance with the provisions of OAR 340-32-5650,
7 creating the potential for public exposure to asbestos or the release of asbestos fibers to the air.
8 This is a Class I violation pursuant to OAR 340-12-050(1)(s).

9 17. On or about October 2, 1996, William Ferguson violated OAR 340-32-5620(1) by
10 failing to notify the Department of an asbestos abatement project. Specifically, William Ferguson
11 failed to comply with the notification requirements of OAR 340-32-5630 prior to removing
12 asbestos-containing insulation from the building. This is a Class II violation pursuant to OAR 340-
13 12-050(2)(j).

14 18. On or about October 2, 1996, William Ferguson violated OAR 340-33-030(2) by
15 allowing uncertified persons to perform asbestos abatement on property owned by William
16 Ferguson. Specifically, William Ferguson allowed persons not certified as asbestos abatement
17 workers to perform asbestos abatement at the building. This is a Class II violation pursuant to
18 OAR 340-12-050(2)(i).

19 19. On or about October 2, 1996, William Ferguson violated OAR 340-33-030(4) by
20 supervising an asbestos abatement project without being certified as an asbestos abatement project
21 supervisor. This is a Class II violation pursuant to OAR 340-12-050(2)(i).

22 IV. CASE ANALYSIS

23 20. Violation No. 1 alleges that William Ferguson violated OAR 340-32-5620(1) by
24 failing to employ required work practices when performing an asbestos abatement project. ORS
25 468A.700(4) defines an asbestos abatement project as, among other things, any "demolition" or
26 "renovation" activity that involves the "removal" or "handling" of "any material that has the
27 potential of releasing asbestos fibers from asbestos-containing material into the air". William
28 Ferguson performed two separate and distinct asbestos abatement projects on his property. The

1 first consisted of the removal of the duct work, and the associated disturbance of the asbestos-
2 containing insulation on the duct work. The second occurred when the insulation that was scattered
3 with other demolition debris during the removal of the duct work was handled by Joel Ferguson in
4 the process of bagging it and putting it into the open trailer. The second asbestos abatement project
5 occurred after Mr. Tong expressly instructed Joel Ferguson not to further disturb the insulation
6 scattered about William Ferguson's property.

7 The required work practices for all asbestos abatement projects are set forth in OAR 340-
8 32-5640(1) through (11). These practices include OAR 340-32-5640(1), which requires that
9 asbestos containing material be removed before any wrecking or dismantling activities that would
10 break up the material, and -5640(2) that requires asbestos containing materials be adequately wetted
11 prior to their removal. William Ferguson failed to employ either of this practices when the duct
12 work and insulation was removed. When Mr. Tong inspected the site on October 2, 1996, he
13 observed torn insulation scattered about and pieces of insulation still attached to the dismantled
14 duct work. Mr. Tong further observed that the insulation was dry. When he returned to the site
15 later in the day, he found that the torn insulation had been picked up, placed in plastic bags and put
16 in the open trailer. When he examined the insulation in the trailer it was also dry.

17 21. Violation No. 2 of the Notice alleges William Ferguson violated OAR 340-32-
18 5600(4) by openly accumulating asbestos containing waste material. OAR 340-32-5590(21)
19 defines "open accumulation" as any accumulation, including storage, of friable asbestos-containing
20 waste material that is not securely enclosed and stored as required by OAR 340-32-5650. OAR
21 340-32-5650(2) requires that material be wetted in a manner which assures that the material will
22 remain wet until disposal, that the material be placed in leak-tight containers, such as double
23 bagging it in plastic bags at least 6 mils thick. or in fiber or metal drums, and that asbestos hazard
24 warning labels be affixed to the containers. OAR 340-32-5640(4) requires that during interim
25 storage before final disposal, asbestos-containing waste material must be physically secured from
26 tampering by unauthorized persons.

1 When Mr. Tong inspected the William Ferguson's property on October 2, 1996, pieces of
2 dry friable asbestos-containing waste material in the form of duct insulation were scattered in the
3 parking area and attached to duct work that had been removed from the building. The material was
4 not wet, placed in leak-proof containers, or secured against tampering. By failing to comply with
5 the requirements of OAR 340-32-5650, William Ferguson openly accumulated asbestos-containing
6 waste material.

7 22. Violation No. 3 alleges that William Ferguson violated OAR 340-32-5650 by
8 failing to employ required practices for the packing and storage of asbestos-containing waste
9 material. The relevant practices are describe above. After his initial inspection on October 2, 1996,
10 Mr. Tong left the site to attend to other business. When he returned later that day, Mr. Tong found
11 the insulation had been picked up, placed in plastic bags, and placed in an open trailer by Joel
12 Ferguson at William Ferguson's direction. The material was not wet, the bags were not thick
13 enough to be leak proof, the bags did not have asbestos hazard warning labels, and the trailer did
14 not prevent physical security against tampering, as required by OAR 340-32-5650(2) and (4).

15 23. Violation No. 4 alleges that William Ferguson violated OAR 340-32-5620(1) by
16 failing to notify the Department of an asbestos abatement project in accordance with the
17 requirements of OAR 340-32-5630. The Department has no record of receiving a notice of an
18 asbestos abatement project to be performed at 421 West Sixth and 37 North Ivy Streets in Medford.

19 24. Violation No. 5 alleges that William Ferguson violated ORS 468A.730(1) by using
20 an uncertified worker to perform asbestos abatement. Joel Ferguson was not certified by DEQ as
21 an asbestos abatement project worker on October 2, 1996, when he removed and handled asbestos-
22 containing duct insulation.

23 25. Violation No. 6 alleges that William Ferguson violated OAR 340-33-030(4) by
24 supervising an asbestos abatement project without being certified as an asbestos abatement project
25 supervisor. William Ferguson was not certified as an asbestos abatement project supervisor on
26 October 2, 1996 when he directed the work which included the removal and subsequent handling of
27 asbestos-containing duct insulation.

V. CIVIL PENALTY CALCULATION

26. Exhibit 1 of the Notice sets forth the calculation of the \$5,400 civil penalty assessed William Ferguson for Violation No. 1, failing to employ required work practices for asbestos abatement projects. The exhibit identifies the violation as a Class I violation pursuant to OAR 340-12-050(1)(o). The magnitude of the violation was elevated from minor to moderate pursuant to OAR 340-12-090(1)(d)(D). While a minor magnitude quantity of asbestos-containing waste material was openly accumulated, 60 square feet, that material contained 10 percent asbestos fiber. OAR 340-12-090(1)(d)(D) provides that if the asbestos content is greater than 5 percent, the Department may elevate the magnitude by one level. The base penalty for a Class I, moderate magnitude violation of an air quality rule is \$3,000 pursuant to OAR 340-12-042(1).

Pursuant to OAR 340-12-045, the Department applied two aggravating factors.

The "O" or occurrence factor. Pursuant to OAR 340-12-045(1)(c)(C)(ii), the Department aggravated William Ferguson's civil penalty by a factor of 2 because the violation "recurred on the same day. In the case of William Ferguson, the violation recurred on the same day. The initial violation occurred when, on October 2, 1996, Joel Ferguson removed the insulated duct work from the building and disturbed the asbestos-containing insulation. The violation recurred when Joel Ferguson disturbed the insulation a second time when, after learning the insulation was suspected asbestos-containing material, he picked up, put it in plastic bags, and placed it in an open trailer.

The "R" or causation factor. Pursuant to OAR 340-12-45(1)(c)(D)(iii) the Department aggravated William Ferguson's civil penalty by a factor of 6 because it found the cause of the violation to be William Ferguson's intentional conduct. OAR 340-12-030(9) states that "intentional" "means conduct by a person with a conscious objective to cause the result of the conduct". This definition does not require that a person have a conscious intent to violate the law, only that a person consciously engage in the conduct that constitutes a violation. William Ferguson consciously engaged in the renovation and remodeling project, including the duct work removal that resulted in the violation. Furthermore, William Ferguson directed Joel Ferguson to

1 disturb the asbestos-containing insulation a second time, even though Joel Ferguson told him that
2 Mr. Tong had said that only a licensed asbestos abatement contractor could clean up the material.
3

4 9/10/97
5 _____
6 Date

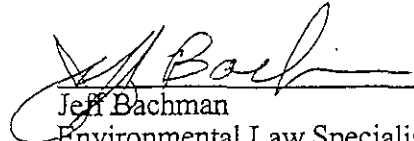
7 
8 _____
9 Jeff Bachman
10 Environmental Law Specialist
11 Oregon Department of Environmental Quality
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EXHIBIT A

(1)

DEPARTMENT OF ENVIRONMENTAL QUALITY
Request for Analysis

Laboratory No. 960847

Location/Site: Corner Ivy + 6th Medford Date: 2 Oct 96 Date Received Lab: _____
Collected By: Keith Tong Program: WRM Asbestos Date Reported: OCT 18 1996
Purpose: Asbestos Enforcement Report Data To: _____
Comments: _____

lab prepared

* Basic (P) unpreserved; Nutrient (R) add H₂SO₄ in field; Metals (Tm) HNO₃ added in lab--don't rinse; Organic(X) mason jar

Item No.	Sampling Point Description (include time)	*Sample Container (bottle) #'s				Test Required
		Nutrients	DO	Metals		
		Basic	BOD	Organic		
1	By Sidewalk card board debris 1:20 PM				1	Asbestos Content
2	In trailer duct wrap 1:25 PM				2	Asbestos Content
3						
4						
5						
6						

Attachment 1

RECEIVED

OCT 24 1996

Laboratory comments _____

Dept. Environmental Quality
MEDFORD

DEPARTMENT OF ENVIRONMENTAL QUALITY LABORATOR

Analytical Records Report

PAGE 1 of 1

FRIDAY OCTOBER 11th, 1996

CASE NAME: 960847 MEDFORD, CORNER OF IVY AND 6TH
 SUBMITTER: Tong, Keith COLLECTOR: Tong, Keith
 FUND CODE: 1432 Asbestos Control

ITEM #	RESULT	UNITS	TEST
-----	-----	-----	-----
001	10/02/96 @ 13:20 Attached	Cardboard debris by sidewalk	Microscopic exam.
002	10/02/96 @ 13:25 Attached	Duct wrap in trailer	Microscopic exam.

DEPARTMENT OF ENVIRONMENTAL QUALITY
LABORATORIES AND APPLIED RESEARCH
INORGANIC/NONMETALS SECTION
MICROSCOPIC TEST RESULTS

Site: Corner of Ivy and 6th Medford	Laboratory No: 960847
Collected by: Keith Tong	Program Code: 1432
Date Collected: 10-01-96	Date Completed: 10-10-96
	Analyst: LE

1. 1 Macro: Brown, corrugated, paper-like material.
 Micro: 10% chrysotile asbestos
 40% plant fiber
 minerals

2. 2 Macro: Brown, corrugated, paper-like material.
 Micro: 10% chrysotile asbestos
 40% plant fiber
 minerals

Comments: Preliminary results by E-mail 10-10-96. LE

Asb847
Word/asbform (4.3.96)

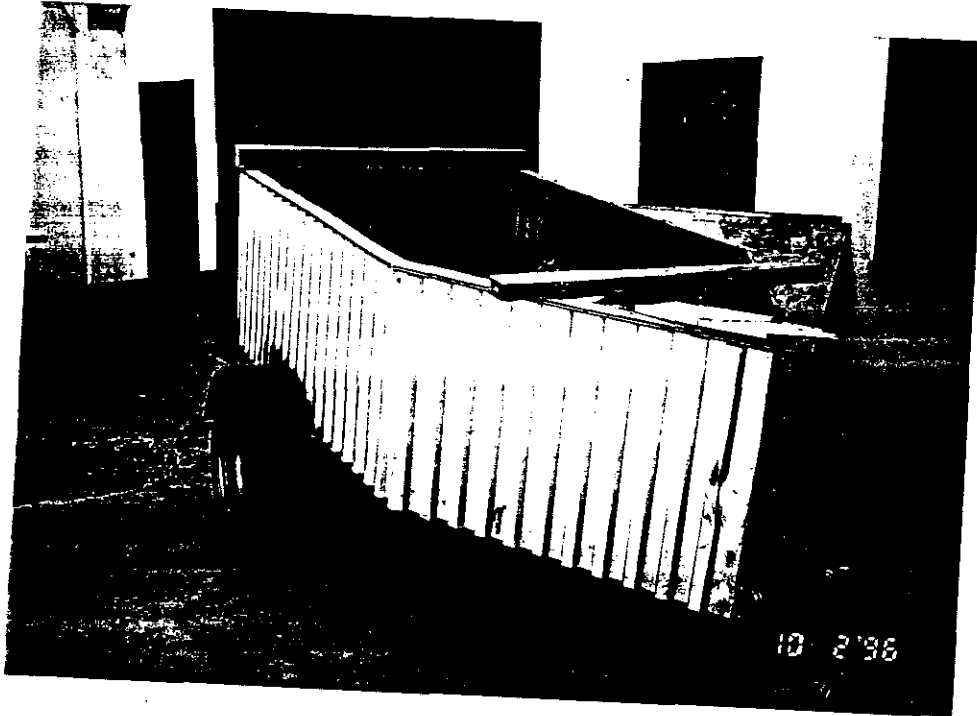
SITE NAME: 6th and Ivy, Medford
DATE: 02 OCT 96 TIME: 1:20 PM PHOTOGRAPHER: TONG PHOTO #: 1
COMMENTS: Photo from center of intersection shows parking lot. Asbestos insulated ducting was adjacent to sidewalk to left of truck. Note the duct work to right of photo center.



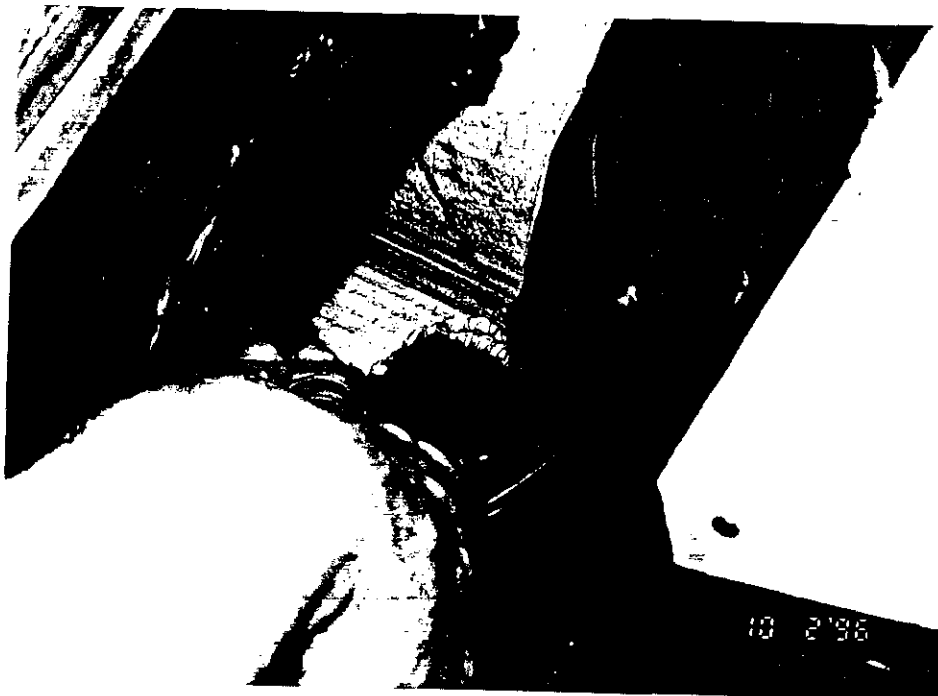
SITE NAME: 6th and Ivy, Medford
DATE: 02 OCT 96 TIME: 1:20 PM PHOTOGRAPHER: TONG PHOTO #: 2
COMMENTS: In the parking lot pieces of torn duct insulation were found. This piece became sample 1, contained 10% asbestos and was taken about a foot from the sidewalk shown in photo 1.



SITE NAME: 6th and Ivy, Medford
DATE: 02 OCT 96 TIME: 1:25 PM PHOTOGRAPHER: TONG PHOTO #: 3
COMMENTS: Photo of trailer where wrapped ductwork was placed under instruction from William Ferguson. The trailer can be seen in photo 1 toward the right and next to the building.



SITE NAME: 6th and Ivy, Medford
DATE: 02 OCT 96 TIME: 1:25 PM PHOTOGRAPHER: TONG PHOTO #: 4
COMMENTS: Closeup of plastic wrapped duct insulation found in the trailer at the site during my second visit. Sample 2 was taken here and contained 10% asbestos.



October 22, 1966

DEQ
201 W. Main 2-D
Medford, OR 97501

Attn.: Mr. Keith R. Tong

Dear Mr. Tong:

I received your letter of October 18, 1996.

Some facts have been confused, perhaps by the passage of 16 days between the incident and your letter. Please let me correct them at this time:

- 1) Joel Ferguson did not ask if he could wrap up the duct work and put it into a trailer. That concept was solely my thought, as if this was actually asbestos bearing material I did not want it left exposed to the public. I had been advised by City Sanitary to double wrap any suspect material in 30mm plastic bags, which we did, and await the test results on the piece I had taken to the lab for analysis.
- 2) Joel had no objection to following my directive other than to say you had asked him only to cover it up with plastic, and that double wrapping it and placing it in a trailer with four-foot sides was more protection for the public than you required awaiting test results.
- 3) The determination that the ducting contained asbestos was done by the lab based on my sample later the same day at approximately 5:00 p.m..
- 4) When sold the property by the YMCA, I was told they had, at the time the property was gifted to them, a clean environmental report that was to have cost about \$10,000. They did not provide me with a copy which I now find was provided to them by the donor.
- 5) When I contacted the Donor, he thought the property was clean, based on the report I picked up from him and provided to you. A careful reading showed asbestos in the ducts. Had we known asbestos existed then, we would have left the ceiling in place, as there was no need to remove it.

Deft. Exhibit C

RECEIVED

OCT 24 1996

Dept. Environmental Quality
MEDFORD

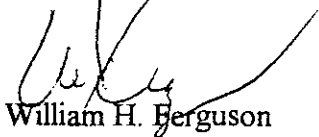
6) You came by the project within 30 minutes of the workers starting to tear down the suspected ducts, and work was stopped in that area immediately, and the building sealed with black plastic, per your request, even before the material was shown to contain 10% asbestos as in your report.

7) The abatement was started and completed on the outside of the building on the 4th by Alpha Environmental who will complete the inside of the building October 23.

8) The workers did not abate the asbestos, they simply protected the public by encapsulating it until the abatement contractors could come.

I thought I should clear up these misunderstandings at this time, rather than at some administrative hearing.

Sincerely,



William H. Ferguson
5200 Pioneer Road
Medford, OR 97501
(541) 772-9545

DEC 05 1996

EXHIBIT /
Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

CERTIFIED MAIL P 335 735 614

William H. Ferguson
5200 Pioneer Road
Medford, OR 97501

Re: Notice of Assessment of
Civil Penalty
No. AQAB-WR-96-315
Jackson County

On October 2, 1996, Department Asbestos Control Analyst Keith Tong inspected the site of an ongoing building renovation project being performed by you on property you own at 421 W. Sixth Street-37 North Ivy Street, Medford. Among the debris generated by the renovation project, Mr. Tong found suspected asbestos-containing material (ACM) in the form of duct wrap. Laboratory analysis of a sample of the material confirmed that it contained 10 percent asbestos. During his inspection, Mr. Tong observed ACM that had been removed from the buildings' duct work scattered in the parking lot and in the structures.

Your removal and handling of the ACM at your property resulted in the following violations of Oregon law:

- (1) Failure to employ required work practices for removal of ACM,
- (2) Open accumulation of asbestos-containing waste material,
- (3) Failure to properly dispose of asbestos-containing waste material,
- (4) Failure to notify the Department of an asbestos abatement project,
- (5) Use of uncertified workers to perform an asbestos abatement project, and
- (6) Supervision of an asbestos abatement project without being a certified supervisor.

Violations 1, 2, and 3 are Class I violations. Violations 4, 5, and 6 are Class II violations.

Exposure to asbestos is a serious health hazard and can result in incurable lung disease, including cancer. There is no known safe level of exposure to asbestos. To protect the public and the environment, the state legislature has enacted statutes and the Department has promulgated rules strictly controlling the removal, handling, storage, and disposal of ACM. Your failure to comply with these rules created a significant risk to public health and the environment. Mr. Tong's inspection determined that asbestos-containing waste material was being openly accumulated in an area in close proximity to a city street and sidewalk and was easily accessible to passers-by.



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1



You are liable for a civil penalty assessment because you violated Oregon environmental law. In the enclosed Notice, I have assessed a civil penalty of \$5,400 for one of the violations cited therein. 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 determination are attached to the Notice as Exhibit 1.

Your penalty was substantially increased because the Department found the cause of the violation to be your intentional conduct. At the conclusion of his inspection, Mr. Tong advised your son, Joel Ferguson, to cover the asbestos, not disturb it further, and bring in a licensed abatement contractor to properly clean it up and dispose of it. Joel Ferguson asked Mr. Tong if he could double wrap the ACM and place it in a trailer on the property. Mr. Tong informed him that asbestos required special handling and that it should not be further disturbed except by a professional. When Mr. Tong returned to the site later that day, he found that ACM had been wrapped and placed in the trailer. Joel Ferguson told Mr. Tong that he had advised you of Mr. Tong's instructions, but that you insisted he disturb the material anyway.

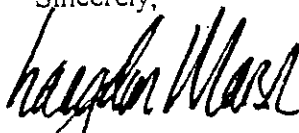
Appeal procedures are outlined in Section IV of the Notice. If you fail to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against you.

If you wish to discuss this matter, or if you believe there are mitigating factors which the Department might not have considered in assessing the civil penalty, you may request an informal discussion by attaching your request to your appeal. Your request to discuss this matter with the Department will not waive your right to a contested case hearing.

I look forward to your cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, you 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 229-5950 or toll-free at 1-800-452-4011, Enforcement extension 5950.

Sincerely,



Langdon Marsh
Director

e:\winword\letters\fergltr.doc

Enclosures

cc: Western Region, Medford Office, DEQ
Air Quality Division, DEQ

William H. Ferguson
Case No. AQAB-WR-96-315
Page 3

Department of Justice
Environmental Protection Agency
Environmental Quality Commission
Jackson County District Attorney

1 4. On or about October 1 and 2, 1996, Respondent violated OAR 340-32-5620(1) by
2 failing to notify the Department of an asbestos abatement project. Specifically, Respondent failed to
3 comply with the notification requirements of OAR 340-32-5630 prior to removing asbestos duct wrap
4 from the buildings. This is a Class II violation pursuant to OAR 340-12-050(2)(j).

5 5. On or about October 1 and 2, 1996, Respondent violated OAR 340-33-030(2) by
6 allowing uncertified persons to perform asbestos abatement on property owned by Respondent.
7 Specifically, Respondent allowed persons not certified as asbestos abatement workers to perform
8 asbestos abatement at the buildings. This is a Class II violation pursuant to OAR 340-12-050(2)(i).

9 6. On or about October 1 and 2, 1996, Respondent violated OAR 340-33-030(4) by
10 supervising an asbestos abatement project without being certified as an asbestos abatement project
11 supervisor. Specifically, Respondent supervised the asbestos abatement at the buildings without being
12 certified. This is a Class II violation pursuant to OAR 340-12-050(2)(i).

12 III. ASSESSMENT OF CIVIL PENALTIES

13 The Department imposes a civil penalty of \$5,400 for the Violation No. 1 in Section II, above.
14 The findings and determination of Respondent's civil penalty, pursuant to OAR 340-12-045, are
15 attached and incorporated as Exhibit 1.

16 IV. OPPORTUNITY FOR CONTESTED CASE HEARING

17 Respondent has the right to have a formal contested case hearing before the Environmental
18 Quality Commission (Commission) or its hearings officer regarding the matters set out above, at which
19 time Respondent may be represented by an attorney and subpoena and cross-examine witnesses. **The
20 request for hearing must be made in writing, must be received by the Department's Rules
21 Coordinator within twenty (20) days from the date of service of this Notice, and must be
22 accompanied by a written "Answer" to the charges contained in this Notice.**

23 In the written Answer, Respondent shall admit or deny each allegation of fact contained in this
24 Notice, and shall affirmatively allege any and all affirmative claims or defenses to the assessment of this
25 civil penalty that Respondent may have and the reasoning in support thereof. Except for good cause
26 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 or
2 defense;

3 3. New matters alleged in the Answer shall be presumed to be denied unless admitted in
4 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. Failure to appear at a scheduled hearing or meet a required
10 deadline may result in a dismissal of the request for hearing and also an entry of a Default Order. The
11 Department's case file at the time this Notice was issued may serve as the record for purposes of
12 entering the Default Order.

13 V. OPPORTUNITY FOR INFORMAL DISCUSSION

14 In addition to filing a request for a contested case hearing, Respondent may also request an
15 informal discussion with the Department by attaching a written request to the hearing request and
16 Answer.

17 VI. PAYMENT OF CIVIL PENALTY

18 The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty
19 becomes final by operation of law or on appeal. Respondent may pay the penalty before that time.
20 Respondent's check or money order in the amount of \$5,400 should be made payable to "State
21 Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental**
22 **Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

23 Date

22 Dec. 5, 1996

23 Langdon Marsh, Director

21 *Langdon Marsh*

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-12-045

VIOLATION: Failure to follow required work practices for asbestos abatement in violation of OAR 340-32-5620(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-12-050(1)(o).

MAGNITUDE: The magnitude of the violation is moderate. The amount of asbestos-containing material involved in the violation was less than 80 square feet. However, because the asbestos content of the material was greater than 5%, the magnitude is elevated, pursuant to OAR 340-12-090(1)(d)(D), from minor to 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 action(s) and receives a value of 0 as Respondent has no prior significant action(s).
- "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 0 as Respondent has no prior significant action(s).
- "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 2 as the violation occurred for more than one day.
- "R" is the cause of the violation and receives a value of 6 as the cause of the violation was intentional in that Respondent acted with the conscious objective to cause the result of his conduct. Furthermore, Respondent continued asbestos abatement after his son relayed to him a warning by a Department staff member that the asbestos-containing material (ACM) should only be handled by a licensed contractor.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of 0 as Respondent was neither wholly cooperative nor wholly uncooperative. Respondent continued asbestos abatement after being advised to stop by a Department inspector. After a second warning, however, Respondent hired a licensed contractor to remove and dispose of the ACM.
- "EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as Respondent incurred greater cost in correcting the violation than the cost he avoided by not complying.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 6 + 0)] + \$5,400 \\ &= \$3,000 + [(\$300) \times (8)] + \$0 \\ &= \$3,000 + \$2,400 + 0 \\ &= \$5,400 \end{aligned}$$

EXHIBIT 2

State of Oregon
Department of Environmental Quality

RECEIVED

DEC 23 1996

December 20, 1996

OFFICE OF THE DEPUTY DIRECTOR

DEQ Rules Coordinator
Office of the Director
811 S.W. Sixth Avenue
Portland, OR 97204

ATTENTION: Langdon Marsh

Re: DEQ v. Ferguson
No. AQAB-WR-96-315

Dear Mr. Marsh:

Enclosed find my Answer and Request for Hearing to the Notice of Civil Penalty. It also contains my request for production of documents and the request for an informal hearing.

I would like to have all of the hearings in Medford, being the situs of the matter in question, and be provided with discovery prior to the informal hearing or further pleading.

Sincerely,


William H. Ferguson

WHF:ns
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	ANSWER AND REQUEST FOR
WILLIAM H. FERGUSON,)	HEARING TO THE NOTICE OF
)	CIVIL PENALTY
Respondent.)	No. AQAB-WR-96-315
)	JACKSON COUNTY

COMES NOW the Respondent and by way of answer and request for hearing admits, denies and alleges as follows:

I.

Denies each and every allegation and thing contained in the plaintiff's Notice of Assessment and the whole thereof.

II.

Respondent further alleges that he has no knowledge of the matters contained in the allegations made in the Notice of Assessment as may be discovered as a result of examination of the file and investigation by the Environmental Quality Commission as such has not been provided to Respondent as of the date of this answer. Respondent hereby demands a full and complete copy of all such material contained in said file and all related files used by the plaintiff Commission to make said allegation in said Notice of Assessment of Civil Penalty.

III.

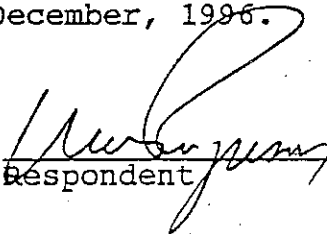
Respondent further reserves the right to further and more

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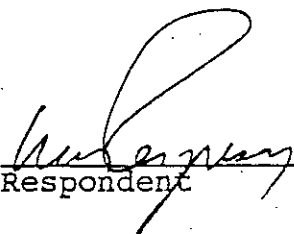
completely answer the allegation of the Commission's Notice of Assessment of Civil Penalty after the Commission's full disclosure as set forth above in this answer and after discovery is completed by Respondent and the right to allege affirmative matters, if any.

Having answered the Commission's Notice of Assessment of Civil Penalty Respondent prays said complaint be dismissed and Respondent recover his costs, disbursements and reasonable attorneys fees in defense thereof.

DATED this 20th day of December, 1996.


Respondent

Pursuant to paragraph V of said notice Respondent requests informal discussion with the Department by this written request attached to the answer.


Respondent

August 14, 1997

William H. Ferguson
5200 Pioneer Road
Medford, Or 97501

EMPLOYMENT
DEPARTMENT

Jeff Bachman
DEQ Enforcement Section
2020 S.W. 4th, Suite 400
Portland, Oregon 97201

Re: Notice of Assessment of Civil Penalty
Case No. AQFB-WR-96-315
Jackson County

The contested case hearing in the above matter has been scheduled as follows:

Date: Wednesday, September 10, 1997
Time: 9:00 a.m. PDT
Location: 201 West Main Street, Suite 2-D
Medford, Oregon

The issues to be addressed at hearing are: Whether William H. Ferguson, hereinafter called respondent, violated OAR 340-32-5620(1) by failing to employ required work practices for handling and removal of asbestos-containing waste; whether respondent violated OAR 340-32-5600(4) by openly accumulating asbestos-containing waste material; Whether respondent violated OAR 340-32-5650 by failing to properly dispose of asbestos-containing waste material; Whether respondent violated OAR 340-12-5620(1) by failing to notify the Department of an asbestos abatement project; Whether respondent violated OAR 340-33-030(2) by allowing uncertified persons to perform asbestos abatement on property owned by respondent; whether respondent violated OAR 340-33-030(4) by supervising an asbestos abatement project without being certified; and whether respondent is subject to a civil penalty of \$5,400.

The specific acts and violations are set forth in Department Order dated December 5, 1996

If you have questions, please call me at (541) 686-7960.

Melvin M. Menegat
MELVIN M. MENEGAT
Hearings Officer

mm/d7009

John A. Kitzhaber
Governor



875 Union St. NE
Salem, OR 97311
(503) 378-8420

Gas leaks won't stall parking lot

Urban renewal hit with big cleanup bill

By DOUG IRVING
of the Mail Tribune

Medford's mucky past has stalled construction of a parking garage for about a week and cost the city's urban renewal agency about \$200,000.

Workers with Takenaka USA discovered a well filled with motor oil and gasoline as they excavated the site at Sixth and River side several weeks ago. They also discovered two old gasoline tanks.

The state Department of Environmental Quality determined the tanks had been leaking gas for as long as 70 years, said Byron Peterson, who helped investigate the site for DEQ.

Old gasoline had also contaminated the northeast corner of the site, said Don Burt, director of the Medford Urban Renewal Agency.

"The contamination pretty well goes clear across the parking lot," Peterson said. "We're just kind of dealing with all the history of Medford in one fell swoop."

Workers loaded up more than 2,000 cubic yards of contaminated dirt, Burt said. That amount of dirt would fill a large five-bedroom home, he said.

Rogue Disposal will treat the dirt for contamination and then use it in its landfills, Peterson said.

Some low-level contamination probably remains at the site, Peterson said. But that's not enough to be a concern, he said.

DEQ issued no citations for the contamination. Takenaka acted quickly when it discovered the problem, calling DEQ and an environmental consultant, Peterson said.

"They just wanted to build a parking garage, and kept running into all this," he said. "We don't like people stumbling onto something."

Cleanup probably knocked the project back a week, although Takenaka is still trying to assess how much time it lost, said site supervisor Jack Raquel.

"We conquered that," he said. "We're right back on track."

Removing the contaminated dirt probably cost Medford at least \$200,000, Burt said. The city is still adding up all the costs.

But the Urban Renewal Agency had built extra money into the project budget to deal with unexpected costs, Burt said.

The total budget is \$5.3 million, while the actual project cost is \$4.7 million. That left \$500,000 to deal with problems such as contaminated soils.

The Urban Renewal Agency budgets for small cleanup operations whenever it builds in the city, Burt said. Most downtown sites are contaminated to some degree, he said. Few are contaminated to this degree.

"Wherever you go (downtown), you're going to have some contamination," he said.

That probably doesn't represent a major environmental threat now, said Terry Baker, the environmental consultant called in by Takenaka. He said the contamination probably stayed on the site.

"No one has had a problem with it in the past," he said. "I don't expect it to be a problem in the future."

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HARDY MYERS
ATTORNEY GENERAL



1515 SW 5th Avenue
Suite 410
Portland, Oregon 97201
FAX: (503) 229-5120
TDD: (503) 378-5938
Telephone: (503) 229-5725

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
PORTLAND OFFICE

MEMORANDUM

DATE: September 9, 1998

TO: Environmental Quality Commission
Langdon Marsh, Director, Department of Environmental Quality

FROM: Larry Knudsen *Larry Knudsen*
Assistant Attorney General
Natural Resources Section

SUBJECT: Petition for Reconsideration
Section 401 Certifications for Hideaway Grazing Allotment

Petition:

On August 10, 1998, the Oregon Natural Desert Association (ONDA) filed a petition with the Commission seeking reconsideration of the section 401 certificates issued for the Hideaway Grazing Allotment. The certificates were issued by the Director on June 11, 1998 pursuant to 33 USC § 1341 and OAR chapter 340, Division 048. A copy of the petition is attached. For the two reasons set out below, I believe that a reviewing court is likely to conclude that the Commission does not have authority to reconsider the decision.

Legal Analysis:

First, it does not appear that DEQ's rules authorize reconsideration in this context. ONDA has petitioned for reconsideration under OAR 137-004-0080, the applicable provision in the Attorney General's Model Rules. This Model Rule allows for reconsideration of "orders in other than contested cases." The procedures are comparable to those set out in the statute and rule on reconsideration of contested cases orders. See ORS 183.484; OAR 340-003-0080. The EQC, however, has not adopted this Model Rule.

Notwithstanding the apparent lack of express authority, I note that DEQ previously has received petitions for reconsideration of permit decisions that were not contested case orders. To the best of my knowledge, the EQC and DEQ's Director typically have taken no action on such petitions, although, in a few cases at least, the petitions have been summarily denied. So far as I am aware, the Commission has never considered whether it has authority

EQC Members, Langdon Marsh
September 9, 1998
Page 2

to entertain a petition for reconsideration of a non-contested case without first adopting the Model Rule.

An argument can be made that the Commission has implied authority to reconsider a decision. However, even if a court were to accept this argument, it is unlikely that a court would find implied authority to extend the statutory 60-day appeal period in ORS 183.484. Thus, a decision to reconsider (under a theory of implied authority) must be made within 60 days after the order was served. Here the petition was not even filed until the 59th day.

Second, assuming for the sake of argument that the Model Rule applies, ONDA's petition appears to have been filed with the wrong entity. Under the Attorney General's rule, a petition for reconsideration may be filed with the "agency" that made the decision. OAR 137-004-0080. The agency, in turn, is the Commission or agency officer authorized by law to issue the order. ORS 183.310(1). A section 401 certificate (the order for this purpose) was issued by the *Director*, not the Commission, in accordance with the applicable rules. *See, e.g.*, OAR 340-048-120(7). The Commission's role is limited to the adoption of the underlying rules and, in certain situations, to considering appeals from the Director's decision. OAR 340-048-0035.

Recommendations:

The Commission may elect to do nothing. If the Commission lacks jurisdiction, no further action is required. Even if the Commission has jurisdiction, it can choose to take no action, in which case the petition is deemed to be denied 60 days after it was filed.

Alternatively, the Commission may discuss the matter and make a formal decision with respect to jurisdiction. If the Commission determines that it has jurisdiction, it still may take no further action and allow the petition to be deemed denied or it may summarily deny the petition. If the Commission determines that it has jurisdiction and it grants the petition for reconsideration, the next steps are unclear. As discussed above, the Commission did not issue the section 401 permit and the applicable rules do not provide for the Commission itself to issue a section 401 certificate. For this reason, my recommended action is either to take no action, or determine that the Commission lacks jurisdiction to grant the petition.

Attachment
LK:kt/LJK0845.MEM

AUG 10 1998

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OFFICE OF THE DIRECTOR

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF 401
CERTIFICATIONS

#98-002 AND #98-0032
(Hidaway Grazing Allotment)

PETITION FOR
RECONSIDERATION

INTRODUCTION

The Oregon Natural Desert Association ("ONDA") requests that the Environmental Quality Commission reconsider two certifications issued pursuant to Section 401 of the Clean Water Act ("CWA" - 33 U.S.C. §1341) for Hidaway Grazing Allotment of the Umatilla National Forest, North Fork John Day Ranger District. These certifications were issued without substantial or any evidence demonstrating that the proposed cattle grazing activities would not violate water quality standards on already water quality limited streams.

PETITIONER

ONDA is a nonprofit, tax-exempt, public interest organization organized under the laws of Oregon. ONDA has members throughout the state of Oregon. ONDA was created to help protect and restore Oregon's arid land environment, educate the public on the values of preserving these environments, and to act as a clearing house for activists and other organizations involved in desert preservation.

1 493 U.S. 1077, 110 S. Ct. 1127 (1990) (certifying agency must
2 have "substantial evidence" to support finding that 401
3 certification will assure compliance with state water quality
4 standards).

5 On February 20, 1998, the Oregon Department of
6 Environmental Quality adopted permanent rules to process
7 applications for certification of federal grazing permits.
8 See, OAR 340-48-0005, *et seq.* Those rules are still in effect
9 and still require such certification.

10 The Ninth Circuit Court of Appeals recently ruled that a
11 401 certificate was not required as a matter of law **by the CWA**
12 for nonpoint source activities such as grazing. Some special
13 interest groups will no doubt claim that this obviates the
14 requirements of DEQs 401 grazing certification rules. However,
15 there is nothing in the CWA that prevents states from adopting
16 more stringent water quality protection requirements, than
17 those required by federal law. In fact, ORS 468B.015, *et seq.*
18 clearly gives DEQ/EQC authority to regulate all sources of
19 pollution, regardless of whether they are point or nonpoint in
20 nature. These statutes provide ample authority to support the
21 continued existence and application of the 401 Grazing
22 Certification Rules.

23 **FACTS**

24 On March 12, 1998, Mr. Mark Warner and Mr. Robert Lazinka
25 (the "Applicants") applied to the DEQ for § 401 certification
26 of their respective federal grazing permits. The permit for

1 which Mr. Warner seeks certification (application # GR-98-032)
2 authorizes Mr. Warner to graze 132 Animal Unit Months or
3 cow/calf pairs (hereinafter "AUMs") on the Hidaway Allotment of
4 the Umatilla National Forest, North Fork John Day District, for
5 a period of ten years. The permit for which Mr. Lazinka seeks
6 certification (application # GR-98-002) authorizes Mr. Lazinka
7 to graze 485 AUM on the same allotment for a period of ten
8 years. The applicants submitted their respective applications
9 for certification to DEQ simultaneously because they both use
10 the Hidaway Allotment at the same time and for the same
11 purposes.

12 On April 30, DEQ concluded that the applications were
13 complete and would be subject to a 30-day public comment
14 period. On May 29, 1998, ONDA submitted comments to DEQ
15 explaining why DEQ should not certify applications
16 #GR-98-002-and #GR-98-032. The comments pointed out that the
17 Hidaway Allotment contains waters that are already water
18 quality impaired and that no adequate demonstration of water
19 quality standard compliance had been made.

20 Frazier Creek and Hidaway Creek, which are on the
21 allotment, are listed as Water Quality Limited Segments
22 (WQLS) under § 303(d) of the CWA for temperature and habitat
23 modification. Cable Creek, just below allotment, and Camas
24 Creek, adjacent to the allotment, are also listed as water
25 quality limited under § 303(d) for temperature and habitat
26 modification. The temperature impairment and habitat

1 modification on all four water bodies are caused by cattle
2 grazing.

3 The federal grazing permits at issue authorize grazing a
4 total of 517 AUMs on the Hidaway Allotment from June 16 through
5 September 30. The permits rely on management using certain
6 "stubble height" calculations and "utilization" standards set
7 by the U.S. Forest Service ("USFS").

8 The applicants claim that water quality standards will be
9 achieved or maintained through short duration rotational
10 grazing, riding, water development on uplands, salting on
11 uplands, and riparian protection by fenced enclosures.
12 However, no analysis of any of the applicable water quality
13 standards, or of any alleged connection between the proposed
14 management methods and water quality, is included in the
15 applications or materials submitted to DEQ.

16 Pursuant to the applicable rules, DEQ sought comments from
17 and review by the Oregon Department of Agriculture (ODA). In a
18 memo to DEQ, ODA stated that reasonable assurances existed that
19 water quality standards would be met. However, there is no
20 actual analysis of water quality, water quality standards, or
21 any alleged connection between the proposed management methods
22 and water quality presented by ODA, nor was any such analysis
23 present in ODA's file.

24 Finally, despite its state and federal statutory
25 obligations to conduct an independent analysis, DEQ's file also
26 contains no actual analysis of water quality, water quality

1 standards, or any alleged connection between the proposed
2 management methods and water quality.

3 On June 11, DEQ certified both permits, with conditions.
4 In the identical certifications, DEQ asserted that there is
5 reasonable assurance that the permitted grazing will not
6 violate state water quality standards if applicants comply with
7 applicable federal standards and guidelines established to
8 protect water quality.¹

9 **GROUNDS FOR RECONSIDERATION**

10 DEQ acted contrary to law and without substantial evidence
11 in the record to support its conclusion that the grazing
12 authorized in applications #GR-98-002 and #GR-98-032 will meet
13 state water quality standards.

14 DEQ relied exclusively on ODA, who relied exclusively on
15 the applicants, who relied exclusively on the BLM and USFS, who
16 relied exclusively on the PACFISH, et al plans. In short,
17 everyone involved made bald-faced unsupported assertions that
18 water quality standards would be met, without actually ever
19 doing any **analysis** of the activities and the applicable
20 standards. EQC, therefore should remand certifications
21 #GR-98-002 and #GR-98-032 to DEQ for further consideration.

22 / / / /

23

24 ¹ Those standards and guidelines are set out in the Interim Strategies
25 for Managing Anadromous Fish-Producing Watersheds ("PACFISH"), the Umatilla
26 Land and Resource Management Plan ("LRMP"), the Hidaway Allotment Management
Plan ("AMP"), and the Aquatic Conservation Strategy from the Northwest
Forest Plan ("NW Forest Plan"). To petitioner's knowledge, not a single one
of these plans have been certified by DEQ under Section 401.

1 I. DEQ CERTIFIED WITHOUT ANY ANALYSIS OF THE APPLICABLE
2 STANDARDS

3 There is no analysis in the DEQ files, of any of the
4 applicable standards. Nor is there any analysis of those
5 standards in the ODA files, in the applications, or in the USFS
6 or BLM materials submitted to DEQ or ODA.

7 Some of the streams in this grazing allotment are WQLSed,
8 for parameters that the file materials show will clearly be
9 affected by the proposed activities (such as temperature,
10 sedimentation or habitat modification). Yet there is no
11 analysis in any of the agency files on how or whether the
12 approved grazing will (or will not) cause violations of the
13 anti-degradation standard in OAR 340-41-026.

14 Nor is there any analysis of the compliance (or lack
15 thereof) of this grazing with the biological criteria standard
16 in OAR 340-41-027. Similarly, there is no analysis of
17 compliance (or lack thereof) with the basin specific anti-deg
18 standard in OAR 340-41-605(1). Finally, there is no analysis
19 anywhere of compliance (or lack thereof) with the basin
20 specific temperature standard in OAR 340-41-605(2)(b), or with
21 the basin specific sediment standard, or with the DO standard,
22 etc., etc., etc.

23 Instead, there is a giant "finger pointing circle," in
24 which each agency or entity relies on another to have actually
25 done the analysis. This is a blatant and unlawful abdication
26 of authority by DEQ. Without having conducted or at the very

1 lease reviewed and verified another qualified agency's analysis
2 of compliance with the applicable water quality standards, DEQ
3 is acting contrary to law and without substantial evidence to
4 support any alleged finding that water quality standards will
5 not be violated.

6 *II. DEQ CERTIFIED WITHOUT ADEQUATE BIOLOGICAL INFORMATION*

7 OAR 340-048-0120 requires that applications for
8 certification describe current upland, riparian, and water
9 quality conditions, and identify historic and present livestock
10 contributions to water quality limitations. Neither
11 application contains this information.

12 Although some monitoring on the allotment has occurred,
13 neither the application nor the certification discusses the
14 results of those studies or current biological conditions of
15 the allotment. Photo point monitoring of Cable, Hidaway and
16 Dry Camas Creeks was conducted between 1980-1997, but the
17 results were not included or discussed in the application for
18 certification. A range condition analysis and
19 production/utilization survey and a Properly Functioning
20 Condition report for Hidaway, Trough and Frazier Creeks were
21 included in the application. The results of these surveys were
22 not interpreted, discussed, or analyzed in either application,
23 either DEQ or the ODA files, or in either certification
24 decision.

25 In 1995, the USFS completed an Ecosystem Analysis of seven
26 watersheds in the Camas Creek area of the North Fork John Day

1 River sub-basin (hereafter "Camas Creek Watershed Analysis").
2 The area analyzed in the Camas Creek Watershed Analysis
3 included most or all of the Hidaway Allotment. The Camas Creek
4 Watershed Analysis describes the lack of data on the analysis
5 area, including the Hidaway Allotment:

6 Regarding riparian vegetation, conclusions
7 on trend and condition were difficult to
8 reach given the inconsistency and lack of
9 data. However, riparian vegetation within
10 [cattle] exclosures has clearly made the
11 most significant progress toward desired
12 conditions. *Camas Creek Watershed*
13 *Analysis*, at 53.

14 The Camas Creek Watershed Analysis also reports that, due to
15 lack of funding, "[n]o biological evaluations have been
16 completed for existing AMPs for the watershed." *Id.* at 118.

17 Similarly, the Watershed Analysis also reports a
18 significant data gap in usable stream surveys and riparian
19 vegetation condition. The analysis also noted the limited
20 value of recent riparian vegetation utilization information.
21 Finally, data on water temperature at points where streams
22 leave the National Forest is largely unavailable. *Camas Creek*
23 *Watershed Analysis*, at 131.

24 DEQ should not have certified applications #GR-98-002 and
25 #GR-98-032 due to the lack of information on current upland,
26 riparian, and water quality conditions, and of any meaningful
discussion and analysis of historic and present livestock
contributions to water quality limitations.

///

1 **III. DEQ DID NOT CONSIDER EXISTING INFORMATION ON POOR**
2 **RIPARIAN CONDITIONS**

3 In granting certification of the permits, DEQ did not
4 consider data and information related to the impacts of
5 livestock grazing on water quality and riparian vegetation.
6 For example, the Camas Creek Watershed Analysis identified the
7 following water quality issues which were not addressed in the
8 certification:

9 "Water quality monitoring and stream
10 inventories in the watershed indicate that
11 important habitat parameters are
12 unsatisfactory, to the point of rendering
13 many streams unsuitable to sustain viable
14 populations of resident and anadromous
15 fish. High water temperatures in July and
16 August, sediment concerns, insufficient
17 pools, shortage of large wood for habitat
18 complexity, and low stream flows were
19 all suspected problems in the Camas
20 watershed streams. Riparian shrub cover
21 and stream bank stability are below their
22 ranges of natural variability in most of
23 the river basins in the Blue Mountains,
24 especially in the central and southern
25 portion, including the Camas drainage
26 (Caraher and others 1992). Upland
 watershed conditions and function also
 influences stream conditions and fish
 habitat; these have been and are affected
 by management activities." *Camas Creek*
 Watershed Analysis, at 18 (emphasis added)

21 The Watershed Analysis also identified livestock grazing as the
22 source of many water quality related problems:

23 "[D]ual use of riparian shrubs by both
24 livestock and large wild ungulates has
25 resulted in serious and long-term
26 degradation of stream banks, stream shade,
 and water quality; and

26 / / / /

1 "[H]igh water temperatures are pervasive in
2 the watershed. In some riparian areas,
3 grazing continues to contribute to high
4 temperatures through the suppression of
5 shading vegetation and bank trampling that
6 shallows and widens the stream channel."
7 *Camas Creek Watershed Analysis*, at 49 and
8 117-18, respectively.

9 The Watershed Analysis goes on to warn that livestock
10 grazing can cause increased water temperatures from loss of
11 shade, vegetation, and channel integrity. In addition, the
12 presence of few surviving specimens of cool water species
13 (spring chinook salmon) and, particularly, cold water species
14 (bull trout) implies that water temperatures in the past were
15 probably much cooler than at present. Finally the Camas Creek
16 Watershed Analysis advises that:

17 "It is essential that grazing be carefully
18 managed if riparian management goals and
19 objectives are to be achieved. This and
20 previous analyses for the watershed have
21 documented extensive high water
22 temperatures in Camas Creek and its
23 tributaries. Many studies (e.g., Meehad
24 1991) have linked livestock grazing in
25 riparian areas to increased stream
26 temperatures through loss of shade and
widening and shallowing of channel cross
sections from bank degradation (i.e.,
trampling and vegetative changes)." *Camas
Creek Watershed Analysis*, at 76.

27 In granting certification, there is no indication or
28 evidence in the file that DEQ considered the severe effects on
29 water quality caused by historic and current livestock grazing
30 on the allotment and in the Camas Creek watershed as a whole.

31 / / / /

1 This is contrary to the dictates of Section 401, of ORS
2 468B.025, and of DEQ's own rules

3 *IV. DEQ IGNORED SUBSTANTIAL EVIDENCE THAT COMPLIANCE WITH*
4 *FEDERAL GUIDELINES IS NOT SUFFICIENT*

5 DEQ's finding that the applications will comply with water
6 quality standards appears to be based solely on the permittees'
7 claim of anticipated compliance with existing federal standards
8 and guidelines that are designed to protect water quality.

9 However, as ONDA's detailed comments make clear, federal
10 standards and guidelines suffer serious biological
11 shortcomings, lack of effectiveness, and lack of implementation
12 or enforcement. DEQ, therefore, cannot rely on compliance with
13 federal standards and guidelines to assure that water quality
14 standards will be met.

15 Moreover, these permittees have **always** been continuously
16 required to comply with these same existing federal
17 regulations. Yet the Hidaway Allotment still contains streams
18 that are WQLSed due to the impacts of livestock grazing.
19 Clearly, compliance with federal regulations **has not** been
20 sufficient to protect water quality on the Hidaway Allotment in
21 the past. Thus, it is not sufficient justification or basis
22 for 401 certification.

23 DEQ states in its review that lack of federal
24 implementation is not grounds for denying certification.
25 Petitioners vehemently disagree. DEQ's decision to certify the
26 applications must be based on substantial evidence. *Miners*

1 *Advocacy Council, supra.* Compliance with federal regulations
2 is the basis for DEQ's decision to certify the permits.
3 Whether or not those regulations are being implemented,
4 therefore, is critical and cannot be ignored by DEQ.

5 V. *LACK OF ADEQUATE MONITORING PLANS*

6 Section 401 requires that certifications include
7 "monitoring requirements necessary to assure that any applicant
8 for a Federal license or permit will comply with [water quality
9 standards]." 33 U.S.C. § 1341(d). Neither of these permits nor
10 the certifications issued by DEQ contain adequate monitoring
11 plans.

12 Primarily, the certifications merely require the
13 applicants and/or Forest Service to monitor stubble height
14 and/or utilization in "key areas" of Frazier and Hidaway
15 Creeks. The applicant proposes to sample a 7.5 square feet at
16 three to five key areas, or 25 to 40 square feet of vegetation,
17 twice per year. Readings from 25 to 40 square feet of area
18 within a 37,044 acre allotment two times per year is not
19 adequate to assure maintenance of proper functioning conditions
20 nor to establish an improving trend on water quality limited
21 streams as should be required.

22 Stubble height varies according to plant-life form.
23 Arbitrarily located measuring sites or "key areas," is simply
24 an invalid choice of "indicators" of ecological condition on
25 already degraded streams. Even if the proposed sampling area
26 were adequate, stubble height measurements cannot be used to

1 establish compliance with water quality standards, proper
2 functioning condition, or improving water quality trends. As
3 explained in ONDA's comments, there is substantial scientific
4 evidence that stubble height is not directly nor consistently
5 correlated with plant productivity, site integrity, or the
6 myriad of factors that affect water quality. The Environmental
7 Protection Agency has determined that multiple metrics, not
8 just stubble height, are necessary to determine the effects of
9 grazing on water quality.

10 Moreover, the Camas Creek Watershed Analysis, which was
11 in DEQ's file, itself warns that stubble height alone is not a
12 sufficient indicator of compliance with water quality
13 standards:

14 "Riparian vegetation condition monitoring
15 related to livestock management should
16 address recovery rate toward desired
17 condition, **not just** forage utilization
18 rates. This can be accomplished is [sic]
19 monitoring recovery rates within enclosures
20 and comparing this 'potential recovery
21 rate' with recovery in like condition
(preferably same watershed) livestock
management riparian zones. This effort is
particularly important in order to meet
PACFISH riparian management objectives."
Camas Creek Watershed Analysis, at 132
(emphasis added).

22 The Watershed Analysis goes on to recommend using basin-wide
23 objectives developed for the Blue Mountains to evaluate habitat
24 conditions and using riparian goals and functions to guide
25 riparian management activities. *Id.* at 132. Yet the
26 certifications do not require that.



Governor's Watershed Enhancement Board (GWEB)

PROGRAM OVERVIEW

Board Membership

GWEB Chair: Governor's Watershed Advisor

Voting:

Environmental Quality Commission
Board of Forestry
Water Resources Commission
Soil & Water Conservation Commission
Fish & Wildlife Commission

Non-Voting:

USDI Bureau of Land Management
Department of Agriculture
OSU Cooperative Extension Service
Natural Resource Conservation Service
USDA Forest Service

Advisory Committee Membership

Technical Advisory Committee

Department of Environmental Quality
USDA Forest Service
OSU Cooperative Extension Service
Department of Agriculture
Department of Forestry
USDI Corps of Engineers
Water Resources Department
Department of Fish & Wildlife
USDI Bureau of Land Management
Division of State Lands
USDI Bureau of Reclamation
Department of Transportation
Natural Resources Conservation Service

Education Advisory Committee

Natural Resources Conservation Service
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Water Resources Department
Department of Fish & Wildlife
USDA Forest Service
OSU Department of Rangeland Resources
Division of State Lands
Oregon Farm Bureau
Department of Agriculture
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Vivienne Torgeson, Program Rep.

Rick Craiger, Program Rep.
Karen Leiendecker - La Grande
Mark Grenbemer - Grants Pass
Sussanne Maleki -Monitoring
Coordinator - Corvallis

What We Do:

We operate a statewide program to provide funding and assistance to individuals and groups working to enhance watershed functions and/or provide education about watershed resources.

*

Funding History

<u>1987-89</u>	<u>1989-91</u>	<u>1991-93</u>	<u>1993-95</u>	<u>1995-97</u>
\$500,000	\$1-million	\$500,000	\$1-million	\$2.6-million
19 major	27 major	19 major	23 major (statewide)	63 major
39 small*	44 small*	30 small*	15 Grande Ronde 7 South Coast 26 small*	33 small*

* GWEB funds awarded to Soil and Water Conservation Districts for small projects.

Soil & Water Conservation Districts have also received funding for landowner workshops (five to eight per biennium). GWEB has also sponsored Teacher In-service Workshops related to *The Stream Scene* and *The Watershed Uplands Scene* curricula and conducted a biennial watershed enhancement conference.

Our Goals:

Enhance Oregon's waters through the management of riparian and associated upland areas of watersheds in order to improve water quality and quantity for all beneficial purposes.

Restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes, and estuary systems.

Improve the filtering capability of riparian areas to reduce non-point source runoff and improve water quality.

Support the activities of local watershed councils.

Provide education and public awareness about watershed concepts.

GWEB's Aim is to Fund the Best Proposals that Address the Goals of the Program:

Projects must demonstrate sound principles of watershed management. The project design must appropriately address the cause of the problem for each specific locale.

Changes In 1995:

The Oregon Legislature adopted House Bill 3441 in 1995 which modified the GWEB structure and responsibility in the following ways:

- It allows for the establishment of local, voluntary watershed councils recognized by local government.
- It designated the Board chair as the Governor's Natural Resource Policy Advisor or his or her designee.
- It requires GWEB to grant funds for the support of watershed councils in assessing watershed conditions, developing action plans, implementing projects and monitoring results.
- It allows GWEB to designate high priority watersheds.
- It requires GWEB to operate a program that relies on the establishment of voluntary local watershed councils comprised of residents, state and federal agency staff, members of federally recognized Indian tribes and other citizens interested in the management of the watershed which provide for the development by these partnerships and local plans that may include but are not limited to the assessment of the watershed condition, the creation of a watershed action plan and a strategy for implementing the action plan.

Changes in 1997:

The 1997 Oregon Legislature passed several bills affecting the GWEB Program.

- **House Bills 5042 and 5044:**
 1. Provide one additional GWEB staff person to coordinate watershed monitoring efforts and data management.
 2. Provide \$5,865,355 for GWEB to implement the Oregon Plan.

3. Provide \$2,959,851 for the State Department of Agriculture for 19 new positions to implement the Healthy Stream Partnership aspect of the Oregon Plan.
4. Provide \$2,523,853 for the Department of Environmental Quality for 19 new positions to implement the Healthy Stream Partnership aspect of the Oregon Plan.
5. Provide \$2,275,000 for the Oregon Department of Fish and Wildlife for 14 new positions to work on restoration of salmon under the Oregon Plan.
6. Provide \$779,821 to the Oregon Dept. of Forestry for six positions for fish presence surveys and forest practices studies necessary to implement the Oregon Plan.

- **House Bill 924:**

1. It creates a bi-partisan Joint Legislative Committee on Salmon and Stream Enhancement consisting of three members of the House of Representatives appointed by the Speaker of the House, three members of the Senate appointed by the President of the Senate, and one member from either legislative body selected by the appointed members. This committee has broad authority over the implementation of the Oregon Plan.
2. It creates a 15 member Healthy Streams Partnership appointed by the Governor, the President of the Senate and the Speaker of the House of Representatives. Its members shall include but not be limited to persons who are involved in the implementation of the Oregon Coast Salmon Restoration Initiative and representatives of industry, local government and environmental interests. The Partnership shall provide information to the legislature about the implementation of the programs from a local and regional perspective.
3. It creates an Independent Multidisciplinary Science Team consisting of seven scientists with recognized expertise in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management. Members shall be appointed by the unanimous decision of the Governor, the Speaker of the House of Representatives and the President of the Senate. The Team shall make annual reports and recommendations on the implementation of the Oregon Coastal Salmon Restoration Initiative.

4. It re-authorizes the Coastal Salmon Restoration and Production Task Force, originally created in 1995, which is charged with developing a fisheries-sustaining coastal salmonid restoration and production strategy consistent with the goals of the Oregon Plan.

- **House Bill 3700:**

1. It creates a tax on timber harvested to provide an amount of funding, not to exceed \$15 million, for the Watershed Improvement Grant Fund to be administered by GWEB.
2. It provided that an additional charge be placed on all angling licenses issued by the state with \$1 million dedicated to the Watershed Improvement Grant Fund and any additional revenue to be administered concurrently with other revenue by the Restoration and Enhancement Board under the State Fish and Wildlife Commission.
3. It provides for automatic repeal of the bill if the National Marine Fisheries Service lists any salmonid species as threatened or endangered or they list in a shared ESU and they take any enforcement action against forestry operations in compliance with the Oregon Forest Practices Act or they promulgate a final regulation under section 4(d) of the federal Endangered Species Act that directly imposes additional requirements on forest practices beyond those required by the Oregon Forest Practices Act.

Memorandum of Agreement:

In April of 1997 the State of Oregon and the National Marine Fisheries Service consummated an MOA which, in brief, provides for the following:

- Collaboration during the implementation of the Oregon Coastal Salmon Restoration Initiative (OCSRI).
- To make adaptive changes in the OCSRI as warranted by scientific information.
- Baseline information from watershed assessments is needed to identify critical habitat needs and details of assessment protocols need to be developed.
- Long-term monitoring is essential and funding for this activity is critical to the success of the OCSRI.
- ESA Section 10 habitat conservation plans or their equivalents will be an important component of restoration of fresh water habitats.

- Previous harvest rate reductions on Oregon coastal coho are essential during the implementation of the OCSRI.
- NMFS agrees to work with agencies to implement the Northwest Forest Plan.
- The parties agree to authorize research on the effects of predatory pinnipeds and seabirds on Oregon coastal coho and recommend action to mitigate impacts identified, where appropriate.
- The parties shall jointly develop guidelines for restoration activities as rapidly as possible and all grants and permits shall reference these guidelines or the future development of guidelines to be followed.
- NMFS will work with the Oregon Department of Forestry to ensure the Oregon forest practices provide a high probability of protecting and restoring aquatic habitat important for Oregon coastal coho.
- Oregon Department of Agriculture will provide NMFS with information about standards and measures developed in the Senate Bill 1010 efforts on the Oregon coast, giving priority to adjust and implement these measures in core areas.
- Oregon shall seek to maximize flow restoration targeted to those streams identified as posing the most critical low-flow barriers to Oregon coastal coho.
- Oregon shall achieve additional protection of core areas - including limitation on fill and removal.
- NMFS will provide comment about hatchery programs affecting Oregon coastal coho.
- The parties acknowledge their commitment to support enforcement of environmental laws and continued public outreach and education.

The Oregon Plan:

The Plan is comprised of the Oregon Coastal Salmon Restoration Initiative and the Healthy Stream Partnership:

The Oregon Coastal Restoration Initiative outlines a comprehensive, multi-interest and multi-agency effort to restore the coastal coho salmon population to sustainable population levels. “The intent of the OCSRI is to conserve and restore functional elements of ecosystems that support fish, wildlife, and people. The success of this effort will depend on sustaining strong and lasting local - state - federal partnerships.” Paramount to this effort is the recognition of the important role communities and landowners

have. "Watershed councils, soil and water conservation districts and other grassroots efforts are vehicles for getting the work done." Recognition and change in the impacts we have all made, and continue to make, on these resources in the conduct of our daily lives is essential to obtain this goal.

While the breadth of the OCRSI is beyond the scope of this summary, the following examples highlight the significant role of watershed councils:

- "Local stakeholders will be responsible for developing and implementing locally-based measures to restore salmon habitat, while the state agencies will help facilitate, guide and support local actions." "There is no question that a success in this effort will move us beyond species-by-species attempts at recovery, and begin to turn our watersheds to their fully functional condition."
- "Local watershed councils are the focal point of Oregon's decision making and local involvement in habitat protection and restoration for the Coastal Salmon Restoration Initiative (CSRI). This includes:
 - Assessing and addressing specific limiting factors to salmon recovery;
 - Assessing entire watersheds across ownership lines;
 - Integrating the role of local landowners;
 - Prioritizing and implementing on the ground work through action plan development and implementation;
 - Making habitat improvement decisions based on the best available science;
 - Receiving and disseminating technical habitat information; and
 - Monitoring the effectiveness of action plan implementation."
- Three watersheds will be used as model integration projects, the Applegate, the Coquille and the Siuslaw.

The Healthy Streams Partnership is an effort to integrate resources and knowledge to improve the health and function of aquatic systems and enhance beneficial uses of water for future generations. This effort was initiated to address the federal Clean Water Act requirements throughout the state. The Agreement, drafted by agency, agriculture and environmental interests, identifies the following general approach to address the non-point source water quality problems facing Oregon:

- Water quality management area plans for agricultural areas designated under Senate Bill 1010 for the stream segments on

- the 1996 303(d) list will be adopted by the Board of Agriculture by July of 2001. Watersheds with listed and/or candidate species will be given special consideration in setting priorities.
- Total Maximum Daily Load requirements will be completed by July of 2007. Prioritization of the basins to work on will be completed by January 1997.
 - An agricultural water quality management area plan must be completed before enforcement action is taken under Senate Bill 1010. Landowners shall also be notified and given reasonable opportunity to respond.
 - Individual landowners and community groups (for example, watershed councils, Soil and Water Conservation Districts and interest groups) will be eligible for project funding to improve and monitor water quality while area management plans are being developed, and to share in the implementation of water quality plans.

In Summary...

There is a lot of work to do. More than at any other time in Oregon's history, people are volunteering their time and resources to improve Oregon's diverse natural resource base. While a lot is known about enhancing watersheds and their resources, there is still a lot to learn. We must continue to invest in and learn from changes in resource use and management to meet Oregon's ecological, economic and social needs.



GWEB Funding Opportunities

Watershed Management Activities	GWEB Funding*
1. Assessment & Monitoring	
Compilation and Analysis of Existing Data	Yes
Development of Action Plan	Yes
Monitoring of Resource Conditions	Yes
2. Watershed Council Support	
Coordinator Salary	Yes
Coordinator Overhead & Supplies	Yes
Major Equipment (Boat, Vehicle, computer, etc.)	No
Travel reimbursement	Yes
3. Watershed Education	
Peer Outreach Projects	Yes
Landowner Workshops	Yes
Student Opportunities for Monitoring and Field Study	Yes
Local informational Materials	Yes
4. Watershed Enhancement	
Upland Runoff Management	Yes
Upland Vegetation Management	Yes
Conservation Easements/Leasing Water Rights	Yes
Riparian restoration	Yes
Wetland restoration	Yes
In-Stream Habitat Enhancement	Yes
Streambank Stabilization	No**
Culvert Replacement	Yes
Road Removal or Improvement	Yes
Off-Stream watering	Yes

*All projects require a 25% match of other contributions or in-kind labor

** Not funded when the only purpose is bank stabilization

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Table 1. GWEB Proposed Budget Allocation (does not include salaries, services and supplies)

Allocation to	Amount	GWEB Approval	Legislative Direction
GWEB Program	\$700,000	July 10, 1997	HB 3700
SWCD Support	\$2,400,000	July 10, 1997	Budget Note
OSU Research	\$500,000	July 10, 1997	Budget Note & Legislative Letter
DLCD (Goal 5)	\$320,000	July 10, 1997	Budget Note
Service Foresters	\$500,000	August 18, 1997	Budget Note
Watershed Council Support	\$2,400,000 authorized \$1,200,000 allocated to date	July 10, 1997	Budget Note
Watershed Improvement	\$4,000,000	July 10, 1997	Budget Note
Monitoring	\$1,000,000 authorized \$300,000 allocated to date	July 10, 1997	Budget Note
Temperature Monitoring	\$280,000 from balance of Monitoring Allocation	Pending	Budget Note in HB 3720
Future Watershed Improvement Grants	\$9,569,710	Pending	To Be Allocated Using Adopted Priorities
Industrial Forestry Restoration	\$616,000	August 18, 1997	Budget Note
IMST Support	\$300,000	July 10, 1997	Budget Note
Coastal Local Govt. Coordination	\$125,000	August 18, 1997	



Governor's Watershed Enhancement Board
TENTATIVE 1997-99 BIENNIUM SCHEDULE

1997 NOVEMBER	DECEMBER	1998 JANUARY	FEBRUARY
1 Issue application: accept continuously throughout biennium	12 GWEB MEETING 31 Applications received after this date held for September awards	7 Eastside Region Training 12 Westside Region Trng. 28-30 Conduct regional review meetings <i>Staff write-up evaluations</i>	18 Evaluation write-ups to EAC/TAC 26 EAC/TAC meeting to develop Board recommendation
MARCH	APRIL	MAY	JUNE
4 Recommendation sent to Board 12 GWEB MEETING Grants awarded ?? GWEB/FSOS Workshop	?? Tribes Workshop 15 Report on implementa- tion of the Oregon Plan ?? Uplands Curriculum Workshops	?? Grant Writing Workshop ?? Conflict Resolution Workshop	18-19 GWEB MEETING
JULY	AUGUST	SEPTEMBER	OCTOBER
?? Stream Scene/Uplands Workshops 22 Applications received after this date held for January awards 27 Application copies to regional review teams	10-12 Conduct regional review meetings <i>Staff write-up evaluations</i> 21 Evaluation write-ups to EAC/TAC	3 EAC/TAC meeting to develop Board recommendation 9 Recommendation sent to Board 24 GWEB MEETING Grants awarded	Who will Catch the Rain Conference
NOVEMBER	DECEMBER	1999 JANUARY	FEBRUARY
?? Uplands Curriculum Workshops	1 Applications received after this date held for 1999-2001 biennium 8 Application copies to regional review teams	7-8 Conduct regional review meetings <i>Staff write-up evaluations</i> 24 Evaluation write-ups to EAC/TAC	4 EAC/TAC meeting to develop Board recommendation 17 GWEB MEETING Grants awarded

GWEB Regions and Contacts

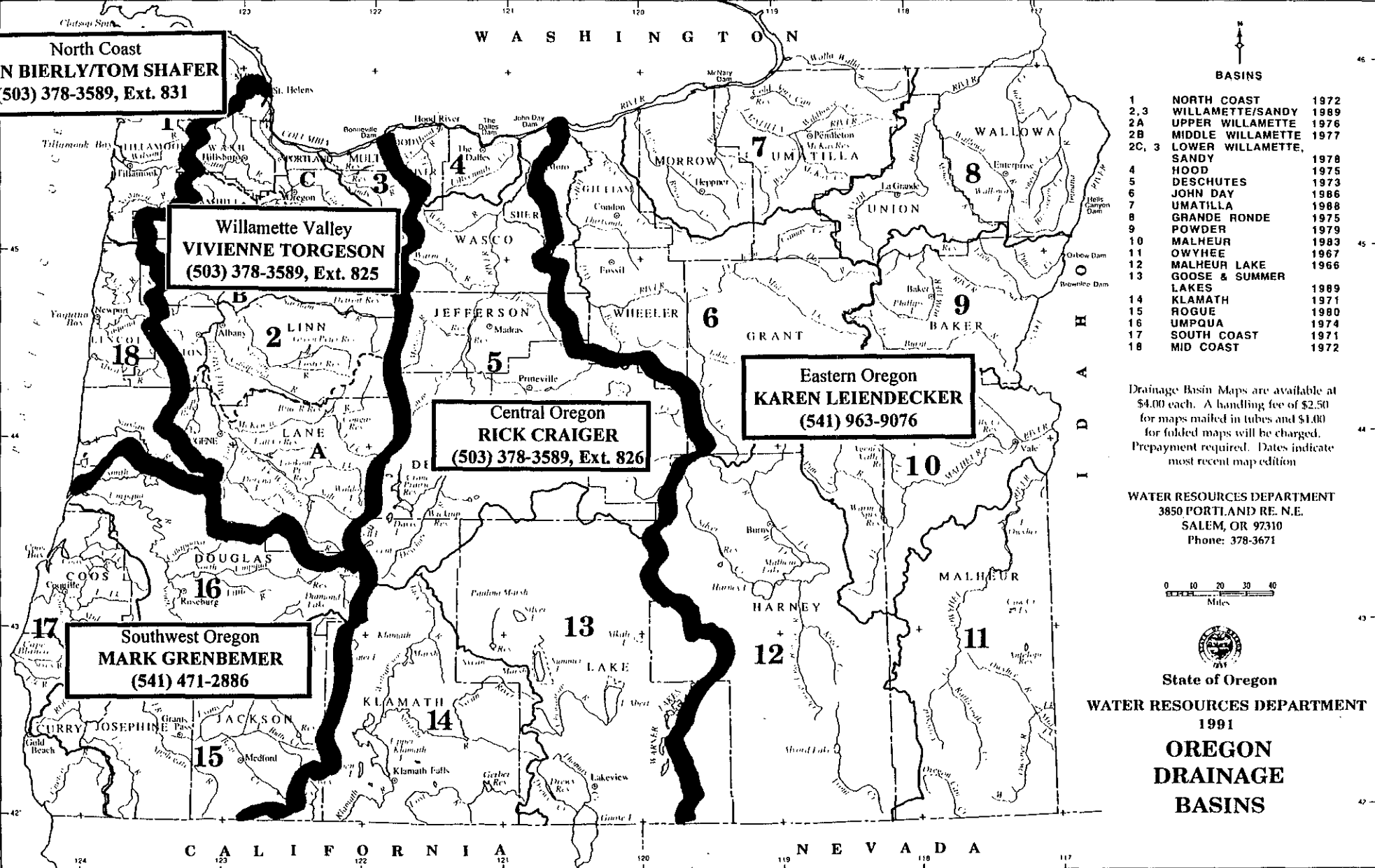
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Willamette Valley
VIVIENNE TORGESON
(503) 378-3589, Ext. 825

Central Oregon
RICK CRAIGER
(503) 378-3589, Ext. 826

Eastern Oregon
KAREN LEIENDECKER
(541) 963-9076

Southwest Oregon
MARK GRENBEMER
(541) 471-2886

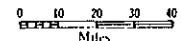


BASINS

1	NORTH COAST	1972
2, 3	WILLAMETTE/SANDY	1989
2A	UPPER WILLAMETTE	1976
2B	MIDDLE WILLAMETTE	1977
2C, 3	LOWER WILLAMETTE, SANDY	1978
4	HOOD	1975
5	DESCHUTES	1973
6	JOHN DAY	1986
7	UMATILLA	1988
8	GRANDE RONDE	1975
9	POWDER	1979
10	MALHEUR	1983
11	OWYHEE	1967
12	MALHEUR LAKE	1966
13	GOOSE & SUMMER LAKES	1989
14	KLAMATH	1971
15	ROGUE	1980
16	UMPQUA	1974
17	SOUTH COAST	1971
18	MID COAST	1972

Drainage Basin Maps are available at \$4.00 each. A handling fee of \$2.50 for maps mailed in tubes and \$1.00 for folded maps will be charged. Prepayment required. Dates indicate most recent map edition.

WATER RESOURCES DEPARTMENT
 3850 PORTLAND RE. N.E.
 SALEM, OR 97310
 Phone: 378-3671



State of Oregon
WATER RESOURCES DEPARTMENT
 1991
OREGON DRAINAGE BASINS

Regional Review Teams

20 July, 1998

Page 1 of 2

reg	first name	last name	organization	address	city	state	zip	phone	fax
1	Tony	Stein	ODFW	2040 SE Marine Science Dr	Newport	OR	97365-	(541) 867-4741ext 253	(541) 867-6311ext
1	Chris	Knutsen	ODFW	17330 SE Evelyn	Clackamas	OR	97015-	(503) 842-2741ext	(503) 842-8385ext
1	Bruce	Apple	DEQ	2310 First St STE 4	Tillamook	OR	97141-	(503) 842-3038ext	(503) 842-5986ext
1	Patty	Blondo	Tillamook Consortium	6825 Officer's Row	Tillamook	OR	97141-	(503) 842-4414ext	(503) 842-6854ext
1	Carrie	Phillips	USF&WS	2127 SE OSU Dr	Newport	OR	97365-	(541) 867-4550ext	(541) 867-4551ext
1	Mike	Powers	Dept. of Agriculture	2310 First St Suite 4	Tillamook	OR	97141-	(503) 842-6287ext	(503) 842-5986ext
1	Greg	Nelson	OWRD	158 12th St NE	Salem	OR	97310-	(503) 378-8455ext 285	
1	Neal	Maine	Coastal Studies Tech. Ctr.	5107 Hyw 101 North	Seaside	OR	97138-	(503) 738-4021ext	(503) 738-4021ext
1	Karen	Bennett	Siuslaw National Forest	4077 Research Way	Corvallis	OR	97339-	(541) 750-7101ext	(541) 750-7142ext
1	Mike	Cloughesy	OSU Extension Service	950 West 13th	Eugene	OR	97401-	(541) 682-7311ext	(541) 682-2377ext
1	Bob	Buckman	ODFW	2040 SE Marine Sci. Ctr Dr	Newport	OR	97365-	(541) 867-4741ext	
1	Bob	Jacobson	OSU Ext. (retired)	2225 Ocean View Drive	Newport	OR	97365-	(541) 265-7535ext	(541) 574-9516ext
2	Tim	Stevenson	Dept. of Agriculture	576 NE E Street	Grants Pass	OR	97526-	(541) 471-7838ext	
2	Al	Cook	OWRD	942 SW 6th St Ste E	Grants Pass	OR	97526-	(541) 471-2886ext	(541) 471-2876ext
2	Mark	Healy	Coquille Indian Tribe	PO Box 1435	Coos Bay	OR	97420-	(541) 267-4587ext	
2	Dennis	Belsky	DEQ	201 W Main St Suite 2-D	Medford	OR	97501-	(541) 776-6010ext 226	(541) 776-6262ext
2	Bob	Mullen	ODFW	4192 N Umpqua Hwy	Roseburg	OR	97470-	(541) 440-3353ext	(541) 673-0372ext
2	Craig	Royce	Dept. of Forestry	1758 NE Airport Rd	Roseburg	OR	97470-	(541) 440-3412ext	(541) 440-3424ext
2	Tom	Wiley	DOGAMI	5375 Monument Dr	Grants Pass	OR	97526-	(541) 476-2496ext	(541) 474-3158ext
2	Rod	Sampson	NRCS	251 NE Garden V. Blvd Ste L	Roseburg	OR	97470-	(541) 673-8316ext	
2	Amy	Peters	OSU Extension Service	290 North Central	Coquille	OR	97423-	(541) 396-3121ext	
2	Derek	Godwin	OSU Extension Service	PO Box 488	Gold Beach	OR	97444-	(541) 247-6672ext	(541) 247-2875ext
2	Terry	Brumley	Umpqua Nat. Forest	2900 NW Stewart Pkwy	Roseburg	OR	97470-	(541) 957-3204ext	
2	Jon	Brazier	Rogue R. Nat. Forest	333 West 8th	Medford	OR	97501-	(541) 858-2200ext	
2	Larry	Belcher	OR State Police	4500 Rogue Valley Hwy	Central Point	OR	97502-	(541) 776-6114ext 245	(541) 664-8762ext
3	Bill	Fujii	OWRD	158 12th St NE	Salem	OR	97310-	(503) 378-8455ext 254	(503) 378-8130ext
3	Gary	Galovich	ODFW	7118 NE Vandenberg Ave	Corvallis	OR	97330-	(541) 757-4186ext	(541) 757-4252ext
3	Bob	Johnson	ODF	PO Box 157	Veneta	OR	97487-	(541) 935-2283ext	(541) 935-0731ext
3	Don	Yon	DEQ	750 Front St NE Ste 120	Salem	OR	97310-	(503) 378-8240ext 247	(503) 373-7944ext
3	Deigh	Bates	Willamette Nat. Forest	211 E 7th Ave	Eugene	OR	97401-	(541) 465-6934ext	(541) 465-6343ext
3	Jim	Schoelkopf	Mt.Hood Com. College	2600 SE Stark St	Gresham	OR	97030-	(503) 667-7602ext	
3	Wayne	Johnson	Linn-Benton-Lincoln ESD	905 4th Ave SE	Albany	OR	97321-	(541) 967-8822ext	(541) 926-6047ext
3	Rick	Hayes	COE/Fernridge Res.	26275 Clear Lake Rd	Junction City	OR	97448-	(541) 688-8147ext	
3	Kat	Beal	Corps of Engineers	PO Box 429	Lowell	OR	97452-	(541) 937-2131ext 57	(541) 937-3401ext
3	Peggy	Vogue	Dept. of Agriculture	635 Capitol St NE	Salem	OR	97310-	(503) 986-4707ext	(503) 986-4730ext
3	Rob	Tracy	NRCS	2200 W 2nd	McMinnville	OR	97128-	(503) 472-6403ext	(503) 472-2459ext
3	Kelly	Doerksen	Conf. Tribes Grand Ronde	9615 Grand Ronde Rd	Grand Ronde	OR	97347-	(503) 879-5964ext	

Regional Review Teams

20 July, 1998

Page 2 of 2

reg	first name	last name	organization	address	city	state	zip	phone	fax
3	Gene	Perelli	OSU Extension Service	PO Box 640	Dallas	OR	97338-	(503) 623-8395ext	
3	Phil	Kaufman	OSU Dept. Fish/Wildlife	200 SW 35st	Corvallis	OR	97333-	(541) 754-4451ext	
4	Jim	Torland	ODFW	3701 West 13th St	The Dalles	OR	97058-	(541) 296-4628ext	
4	Gene	Hickman	NRCS	20350 Empire Av Bldg A Ste 3	Bend	OR	97701-	(541) 382-8466ext	(541) 385-6248ext
4	Elwood	Miller	Klamath Tribes	PO Box 436	Chiloquin	OR	97624-	(541) 783-2219ext	
4	David	Summer	Deschutes Nat. Forest	1645 Hwy 20 E	Bend	OR	97701-	(541) 388-2715ext	
4	Bonnie	Lamb	DEQ	2146 NE Fourth Ste 104	Bend	OR	97701-	(541) 388-6146ext 239	(541) 388-8283ext
4	Rod	Todd	OSU Extension Service	3328 Vandenberg Rd	Klamath Falls	OR	97603-	(541) 883-7131ext	(541) 883-4582ext
4	Bill	Pieratt	Prineville District BLM	PO Box 550	Prineville	OR	97754-		
4	Ellen	Hammond	Dept. of Agriculture	2146 NE 4th St Ste 104	Bend	OR	97701-	(541) 617-0017ext	(541) 388-8283ext
4	Rebecca	Geisen	OWRD	158 12th St NE	Salem	OR	97310-	(503) 378-8455ext 241	(503) 378-8130ext
4	Tim	Deboodt	OSU Extension Service	498 SE Lynn Rd	Prineville	OR	97754-		
4	Steve	Egeline	Fremont National Forest	524 North G	Lakeview	OR	97630-	(541) 947-6205ext	(541) 947-6399ext
4	Hap	Boyer	Bureau of Reclamation	1150 North Curtis Rd Ste 100	Boise	ID	83706-	(208) 378-5282ext	(208) 378-5305ext
4	Stu	Otto	OR Dept of Forestry	3501 E 3rd	Prineville	OR	97754-	(541) 447-5658ext	(541) 447-1469ext
5	Dan	Gonzalez	Burns Paiute Tribe	HC 71 100 Pasigo St	Burns	OR	97720-		
5	Dave	Blackstun	BLM	HC 74 - 12533 Hwy 20 W.	Hines	OR	97738-	(541) 573-4445ext	
5	Greg	Kuehl	NRCS	3990 Midway Dr	Baker City	OR	97814-	(541) 523-7121ext	(541) 523-2184ext
5	Tom	Straughan	Dept. of Agriculture	1 SW Nye St Suite B	Pendleton	OR	97801-	(541) 278-6721ext	(541) 276-8130ext
5	Ken	Diebel	Dept of Agriculture	10507 N McAlister Rd Rm1	La Grande	OR	97850-	(541) 963-4610ext	
5	*Mike	Ladd	OWRD	116 SE Dorion	Pendleton	OR	97801-	(541) 278-5456ext	(541) 278-0287ext
5	Kathy	Ferge	OWIC	35638 Rieth Rd	Echo	OR	97826-	(541) 276-1260ext	
5	Steve	Fletcher	Wallowa-Whitman Nat. For.	PO Box 907	Baker City	OR	97814-		
5	Mitch	Wolgamott	Dept. of Env. Quality	3012 Island Avenue	La Grande	OR	97850-	(541) 963-1331ext	
5	Dave	Zimmer	Bureau of Reclamation	1150 Curtis Rd Ste 100	Boise	ID	83706-	(208) 378-5088ext	
5	Don	Bryson	Nez Perce Tribe	201 West Main	Enterprise	OR	97828-		
5	Dave	Chamberlain	OSU Extension Service	450 North Buena Vista	Burns	OR	97720-	(541) 573-2506ext	
5	Mike	Burton	NRCS	10507 N McAlister	La Grande	OR	97850-	(541) 963-0724ext	(541) 962-1022ext
5	Mike	Gray	ODFW	PO Box 9	John Day	OR	97845-	(541) 575-1167ext	(541) 575-0948ext
5	Sam	Pambrun	Umatilla/Morrow ESD	2001 SW Nye	Pendleton	OR	97801-	(541) 276-6992ext 148	(541) 276-4252ext
5	Barry	Nord	NRCS	2925 SW 6th Ste 2	Ontario	OR	97914-	(541) 889-2588ext	(541) 889-4304ext
5	John	Buckman	OR Dept of Forestry	1055 Airport Rd	Pendleton	OR	97801-	(541) 276-3491ext	(541) 276-0710ext
5	Lara	Burgel	OWRD	158 12 th St NE	Salem	OR	97310	(503) 378-8455ext 301	(503) 378-8130
6	Steve	Purchase	Division of State Lands	775 Summer St NE	Salem	OR	97310-	(503) 378-3805ext	
6	Sue	Chase	ODOT	800 SE Airport Rd	Salem	OR	97310-	(503) 986-3008ext	(503) 986-3096ext



OREGON'S WATERSHED COUNCIL PROGRAM

What are Local Watershed Councils?

Watershed Councils are locally organized, voluntary, non-regulatory groups established to improve the condition of natural resources in the state's watersheds. There are currently almost 80 recognized councils in Oregon engaged in a wide range of watershed work.

The 1995 legislature unanimously passed House Bill 3441 to provide guidance on the formation of watershed councils. However, House Bill 3441 makes it clear that formation of a council is a local government decision, with no state approval required. Watershed councils are required to represent the interests in the basin and be balanced in their makeup. Watershed councils offer local residents the opportunity to independently evaluate watershed conditions and identify opportunities to restore or enhance conditions. Through the councils, partnerships between residents, local, state and federal agency staff and other groups can be developed. Through these partnerships and the resulting integration of local efforts, the state's watersheds can be protected and enhanced.

How Local Watershed Councils are Formed

Establishment of a council is a local government decision made by a city, county, water supply or sewer district. In practice, recognition of councils has been by formal letter, resolution or order, usually from a county commission. Two primary guidelines are provided by the legislation: 1) that the watershed council be a voluntary, local group; and 2) that the council represent a balance of interested and affected persons within the watershed. Watershed councils are comprised of people from the local communities. They represent local knowledge and understand the local community and its complexities.

Some watershed councils form as non-profit corporations or adopt other formal organizational structures, while others organize as informal groups. Many councils work closely with local soil and water conservation districts, council of governments and resource conservation and development districts.

The Role of Local Watershed Councils:

Watershed councils work across jurisdictional boundaries and across agency mandates to look at the watershed in its entirety. The primary purpose of the watershed council is to address watershed conditions from ridgetop to ridgetop. The council also plans and implements projects to protect or improve natural resources, educates people about watershed conditions and functions, and monitors changes in the watershed.

The council is a forum to bring local, state and federal land management agencies together with local property owners and private land managers. It provides local people with a voice in natural

resource management which can significantly influence watershed management decisions. Councils can also be a tool that watershed management decision-makers use to disseminate information to the public, gage local sentiment on specific management issues and coordinate a broad-based review of management plans.

Watershed councils do not have any specific authority or ability to regulate land or water use. They work as an advisory body but also undertake specific restoration, education and monitoring projects. As a group that is recognized by local government, they incur no more or less liability to local governments than any other locally appointed advisory group (i.e., planning commission, design review board, etc.).

Local Watershed Councils and The Oregon Plan:

Local watershed councils are an essential part of The Oregon Plan. The Oregon Plan currently has two components: the Coastal Salmon Restoration Initiative which deals with recovering coho salmon runs in coastal basins, and the Healthy Streams Partnership which deals with improving water quality statewide to meet federal Clean Water Act standards. A third component addressing the restoration of potentially threatened steelhead salmon is being added to The Oregon Plan and it is envisioned that eventually the plan will become a comprehensive approach to sustaining watershed health to meet the habitat requirements of all species.

Watershed councils, working through their local networks and relying upon technical expertise from local, state and federal agencies, are compiling and analyzing data on current watershed conditions and developing prioritized work plans to solve natural resource problems. They are monitoring watershed conditions, tracking the effects of restoration work, and providing data to a centralized repository so that the overall impact of The Oregon Plan can be quantified. Watershed councils are also working hard to provide information and raise public awareness about watershed health issues. Helping people realize that they have an individual role and responsibility for the state's natural resources will, in the long run, help ensure the future viability of our watersheds.

Local Watershed Councils and GWEB

The Governor's Watershed Enhancement Board (GWEB) was directed by the 1995 legislature to support the work of local watershed councils. GWEB provides grant funds for activities that benefit the state's watersheds, provides technical assistance through its member agencies and administers funding for implementation of The Oregon Plan. When evaluating applications for grant funds, GWEB gives preference to projects that are proposed or endorsed by watershed councils. Councils may also apply to GWEB for funding for coordinator salaries and council administrative costs. GWEB provides informational materials to councils, sponsors workshops for council members, and is developing a watershed assessment manual to provide uniform protocols for assessing current watershed conditions.

Locally Organized Watershed Councils in Oregon

07/29/98

Page 1 of 2

Organization	First Name	Last Name	Address	City	State	Zip	Telephone	Fax
APPLEGATE R WS COUNCIL	JAN	PERTTU	2816 UPPER APPLEGATE RD	JACKSONVILLE	OR	97530-	(541) 899-8036	
BAKEOVEN WS COUNCIL	JEFFERY	HOPKINS-CLARK	2325 RIVER RD STE 3	THE DALLES	OR	97058-	(541) 296-6178	
BANKS WS COUNCIL	DALE	MERRELL	PO BOX 428	BANKS	OR	97106-		
BEAR CREEK WS COUNCIL	BILL	MEYERS	RVCOG PO BOX 3275	CENTRAL POINT	OR	97502-	(541) 664-6676	(541) 664-7927
BRIDGE CR WS COUNCIL	PAT	GEER	31444 WEST BRANCH ROAD	MITCHELL	OR	97750-	(541) 462-3882	(541) 462-3882
BULLY CR WS COALITION	BILL	ROMANS	2200 SIXTH AVE	VALE	OR	97918-	(541) 473-3365	
CALAPOOIA WS COUNCIL	KATHY	KOEHN	14420 WHITE LANE	JEFFERSON	OR	97352-	(503) 378-8240	
CHETCO WS COUNCIL	STEVE	NICHOLSON	PO BOX 75	SMITH RIVER	CA	95567-	(707) 487-3516	
CLACKAMAS RBC	ERIC	CARLSON	PO BOX 1869	CLACKAMAS	OR	97015-1869	(503) 650-1256	
CLACKAMAS RIVER BASIN	LLOYD	MARBET	19142 SE BAKERS FERRY RD	BORING	OR	97009-	(503) 637-3549	(503) 637-6130
CLAGGETT CR WS GROUP	GARY	MILLER	c/o 505 SANDY DR N	SALEM	OR	97303-	(503) 399-5233	
CLATSOP COORD COUNCIL	JIM	CLOSSON	750 COMMERCIAL ST, RM 205	ASTORIA	OR	97103-	(503) 325-0435	(503) 325-0459
COLUMBIA SL WS COUNCIL	JAY	MOWER	7040 NE 47TH AVE	PORTLAND	OR	97218-1212	(503) 281-1132	(503) 281-5187
COOS WATERSHED ASSN	ANNE	DONNELLY	PO BOX 5860	COOS BAY	OR	97420-	(541) 888-5922	(541) 888-6111
COQUILLE WATERSHED ASSN	JENNIFER	HEMPEL	382 N CENTRAL BLVD	COQUILLE	OR	97423-	(541) 396-2229	(541) 396-3963
CROOK COUNTY WS COUNCIL			350 N DURHAM ST	PRINEVILLE	OR	97754-1955		
DESCHUTES CNTY WS COUNCIL	BARBARA	LEE	PO BOX 894	BEND	OR	97709-	(541) 383-7146	(541) 383-7638
ECOLA CREEK WS COUNCIL	FRANK	LITTLE	PO BOX 368	CANNON BEACH	OR	97110-	(503) 436-1739	
ELK-SIXES R WS COUNCIL	CAROLYN	OSBORNE	PO BOX 666	GOLD BEACH	OR	97444-	(541) 247-2755	
ELK-SIXES R WS COUNCIL	PAUL	HAMMERBERG	PO BOX 277	BANDON	OR	97411-	(541) 396-4391	
EUCHRE CR WS COUNCIL	JOHN	WILSON	PO BOX 666	GOLD BEACH	OR	97444-	(541) 247-2755	
EVANS CR WS COUNCIL	PHIL	GREMAUD	PO BOX 537	ROGUE RIVER	OR	97537-9609	(541) 582-0062	
FAIRVIEW CR WS PLAN GROUP			2115 SE MORRISON	PORTLAND	OR	97214-	(503) 253-0503	
FIFTEEN MILE WS COUNCIL	JEFFERY	HOPKINS-CLARK	2325 RIVER RD STE 3	THE DALLES	OR	97058-	(541) 296-6178	
FLORES CR/NEW R WS CNCL	MIKE	KNAPP	PO BOX 85	LANGLOIS	OR	97450-	(541) 348-9961	
GILLIAM-EAST JOHN DAY WSC	SUSIE	ANDERSON	PO BOX 427	CONDON	OR	97823-	(541) 384-3768	(541) 384-2166
GLENN & GIBSON CREEK WS	LINDA	BIERLY	2308 PTARMIGAN ST NW	SALEM	OR	97304-	(503) 362-6860	
GOOSE LK FISHES WRKNG GRP	RAY	SIMMS	513 CENTER ST	LAKEVIEW	OR	97630-	(541) 947-6003	
GRANDE RONDE MODEL WS	PATTY	PERRY	10901 ISLAND AVE	LA GRANDE	OR	97850-	(541) 962-6590	(541) 962-6593
HARNEY COUNTY WS COUNCIL	KATHERINE	ANDERSON	HC 71 4.51 HWY 205	BURNS	OR	97720-	(541) 573-2064	
HOOD R WS COUNCIL	HOLLY	COCCOLI	2990 EXPERIMENT STN DR	HOOD RIVER	OR	97031-	(541) 386-2275	
HUNTER CR/PISTOL R WSC			PO BOX F	GOLD BEACH	OR	97444-	(541) 247-2754	
ILLINOIS V WS COUNCIL	CORKY	LOCKARD	PO BOX 352	CAVE JUNCTION	OR	97523-	(541) 592-3770	
JOHNSON CR WS COUNCIL	BOB	ROTH	525 LOGUS ST	OREGON CITY	OR	97045-	(503) 239-3932	(503) 239-3946
KLAMATH BSN WS ADV CNCL	JAMES R	OTTOMAN	20554 N MALIN	MALIN	OR	97632-		
L BUTTE CR WS COUNCIL	LU	ANTHONY	1094 STEVENS RD	EAGLE POINT	OR	97524-	(541) 826-2908	
L COLUMBIA WS COUNCIL	MARGARET	MAGRUDER	12589 HWY 30	CLATSKANIE	OR	97016-	(503) 728-9015	
L NEHALEM WS COUNCIL	DOUG	FIRSTBROOK	PO BOX 249	NEHALEM	OR	97131-	(503) 368-7424	
L ROGUE WS COUNCIL	JENNIFER	DWYER	PO BOX 666	GOLD BEACH	OR	97444-	(541) 247-2755	(541) 247-8058
LONG TOM WS COUNCIL	DANA	ERICKSON	751 S DANEBE AVE	EUGENE	OR	97402-	(541) 683-6578	(541) 683-6998
LOST CR WS GROUP	JONO	NEIGER	81868 LOST VALLEY LANE	DEXTER	OR	97431-		
MALHEUR WS COUNCIL	ED	GHEEN	2925 SW 6TH AVE STE 2	ONTARIO	OR	97914-	(541) 889-2588	
MARY'S RIVER WS COUNCIL	SANDRA	COVENY	PO BOX 1041	CORVALLIS	OR	97339-	(541) 758-7597	(541) 754-4252
McKENZIE WS COUNCIL	JOHN	RUNYON	PO BOX 1025	CORVALLIS	OR	97339-	(541) 741-5235	(541) 766-8336
McKENZIE WS COUNCIL	PATRICK	THOMPSON	40240 MOHAWK RVR RD	MARCOLA	OR	97454-	(541) 687-4283	
MID COAST WS COUNCIL	LEROY	FISH	344 SW 7TH ST STE A	NEWPORT	OR	97365-	(541) 265-2631	(541) 265-9351
MID DESCHUTES WS COUNCIL	MARIE	HORN	243 SW 3RD ST	MADRAS	OR	97741-	(541) 475-3144	
MID FK WILLAMETTE COUNCIL	DEAN	SHINN	PO BOX 1216	OAKRIDGE	OR	97463-		
MOHAWK WS PLAN GROUP	LORNA	BALDWIN	28750 FOX HOLLOW RD	EUGENE	OR	97405-	(541) 338-8078	(541) 465-6483

Locally Organized Watershed Councils in Oregon

07/29/98

Page 2 of 2

Organization	First Name	Last Name	Address	City	State	Zip	Telephone	Fax
N FK JOHN DAY WS COUNCIL	ROBERT	STUBBLEFIELD	PO BOX 95	MONUMENT	OR	97864-		
N SANTIAM WS COUNCIL	PATRICIA	SMITH	35403 FRANCIS ST	LYONS	OR	97358-	(503) 897-2606	
NECANICUM WS COUNCIL	GLENN	JAQUES	2085 MAPLE ST	SEASIDE	OR	97138-	(503) 738-9242	
NESTUCCA WS COUNCIL	VICKI	GOODMAN	PO BOX 255	HEBO	OR	97122-	(503) 842-2240	
NETARTS BAY WS COUNCIL	LESLIE	PITTMAN	6385 TILLAMOOK AVE	BAY CITY	OR	97107-	(503) 377-4000	(503) 377-4010
NICOLAI-WICKIUP WS COUNCIL	SAM	PATRICK	RT 4 BOX 593-K	ASTORIA	OR	97103-	(503) 458-6881	
PINE HOLLOW WS COUNCIL	JEFFERY	HOPKINS-CLARK	PO BOX 405	MORO	OR	97039-	(541) 565-3216	(541) 565-3430
PORT ORFORD WS COUNCIL	DAVID	WILKEN	PO BOX 82	PORT ORFORD	OR	97465-	(541) 332-5023	
PORT ORFORD WS COUNCIL	ELLEN	WARING	PO BOX 310	PORT ORFORD	OR	97465-		
POWDER BASIN WS COUNCIL	VICKI	WARES	3990 MIDWAY DR	BAKER CITY	OR	97814-	(541) 523-7121	
PRINGLE CR WS COUNCIL	TINA	SCHWEIKERT	PUB WRKS 555 LIBERTY ST SE	SALEM	OR	97301-	(503) 588-6211	
PUDDING CR WS GROUP	TERRI	ALLEN	PO BOX 247	SCOTTS MILLS	OR	97375-	(503) 873-2757	
RICKREALL WS STEERING COM	GENE	CLEMENS	850 MAIN ST	DALLAS	OR	97338-	(503) 623-9237	
S COAST WS COUNCIL	HARRY	HOOGESTEGER	PO BOX 666	GOLD BEACH	OR	97444-	(541) 247-2755	(541) 247-8058
S.SANTIAM WS COUNCIL	SUSAN	GRIES	33630 MCFARLAND RD	TANGENT	OR	97389-	(541) 967-5927	
SANDY BASIN WS COUNCIL	DEBBIE	MCCOY	PO BOX 868	SANDY	OR	97055-	(503) 630-2382	(503) 630-2341
SCAPPOOSE BAY WS COUNCIL	DAVID	POWERS	34017 SLAVENS RD	WARREN	OR	97053-	(503) 229-5988	
SIUSLAW WS COUNCIL			PO BOX 422	MAPLETON	OR	97452-	(541) 268-3044	
SKIPANON WS COUNCIL	JIM	SHELLER	523 TURLAY RD	WARENTON	OR	97146-	(503) 861-3669	
SW COOS WS COUNCIL	CINDY	CHASE	RT 1 BOX 1370A	BANDON	OR	97411-	(541) 347-9584	
TEN MILE BASIN PARTNERSHIP	JIM	BROWN	PO BOX L	LAKESIDE	OR	97449-	(541) 759-4325	
TILLAMOOK WS COUNCIL	LESLIE	PITTMAN	6385 TILLAMOOK AVE	BAY CITY	OR	97107-	(503) 377-4000	(503) 377-4010
TRYON CR PARTNERSHIP	LIZ	CALLISON	6039 SW KNIGHTS BRIDGE	PORTLAND	OR	97219-	(503) 244-0641	
TRYON CR WS COUNCIL	DAWN	UCHIYAMA	10750 BOONES FERRY RD	PORTLAND	OR	97219-	(503) 823-5596	
TUALATIN WS COUNCIL	JACQUELINE	DINGFELDER	1080 SW Baseline Bldg B Ste B-2	HILLSBORO	OR	97123-	(503) 681-0953	(503) 681-9772
U NEHALEM WS COUNCIL	MAGGIE	PEYTON	16747 TIMBER RD	VERNONIA	OR	97064-	(503) 429-2401	
U ROGUE WS COUNCIL	CAROL	FISHMAN	PO BOX 1128	SHADY COVE	OR	97539-	(541) 878-3800	(541) 878-3800
UMATILLA BASIN WS COUNCIL	TRACY	BOSEN	PO BOX 1551	PENDLETON	OR	97801-	(541) 276-2190	
UMPQUA BASIN WS COUNCIL	BOB	KINYON	1758 NE AIRPORT RD	ROSEBURG	OR	97470-	(541) 672-6507	(541) 440-3424
UPPER CHEWAUCAN WS CNCIL	SCOTT	PETES	PO BOX 67 RANGER DIST	PAISLEY	OR	97636-	(541) 943-3114	
UPPER KLAMATH WS COUNCIL	DIANE	KEITH	2316 S 6TH STE C	KLAMATH FALLS	OR	97601-	(541) 882-5409	(541) 882-5409
Upper S Fork John Day Basin	Phil	St. Clair	St Clair Ranch Izee Rt.	Canyon City	OR	97820-		
WALLA WALLA WS COUNCIL	JOHN	ZERBA	PO BOX 68	MILTON FREEWATER	OR	97862-	(541) 938-6105	
WILLIAMS CR WS COUNCIL	RANDY	CAREY	PO BOX 94	WILLIAMS	OR	97544-	(541) 846-9175	
WINCHUCK WS COUNCIL	TERRY	HANSCAM	11243 WINCHUCK RIVER RD	BROOKINGS	OR	97415-	(541) 469-5462	
YAMHILL WS COUNCIL	MELISSA	LEONI	2200 W 2ND	MCMINNVILLE	OR	97128-	(503) 472-6403	
YOUNG'S BAY WS COUNCIL			RT 1 BOX 990	ASTORIA	OR	97103-	(503) 325-8609	

THE GOVERNOR'S WATERSHED ENHANCEMENT BOARD

255 Capitol St. NE, 3rd Floor, Salem, OR 97310-0203

Telephone: (503) 378-3589, Ext. 825, 826, 831

FAX: (503) 378-3225

1997-99 GRANT APPLICATION

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February 17, 1999

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695-20-45

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Funding priority will also be given to:

- a) Projects that ensure monitoring of both implementation and effectiveness and are structured to have measurable outcomes and identifiable results.
- b) Projects developed from a watershed-level assessment and analysis of conditions that includes an action plan for restoration or enhancement of watershed functions.

Does this project assist:

- The Coastal Salmon Restoration Initiative (improves habitat conditions for coastal salmon)
- The Healthy Streams Partnership (improves water in water quality limited areas)

1. Please list all agencies/organizations from whom funding is anticipated for the proposed project (note that at least 25% in other funding is required - see the Guidebook for a definition of other funding) and provide cost-share information as requested below.

Agency/Organization	Cost Share Status Secured?			Amount Requested
	yes	no	in-kind	
Governor's Watershed Enhancement Board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Oregon Department of Fish and Wildlife	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Oregon Department of Agriculture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Oregon Department of Environmental Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Oregon Department of Forestry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
USDA Natural Resource Conservation Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
US Fish and Wildlife Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Total Estimated Project Costs: _____

2. Have any conditions been placed on other funds which may affect project completion?

Yes No If yes, explain: _____

3. Who will be partnering (agencies, landowners, volunteers) in the project and what will they be doing? _____

4. a) Is the proposal part of an existing plan for the watershed? Yes No If yes, name the plan:

b) How does this proposal relate to other projects completed or planned in the watershed?

c) How does this proposal relate to workforce and economic development plans in the local community? _____

5. If the project is not primarily for education and/or public awareness, how will you promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally? _____

6. What is the proposed schedule for the project? _____

7. Have affected individuals and organizations been contacted about this proposal and do they support it? YES NO If no, please explain: _____

8. **Required Attachments: Be sure to complete and attach these forms to the back of your application:**

- Budget Page
- Legal Requirements Page
- Other documentation requested in Section III

Section III
SPECIFIC PROJECT ACTIVITY

USE 8-1/2" x 11" SINGLE-SIDED PAGES

*Answer the sets of questions that apply to the type of activity you propose.
Retype the questions and number your answers to correspond to the questions.*

WATERSHED MANAGEMENT PROJECTS:

For projects that involve on-the-ground (or in the stream) activity, please answer the following questions. For projects that encompass work at more than one location within the watershed, be specific for each site.

- T1. What is the present situation? Please describe the current conditions at the project site(s).
- T2. What are you proposing to do? Supply sufficient detail to match the complexity and technical difficulty of the project so that its technical viability can be evaluated.
- T3. What are the objectives you plan to achieve?
- T4. Who will inspect the completed project work?
- T5. How will the success of this project be determined, i.e., what elements of the project will be monitored/evaluated – by whom, how often and for how long? (GWEB's standard for post-project monitoring of on-site enhancement projects is 10 years). List:

Agency/Organization	Address	Activity & Frequency
---------------------	---------	----------------------

- T6. Who will maintain the project and for how long? List:

Name/Agency/Organization	Address	Activity & Frequency
--------------------------	---------	----------------------

- T7. What elements of the project will GWEB funds be used for?
- T8. Additional Required Attachments: The following must also be part of the application in order for your proposal to be considered.

- Land Use Information Page** (see attached form)
- Maps:** Provide a general location map highlighting the location and extent of your project. On a more detailed map, locate site specific activities. Please provide maps on 8-1/2" x 11" pages.
- Location:** Provide the township, range, section and 1/4 corner location of each site
- Photographs:** Please provide photographs that may be useful in understanding the situation.

WATERSHED EDUCATION PROJECTS:

For projects with the primary purpose of communicating information about watersheds or for other projects that include significant components of education and/or public outreach, please answer the following questions.

- E1. Indicate which categories your project falls into:
- | | | | |
|---------------------------------------|---|-----------------------------------|--------------------------------|
| <input type="checkbox"/> School Group | <input type="checkbox"/> Demonstration | <input type="checkbox"/> Local | <input type="checkbox"/> Other |
| <input type="checkbox"/> Landowners | <input type="checkbox"/> Public Awareness | <input type="checkbox"/> Regional | |
- E2. Describe the present situation and explain why the work you propose is needed.
- E3. What are you proposing to do, what learning strategies will be used and what will your end product be?
- E4. What are the instructional goals and objectives you plan to achieve?
- E5. What audience will be targeted and how will you deliver your product to them?
- E6. Could your project be used at other locations without major modifications? Explain.
- E7. Describe the credentials and related experience of those who will be undertaking this project.
- E8. Identify who will evaluate the education results, the elements that will be evaluated and the evaluation method to be used.
- E9. What elements of the project will GWEB funds be used for?

WATERSHED COUNCIL SUPPORT PROJECTS:

For projects requesting funding for a Watershed Council Coordinator and related expenses, please answer the following questions.

- C1. Describe the present situation in the watershed and explain why a coordinator is needed.
- C2. Provide a work plan (including products and time line) for the coordinator.
- C3. What watershed council objectives will be achieved with the aid of the coordinator?
- C4. Explain the level of local support for this position.
- C5. Explain who will be responsible for overseeing the work done by the coordinator and who will be responsible for maintaining payroll and insurance records.

- C6. Identify how the watershed council eventually plans to support this position without GWEB financial support.
- C7. How will the success of the position be evaluated?
- C8. What elements of the project will GWEB funds be used for?
- C9. Attach a list of watershed council members and documentation to show that the council has been formally recognized.

☐ WATERSHED ASSESSMENT/ACTION PLAN PROJECTS:

For projects requesting funding for assessment of watershed conditions and/or development of action plans, please answer the following questions:

- A1. Describe what is known about the status of other past or current watershed assessment efforts.
- A2. How are you proposing to assess watershed conditions?
- A3. What are the objectives? Identify how you plan to establish priorities, if developing an action plan.
- A4. Who will conduct the assessment/action plan and how will affected groups be involved?
- A5. What data sources currently exist and how will they be used?
- A6. Will the development of an Action Plan be based upon an existing watershed assessment? If so, please name the assessment and give the date it was completed.
- A7. How will the success of the project be determined?
- A8. What element of the project will GWEB funds be used for?

☐ WATERSHED MONITORING PROJECTS:

For projects requesting funding for watershed monitoring activities, answer the following questions:

- M1. What is the present situation? Describe the issue or opportunity the project addresses.
- M2. What are you proposing to do? Supply sufficient detail to match the complexity and technical difficulty of the project so that its technical viability can be evaluated.
- M3. Describe the type of monitoring proposed (baseline or post-project effectiveness) and what protocols will be used.

- M4. What are your objectives? If effectiveness monitoring is proposed, provide a specific hypothesis or monitoring question. How will the data be used?
- M5. Describe how the information to be gathered augments existing available data.
- M6. How will the success of the project be determined?
- M7. What element of the project will GWEB funds be used for?

PROJECT BUDGET

Minimize projected costs under each of the following categories:

	Unit	Unit Cost	Donated Services/Supplies	Other Funds	GWEB Funds	Total Costs
PERSONNEL (For example: wages, benefits):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
ADMINISTRATION (For example: planning, design, permits, inspection, monitoring, maintenance):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
TRAVEL (For example: mileage, per diem, student transportation):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
CONTRACTED SERVICES (For example: labor for fencing, instream work, technical consultation):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
SUPPLIES/MATERIALS (For example: fertilizer, seed, fencing, boulders, logs, postage, paper, film):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
PRODUCTION COSTS (For example: video production, printing, film developing):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
EQUIPMENT* (For example: items usable beyond the end of the project such as rain gauge, thermograph, Hach kits):						
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
Percent (%) of total project cost:			_____ %	_____ %	_____ %	
TOTALS:	_____	_____	_____	_____	_____	_____

*Attach list of equipment expenditures over \$100.00

LAND USE INFORMATION SHEET

This information is needed to determine if the proposed project complies with statewide planning goals and is compatible with local comprehensive plans (ORS 192.180).

CITY/COUNTY LAND USE INFORMATION (to be completed by local planning official):

Please check below the one that applies:

- This project is not regulated by the local comprehensive plan and zoning ordinance.
- This project has been reviewed and is compatible with the local comprehensive zoning ordinance. (Please cite appropriate plan policies, ordinance section, and case numbers).
- This project has been reviewed and is not compatible with the local comprehensive plan and zoning ordinance. (Cite appropriate plan policies, ordinance section, and case numbers).
- Compatibility of this project with the local planning ordinance cannot be determined until the following local approvals are obtained:

_____ Conditional Use Permit _____ Development Permit
_____ Plan Amendment _____ Zone Change
_____ Other

An application has _____ has not _____ been made for the local approvals checked above.

*Signature of Local Official: _____

Title: _____ Date: _____

* *Must be authorized signature from your local City/County Planning Department*

LEGAL REQUIREMENTS

AGREEMENTS

I/we, _____
of _____, Oregon, hereby make application for financial
assistance under the terms and conditions of the Governor's Watershed Enhancement
Board in the amount of \$ _____. The total cost of the project is
\$ _____, as shown on Page 1.

I/we understand that if this proposal is funded, I/we will be required to:

- Sign a Grant Agreement containing the terms and conditions upon which funds will be released, including submission of necessary permits and documents, a certification to comply with state, federal and local regulations, and a release of liability for the State of Oregon;
- Obtain landowner, monitoring and maintenance agreements;
- Certify that the project complies with state, federal and local regulations;
- Submit a report at the completion of project construction and subsequent periodic reports to the Board on the project's performance; and
- Agree that educational products resulting from projects are public domain.

SIGNED: _____ DATE: _____

TITLE: _____



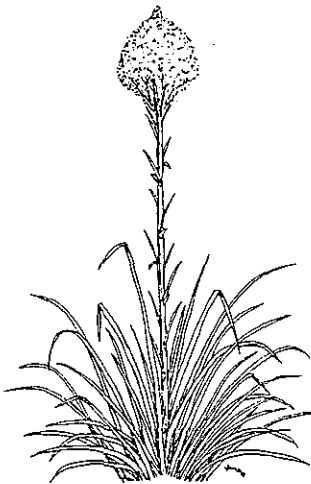
SUPPLEMENTAL INFORMATION

GUIDE TO PROJECTS

and

HOW TO APPLY FOR GRANT FUNDS

November 1997



Governor's Watershed Enhancement Board
255 Capitol St. NE
Salem, OR 97310-0203
(503) 378-3589, Ext. 827

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Part I
GUIDE TO PROJECTS

INTRODUCTION

Thank you for your interest in watershed enhancement! The Governor's Watershed Enhancement Board (GWEB) wants to make the process of developing a successful grant application as simple and straightforward as possible. **Please read this Guide carefully before completing your application.**

Part I of this Guide explains the GWEB program as it relates to potential grant activities and the evaluation criteria used to make funding decisions.

Part II provides an explanation of the type of information being requested.

NOTE: The project application is a separate document to be used when applying for funds.

Applications can be for watershed management, education, support for watershed councils, conducting assessments of watershed conditions, developing watershed action plans, or monitoring. Please note that grant applications can be submitted to GWEB **at any time during the remainder of the 1997-99 biennium** (i.e., until June 30, 1999). However, applications received after December 1, 1998 will be held for funding consideration in the 1999-2001 biennium.

We hope this Guide will be of help to you in applying for a grant. If you have additional questions, please contact GWEB program representatives Vivienne Torgeson (Ext. 825) or Rick Craiger (Ext. 826), or call Ken Bierly, GWEB Program Manager, at Ext. 831.

GWEB Central Office:
255 Capitol St. NE, 3rd Floor, Salem, OR 97310-0203
Telephone (503) 378-3589 FAX (503) 378-3225.

Alternatively, please contact GWEB field staff:

Mark Grenbemer, 101 NW "A" St., Grants Pass, OR 97526
Telephone (541) 474-5385, FAX (541) 474-5389
for projects in the southwest area of the state;

Karen Leiendecker, 10901 Island Ave., La Grande, OR 97850
Telephone (541) 963-9076, FAX (541) 962-0126
for projects east of the Deschutes Basin.

You may also contact any agency involved with the GWEB program. There is a list of these agencies at the back of this guide.

WATERSHED ENHANCEMENT DEFINITIONS USED BY GWEB

◆ What is a watershed management project?

A watershed management project is one that involves an on-the-ground element, such as a change in land use activities, re-establishing or changing the vegetation and function of riparian or associated upland areas, constructing fish habitat, purchasing conservation easements or leasing water rights. Each watershed management project should demonstrate the environmental and potential economic value of good watershed management.

◆ What is an education project?

An education project has as its primary purpose the communication of information about watersheds. It may encompass a formal course of study that leads to a change in behavior or perception, or it may be focused on raising public awareness about watershed issues. All education projects have a defined objective, are directed at a specific audience and have a planned outcome.

◆ What is a watershed council?

A watershed council is a voluntary local group designated by a local government and convened by a county governing body to address the goal of sustaining, protecting or enhancing natural resources within a watershed. Watershed councils are expected to consist of a balance of interests in the watershed and be made up of local people who live in the area. Some watershed councils were recognized by the state's Watershed Health Program during the 1993-95 biennium. Since that time, local governments have recognized more than 50 watershed councils.

Watershed councils have been identified as being highly effective organizations for developing and implementing plans for watershed improvement. Councils are expected to look beyond purely political boundaries to provide an integrated evaluation of watershed conditions and implement solutions to watershed problems.

◆ What are watershed council support projects?

The 1995 legislature directed GWEB to provide assistance to local watershed councils. Watershed council support projects are intended to facilitate the administrative work of the council. Eligible expenses may include salaries and benefits, bookkeeping, equipment and supplies, travel, rent, phone, postage, etc.

◆ **What are watershed assessments, action plans and monitoring projects?**

To truly evaluate natural resource conditions and the potential for improvement of a watershed or watershed component (forested uplands, wetlands, riparian zones, stream habitats, etc.), a systematic approach is required. Watershed condition assessments are systematic reviews of existing information about watershed conditions and processes such as erosion rates, pollution sources, fish habitat conditions, riparian conditions, etc. An assessment relates those conditions and processes to desired future conditions. Assessments should, ideally, include the status and trends of resources in the watershed and identify critical functions that are at risk or are limiting the production of the watershed. Assessments must be sufficiently focused to tie proposed actions to existing conditions.

Action plans identify potential projects that would benefit watershed conditions. Action plan elements should be based on local prioritization and be focused on solving priority problems identified in an assessment of watershed conditions. Action plans result from broad discussion among the parties involved in the basin and a comparison of relative costs and benefits of the different project options available.

Since the application of land management practices in a watershed do not result in uniform effects, the best way to learn about the effects of proposed actions is to monitor the existing conditions and changes that may result from management actions. Monitoring can be for the purpose of gathering baseline data on current conditions, for evaluating the specific effects of a project or for comparing similar watershed components before and after a project. A monitoring plan should be specific about the measures taken, timing of activities, and use of the data gathered. It should clearly indicate how the data to be gathered will augment existing available data.

◆ **What are other funds?**

All projects must include at least 25% of other funding in order to be eligible for GWEB funding.

Other funding may be in the form of cash on-hand, cash that is pledged to be on-hand prior to commencement of the project, secured funding commitments from other sources, pending commitments of funding from other sources (*note: GWEB funding will not be released prior to secured commitment of the other funds and commitments must be secured within 12 months from the date of the award*), the value of donated conservation easements, or the value of donated labor and materials essential to the project.

GENERAL GWEB FUNDING POLICIES AND PRIORITIES

◆ **How are landowners included in GWEB projects?**

The GWEB program is built around local voluntary efforts. Landowner approval is necessary for GWEB funding and emphasis is given to projects that include landowner involvement and support. Applications are accepted from individual landowners. Grants to landowners can include compensation for their labor related to watershed enhancement projects.

◆ **Are matching funds required for GWEB projects?**

GWEB projects must include a minimum of 25% other funding. Other funding may be in the form of secured dollars, in-kind services or donations (see definition on page 3). By leveraging state (GWEB) funds with local, other state or federal funds, the GWEB program can achieve broader benefits to Oregon's watersheds. The greater the amount of other funds, the increased weight will be given in the evaluation. Also, applications that minimize overhead costs to be funded by GWEB will be more favorably reviewed.

◆ **What type, size and location of projects does GWEB want to see?**

GWEB's goals are quite broad; it has funded a wide variety of resource management, education, council support and assessment/monitoring projects. There are some constraints, however. GWEB will not fund a project that consists solely of construction of a storage structure for out-of-stream uses or a project implemented solely to comply with a state or federal agency enforcement order. GWEB also will not fund projects for routine maintenance activities. In addition, projects consisting solely of project planning and/or design will not be funded, although a project that has planning and/or design as part of the total project may be eligible for funding.

The Board seeks projects that provide an opportunity for watersheds to function as closely as possible to a natural system or which provide education on this concept. The Board gives preference to projects that are part of an overall plan for improving a watershed or that have both stream and upland components. Projects that consist of watershed condition assessments, development of action plans for the entire watershed and/or monitoring are eligible for GWEB funding. Projects requesting administrative or staff support for watershed councils are also eligible.

In general, the Board sets no specific limit on the size of a grant. Large and small projects will be considered. The Board seeks both urban and rural projects and distributes funding to

projects throughout the state to promote public awareness of watershed enhancement benefits.

GWEB encourages the use of new technologies. It also encourages applicants to seek additional sources of project funding. Other funds and donated materials and services from agencies, businesses, volunteer organizations, schools and other youth groups tend to help spread the word about the benefits of restoring, maintaining and enhancing Oregon's watersheds.

◆ **What funding priorities does GWEB have?**

For the 1997-99 biennium, GWEB has been authorized by the Oregon Legislature to provide funding to implement The Oregon Plan. The Oregon Plan focuses on watershed restoration activities as a means to address water quality conditions throughout the state and to enhance fish habitat and stream functions for listed and potentially listed fish species. GWEB has adopted project priorities as a temporary rule to provide guidance to applicants on the types of project activities that will receive preference for funding. These priorities are listed on page ii of this Guide and on the Grant Application form.

◆ **What will be expected of me if my project is selected for funding?**

Before funds can be disbursed, you will be required to sign a grant agreement and submit several documents including necessary permits, landowner approvals, inspection, monitoring and maintenance agreements and evidence of compliance with statewide and local land use plans. *You should check with your local Watermaster, the Division of State Lands, the Department of Fish and Wildlife and your local planning department to determine what permits are needed. GWEB funds cannot be released until all necessary permits have been obtained.*

Upon completion of the project, you will be required to send GWEB a project completion report and then periodic reports on project performance over a number of years. These periodic reports help the Board determine which techniques work best and aid in fine-tuning the Board's program. Ten percent (10%) of the project award will be retained until the completion report is submitted to and accepted by GWEB.

You will be required to post a sign at the site of your watershed management project identifying it as a GWEB project and noting that state revenues are a source of funding. Printed materials produced through GWEB projects must include a similar notation. In addition, all promotional or educational materials must be reviewed by GWEB's Education Advisory Committee for consistency with GWEB concepts *prior* to publication and/or distribution.

PROJECT CRITERIA

Projects proposed for GWEB funding must first meet the three requirements identified by statute (ORS 541.350 to 541.375). Only projects meeting these three criteria can be considered for funding:

1) The project must demonstrate sound principles of watershed management.

In general, sound principles of watershed management are demonstrated by activities which sustain, enhance or protect natural watershed functioning. Watersheds function by capturing water where it falls, allowing water to be effectively stored within the soil, and releasing water into springs, seeps, streams, lakes and rivers to sustain the biological capacity of the area. Education projects that provide information about watershed concepts and projects that assess or monitor conditions, develop action plans and support the work of watershed councils both directly and indirectly demonstrate sound principles of watershed management.

2) The project must use methods adapted to the locale.

GWEB does not prescribe any particular method to accomplish local enhancement objectives. Preference will be given to projects that are supported by an assessment and action plan that shows the project as a priority. The Board encourages simple and relatively small-scale methods for any one place and time.

3) All watershed improvement projects must comply with statewide land use planning goals, local land use plans and other state and federal laws that may apply.

You need to be familiar with these. For private lands, you must contact your city or county planning department. On public lands, contact the appropriate land management agency. Be sure you clearly convey your project objectives to the local planning agency. **A form is included in the application to help you comply with this requirement.** In addition, you must have the permission of the landowner to implement the project on his/her property. Proof of landowner approval will be required prior to receiving GWEB funds.

In addition to these general criteria, all projects must demonstrate a commitment of at least 25% in matching funds and must identify the person or organization with fiscal responsibility for the project. Applications from watershed councils must include documentation that the council has local government recognition, that it represents a balance of interests in the watershed and that it has the necessary skills and expertise to guide watershed management activities.

Also, all projects should include an element of education or public awareness. See the education project criteria for guidance, even if your project falls within one of the other categories. (GWEB's definition of education and public awareness is given on page 2.)

If your project meets the criteria above, it can then be evaluated based on how well it addresses the resource management, education, watershed council support or monitoring/assessment criteria described in the following sections. Projects are not expected to meet all of the criteria, however projects that address most of the criteria are more likely to be funded.

CRITERIA FOR WATERSHED MANAGEMENT PROJECTS:

Watershed management projects will be evaluated using the following criteria:

- ◆ **Enhances Oregon's waters through the management of riparian and associated upland areas of the watershed in order to improve water quality and quantity for all beneficial uses as defined by ORS 536.310.**

This is general in nature. It refers to how well a project might improve the overall health of a watershed.

- ◆ **Has permission of and support from the landowner(s).**
- ◆ **Is part of an adopted resource management plan.**

Such plans might be grazing management plans, timber management plans, storm water plans, watershed action plans, etc. GWEB needs to know how your project is linked to on-going management of the watershed.

- ◆ **Protects, restores, maintains and enhances the biological, chemical and physical integrity of the riparian zones, wetlands and associated uplands of the state's watersheds.**

This means that the work results in vegetation improvement on the uplands and in the riparian zone. Follow-up long-term resource management plans are required to protect and maintain those improvements.

- ◆ **Restores and enhances the ground water storage potential associated with healthy riparian ecosystems.**

Abundant riparian zone vegetation slows water velocities and provides an opportunity for water to seep into the soils, raising the water table beneath the riparian area and allowing sediment and adhered nutrients or other materials to settle out. Practices which provide for soil or ground water storage can contribute to better water quality and vegetative conditions and late season stream flows.

◆ **Improves the capability of riparian areas to reduce non-point source runoff and improve water quality.**

This addresses the riparian area and the kind and amount of vegetation and other buffering materials which help to slow the water, allowing it to deposit sediment. Sediment builds the volume of soil and permits more in-soil water storage.

◆ **Encourages the use of non-structural methods to enhance riparian areas and associated uplands.**

Non-structural methods are those which rely on strategies other than the creation and installation of man-made materials to meet project objectives. Most projects involve some physical change to the landscape. GWEB encourages the management of perennial vegetation to accomplish positive change. For example:

- Grazing management may need to be changed. This could mean fencing, livestock water development or other management actions.
- Changing vegetation to more desirable species may be necessary.
- A riparian zone may need some initial plantings of appropriate woody vegetation.
- Stabilization practices may be needed along stream banks to slow water, allow sediment to be deposited and provide a better environment for plant growth.
- Log or rock check dams may be useful to create pools.
- Wetland restoration by elimination of drain-tile or ditches can assist in storing flood-water and increasing habitat diversity.

These practices and many others are acceptable.

◆ **Includes funds or in-kind services from landowners, federal agencies and/or other sources.**

This is called leveraging. It essentially means spreading the cost effectiveness of the GWEB grant. A minimum of 25% of other funding is required. Other funding can be in the form of secured dollars, in-kind services and supplies or donations. When a project includes components that do not fit the GWEB criteria, GWEB funds should not be requested for those purposes. Use other sources of money for those parts of a project if possible. GWEB funds should be requested primarily for implementing practices.

◆ **Is cost-effective based on the extent to which it maximizes participation of volunteers, encourages individuals and organizations to work jointly to accomplish the project and involves intergovernmental cooperation.**

This also addresses a form of leveraging and spreads the grant money over more project work.

◆ **Provides monitoring and evaluation activities.**

Every project must have a monitoring component to assess progress toward meeting project goals. Watershed management projects should include a monitoring plan which addresses changes in vegetation and biological resources over time and describes how well the changes meet the project objectives. The Board relies upon you, with the assistance of agencies involved in the project, to provide appropriate monitoring. Project monitoring costs may be included in your grant requests.

CRITERIA FOR EDUCATION PROJECTS:

An education project will be evaluated based on the extent to which it:

◆ **Furtheres the broad goal of developing and maintaining healthy watersheds in that it:**

- Communicates information about watershed concepts to a targeted audience;
- Raises awareness of the citizens of the State of Oregon about watershed concepts;
- Teaches about the long-term benefits of healthy watersheds; and/or
- Meets a specific GWEB-solicited project request.

The Board recognizes that education is necessary for an understanding of watersheds, their needs and what makes watershed projects effective. The Board funds education projects to encourage movement toward this goal. From time to time, the Board may solicit projects which meet a particular goal or objective in the Board's program.

◆ **Has well-defined instructional goals and objectives.**

You should not assume that the project evaluators will know what your goals are. State them very clearly. Also, the project must have well defined objectives so that it is clear what steps will be taken to accomplish the goals. The objectives should support the goals and be measurable.

◆ **Identifies a target audience and includes a delivery plan.**

In order to tailor education projects to meet specific needs, the intended audiences must be clearly identified and a plan for reaching the audience and delivering the product must be developed.

◆ **Can be accomplished.**

The project must be within the ability of the applicant to complete within the stated timelines and with the identified resources.

◆ **Applies learning strategies that are appropriate for the target audience.**

The form of teaching, such as lectures, on-site work projects, brochures, tours, workshops, etc., must be suited to the age, experience and background of the target audience. Using multiple techniques to accommodate various learning styles is encouraged.

◆ **Can be used at other locations without major modifications.**

In order to make the investment of GWEB funds as effective as possible, it is helpful if the end product is easily adaptable for use in other locations.

◆ **Provides monitoring and evaluation activities.**

Every project must have a monitoring component to assess progress toward meeting project goals. Education projects should include a plan for evaluating the success of each project element and for tracking long-term benefits.

CRITERIA FOR WATERSHED COUNCIL SUPPORT PROJECTS:

Watershed council support applications will be evaluated based on the following criteria:

◆ **Identifies significant natural resource management issues requiring management efforts and explains how having the assistance requested will help address these issues.**

Watershed councils must have a clear idea of the nature and range of natural resource issues facing the watershed. Priority watershed issues the council will be dealing with should be identified.

◆ **Provides a proposed budget for the future, showing anticipated levels of state funding.**

GWEB recognizes the need for watershed councils to be truly local efforts based on volunteer participation and local support. While GWEB funds are available for support of council work, councils are encouraged to pursue other sources of funding and to demonstrate declining dependence on state support. Also, councils should identify the extent to which they are cost effective in accomplishing watershed goals by documenting the amount of other funding they bring to the watershed and the dollar value of their conservation efforts. A description of what was accomplished as a result of any previous GWEB coordinator funding will also help justify continued funding.

◆ **Defines the role of the council coordinator.**

Watershed council coordinators provide local coordination between agencies and landowners, compile information on watershed conditions and facilitate the day-to-day work of the council. The duties and responsibilities of the council coordinator should be clearly defined.

- ◆ **Provides a work plan that identifies anticipated work products and time schedules for completion.**

Having a well thought-out work plan for the council coordinator demonstrates that the council has defined what it will accomplish within a given time frame. It is important to have a clear idea of how the coordinator will assist and support the work of the council and to establish who will hire, supervise and track the work of the coordinator.

- ◆ **Demonstrates Citizen Participation and Role of Council Members.**

Voluntary citizen involvement and participation in the work of the council is an essential component to ensure watershed sustainability at the local level. The members of the council also have a vital role to play in raising community support and awareness for watershed enhancement.

- ◆ **Provides for monitoring and evaluation**

Every project must have a monitoring component to assess progress toward meeting project goals. Watershed council support projects should include a plan for evaluating the success of each project element and for tracking long-term benefits.

CRITERIA FOR WATERSHED CONDITION ASSESSMENTS AND ACTION PLAN

PROJECTS: Watershed condition assessment and action plan projects will be evaluated based on the following criteria:

- ◆ **Assessments: Demonstrates knowledge of state and/or federally accepted assessment protocols for the scope of the work proposed and uses recognized assessment procedures that include the entire watershed.**

GWEB does not wish to be prescriptive about the methods used to assess watershed conditions. However, projects that use accepted methods and protocols and that incorporate existing watershed data are preferred. Upon completion of GWEB's Watershed Assessment Manual, preference will be given to the use of this approach. Assessments should cover the entire watershed.

- ◆ **Assessments: Uses existing data on watershed conditions.**

Existing data and agency data sources should be utilized to the maximum extent possible. Data gaps should be identified in the assessment. Provisions for making the results of the assessment available to a state database should be included.

- ◆ **Assessments: Clearly documents problems affecting watershed functions and has a method to tie watershed management projects to the identified problems.**

Watershed condition assessments should document which processes are functioning well and which are impaired. It is important to identify the problems of a watershed so that projects can be implemented to resolve the identified problems or enhance conditions.

- ◆ **Action plans: Is based on an assessment of watershed conditions and the identification of a vision for future conditions in the watershed.**

Action plans lay out the priorities and strategies for watershed management. To identify the kinds of actions that might improve the watershed, the plan should identify the objectives or the vision for the future condition of the watershed. This approach will identify the logical connection between watershed conditions and the projects.

- ◆ **Assessments/action plans: Includes full involvement of the groups interested in the watershed.**

Assessments and action plans should be developed by a group process to identify priorities and types of projects to be undertaken in the watershed. It is expected that the group process will be open and inclusive and cover all points of view.

- ◆ **Provides for monitoring and evaluation**

Every project must have a monitoring component to assess progress toward meeting project goals. Assessment and action plan projects should include a plan for evaluating the success each project element and for tracking long-term benefits.

CRITERIA FOR MONITORING PROJECTS:

Monitoring projects will be evaluated based on the following criteria:

- ◆ **Demonstrates knowledge of state and/or federally accepted monitoring protocols for the scope of the work proposed and uses recognized monitoring procedures.**

GWEB does not wish to be prescriptive about the methods used to monitor watershed conditions. However, projects that use accepted methods and protocols and that incorporate existing data are preferred. Monitoring may be for the purpose of collecting baseline data on current conditions, for evaluating the specific effects of management actions, or for comparing similar watershed components before and after a project.

- ◆ **Includes specific objectives and desired outcomes from the data gathered.**

To ensure that the data gathered from monitoring projects is useful, there must be a clear idea of how the data can be used to demonstrate the effectiveness (or lack of effectiveness) of the project(s) or conditions in the watershed. The data should be tied to project objectives.

- ◆ **Identifies data being gathered by other agencies and describes how the proposed monitoring data will be used to augment existing data gathering.**

A number of state and federal agencies have data gathering responsibilities that relate to watershed conditions. The relationship between the proposed monitoring and existing agency data should be described to identify the most cost effective monitoring strategy. Applicants must also be willing to make their data available for inclusion in a state database.

Part II
GENERAL GRANT APPLICATION
DIRECTIONS

The application contains the questions that need to be answered. Sections I and II should be filled out using the space provided on the form. Starting with Section III, answer each set of questions related to the activity you propose, *using additional sheets of paper as needed.*

Please number your answers to correspond to the questions. The budget sheet and legal requirements sheet must be attached to the application. Please use 8-1/2" x 11" sheets of paper and provide a single-sided original to facilitate copying.

If any of the information requested on the application form cannot be supplied, please be sure to include an explanation.

Section I
APPLICANT INFORMATION

Please follow the form provided. While preferred, these pages need not be typed. Please limit your responses to the space provided.

Name of project: Provide a name that can be used for the project on all related correspondence and/or agreements. Give the project a name which helps to define it. For example, "Rock Creek Watershed Rehabilitation," "Beaver Creek Riparian Fencing," "Mill Creek Watershed Council Coordinator."

GWEB dollars requested/Total project cost: Fill in the dollar figures as appropriate.

Applicant: The applicant can be any individual, interest group, watershed group, watershed council, public or private entity, local, state or federal agency.

Fiscal Officer: Provide the name of the person who will be responsible for tracking and accounting for project funds and compliance with the grant agreement conditions.

Applicant Contact (if different): Give the name(s) of the person(s) we can contact for information about the project during the evaluation period as well as during the project implementation phase.

Agency/Organization: Identify the affiliation of the applicant and/or contact person.

Address: Provide the mailing address for the contact person and the name of the county in which the project is located.

Project location - watershed and sub-basin: Please identify the main watershed where the proposed project is located, regardless of the type of project (watershed improvement, education, assessment, etc.) and provide the name of the sub-basin, i.e., Deschutes Watershed, Metolius sub-basin.

Name of the watershed council in the area (if any): If there is a watershed council in the area where the project is proposed, provide the council name. Call your city, county or GWEB if you are uncertain whether there is a watershed council in your area.

Endorsement of the watershed council: If there is a watershed council in the area where the project is proposed, provide the signature of the council chairperson if the council supports the project.

Section II PROJECT SUMMARY

Check the type(s) of activity proposed: Your project may be for more than one type of activity. Check all that apply.

Summary of project: In the space provided, explain what benefits the project will provide when it is completed. Give just a brief statement, e.g., "The project will increase vegetation for forage and slow runoff," or "The project will enable the watershed council to compile watershed data and assess the condition of natural resources in the watershed."

Does this project assist the Coastal Salmon Restoration Initiative/Healthy Streams Partnership: If you are familiar with the two state efforts mentioned, please indicate whether the project is designed to address them. If you are uncertain whether your project may be part of these two initiatives, do not mark either one.

1. Funds requested:

Please indicate how much money you are requesting from GWEB, how much from other identified funding sources, whether the funds are secured and the total cost of the project. Please note that these figures should correspond to the information you provide on the budget page.

2. Have any conditions been placed on other funds:

Indicate whether GWEB funds have to be spent first or if other funds are only available under certain conditions.

3. Who will be partnering in the project and what will they be doing:

Almost all projects have the cooperation of landowners, professional advisors, organizations and/or volunteers. Please identify who these entities are, approximately how much time/materials they are contributing and what their role is in completing the project. Examples may include the soil and water conservation district, local, state or federal agencies, sports clubs, conservation groups or scouting groups.

4. a) Is the project part of an existing plan for the watershed:

Explain whether the work or site where work is proposed to take place is specifically identified in an existing watershed management plan.

b) How does this project relate to other projects completed or planned:

Note how the project relates to other activities in the watershed in order to demonstrate that the project is for the right type of work, at the right time, at the right location.

c) How does this proposal relate to workforce and economic development plans in the local community?

All project activities must demonstrate, to the extent possible, that assessment, monitoring and implementation, or monitoring project effectiveness are consistent with local community, workforce and economic development plans and policies. Contact your regional Economic Development Department for information about these plans and policies.

5. How will the project promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally:

Describe how the public will become more aware of watershed enhancement as a result of the project. For example, "The coordinator will print a newsletter about watershed council activities," "The OSU Extension Service will hold a tour of the project for local ranchers," "Questionnaires will be circulated to landowners as part of the assessment and results will be shared at "town hall" meetings," etc.

6. What is the proposed schedule for the project:

List the anticipated start and completion dates for the various components of the project.

7. Have affected individuals and organizations been contacted:

Indicate whether persons affected by the proposed project have been contacted. If you have chosen to delay contacting affected persons, explain your rationale.

8. Required Attachments:

These forms must be included as part of the application in order for it to be considered for funding:

Budget Page:

Be sure to list the amounts of other funds and the dollar value of donated services and supplies on the budget page. Please note the column marked, "Other Funds." This column is only for funds from sources other than GWEB. At least 25% of other funding is required.

In the equipment section, show all proposed expenditures and list on a separate sheet of paper any proposed expenditures for equipment costing over \$100. **Where possible, GWEB funds should be used to rent or lease equipment rather than for outright purchase.** For all equipment purchases, explain who will house, maintain and use the equipment both during and after completion of the project.

Legal Requirements Page:

This form provides acknowledgment that if funds are awarded for the project by GWEB, the applicant is aware of the contractual and performance obligations required under the GWEB program.

Section III SPECIFIC PROJECT ACTIVITY

From this point on, attach as many pages as necessary to concisely answer the questions. Repeat the question or number the answers to correspond to the application. Please try to limit the length of the application, with attachments, to no more than 20 pages. In addition, it is very helpful for copying purposes if all of the information, including maps, is submitted on 8-1/2" x 11" sheets of paper.

ANSWER ONLY THE SET OF QUESTIONS FOR THE TYPE OF PROJECT YOU PROPOSE.

FOR PROJECTS ENCOMPASSING MORE THAN ONE TYPE OF ACTIVITY, ANSWER EACH APPROPRIATE SET OF QUESTIONS.

WATERSHED MANAGEMENT PROJECTS:

T1. What is the present situation? Please describe the current conditions at the project location.

Describe what the watershed is like right now, including any inadequacies, e.g., poor water quality, excessive erosion, decreased stream flow, degraded upland forage condition, etc. Explain what is going on at the project site that necessitates the project.

T2. What are you proposing to do? Supply sufficient detail to match project complexity.

This is your opportunity to describe specifically what you are planning to do. Describe the practices to be included in the project, e.g., selective burning, seeding, reforestation, juniper cutting, bio-engineering, etc. The degree of detail provided should match the complexity and technical difficulty of the project and allow for full evaluation of the technical viability of the work proposed. For example, for a large woody debris placement project, include the size of the wood, size of the stream, whether anchoring will be used and if so, the type of anchoring proposed. For a fish passage restoration project, include the size of the culvert, the size of the stream, the gradient and the design to be used. Explain the benefits of each

proposed practice and describe how the benefits address the problem described in your answer to Question #T1 above. A description of alternatives considered and the reasons for choosing the practices proposed is also helpful. If the project proposes to address noxious weed problems, describe in what ways the weed is impairing watershed function, explain whether your project treats the cause of the infestation, and note whether you have consulted with the Department of Agriculture about the problem.

T3. What are the objectives you plan to achieve:

The objectives should, in most cases, be measurable and able to be monitored. They should reflect what you think the project site should look like after a set number of years and what you think the project should accomplish. For example, "Upland forage will increase by 10%," "20% of the stream will be shaded after 10 years," "Erosion will be reduced by 50% in 3 years," etc.

T4. Who will inspect the completed project work?

A commitment from a state, federal or local agency or its designee to inspect the completed work for compliance with the original project plan is required. Identify who will provide this inspection.

T5. How will the success of the project be determined, i.e., what elements of the project will be monitored/evaluated -- how often, for how long and by whom? (GWEB's standard for post-project monitoring of on-site enhancement is 10 years):

In most cases, monitoring will be required for a number of years following project completion. Costs for monitoring can be included in your grant request. Disbursement of funds for long-term monitoring (i.e., more than 2 years) can be accomplished through a joint reserve account or other mutually agreed upon mechanism.

Provision must be made for monitoring and evaluating project results so that the effectiveness of your project can be measured. Be specific for each site where work will be undertaken. For example:

<u>Agency/Organization</u>	<u>Address</u>	<u>Activity & Frequency</u>
Water Resources Dept.	158 12th St.NE Salem	Streamflow measurement Site #1: 2 x year/10 years
Fish & Wildlife Dept.	PO Box 59 Portland	Upland habitat improvement Site #5: 1 x year/10 years

T6. Who will maintain the project and for how long?

Please indicate who is responsible for making sure the project stays in place and doing what it was intended to do, e.g., fence repair, tree watering until fully established, cleaning of culverts, etc. Be specific for each site where work will be undertaken. Refer to the example in T4. above.

Note: Written commitments to inspect, monitor and maintain the project will be required before GWEB funding will be released.

T7. What elements of the project will GWEB funds be used for:

List the specific items GWEB funds will be used for. This is your opportunity to expand upon the information given on the budget page.

T8. Additional Required Attachments:

Attach the following to the back of your project application:

Land Use Information Page:

GWEB must be assured that all watershed management projects have been reviewed by the local land use planning authority and determined to be in compliance with local planning requirements.

Maps:

All watershed management project applications must include both a vicinity map to identify generally where the project(s) is located and a more detailed project map showing the locations of the various planned activities. Please provide maps on 8-1/2" x 11" pages.

Location:

All watershed management projects must provide a description of where the project activity(ies) are occurring. List the township, range, section and 1/4 corner location of each site where work will be undertaken.

Photographs:

Please provide photographs of sites where watershed management activities are planned. Color slides are preferred but not required. Please label each picture and include a written narrative describing the significance of the photograph. These photographs will not be returned unless special arrangements are made with GWEB.

WATERSHED EDUCATION PROJECTS:

E1. Indicate which categories your project falls into:

- | | | | |
|---------------------------------------|---|-----------------------------------|--------------------------------|
| <input type="checkbox"/> School Group | <input type="checkbox"/> Demonstration | <input type="checkbox"/> Local | <input type="checkbox"/> Other |
| <input type="checkbox"/> Landowners | <input type="checkbox"/> Public Awareness | <input type="checkbox"/> Regional | |

This is simply to help clarify the type of project your propose.

E2. Describe the present situation and explain why the work you propose is needed:

Identify the problem or opportunity you plan to address. Include the issues covered, the scope of the project, where you will use it, whether it is local, regional or statewide and why the project is important.

E3. What are you proposing to do, what learning strategies will be used and what will your end product be?

Describe what you are planning to do that addresses the situation described above. Note whether you will be using lectures, work projects, brochures, tours, etc. to deliver your program and explain how your teaching strategy will help the participants learn. Explain what the end product will be (for example, "A series of community workshops on urban wetland restoration" etc.).

E4. What are the instructional goals and objectives you plan to achieve?

Identify specific goals and objectives which will be met through carrying out the project. If the audience or the nature of your education project does not lend itself to formal district or state educational goals and objectives, identify local objectives to be met by this project.

E5. What audience will be targeted and how will you deliver your product to them?

List the age group, numbers, vocations and educational levels of the intended audience(s). You must have a plan for delivering your product to the intended audience; include how many contacts will be made over what period of time, the methods for making the contacts and other promotional activities. For example, "A flyer will be mailed to each school in the watershed about the teacher workshops and an announcement will be placed in the local newspaper;" or, "An article describing the interpretive trail will be written for the school newsletter which is given to each student to take home," etc.

E6. Could your project be used at other locations without major modifications? Explain:

Describe whether your project could be adapted for use by other entities in other locations of the state.

E7. Describe the credentials and related experience of those who will be undertaking this project.

Education goes beyond information sharing. In order to develop education objectives and methodologies, certain expertise is necessary. Describe the credentials and experience of those undertaking the project.

E8. Identify who will evaluate the education results, the elements that will be evaluated and the evaluation method to be used:

Explain how the evaluation of the project will be structured and how the results will be related to the project objectives.

E9. What elements of the project will GWEB funds be used for?

List the specific items GWEB funds will be used for. This is your opportunity to expand upon the information given on the budget page.

WATERSHED COUNCIL SUPPORT PROJECTS:

C1. Describe the present situation in the watershed and explain why watershed council support is needed:

Explain what is happening in the watershed that prompts the need for a watershed council coordinator and/or other related support.

C2. Describe the work plan (including products and time line) for the council coordinator:

Describe the specific tasks you want the coordinator to work on and what products will be produced. For example, "The coordinator will set-up and advertise each monthly meeting, produce a monthly newsletter, work with the council and agency staff to prepare a work plan for conducting a watershed assessment," etc. If funding is requested for subcontracting for specific technical expertise, explain your rationale and describe what will be accomplished.

C3. What watershed council objectives will be achieved with the aid of the coordinator?

Describe how the work plan of the coordinator addresses local objectives. For instance, it may be a council objective to work with small livestock owners and hobby farmers to improve the condition of riparian zones and wetlands. Relate how having a coordinator will advance the work of the council.

C4. Explain the level of local support for this position:

Describe the watershed council membership and the recognition/participation by local government(s). Explain how long the council has been formed and what it is working on that leads to the conclusion that a coordinator is necessary. Also, explain the level of voluntary citizen involvement in the work of the council and the role of councils members in raising community support and awareness for watershed enhancement.

C5. Explain who will be responsible for overseeing the work done by the coordinator and who will be responsible for maintaining payroll and insurance records:

Generally, watershed councils are an alliance of interested stakeholders in a watershed. They may not have the formal structure required to hire an employee and manage the fiscal responsibilities related to being an employer. Other entities (quite often a soil and water conservation district) may be willing to accept these responsibilities. Identify to whom the coordinator will report and who will maintain employee records.

C6. Identify whether the watershed council eventually plans to support the position without GWEB funds:

This is the place to describe how the coordinator position will be funded in the future and how it will remain viable in the long term. Will other funds be sought to help fund this position? If GWEB funding has previously been received for watershed council support, describe the level of additional other funding brought to the watershed as a result of the coordinator's work. Also, if previous GWEB council support funding has been received, be sure to explain what was accomplished and what benefits were derived.

C7. How will the success of the position will be evaluated?

Explain how evaluation of the watershed council support project will be structured, how the results will be related to council objectives, and what measures of success will be used.

C8. What elements of the project will GWEB funds be used for?

List the specific items GWEB funds will be used for. This is your opportunity to expand upon the information given on the budget page. Be sure to specify whether the funding level requested includes expenses in addition to coordinator salary and benefits and the time-period to be covered with the requested funding.

C9. Attach watershed council documentation:

Attach documentation to show that the council has local government recognition (or was formed before 1995). This documentation may be a formal order, letter of recognition, resolution, etc. from the city, county, water supply district or sewer district. Also attach a list of watershed council members to demonstrate that the council has a balance of interests in the watershed and that it has the necessary skills and expertise to guide watershed management activities.

WATERSHED ASSESSMENT AND ACTION PLAN PROJECTS:

A1. Describe what is known about the status of other past or current watershed assessment efforts:

Explain what is known about other assessment efforts in the watershed. Note whether other data currently exists related to resource status determination or project prioritization.

A2. How are you proposing to assess watershed conditions?

List the organizations and agencies you will contact to work on developing an assessment or action plan. Describe how large an area will be assessed, the number of monitoring locations, the type of data to be gathered, who will be involved, the kind of forum to be used for setting action plan priorities, etc. If you do not intend to follow the GWEB Watershed Assessment Manual or another recognized methodology, explain why the approach you have chosen is the best for your watershed.

A3. What are the objectives? Identify how you plan to establish priorities, if developing an action plan:

The assessment and/or action plan may enable the council to achieve certain objectives, such as focusing on issues related to new land development projects or keying road restoration and culvert replacements, etc. Note the council's objectives and describe how you will establish priorities for accomplishing the objectives.

A4. Who will conduct the assessment/action plan? How will affected groups be involved?

Explain who is working on your technical team to design the parameters of the assessment. Assessments and action plans should be developed through a group process and be open and inclusive and cover all points of view.

A5. What data sources currently exist and how will they be used?

Answering this question helps GWEB understand the level of participation by local, state and federal agencies in the design of the assessment. The assessment should identify data gaps which can only be filled if there is a thorough investigation of the quantity and quality of existing data. If an investigation into existing data has not been done, then indicate how the assessment will identify these sources.

A6. Will the development of an Action Plan be based upon an existing watershed assessment? If so, please name the assessment and give the date it was completed.

If the assessment of watershed conditions is completed and you are now trying to identify and prioritize watershed improvement activities, please indicate upon what document(s) you are relying to formulate the action plan.

A7. How will the success of the project be determined?

Explain how the evaluation of the project will be structured and how the results will be related to the project objectives.

A8. What elements of the project will GWEB funds be used for?

List the specific items GWEB funds will be used for. This is your opportunity to expand upon the information given on the budget page.

WATERSHED MONITORING PROJECTS:

M1. What is the present situation? Describe the issue or opportunity the project addresses:

All types of monitoring are eligible for GWEB funding. Perhaps work is proposed on a significant watershed resource but current information in specific areas is lacking. In this situation, a project might be to collect data that will be used with future information once project work has occurred. Perhaps several watershed improvement projects have been done and monitoring needs to be designed and implemented to determine the individual and collective value of these investments.

M2. What are you proposing to do? Supply sufficient detail to match project complexity:

Describe what you are planning to monitor and for what purpose. Describe the methods you will use to implement the monitoring plan. For example, "Seven instream temperature data loggers will be located throughout the watershed," "Macroinvertebrate sampling will be done three times at five sites," or "Water quality testing for turbidity, coliform and dissolved oxygen will be done at five sites on a monthly basis by juniors from Santiam High School," etc.

M3. Describe the type of monitoring proposed (baseline or post-project effectiveness) and the protocols that will be used:

If you are planning to use an accepted protocol for monitoring, please indicate what that method is and why you believe it will provide the information needed in the most usable form. Explain who will interpret the data.

M4. What are the objectives? If effectiveness monitoring is proposed, provide a specific hypothesis or monitoring question. How will the data be used?

Monitoring should be undertaken only when it is clear what will be accomplished as a result of the effort and the use for the data has been clearly defined. Similarly, the development of the data should guide local efforts toward achieving locally identified objectives. Explain how the monitoring project will facilitate reaching local objectives and how it will guide watershed-wide management decision-making. If effectiveness monitoring is proposed, provide a specific hypothesis or research question, i.e., a testable statement regarding a natural process. An example might be, "We believe that this new best management practice when applied will adequately shade the stream and protect against stream temperature increases."

M5. Describe how the information to be gathered augments existing available data:

Too often, information is gathered which duplicates other information or is inconsistent with other information because of different collection protocols. For maximum efficiency, GWEB wants to know that the information to be collected will augment other existing data or other on-going data collection efforts.

M6. How will the success of the project be determined?

Explain how the evaluation of the project will be structured and how the results will be related to the project objectives.

M7. What elements of the project will GWEB funds be used for?

List the specific items GWEB funds will be used for. This is your opportunity to expand upon the information given on the budget page.

The Governor's
WATERSHED ENHANCEMENT BOARD

Governor's Natural Resources Policy Office
255 Capitol St. NE
Salem, Or 97310-0203
(503) 378-3589, Ext. 823

USDA Natural Resources Conservation Service
101 SW Main, Suite 1300
Portland, OR 97204
(503) 414-3201

Oregon Fish & Wildlife Commission
PO Box 59
Portland, OR 97207
(503) 229-5400

USDI Bureau of Land Management
PO Box 2965
Portland, OR 97209
(503) 280-7051

Soil & Water Conservation Commission
635 Capitol St. NE
Salem, OR 97310
(503) 986-4700

Department of Agriculture
635 Capitol St. NE
Salem, OR 97310
(503) 986-4555

Environmental Quality Commission
811 SW 6th Ave.
Portland, Or 97204
(503) 229-5696

OSU Extension Service
Ballard Hall, Oregon State University
Corvallis, OR 97331
(541) 737-2713

Water Resources Commission
158 12th St. NE
Salem, OR 97310
(503) 378-3739

USDA Forest Service
PO Box 3623
Portland, OR 97209-3623
(503) 326-3173

Board of Forestry
2600 State St.
Salem, Or 97310
(503) 945-7200

Date: _____

Governor's Watershed Enhancement Board
WATERSHED MANAGEMENT
PROJECT EVALUATION

Project # _____ Name: _____
Amount Requested _____ Amount Recommended: _____

SCORING: Score the following application questions on a scale of 1 to 4 - with four being the best response to the question. Circle the most appropriate score for the criteria. **NOTE: Application question 2, 4a, 6 and 7 are not scored.**

1. Please indicate all agencies/organizations from whom funds are being requested for the proposed project. In addition, please provide cost-share funding information as requested below (note there is a 25% match requirement):

- There are a wide variety of contributors. 1, 2, 3, 4
- There is a high ratio of match. 1, 2, 3, 4
- Other funding/match is secured. 1, 2, 3, 4

3. Who will be partnering (agencies, landowners, volunteers) in the project and what will they be doing?

- Has interagency involvement. 1, 2, 3, 4
- Includes volunteer/youth involvement and cooperation. 1, 2, 3, 4
- Has local business/organization involvement. 1, 2, 3, 4

4. b) How does this proposal relate to other projects completed or planned in the watershed?

- There is a relationship. 1, 2, 3, 4
- The problem is a high priority in an action plan. 1, 2, 3, 4

c) How does this proposal relate to workforce and economic development plans in the local community?

- There is a relationship. 1, 2, 3, 4

5. If the project is not primarily for education and/or public awareness, how will you promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally?

- The project reaches a large number and diversity of people. 1, 2, 3, 4
- The public awareness effort is an active vs. passive effort. 1, 2, 3, 4
- The public awareness techniques will be effective. 1, 2, 3, 4

SPECIFIC WATERSHED IMPROVEMENT PROJECT QUESTIONS:

T1. What is the present situation? Please describe the current conditions at the project site(s).

- The problem is clearly defined. 1, 2, 3, 4
- The problem is severe. 1, 2, 3, 4
- The scope of the project is appropriate. 1, 2, 3, 4

T2. What are you proposing to do? Supply sufficient detail to match the complexity and technical difficulty of the project so that its technical viability can be evaluated.

- The project will solve the problem. 1, 2, 3, 4
- The project is the best treatment. 1, 2, 3, 4
- The project will not precipitate other problems. 1, 2, 3, 4
- There is enough detail to ensure project success. 1, 2, 3, 4

T3. What are the objectives you plan to achieve?

- The situation and treatment addresses the management objectives. 1, 2, 3, 4
- The objectives are reasonable. 1, 2, 3, 4
- The objectives address the total watershed. 1, 2, 3, 4
- The objectives are consistent with the watershed plan. 1, 2, 3, 4

T4. Who will inspect the completed project work.

- It is clear the appropriate expertise will evaluate the completed project. 1, 2, 3, 4

T5. How will the success of this project be determined, i.e., what elements of the project will be monitored/evaluated - by whom, how often and for how long?

- The responsibilities are clear. 1, 2, 3, 4
- The scope of monitoring is consistent with the project. 1, 2, 3, 4
- The time frame for monitoring is appropriate. 1, 2, 3, 4

T6. Who will maintain the project and for how long?

- The responsibilities are clear. 1, 2, 3, 4
- The scope of maintenance is consistent with the project. 1, 2, 3, 4

T7. What elements of the project will GWEB funds be used for?

- Provides an adequate explanation of how GWEB funds will be used. 1, 2, 3, 4
- Indirect (administrative) costs are in-line with the project scope. 1, 2, 3, 4
- Personnel costs are at an appropriate level. 1, 2, 3, 4
- Equipment purchases are valid. 1, 2, 3, 4

Extra Points

Are Threatened or Endangered species to benefit from this project? 1, 2, 3, 4

Other unusual site characteristics, wild and scenic river, highly visible project with high demonstration value, will serve as example for other watersheds, etc. 1, 2, 3, 4

TOTAL SCORE.....

Comments or Questions: **NOTE - IT IS IMPORTANT TO WRITE A SENTENCE OR TWO ABOUT YOUR OVERALL IMPRESSION OF THE PROJECT OR CONCERNS YOU HAVE:** _____

Date: _____

GOVERNOR'S WATERSHED ENHANCEMENT BOARD
WATERSHED COUNCIL SUPPORT
PROJECT EVALUATION

Project # _____ Name: _____
Amount Requested _____ Amount Recommended: _____

SCORING: Score the following application questions on a scale of 1 to 4 - with four being the best response to the question. Circle the most appropriate score for the criteria. **NOTE:** Application question 2, 4a, 6 and 7 are not scored.

1. Please indicate all agencies/organizations from whom funds are being requested for the proposed project. In addition, please provide cost-share funding information as requested below: **NOTE - THERE IS A 25% MATCH REQUIREMENT:**
 - There are a wide variety of contributors. 1, 2, 3, 4
 - There is a high ratio of match. 1, 2, 3, 4
 - Other funding/match is secured. 1, 2, 3, 4

3. Who will be partnering (agencies, landowners, volunteers) in the project and what will they be doing?
 - Has interagency involvement. 1, 2, 3, 4
 - Includes volunteer/ youth involvement and cooperation. 1, 2, 3, 4
 - Has local business/organization involvement. 1, 2, 3, 4

4. b) How does this proposal relate to other projects completed or planned in the watershed?
 - There is a relationship. 1, 2, 3, 4
 - The problem is a high priority in an action plan. 1, 2, 3, 4

c) How does this proposal relate to workforce and economic development plans in the local community?

 - There is a relationship. 1, 2, 3, 4

5. If the project is not primarily for education and/or public awareness, how will you promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally?
 - The project reaches a large number and diversity of people. 1, 2, 3, 4
 - The public awareness effort is an active vs. passive effort. 1, 2, 3, 4
 - The public awareness techniques will be effective. 1, 2, 3, 4

SPECIFIC WATERSHED COUNCIL SUPPORT QUESTIONS:

- C1. Describe the present situation in the watershed and explain why a coordinator is needed.**
- The problem or present situation is well defined. 1, 2, 3, 4
 - The situation significantly warrants a coordinator. 1, 2, 3, 4
 - The coordinator role is well defined. 1, 2, 3, 4
 - Identifies resource management issues and how coordinator will help. 1, 2, 3, 4

- C2. Provide a work plan (including products and time line) for the coordinator.**
 - The work plan is specific. 1, 2, 3, 4
 - The work plan is feasible and achievable. 1, 2, 3, 4
 - Provides workable time schedules for completion. 1, 2, 3, 4

- C3. What watershed council objectives will be achieved with the aid of the coordinator?**
 - The council objectives are identified. 1, 2, 3, 4
 - There is an obvious tie between the coordinator and the objectives. 1, 2, 3, 4
 - The objectives are achievable. 1, 2, 3, 4

- C4. Explain the level of local support for this position?**
 - There is a detailed response to this question. 1, 2, 3, 4
 - There is adequate support. 1, 2, 3, 4

- C5. Explain who will be responsible for overseeing the work done by the coordinator and who will be responsible for maintaining payroll and insurance records.**
 - The coordinator's work will be appropriately tracked and supervised. 1, 2, 3, 4
 - An entity exists to do payroll and maintain employee records. 1, 2, 3, 4

- C6. Identify how the watershed council eventually plans to support this position without GWEB financial support.**
 - If previously GWEB-funded, accomplishments were significant. 1, 2, 3, 4
 - The plan for future funding is reasonable. 1, 2, 3, 4
 - The plan reflects decreasing GWEB support. 1, 2, 3, 4

- C7. How will the success of the position be evaluated?**
 - There is criteria established to determine success. 1, 2, 3, 4
 - The criteria is reasonable. 1, 2, 3, 4

- C8. What elements of the project will GWEB funds be used for?**
 - Provides an adequate explanation of how GWEB funds will be used. 1, 2, 3, 4
 - Overhead (i.e., office, rental equipment/purchase, transportation etc.) are appropriate. 1, 2, 3, 4
 - Administration costs (i.e., taxes, insurance, employer fees, etc.) are appropriate. 1, 2, 3, 4

Extra Points

Are Threatened or Endangered species to benefit from this project? 1, 2, 3, 4

Other unusual site characteristics, wild and scenic river, highly visible project with high demonstration value, will serve as example for other watersheds, etc. 1, 2, 3, 4

TOTAL SCORE.....

Comments or Questions: **NOTE - IT IS IMPORTANT TO WRITE A SENTENCE OR TWO ABOUT YOUR OVERALL IMPRESSION OF THE PROJECT OR CONCERNS YOU HAVE:** _____

Date: _____

GOVERNOR'S WATERSHED ENHANCEMENT BOARD
WATERSHED MONITORING
PROJECT EVALUATION

Project # _____ Name: _____
Amount Requested _____ Amount Recommended: _____

SCORING: Score the following application questions on a scale of 1 to 4 - with four being the best response to the question. Circle the most appropriate score for the criteria. NOTE: Application questions 2, 4a, 6 and 7 are not scored.

1. Please indicate all agencies/organizations from whom funds are being requested for the proposed project. In addition, please provide cost-share funding information as requested below (note there is a 25% match requirement):
 - There are a wide variety of contributors. 1, 2, 3, 4
 - There is a high ratio of match. 1, 2, 3, 4
 - Other funding/match is secured. 1, 2, 3, 4

3. Who will be partnering (agencies, landowners, volunteers) in the project and what will they be doing?
 - Has interagency involvement. 1, 2, 3, 4
 - Includes volunteer/youth involvement and cooperation. 1, 2, 3, 4
 - Has local business/organization involvement. 1, 2, 3, 4

4. b) How does this proposal relate to other projects completed or planned in the watershed?
 - There is a relationship. 1, 2, 3, 4
 - The problem is a high priority in an action plan. 1, 2, 3, 4

- c) How does this proposal relate to workforce and economic development plans in the local community?
 - There is a relationship. 1, 2, 3, 4

5. If the project is not primarily for education and/or public awareness, how will you promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally?
 - The project reaches a large number and diversity of people. 1, 2, 3, 4
 - The public awareness effort is an active vs. passive effort. 1, 2, 3, 4
 - The public awareness techniques will be effective. 1, 2, 3, 4

MONITORING PROJECTS:

- M1. What is the present situation? Describe the issue or opportunity the project addresses.
 - Includes or recognizes the need for baseline data. 1, 2, 3, 4
 - There is a strong link back to an assessment. 1, 2, 3, 4
 - The problem is significant. 1, 2, 3, 4

- M2. What are you proposing to do? Supply sufficient detail to match the complexity and technical difficulty of the project so that its technical viability can be evaluated.**
- The application clearly defines what will be done. 1, 2, 3, 4
 - The problem statement is clear and concise. 1, 2, 3, 4
 - Identifies why the data is being collected and how it will be used. 1, 2, 3, 4
 - The applicant clearly demonstrates knowledge of accepted protocol. 1, 2, 3, 4
- M3. Describe the type of monitoring proposed (baseline or post-project effectiveness) and what protocols will be used?**
- The protocol to be used is correct for the monitoring proposed. 1, 2, 3, 4
 - The appropriate technical expertise is being utilized. 1, 2, 3, 4
 - The data being collected is repeatable. 1, 2, 3, 4
 - Has clear objectives and links back to the assessment 1, 2, 3, 4
- M4. What are the objectives? If effectiveness monitoring is proposed, provide a specific hypothesis or monitoring question. How will data be used?**
- The objectives are clear. 1, 2, 3, 4
 - The objectives address the problem. 1, 2, 3, 4
 - The objectives and data link back to the assessment. 1, 2, 3, 4
 - The need for the data and its use is clearly defined. 1, 2, 3, 4
- M5. Describe how the information to be gathered augments existing available data.**
- There is no duplication of data being collected. 1, 2, 3, 4
 - There is coordination of monitoring in the watershed. 1, 2, 3, 4
 - The proposal lists other efforts in the watershed and avoids duplication. 1, 2, 3, 4
- M6. How will the success of the project be determined?**
- There is a description of how the monitoring data be used and analyzed? 1, 2, 3, 4
 - There is criteria established to determine success. 1, 2, 3, 4
 - The criteria is reasonable. 1, 2, 3, 4
- M7. What elements of the project will GWEB funds be used for?**
- Provides an adequate explanation of how GWEB funds will be used. 1, 2, 3, 4
 - Indirect (administrative) costs are in-line with the project scope. 1, 2, 3, 4
 - Personnel costs are at an appropriate level. 1, 2, 3, 4
 - Equipment purchases are valid. 1, 2, 3, 4

Extra Points

Are Threatened or Endangered species to benefit from this project? 1, 2, 3, 4

Other unusual site characteristics, wild and scenic river, highly visible project with high demonstration value, will serve as example for other watersheds, etc. 1, 2, 3, 4

TOTAL SCORE.....

Comments or Questions: **NOTE - IT IS IMPORTANT TO WRITE A SENTENCE OR TWO ABOUT YOUR OVERALL IMPRESSION OF THE PROJECT OR CONCERNS YOU HAVE:** _____

Date: _____

GOVERNOR'S WATERSHED ENHANCEMENT BOARD
WATERSHED ASSESSMENT/ACTION PLAN
PROJECT EVALUATION

Project # _____ Name: _____
Amount Requested _____ Amount Recommended: _____

SCORING: Score the following application questions on a scale of 1 to 4 - with four being the best response to the question. Circle the most appropriate score for the criteria. **NOTE:** Application question 2, 4a, 6 and 7 are not scored.

1. Please indicate all agencies/organizations from whom funds are being requested for the proposed project. In addition, please provide cost-share funding information as requested below (note there is a 25% match requirement):
- There are a wide variety of contributors. 1, 2, 3, 4
 - There is a high ratio of match. 1, 2, 3, 4
 - Other funding/match is secured. 1, 2, 3, 4
3. Who will be partnering (agencies, landowners, volunteers) in the project and what will they be doing?
- Has interagency involvement. 1, 2, 3, 4
 - Includes volunteer/youth involvement and cooperation. 1, 2, 3, 4
 - Has local business/organization involvement. 1, 2, 3, 4
4. b) How does this proposal relate to other projects completed or planned in the watershed?
- There is a relationship. 1, 2, 3, 4
 - The problem is a high priority in an action plan. 1, 2, 3, 4
- c) How does this proposal relate to workforce and economic development plans in the local community?
- There is a relationship. 1, 2, 3, 4
5. How will the project promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally?
- The project reaches a large number and diversity of people. 1, 2, 3, 4
 - The public awareness effort is an active vs. passive effort. 1, 2, 3, 4
 - The public awareness techniques will be effective. 1, 2, 3, 4

SPECIFIC WATERSHED ASSESSMENT / ACTION PLAN PROJECT QUESTIONS:

- A1. Describe what is known about the status of other past or current watershed assessment efforts.
- There is a clear understanding of the status of other assessment efforts. 1, 2, 3, 4
 - This project makes full use of other assessments done in the watershed. 1, 2, 3, 4
 - Identifies watershed problems and why the assessment is needed. 1, 2, 3, 4
- A2. How are you proposing to assess watershed conditions?
- The description of methods is clear. 1, 2, 3, 4
 - The methods proposed are appropriate for the watershed. 1, 2, 3, 4
 - The application reflects knowledge about the watershed. 1, 2, 3, 4
 - Describes in general the assessment methodology to be used. 1, 2, 3, 4

A3. What are the objectives of the assessment? Identify how you plan to establish priorities, if developing an action plan.

- The focus is on the entire watershed. 1, 2, 3, 4
- The assessment will identify desired future conditions. 1, 2, 3, 4
- The desired future conditions reflect a balance among watershed resources/uses. 1, 2, 3, 4
- The assessment would link conditions to proposed projects. 1, 2, 3, 4

A4. Who will conduct the assessment/action plan and how will affected groups be involved?

- There has been or is planned to be a lot of public outreach/involvement. 1, 2, 3, 4
- The appropriate technical expertise is or will be involved. 1, 2, 3, 4
- Has group process and ensures adequate public involvement. 1, 2, 3, 4
- Provides for input from agencies, landowners, tribes, public, etc. 1, 2, 3, 4

A5. What data sources currently exist and how will they be used?

- The application represents a clear understanding of available data. 1, 2, 3, 4
- There is a clear idea of how data will be used. 1, 2, 3, 4
- The project is linked to other assessment efforts. 1, 2, 3, 4

A6. Will the development of an Action Plan be based upon an existing watershed assessment? If so, please name the assessment and give the date it was completed.

- There is a clear link between the assessment and the development of the action plan. 1, 2, 3, 4
- The action plan will clearly identify how projects will be selected. 1, 2, 3, 4
- The action plan will use defensible logic to develop priorities. 1, 2, 3, 4

A7. How will the success of the project be determined?

- There is an independently verifiable means to measure success. 1, 2, 3, 4
- There is a clear opportunity for public review and comment. 1, 2, 3, 4

A8. What elements of the project will GWEB funds be used for?

- Provides an adequate explanation of how GWEB funds will be used. 1, 2, 3, 4
- Indirect (administrative) costs are in-line with the project scope. 1, 2, 3, 4
- Personnel costs are at an appropriate level. 1, 2, 3, 4
- Equipment purchases are valid. 1, 2, 3, 4

Extra Points

Are Threatened or Endangered species to benefit from this project? 1, 2, 3, 4

Other unusual site characteristics, wild and scenic river, highly visible project with high demonstration value, will serve as example for other watersheds, etc. 1, 2, 3, 4

TOTAL SCORE.....

Comments or Questions: **NOTE - IT IS IMPORTANT TO WRITE A SENTENCE OR TWO ABOUT YOUR OVERALL IMPRESSION OF THE PROJECT OR CONCERNS YOU HAVE:** _____

Date: _____

GWEB Advisory Committee
EDUCATION / PUBLIC AWARENESS
PROJECT EVALUATION

Project # _____ Name: _____
Amount Requested _____ Amount Recommended: _____

SCORING: Score the following application questions on a scale of 1 to 4 - with four being the best response to the question. Circle the most appropriate score for the criteria. NOTE: Application question 2, 4a, 6 and 7 are not scored.

1. Please indicate all agencies/organizations from whom funds are being requested for the proposed project. In addition, please provide cost-share funding information as requested below (note there is a 25% match requirement):
 - There are a wide variety of contributors. 1, 2, 3, 4
 - There is a high ratio of match. 1, 2, 3, 4
 - Other funding/match is secured. 1, 2, 3, 4

3. Who will be partnering (agencies, landowners, volunteers) in the project and what will they be doing?
 - Has interagency involvement. 1, 2, 3, 4
 - Includes volunteer/youth involvement and cooperation. 1, 2, 3, 4
 - Has local business/organization involvement. 1, 2, 3, 4

4. b) How does this proposal relate to other projects completed or planned in the watershed?
 - There is a relationship. 1, 2, 3, 4
 - The problem is a high priority in an action plan. 1, 2, 3, 4
 - The problem addressed by the project is a high priority in the plan. 1, 2, 3, 4

- c) How does this proposal relate to workforce and economic development plans in the local community?
 - There is a relationship. 1, 2, 3, 4

5. How will the project promote public awareness of the benefits of watershed enhancement and the efforts being undertaken locally?
 - The project reaches a large number and diversity of people. 1, 2, 3, 4
 - The public awareness effort is an active vs. passive effort. 1, 2, 3, 4
 - The public awareness techniques will be effective. 1, 2, 3, 4

SPECIFIC EDUCATION PROJECT QUESTIONS:

- E2. Describe the present situation and explain why the work you propose is needed.**
- Need for project is clearly defined. 1, 2, 3, 4
 - The problem is significant. 1, 2, 3, 4
 - The scope of the project is appropriate. 1, 2, 3, 4

- E3. What are you proposing to do, what learning strategies will be used and what will your end product be?**
- The project is cohesive and makes sense. 1, 2, 3, 4
 - Meets accepted educational strategies and addresses several types of learners. 1, 2, 3, 4
 - Helps meet State Education Dept. requirements, i.e., essential learning skills, CIM/CAM outcomes, addresses needs of special populations. 1, 2, 3, 4
 - Provides for hands-on learning to take place. 1, 2, 3, 4
 - The project raises public awareness. 1, 2, 3, 4
- E4. What are the instructional goals and objectives you plan to achieve?**
- Goals and objectives are clearly defined: the objectives support the goals. 1, 2, 3, 4
 - Has measurable objectives that will be periodically evaluated. 1, 2, 3, 4
 - Instructional goals include an understanding of the long-term advantages of healthy watersheds. 1, 2, 3, 4
- E5. What audience will be targeted and how will you deliver your product to them?**
- Has appropriate size and relevant target audience. 1, 2, 3, 4
 - Has appropriate forms of distribution to reach target audience. 1, 2, 3, 4
 - The target age is appropriate. 1, 2, 3, 4
- E6. Could your project be used at other locations without major modifications?**
- The project can be easily used outside the project area. 1, 2, 3, 4
- E7. Describe the credentials and related experience of those who will be undertaking this project.**
- Has the necessary resources to complete the project. 1, 2, 3, 4
 - Key personnel have appropriate communications and administrative knowledge, skills and experience. 1, 2, 3, 4
- E8. Identify who will evaluate the education results, the elements that will be evaluated and the evaluation method to be used.**
- Evaluation plan is clearly tied to the objectives. 1, 2, 3, 4
 - Describes methods and strategies to be used. 1, 2, 3, 4
- E9. What elements of the project will GWEB funds be used for?**
- Provides an adequate explanation of how GWEB funds will be used. 1, 2, 3, 4
 - Indirect (administrative) costs are in-line with the project scope. 1, 2, 3, 4
 - Personnel costs are at an appropriate level. 1, 2, 3, 4
 - Equipment purchases are valid. 1, 2, 3, 4

Extra Points

Are Threatened or Endangered species to benefit from this project? 1, 2, 3, 4

Other unusual site characteristics, wild and scenic river, highly visible project with high demonstration value, will serve as example for other watersheds, etc. 1, 2, 3, 4

TOTAL SCORE.....

Comments or Questions: **NOTE - IT IS IMPORTANT TO WRITE A SENTENCE OR TWO ABOUT YOUR OVERALL IMPRESSION OF THE PROJECT OR CONCERNS YOU HAVE:** _____

GWEB MAJOR GRANT PROGRAM

Projects Funded in the 1995-97 Biennium

Project No.	Project Name	Applicant	County	GWEB Grant	Federal Funds	*Other Funds
95-014	Umpqua Aquatic Habitat Survey	Umpqua Basin Fisheries Rest. Initiative	Douglas	\$ 30,000		
95-015	McKenzie WS Teacher Training	Eugene Water & Electric Board	Lane	6,000		
95-016	Tualatin WS Involvement	Jackson Bottom Wetlands Preserve	Washington	46,278		
95-017	Tualatin Streamkeepers/Baykeepers	Tillamook Bay National Estuary Project	Tillamook	43,200		
95-018	Baker City Powder R. Enhancement	Baker City	Baker	33,400		
95-019	Lobato Fish & Wildlife Habitat	Umatilla County SWCD / ODFW	Umatilla	33,515		
95-022	Damon Riparian Enhancement	Morrow SWCD	Morrow	4,812		
95-029	Bakeoven WS Enhancement	Wasco County SWCD	Wasco	56,250		
95-030	Buck Hollow Phase 5	Sherman/Wasco Counties SWCDs	Sherman/Wasco	56,500		
95-045	McKenzie Pilot Citizen Monitoring	Pacific Rivers Council	Lane	21,000		
95-046	Clover Cr. WS	Malheur County SWCD	Malheur	27,155		
95-049	Naturescaping for Clean Rivers	East Multnomah SWCD	Multnomah	23,000		
96-001	Redmond High Outdoor Classroom	Redmond High/Deschutes WS Council	Dechutes	10,985		
96-003	SW Oregon CSRI	Rogue V. COG/Rogue Basin WS Council	Jackson	50,000		
96-004	Student WS Enhancement Team	Monument SWCD/N.Fk.John Day Council	Grant	6,632		
96-013	WS Council Coordinator	Illinois V. Watershed Council	Josephine	13,500		
96-015	Rowland Cr.	Coos SWCD/Coquille Watershed Assoc.	Coos	7,271		
96-016	Big Cr.	Coos SWCD/Coquille Watershed Assoc.	Coos	5,653		
96-018	Tidegate Retrofit	Coos SWCD/Coquille Watershed Assoc.	Coos	23,778		
96-019	WS Action Plan Revision	Coos SWCD/Coquille Watershed Assoc.	Coos	3,500		
96-021	Rock Prairie Cr.	Coos SWCD/Coquille Watershed Assoc.	Coos	4,772		
96-023	Yost-Middle Cr.	Coos SWCD/Coquille Watershed Assoc.	Coos	1,051		
96-024	Mile Post 50	Coos SWCD/Coquille Watershed Assoc.	Coos	2,996		
96-025	Riparian Rest. L. Coquille Tribs.	Coos SWCD/Coquille Watershed Assoc.	Coos	90,731		
96-027	Three WS Partnerships Study	Diane Rolph/McKenzie Watershed Council	Lane	500		
96-028	Netarts Bay WS Public Education	Netarts Comm. Council/Watershed Council	Tillamook	3,500		
96-029	Nestucca WS Education/Outreach	Nestucca WS Council	Tillamook	7,818		
96-033	Lower N. Powder Riparian Rest.	Union SWCD/Powder Basin WS Council	Baker	8,410		
96-037	Bear Cr. Water Quality Education	Rogue V. COG/Bear Cr. Watershed Council	Jackson	10,000		
96-038	Umpqua Basin Landowner Ed.	Umpqua Reg. COG/UBFRI	Douglas	15,638		
96-039	Riparian Restoration Demo.	Derek Godwin/S.Coast Watershed Council	Curry	21,525		

Major Grant Program Projects Funded in the 1995-97 Biennium (Continued)

Project No.	Project Name	Applicant	County	GWEB Grant	Federal Funds	*Other Funds
96-041	Water Quality Monitoring	Grande Ronde Model Watershed/Council	Union/Wallowa	36,284		
96-043	Bear Cr. Fencing/Bank Stabilization	Union SWCD/Grande Ronde Model WS	Union	8,650		
96-044	McCully Cr. Riparian Fence	Wallowa SWCD/Grande Ronde Model WS	Wallowa	8,190		
96-045	U. Whiskey & Tope Cr. Sediment	Wallowa SWCD/Grande Ronde Model WS	Wallowa	11,032		
96-046	U. Dry Cr. Road Rehab. & Riparian	Wallowa SWCD/Grande Ronde Model WS	Wallowa	13,505		
96-048	L. Leap Riparian & Rangeland Imp.	Wallowa SWCD/Grande Ronde Model WS	Wallowa	17,033		
96-050	Whiskey Cr. Sediment Reduction	Wallowa SWCD/Grande Ronde Model WS	Wallowa	20,175		
96-058	Johnson Cr. Watershed Coordinator	Johnson Cr. Watershed Council	Multnomah	60,000		
96-059	Malheur R. Basin Action Plan	Malheur-Owyhee Watershed Council	Malheur	7,000		
96-060	Bully Cr. WS Education Coordinator	Bully Cr. Watershed Coalition, Inc.	Malheur	22,000		
96-061	Malheur R. Monitoring Update	Malheur-Owyhee Watershed Council	Malheur	3,835		
96-064	U. Watershed Habitat Structures	Coos Watershed Association	Coos	44,173		
96-065	Council Operations	Coos Watershed Association	Coos	18,110		
96-068	Deschutes Watershed Coordinator	Deschutes SWCD/Deschutes WS Council	Deschutes	22,350		
96-071	Applegate R. Watershed Coordinator	Applegate R. Watershed Council	Jackson	26,753		
96-073	Mid. Thomas Cr. Bank Stabilization	Goose Lk. Fishes Working Group/Council	Lake	9,900		
96-074	Basin Coordinator	Goose Lk. Fishes Working Group/Council	Lake	19,550		
96-075	Bakeoven WS Action Plan Imp.	Wasco Co. SWCD/Bakeoven WS Council	Wasco	63,200		
97-002	Mid-Coast Salmonid Habitat Rest.	Oregon Wildlife Heritage Foundation	Mid-Coast	50,000		
97-007	N. Tillamook Co. WS Education	Neah-Kah-Nie School District 56	Tillamook	3,870		
97-008	Tillamook Co. WS Coordinator	Tillamook Co. SWCD	Tillamook	10,000		
97-011	S. Coast Coord. Council Coordinator	Curry SWCD/S. Coast Coord. Council	Curry	11,000		
97-018	Siuslaw Mid. School Stream Team	Siuslaw School District 27J	Lane	1,676		
97-020	U. Rogue WS Council Coordinator	U. Rogue Parks & Recreation Association	Jackson	11,000		
97-021	St. Restoration - Eight State Parks	Oregon Parks & Recreation Department	Coast	27,000		
97-024	Little Butte Watershed Coordinator	Little Butte Cr. Watershed Council	Jackson	11,000		
97-025	Nehalem Watershed Restoration	Columbia SWCD	Columbia	31,350		
97-026	Deadwood Cr. CRMP	The Siuslaw Institute, Inc.	Lane	15,850		
97-028	Siuslaw Watershed Coordinator	Siuslaw Watershed Council	Lane	10,000		
97-033	Coos CSRI Salmon Habitat	Coos Watershed Association	Coos	58,102		
97-036	Illinois V. Council Coordinator	Rogue V. Council of Governments	Josephine	20,625		

Project #	Grantee	Project Name	Original Grant
97-001	City of Lakeside	Ten Mile Lakes Basin Stream Habitat & Spawning Surveys	36,430.00
97-002	Oregon Wildlife Heritage Foundation	Mid-Coast Salmonid Habitat Restoration Project	49,900.00
97-003	Stephen Caruana	Oregon's CREP Proposal Review-PSC	4,000.00
97-007	Neahkahnie School Dist # 56	North Tillamook County Watershed Education Project	3,870.00
97-008	Tillamook Co. SWCD	Tillamook County Coordinator - Round 1	10,000.00
97-008A	Tillamook SWCD	1 YR Tillamook Co. Watershed Council Coordinator	48,867.00
97-009	Crest/Clatsop Coord. Council	Clatsop Coordinating Council for Watersheds	38,100.00
97-011	Curry SWCD	South Coast Coordinator - Round 1	11,000.00
97-013	Evans Creek Watershed Council	Watershed Enhancement Early Action Projects	97,400.00
97-018	School District 97-J	Siuslaw Middle School Stream Team	1,676.20
97-020	Upper Rogue Parks & Rec Assoc.	Upper Rogue Coordinator-Round 1	11,000.00
97-021	Oregon Parks & Recreation Dept	Stream Restoration & Public Interpretation in (8) state park	27,000.00
97-021A	Oregon Parks & Recreation Dept	Stream Restore & Public Interpretation in (8) State Park	28,000.00
97-023	Curry County SWCD	Lower Rogue Watershed Council Coordinator	15,246.00
97-024	SW Oregon RC & D	Little Butte Coordinator - Round 1	11,000.00
97-026	The Siuslaw Institute, Inc.	Deadwood Creek Camp Enhancement Project	15,850.00
97-027	Applegate Partnership	Little Applegate Landscape Design	56,950.00
97-028	Siuslaw SWCD	Siuslaw Coordinator - Round 1	10,000.00
97-029	Lincoln SWCD	Mid-Coast Watersheds Council Watershed Coordinator	17,994.00
97-032	Mid-Coast Watershed Council	Mill Creek Watershed Salmon Monitoring Project	12,000.00
97-033	Coos Watershed Association	Coos CSRI Core Habitat Enhancement II-Round 1	58,102.00
97-035	Rogue Valley Council of Govts	Bear Creek Watershed Council Coordinator	14,315.00
97-036	Rogue Valley Council of Govts	Illinois Valley Watershed Coordinator	20,625.00
97-039	Coos Co. OSU Extension Service	Constructed Wetland for Dairy Waste Water Treatment	13,090.00
97-040	Jefferson Co. SWCD	Jefferson / Middle Deschutes Watershed Coordinator	17,000.00
97-041	IBIG Forestry Action Committee	IBIG Forestry Action Committee annual riparian planting proj	68,200.00
97-042	Baker Valley Irrigation District	McEnroe Bank Stabilization/Powder River Project	17,460.00
97-043	Sherman County SWCD	Pine Hollow Watershed Enhancement Project	103,290.00
97-046	Tillamook Co. SWCD	Nestucca Watershed Enhancement Projects	10,925.00
97-048	Tillamook Co. SWCD	Nestucca Watershed Assessment/ Action Plan	25,057.00
97-049	Astoria Middle School	Astoria Middle School Nature Trail	15,701.65
97-060	Yamhill SWCD	Yamhill Watershed Action Plan Implementation	71,200.00
97-062	City of Lakeside	Ten Mile Lakes Coordinator Funding	17,798.00

Project #	Grantee	Project Name	Original Grant
97-065	Various Vendors	Small Grant Program 97-99 Carryover	7,338.47
97-066	Sherman County SWCD	Sherman & Wasco Co. Watershed Council Coordinator	59,791.00
97-067	Coos SWCD	Coquille Watershed Improvement Mgt Plan	300,000.00
97-069	Portland State University	Guide to Development of Aquatic Veg. Mgt Plans	42,288.00
97-070	Oregon Dept of Fish & Wildlife	Stream Scene Curriculum Update	38,688.00
97-075	South Coast Land Conservancy	Beaver Hill Watershed Restoration Project	250,000.00
97-076	The Resort at the Mountain	Wee Burn Stream Rehabilitation	50,985.00
97-079	Applegate Partnership/River Watershed Co	Applegate Newsletter	26,820.00
97-080	South Slough NERR	Winchester Tidelands Restoration Monitoring	57,576.00
97-081	South Slough NERR	Estuary Study Through Education, Awareness & Monitoring	58,092.00
97-083	Oregon Dept Of Forestry	Powder River Watershed/Baker Co. Vegetative Identification	144,590.00
97-084	East Lane SWCD	Long Tom River Watershed Council Coordinator & Assessment	91,440.00
97-086	Columbia SWCD	Lower Columbia R. Watershed Council Coordinator	37,500.00
97-092	Sunridge Middle School	Umatilla Basin Watershed Education Project	4,630.00
97-093	Union SWCD	Grande Ronde Model Watershed Action Plan Implementation	109,916.00
97-093A	Union SWCD	Morgan Lake Road Improvement	15,065.00
97-093B	Union SWCD	North Fork Clark Creek Crossing Improvement	35,277.00
97-093C	Union SWCD	Loren Fleet Dike Setback	22,600.00
97-093D	Union SWCD	Indian Creek/Fischer Streambank Stabilization	6,770.00
97-093E	Union SWCD	Grande Ronde River/Hardy Riparian Enhance	6,031.00
97-093F	Union SWCD		0.00
97-093G	Union SWCD	Gordon Creek/Fruitts restoration	5,914.00
97-093H	Union SWCD	Mainstream Grande Ronde Restoration	22,550.00
97-093I	Union SWCD	Birdtrack Springs/Gun Club Noxious Weed Treatment	2,625.00
97-093J	Union SWCD	Little Rock Creek Instream Restoration	10,000.00
97-093K	Union SWCD	Whiskey & Little Whiskey Creek/Courtney	17,960.00
97-093L	Union SWCD	Mt Harris Watershed Enhancement	75,000.00
97-093M	Union SWCD	Wood Cross-Fencing & Erosion Reduction	16,565.00
97-093N	Union SWCD	McArtor/Wallowa River Riparian Improvement	9,077.00
97-093O	Union SWCD	Cove Yellow Starthistle Project	4,475.00
97-093P	Union SWCD		0.00
97-093Q	Union SWCD		0.00
97-093R	Wallowa SWCD	Williams Imnaha Fencing and Spring Develop	37,175.00

Project #	Grantee	Project Name	Original Grant
97-093T	Union SWCD	Nutrient Mgt for Peppermint Project	3,000.00
97-095	Curry County SWCD	South Coast Riparian Restoration	100,000.00
97-096	Curry County SWCD	South Coast Fish Passage & Water Quality Restoration	74,580.00
97-097	Curry County SWCD	Lower Rogue Watershed Enhancement Projects	15,178.00
97-099	Curry County SWCD	Lower Rogue/South Coast Watershed Monitoring Program	92,450.00
97-100	Oregon State University	Urban NPS Solutions Video	7,000.00
97-103	Walla Walla Watershed Council	Walla Walla Basin Watershed Council Coordinator	27,850.00
97-108	The High Desert Museum	Summer Environmental Institute, "Nature Explorations: Connec	4,974.00
97-109	Harney Co. SWCD	Harney Co. Watershed Coordinator	65,000.00
97-110	Wheeler SWCD	Bridge Creek Demonstration Projects	50,000.00
97-113	Oregon Trout, Inc.	Salmon Watch Environmental Education Program	129,900.00
97-115	Klamath SWCD	Klamath Basin Bull Trout project	40,250.00
97-117	Wasco Co. SWCD	Fifteen Mile Creek Watershed Enhancement Project	76,000.00
97-118	Cascade Pacific RC & D	Marys River Watershed Council	36,000.00
97-119	South Santiam Watershed Council	South Santiam Watershed Council	46,500.00
97-120	Oregon Dept of Forestry	Miami Forest Rd. Fish Habitat Improvement Interpretive Sign	1,200.00
97-121	Tillamook Bay NEP	Trask River Watershed Assessment	60,000.00
97-125	Columbia SWCD	Nehalem Watershed Restoration	31,350.00
97-130	Hidden Valley High School	Hidden Valley Watershed Enhancement Education Program	3,350.00
97-131	Siuslaw SWCD	Siuslaw Watershed Assessment-Development of Centralized GI	16,220.00
97-133	Haystack Rock Awareness Program	Haystack Rock Awareness Program	3,606.00
97-135	Illinois Valley Watershed Council	Alternatives To Gravel Push-Up Dams	342,420.00
97-136	Southern Oregon RC & D, Inc.	Sediment Assessment Component of Upper Rogue Coor Res. M	7,500.00
97-139	Illinois Valley SWCD	The IV Watershed & You	7,084.00
97-140	Upper Rogue Watershed Council	Education & Outreach Component of Coordinated Ecosystem R	22,490.00
97-143	SW Oregon RC & D, Inc.	Volunteer Monitoring Program	23,394.00
97-144	Rogue Valley COG	Across the Rogue Watersheds Protection & Restoration Progra	200,000.00
97-145	East Multnomah SWCD	Columbia Slough Watershed Council	51,500.00
97-146	City of Baker City	Powder River Enhancement Project	45,000.00
97-148	Curry SWCD	Stream Enhancement Partnership	39,725.00
97-149	Grant SWCD	Upper South Fork Watershed Enhancement Project	82,737.00
97-150	Oregon Water Trust	Lacy Irrigation Conversion-Conservation Project	7,000.00
97-151	East Lane SWCD	Mohawk Watershed Assessment & Action Plan	24,300.00

Project #	Grantee	Project Name	Original Grant
97-156	Klamath SWCD	Rust Project	49,588.00
97-157	Klamath SWCD	Upper Klamath Watershed Council Coordinator	68,199.00
97-158	Union SWCD	Phase 2 Vegetation Rehabilitation Element- Grande Ronde Riv	16,004.00
97-159	Wallowa SWCD	N. Fork Whiskey Creek Riparian Enhancement/Sediment Reduct	20,175.00
97-161	Union SWCD	Water Quality Monitoring for the Grande Ronde River Basin	66,560.00
97-163	Union SWCD	Indian Creek Off-Stream Livestock Watering & Riparian Improv	4,130.00
97-164	Ukiah School District	Ukiah Student Watershed Enhancement Program	5,698.00
97-165	Upper Chewaucan Watershed Council	Upper Chewaucan Watershed Assessment/ Action Plan	46,500.00
97-169	Applegate River Watershed Council	Applegate Watershed Riparian Restoration-Fencing & Planting	100,000.00
97-171	Applegate River Watershed Council	Farmer's Ditch Jump Pool	2,500.00
97-173	Applegate Partnership/River Watershed Co	Refugia, Search and Confirmation	28,894.00
97-181	Morrow SWCD	Morrow County Education Partnership	3,943.00
97-183	Clatsop SWCD	Skipanon River Restoration Project	6,950.00
97-184	Clatsop SWCD	Pacifica Project	5,600.00
97-186	Oregon Dept of Forestry	Umatilla Basin Vegetative Identification Project	110,040.00
97-187	Washington Co. SWCD	Small Farms/Hobby Farms Resource Mgt Education	53,180.00
97-189	Washington Co. SWCD	Tualatin River Watershed Council Coordinator	68,132.00
97-193	Columbia Co. SWCD	OYCC HRJP - Riparian Fencing	10,000.00
97-195	Unified Sewerage Agency	Summer Creek Enhancement Project	21,986.00
97-199	City of Portland - BES	Columbia Slough Watershed Education	55,000.00
97-200	Monument SWCD	N. Fork John Day Watershed Council Coordinator	16,900.00
97-201	Rogue Valley Council of Govt's	Bear Creek Watershed Stewardship Project	24,635.00
97-204	Malheur - Owyhee Watershed Council	Malheur - Owyhee Watershed Council Coordinator	71,500.00
97-207	Johnson Creek Watershed Council	Johnson Creek Watershed Council Coordinator Support	40,000.00
97-209	Philomath High School	Marys River Midsection	10,825.00
97-210	Hood River SWCD	Hood River Watershed Group Coordinator	42,050.00
97-211	Deschutes SWCD	Squaw Creek Monitoring, Deschutes County	24,626.00
97-212	Deschutes SWCD	Deschutes County Watershed Coordinator	45,113.00
97-213	Baker Co. ACD	Powder Basin Council Coordinator	31,769.00
97-217	East Multnomah SWCD	Rural/Urban WS Education & Outreach Coordinator	99,000.00
97-231	Tillamook County SWCD	Lower Nehalem WC Improvement Projects	18,880.00
97-232	Portland State University-Office Bus. Affairs	Upper & Lower Nehalem Watershed Assessment	45,927.00
97-233	Tillamook County SWCD	Lower Nehalem Watershed Council:Monitoring	5,015.00

Project #	Grantee	Project Name	Original Grant
97-235	Tillamook County SWCD	Netarts: Watershed Assessment/ Action Plan	15,282.00
97-238	Columbia River Estuary Study Task Force	Columbia River Estuary Study Task Force	6,000.00
97-239	Southwest Oregon RC &D, Inc.	Upper Rogue Watershed Council Coordinator Funding	72,000.00
97-240	Coos Watershed Association	Coos CSRI Salmonoid Habitat Enhancement II	300,000.00
97-241	Sw Oregon RC & D	Little Butte Creek Watershed Council Coordinator	45,000.00
97-242	Curry SWCD	Riparian Demonstration Project II	21,525.00
97-243	Curry Co. SWCD	South Coast Coordinating Watershed Council Coordinator	36,960.00
97-244	Bureau of Reclamation	Alternatives to Push Up Dams	2,000.00
97-681	US Forest Service	Provide Geographic Info Service Data	52,105.00
97-682	Non-Point Source Solutions	Watershed Assess Manual - Balance 3rd contract	102,951.00
97-683	WRD-Salem	Costs for Weston Becker -Annual Salmon Report	1,115.42
97-684	Various	98 State Fair Contributions	20,000.00
97-685	Paul Hoobyar	PSC- Editing "the State of the Salmon Report"	4,500.00
97-686	ODFW	1998 GF Education Workshops	11,500.00
97-687	Ross & Associates Environmental Consultin	PSC -GFSWN- Healthy Streams Partnership	82,913.00
97-688	Oregon Dept of Environmental Quality	Oregon Plan-Salmon/Healthy Streams Brochure	5,000.00
97-689	Oregon DEQ	Interagency- DEQ Monitoring Equipment Purchases	120,000.00
97-690	State Service Center for GIS	Interagency- State Service Center GIS Maps by Regions	7,118.00
97-691	State Service Center for GIS	Interagency State Service Center GIS Mapping & Analysis	57,000.00
97-692	Oregon State University	OSU Interagency-Oregon CREP Proposal	48,671.00
97-693	Carrie Fox Mediation	PSC for Governor's Task Force Report	2,000.00
97-694	Aquatic Biology Assoc., Inc.	PSC-Macroinvertebrate sample / Manual	5,000.00
97-695	For Sake of the Salmon	FSOS - Watershed Council Training	5,000.00
97-696	Pacific Rivers Council	PSC - Index of Biological Index	4,870.00
97-697	Pacific Rivers Council	PSC- Oregon coastal Watershed Index	4,995.00
97-698	Bureau of Reclamation	Bureau of Reclamation-Rogue R. Engineer Position	75,000.00
97-699	Various Vendors	Miscellaneous Projects - Statewide Needs	2,611.25
97-701	Oregon Dept of Agriculture	Dept of Ag-Interagency Agreement for Oregon Plan	2,400,000.00
97-702	OSU - College of Agricultural Sciences	OSU - Interagency Oregon Plan (Stream Temperatures)	500,000.00
97-703	OCZMA	OCZMA (OF) Oregon Plan Agreement for 97-99	125,000.00
97-704	Alder Fork Consulting	PSC - Independent Multidisciplinary Science Team	68,636.00
97-705	Oregon DEQ	DEQ -HB 3720 Attainability Analysis	280,000.00
97-706	Oregon Dept of Land Conservation & Devel	Interagency-DLCD(Riparian Corridors & Wetlands Protection	320,000.00

Project #	Grantee	Project Name	Original Grant
97-707	OSU	Interagency-Independent Multidisciplinary Science Team	291,776.00
97-708	Various Vendors	Healthy Streams Partnership Support	22,500.00
97-709	Oregon Wildlife Heritage Foundation	Biologists for Salmon/Steelhead on Industrial Timber Lands	505,198.00
97-710	Oregon Dept of Agriculture	Interagency-Oregon Dairy Waste Management Practices	225,000.00
97-711	Oregon Dept of Forestry	Service Foresters - Interagency (Timber Tax)	500,000.00
97-801	Non-Point Source Solutions	Watershed Assessment Manual	40,000.00
97-802	Illinois Valley SWCD	Federal Funds Exxon Valdez- McMahan Project	4,250.00
97-803	Illinois Valley SWCD	Federal Funds Exxon Valdez- James Pushup Dam	8,361.00
97-804	Illinois Valley SWCD	Federal Funds Exxon Valdez-Devorss project	8,139.00
97-805	Illinois Valley SWCD	Federal Funds Exxon Valdez-Suaer Project	20,146.00
97-806	Jennifer Radlet	PSC - Oregon Plan Coordination - Fed Funds	35,000.00
97-807	Douglas County	Umpqua Coordinator Funding (FSOS - Federal Funds)	15,000.00
97-808	Curry County Extension Service	Federal Funds Exxon Valdez-Floras Creek Project	15,000.00
97-809	Non-Point Source Solutions	Watershed Assessment Manual -2nd contract	34,312.00
97-810	Oregon Water Trust	Federal Funds Exxon Valdez-Lacy Project	7,500.00
97-811	Tillamook Bay National Estuary Project	Federal Funds Exxon Valdez-Tillamook NEP	30,000.00
97-812	Oregon Dept of Forestry	Simmons Creek -Tillamook Co. (Exon-Val Fed Funds)	57,000.00
97-813	Non-Point Source Solutions	Watershed Assessment Manual - 3rd Contract	37,043.00
97-814			8,300.00
97-815	The City of Seaside	Neawanna Wetlands Restoration - Fed Funds USF&W	170,000.00
97-900		Oregon Salmon Plan-State Fair Contributions (Misc Agreement)	15,000.00
97-901	Douglas County	Umpqua Coordinator Funding (FSOS - Other Funds)	75,000.00
97-902	Various	Oregon Plan Outreach - "Other Funds"	5,000.00
97-903	Allied Video Productions	PSC for 98 GWEB Conference - "Other Funds"	4,940.00
98-001	LaGrande High School	La Grande High School Watershed & Forest Health	29,046.00
98-004	SW Oregon RC & D	Watershed Friendly Landowner	12,210.00
98-005	Baker Co. Assoc. of Conser Dist	Powder Basin Watershed Council Support	42,819.00
98-007	Neahkahnie School District #56	N. Tillamook Co. Watershed Education Continuation Project	6,350.00
98-008	Cascade Pacific RC & D	Marys R. Watershed Assess.	21,850.00
98-011	Oregon Department of Forestry	South Fork Trask River Stream Enhancement	117,000.00
98-012	Oregon Department of Forestry	Trask River Stream Enhancement	64,000.00
98-013	Oregon Department of Forestry	Little North Fork Wilson River Bridge Project	45,000.00
98-015	Oregon Department of Forestry	Kilchis/Nehalem Stream Enhancement	29,000.00

Project #	Grantee	Project Name	Original Grant
98-017	SIUSLAW NATIONAL FOREST	Enchanted Valley Stream Restoration	60,000.00
98-019	Southern Oregon Land Conservancy	Irrigation Diversion Structure Re-engineering & Water Conser	100,000.00
98-020	Malheur Co. SWCD	Malheur River Basin Water Quality Monitoring	38,800.00
98-022	USDI Bureau of Land Management	Wood River Wetland Info & Education Project	36,750.00
98-025	Curry County SWCD	Pistol River Package	145,500.00
98-026	Curry County SWCD	Stream Team - Riparian Maintenance	40,980.00
98-027	Curry County SWCD	South Coast Outreach/ Education	14,253.00
98-030	The High Desert Museum	Summer Watershed Education Workshop	7,450.00
98-031	Wheeler SWCD	Wheeler County Watershed Council Coordinator	57,520.00
98-032	Oregon County Fair	OCF Wetlands Consolidation	9,600.00
98-034	Marys River WS Council	Temp.Monitoring/ Modeling/Marys R. WS	3,650.00
98-036	Saturday Academy	Student WS Research	79,104.00
98-039	City of Baker City	Baker City Watershed Forest Health Project	50,000.00
98-042	Tualatin Riverkeepers	Tualatin WS Citizen Stewardship	42,000.00
98-045	Bureau of Land Management	Wood River Wetland Restoration (Phase III)	50,000.00
98-048	Walla Walla Basin WSC	Walla Walla Basin Watershed Coordinator Funding	27,200.00
98-051	The Xerces Society	Stream Macroinvertebrate Monitoring Workshops	16,538.00
98-053	E & S Enviro Restoration, Inc.	Remediation - Tillamook Bay WS	96,470.00
98-055	Coos SWCD	Coquille Watershed Improvement Management Plan II	271,328.00
98-056	The Siuslaw Institute, Inc.	Deadwood Cr.CRMP, Phase II	29,600.00
98-057	N Central Educational Service Dist	Tri-County Watershed ED Team	45,000.00
98-058	Oregon Water Trust	Conserved Water Project for Art and Jude Vawter	22,750.00
98-062	Oregon Cattlemen's Assoc.	Oregon Cattlemen's Assoc West Education Program	42,790.00
98-063	Tillamook SWCD	Lower Nehalem Watershed Monitoring Project	6,269.00
98-064	Illinois Valley WSC	Illinois Valley Basin Water Quality & Fish Enhancement	185,160.00
98-065	Klamath SWCD	Fasteen Copperfield Draw Head Cutting Restoration Project	13,662.00
98-069	Lincoln SWCD	Rock Creek Watershed Assessment	10,000.00
98-070	Umatilla County Weed Control	Dry Creek Watershed Rehabilitation Project	8,500.00
98-071	Jackson SWCD	Fish Screens and Push up Dams	94,185.00
98-072	USDA Forest Service	Tsalila: A Watershed Experience	55,745.00
98-073	Wallowa County Public Works Dept.	Grouse Creek Culvert Replacement	80,350.00
98-074	OR Assoc.Clean Water Agencies	Flight Down R. Ed. Videotape	15,000.00
98-075	Applegate River Watershed Council	Applegate Watershed Education Program	22,165.00

Project #	Grantee	Project Name	Original Grant
98-076	Applegate River Watershed Council	Applegate River Watershed Council Support	47,360.00
98-077	Williams Creek WS Council	Williams Creek Watershed Assessment & Action Plan	56,210.00
98-078	Applegate Partnership	Cheney Creek Watershed Assessment & Action Plan	20,700.00
98-080	Applegate Partnership	Intergrated Flood Plain Planning-Balance River Function	25,370.00
98-081	RVCOG	Bear Creek Watershed Assessment/Action Plan	36,795.00
98-083	Siuslaw WSC	Deadwood-Wildcat Rapid Assess.	49,050.00
98-084	Siuslaw WSC	Siuslaw WS Coordinator & Council Support	41,670.00
98-085	Siuslaw WSC	Deadwood/Wildcat Culvert Assessment	60,540.00
98-090	Mid-Coast Watersheds Council	Oregon Middle Coast Range Watersheds Newsletter	9,300.00
98-093	Mid-Coast Watersheds Council	Yaquina & Alsea Estuarine/Wetland Restoration Assessment	22,000.00
98-094	Mid-Coast Watersheds Council	Moonshine Park Salmon Enhancement Education Project	3,650.00
98-095	Mid-Coast Watersheds Council	Depoe Bay Salmon Enhancement Education Project	3,550.00
98-096	Mid-Coast Watersheds Council	Private Options for Conservation Easements in the Mid-Coast	48,000.00
98-099	Mid-Coast Watersheds Council	N. Fork Yachats Habitat Restoration Project	11,425.00
98-101	Mid-Coast Watersheds Council	South Fork Yachats/Grass Creek Restoration	24,850.00
98-102	Mid-Coast Watersheds Council	Big Elk Creek Riparian Mgt Project B	14,000.00
98-103	Mid-Coast Watersheds Council	Big Elk Creek Riparian Mgt Project A	14,300.00
98-105	Mid-Coast Watersheds Council	Lint Slough-Alsea Bay Estuarine Habitat Restoration	49,200.00
98-106	Mid-Coast Watersheds Council	Oregon Middle Coast Range Watersheds Assessment	144,800.00
98-108	Mid-Coast Watersheds Council	Mid-Coast Watersheds Coordinator & Support	67,600.00
98-109	Lincoln County SWCD	Mid-Coast Rapid Bio-Assessment Project	66,260.00
98-111	Jefferson County SWCD	Jefferson Co./Middle Deschutes Support/ Implementation I	20,000.00
98-112	Deschutes County WSC	Upper Deschutes Noxious Weed Education Program	27,495.00
98-114	Deschutes County WSC	Watershed Education: Improving Land Mgt Practices	30,764.00
98-118	Tenmile Lakes Basin Partnership	Tenmile Lakes Basin Partnership Coordinator Funding	42,485.00
98-121	Necanicum WSC	Necanicum Watershed Council Coordinator	27,495.00
98-123	Confederated Tribes of Warm Springs	Beaver Relocation and Mgt Program	14,962.00
98-125	Umpqua SWCD	Paradise Creek Watershed Restoration	82,121.00
98-126	Tri-County Weed Management Area	Watershed Protection: A Partnership for Healthy Plant Comm.	86,180.00
98-127	Wheeler SWCD	Lower John Day River Riparian Enclosure Project (RM 157-142)	25,025.00
98-129	Wallowa SWCD	Bakke Meadows Wetland Restoration	19,350.00
98-130	Wallowa SWCD	Promise Sediment Reduction & Road Rehabilitation	21,846.00
98-131	Wallowa SWCD	Dry Creek Sediment Reduction & Road Rehabilitation	9,226.00

Project #	Grantee	Project Name	Original Grant
98-136	Grande Ronde Model Watershed	Grande Ronde Model Watershed Program	144,900.00
98-137	Coos Watershed Assoc.	Coos Watershed Association 1998	321,690.00
98-139	Salem Public Works	Pringle Cr. Parking Lot Runoff Remediation	47,450.00
98-141	Scappoose Bay WS Council	Milton Cr. Ed./ Salmon Habitat Rest.	19,252.00
98-142	Columbia SWCD	Nehalem WS Council Coordinator	43,450.00
98-143	ODFW	Umpqua Basin Juvenile Trap Monitoring	2,300.00
98-144	Yamhill SWCD	Yamhill Watershed Action Plan Implementation II	11,569.00
98-145	Conf. Tribes of Grande Ronde	W. Fk. Agency Cr. Culvert Replacement	40,450.00
98-147	Linn SWCD	S. Santiam WS Coord.	50,000.00
98-148	Lane COG	Willamette WS Conference	10,000.00
98-149	Douglas SWCD	Pheasant Creek Fish Passage Improvement	3,174.00
98-150	Douglas SWCD	Umpqua Basin Riparian Enhancement Program	66,122.00
98-151	Douglas SWCD	Watershed Function & Dynamic Stream Model Education	7,725.00
98-152	Douglas SWCD	Umpqua Basin Off-Channel Stockwater Demonstration	29,527.00
98-154	Douglas County	Lane & Judd Creek Stream Enhancement	51,980.00
98-160	Douglas County	Elk Creek Temperature Monitoring	2,255.00
98-161	Douglas County	Umpqua Basin Watershed Council Support	51,316.48
98-164	Tillamook County SWCD	1997-99 Tillamook County Watershed Restoration & Inventories	100,000.00
98-165	Tillamook County SWCD	Tillamook County Watershed Council Support	49,700.00
98-166	Confed Tribes Warm Springs	NW Intertribal Youth & Natural Resource Practicum	10,000.00
98-167A	Clackamas R. Basin Council	Clackamas R. Ed., Monitoring & Assess	14,000.00
98-167B	Clackamas R. Basin Council	Clackamas R. - Phase 2	36,000.00
98-168	Malheur County SWCD	Pole Creek Riparian Project	20,008.00
98-169	Linn SWCD	S. Santiam WS Assess.	52,800.00
98-171	Wasco County SWCD	Buck Hollow Watershed Enhancement - Phase 6	64,942.00
98-172	Cascade Pacific RC & D	Long Tom R. WS Assess.	4,967.00
98-176	City of Lakeside	Tenmile Habitat Assessment Project	17,926.00
98-177	Umatilla Basin WSC Foundation	Umatilla Coordin of WS Restoration Projects & Outreach	67,052.00
98-180	Spirit of the Rogue Nature Center	The Traveling Living Stream Exhibit	14,771.00
98-189	Clackamas River Basin Council	Clackamas R. Council Support	58,250.00
98-190	City of Seaside	Balance of Neawanna Wetlands Restoration - GF	147,000.00

(1) Receive informational reports from the Healthy Streams Partnership established under section 4 of this Act, from the Independent Multidisciplinary Science Team created under section 5 of this Act, from the Coastal Salmon Restoration and Production Task Force established under section 2, chapter 544, Oregon Laws 1995, and from other sources and, on the basis of such informational reports, recommend changes to the statewide stream and salmon enhancement efforts.

(2) Review the activities of the individuals and state and federal agencies implementing the Oregon Coastal Salmon Restoration Initiative and programs for the improvement of the health of Oregon's streams.

(3) Review requests for and make recommendations to the Joint Legislative Committee on Ways and Means or, during the interim between legislative sessions, to the Emergency Board, regarding grant proposals and other requests for funds submitted by the Governor's Watershed Enhancement Board or other state agencies responsible for implementing the Oregon Coastal Salmon Restoration Initiative or other stream enhancement projects.

(4) Review any memorandum of understanding or intergovernmental agreement between a state agency and any other local, state or federal agency to implement all or any portion of a program described in section 1 of this Act.

(5) Review rules proposed for adoption by an agency to implement the programs described in section 1 of this Act.

(6) Review the effectiveness of existing projects and programs.

(7) Review research projects related to all factors that influence the health of Oregon's streams.

(8) Recommend implementation principles, priorities and guidance for the programs described in section 1 of this Act.

SECTION 4. (1) As soon as possible after the effective date of this Act, the Governor, the President of the Senate and the Speaker of the House of Representatives shall appoint a statewide or regional Healthy Streams Partnership. The Healthy Streams Partnership may consist of up to 15 persons. The persons appointed to the Healthy Streams Partnership shall include, but need not be limited to, persons who are involved in the local implementation of the Oregon Coastal Salmon Restoration Initiative and other watershed restoration and enhancement projects and representatives of industry, local government and environmental interests.

(2) The duties of the Healthy Streams Partnership shall include but need not be limited to:

(a) Providing information to the Joint Legislative Committee on Salmon and Stream Enhancement about the implementation of the programs from a local and regional perspective; and

(b) Recommending changes necessary to facilitate more efficient implementation of the initiative and other stream improvement programs at the local level.

(3) Members of the Healthy Streams Partnership shall not be compensated for their services but are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

SECTION 5. (1) There is created an Independent Multidisciplinary Science Team consisting of up to seven scientists with recognized expertise in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management. As soon as possible after the effective date of this Act, the Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint the Independent Multidisciplinary Science Team. The decision to appoint a member of the team shall be a unanimous decision by the appointing authorities. The members of the Independent Multidisciplinary Science Team shall serve for four years and may be reappointed for a subsequent term. The team shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the National Academy of Sciences.

(2) The Independent Multidisciplinary Science Team shall:

(a) Review implementation of the Oregon Coastal Salmon Restoration Initiative and other programs for achieving healthy streams as described in section 1 of this Act.

(b) Prepare and submit to the Governor, the Legislative Assembly and the public an annual report on the implementation of the Oregon Coastal Salmon Restoration Initiative, including any recommendations for changes or adjustments to the initiative.

(c) Serve as an independent scientific peer review panel to the state agencies responsible for developing and implementing the Oregon Coastal Salmon Restoration Initiative and other salmon or stream enhancement programs throughout this state.

(d) Report regularly to the Joint Legislative Committee on Salmon and Stream Enhancement concerning the duties described under this subsection and other requests by the Joint Legislative Committee on Salmon and Stream Enhancement.

(3) If the Independent Multidisciplinary Science Team submits suggestions to an agency responsible for implementing a portion of the Oregon Plan, the agency shall respond in writing to the team, explaining how the agency intends to implement the suggestion or why the agency does not implement the suggestion. The team shall include any agency responses in its report to the Joint Legislative Committee on Salmon and Stream Enhancement.

(4) Members of the Independent Multidisciplinary Science Team shall be compensated for their services and are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

(5) Compensation for members of the Independent Multidisciplinary Science Team shall be cooperatively determined by the appointing authorities and the Joint Legislative Committee on Salmon and Stream Enhancement.

(6) The office of the Governor shall provide administrative support and services to the Independent Multidisciplinary Science Team.

SECTION 6. Section 2, chapter 544, Oregon Laws 1995, is amended to read:

Sec. 2. (1) There is created the Coastal Salmon Restoration and Production Task Force consisting of [11] 15 members.

(2)(a) The Governor shall appoint the members of the task force subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Members shall represent the interests of production, restoration and harvest of salmon on the Oregon coast including, but not limited to, the commercial fishing industry, recreational anglers and the recreational fishing industry, private sector scientists with knowledge of coastal salmon resources watershed landowners, habitat restoration interests and the public.

(b) At least three members shall be representatives of the commercial fishing industry, three members shall be representatives of recreational anglers and the recreational fishing industry, and at least one member shall represent an Oregon Indian tribe.

(3) The task force shall elect a chairperson from among its members.

[(4) The task force shall develop a fisheries-sustaining coastal salmonid restoration and production strategy plan based on established scientific principles, studies and available data. The plan shall:]

[(a) Establish quantifiable natural production goals that ensure that abundance levels of salmonid species will exist sufficient to support sustainable harvest surpluses and that salmonid species will not become listed as sensitive by the State of Oregon, or threatened or endangered as defined by the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) as amended.]

[(b) Establish methodologies for measuring the productivity of salmonid watersheds including systematic measurement of smolt production and adult salmonid escapement in watersheds and make recommendations for actions necessary to restore watersheds for the productivity of salmonid species.]

[(c) Establish quantifiable hatchery production goals.]

[(d) Establish quantifiable recreational and commercial fish harvest goals.]

[(e) Provide for effective hatchery programs that:]

[(A) Focus on appropriate stocks for specific harvest opportunities;]

[(B) Improve survival rates through improved rearing and hatchery management practices including protecting smolt from predation;]

[(C) Utilize generally appropriate brood stock; and]

[(D) Release numbers adequate for maintaining future viable salmonid fisheries as defined in the Oregon benchmarks.]

[(f) Identify opportunities for establishing additional public salmonid hatcheries and salmonid hatchery programs to supplement existing public programs.]

[(g) Identify funding sources and mechanisms for county governments to implement locally sponsored and supported salmonid production projects and to support associated management costs.]

[(h) Identify management tools that maximize the efficiency of salmonid hatchery production and that provide for:]

[(A) Improving or expanding fisheries that selectively harvest hatchery-produced salmon;]

[(B) Methods for capturing hatchery strays; and]

[(C) Opportunities for rehabilitating natural salmonid stocks where natural production levels are significantly and consistently below planned goals, including supplementing natural salmonid stocks through a salmon and trout enhancement program as described in ORS 496.435 to 496.455.]

[(i) Identify other issues relating to salmonid production and harvest.]

(4) The task force shall develop a fisheries-sustaining coastal salmonid restoration and production strategy consistent with the goals established under the Oregon Plan as described in section 1 of this 1997 Act and based on established scientific principles, studies and available data. The strategy shall:

(a) Establish methodologies for setting natural production goals, on a basin-by-basin basis, that ensure that abundant levels of salmonid species will exist sufficient to support sustainable harvest surpluses, including but not limited to methodologies to measure the existing and potential productivity of salmonid watersheds, smolt production and adult salmonid escapement.

(b) Establish methodologies for rehabilitating natural salmonid stocks, using hatchery programs and programs established under the salmon and trout enhancement program, where natural production levels are below goals established under the Oregon Plan.

(c) Establish criteria under which the use of hatchery programs and hatchery stocks can be optimized to provide for salmonid fisheries over time.

(d) Identify opportunities and funding sources for establishing additional public, private and cooperative salmonid hatcheries and salmonid hatchery programs at the local level to supplement existing programs.

(e) Improve and expand fisheries that selectively harvest hatchery produced salmon.

(f) Establish methodologies to work toward the development of harvest rates of salmonids customized for each of Oregon's river basins and nearshore ocean areas.

(g) Identify other issues relating to salmonid production and harvest.

(5) On the basis of the work of the task force under subsection (4) of this section, the task force shall provide to the Joint Legislative Committee on Salmon and Stream Enhancement information and suggestions for improving the enhancement and restoration plan under this section.

(6) As used in this section, "Oregon Plan" means the programs and activities described in section 1 of this 1997 Act.

SECTION 7. Section 5, chapter 544, Oregon Laws 1995, is amended to read:

Sec. 5. [This Act] Chapter 544, Oregon Laws 1995, is repealed on January 1, [1999] 2001.

SECTION 8. ORS 541.375 is amended to read:

541.375. (1) Any person, state agency, federal agency, federally recognized Indian tribe, watershed council, soil and water conservation district, community college, state institution of higher education, independent not-for-profit institution of higher education or political subdivision of this state may submit a request for funding for or for advice and assistance in de-

veloping a watershed enhancement project under the program established by the Governor's Watershed Enhancement Board under ORS 541.365.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board. The requester may submit the request to the board or to a local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

(3) Based upon criteria established by rule by the board, within 90 days after a district receives a request under subsection (1) of this section, the district shall either:

(a) Approve the request and provide the requested advice, assistance or funding for the project; or

(b) Forward the request to the board for approval or disapproval.

(4) A watershed enhancement project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment, site specific in-stream structures, watershed assessments and action plan development, implementation and monitoring.

(5) A watershed enhancement project proposal submitted to a district under this section shall not be subject to review and approval by the Natural Resources Division under ORS 561.400.

(6) The Governor's Watershed Enhancement Board shall approve for funding only those enhancement projects that:

(a) Are based on sound principles of watershed management;

(b) Use enhancement methods most adapted to the project locale; *[and]*

(c) Meet the criteria established by the board under ORS 541.380; and

(d) **Contribute to either:**

(A) **The improved health of a stream and toward the achievement of standards that satisfy the requirements of the Federal Water Pollution Control Act (P.L. 92-500), as amended;** or

(B) **The restoration of native or anadromous fish habitat.**

(7) The Governor's Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(8) If the Governor's Watershed Enhancement Board approves funding for a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license.

SECTION 9. ORS 541.380 is amended to read:

541.380. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Governor's Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to:

(a) Criteria for selecting projects to receive assistance or funding from the board.

(b) **Criteria for distributing to those entities specified in ORS 541.375 those funds appropriated to the board for funding projects. The criteria shall include a process for periodic review of the distribution by the Joint Legislative Committee on Salmon and Stream Enhancement.**

[(b)] (c) Conditions for approval by the board for implementation of a project including but not limited to:

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employees of any cooperating agency providing staff services for the board access to the project area;

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project;

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board; and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project.

[(c)] (d) The amount of funding that a local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933 can provide directly for a watershed enhancement project without prior approval of the board.

SECTION 10. Any state agency participating in the programs and activities described in section 1 of this Act shall:

(1) Upon request of any person who believes the person's private property rights may be adversely affected by the Oregon Plan, provide the person with written information about the agency's dispute resolution services available pursuant to ORS 183.502.

(2) Report to the Joint Legislative Committee on Salmon and Stream Enhancement any dispute resolution services requested under this section, and the outcome of such dispute resolution.

SECTION 11. (1) Section 2, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), is repealed if either of the following occurs:

(a) Any salmonid species is listed by the National Marine Fisheries Service as threatened or endangered pursuant to the federal Endangered Species Act (16 U.S.C. 1531) in any coastal evolutionary significant unit located exclusively in the State of Oregon; or

(b) Any salmonid species is listed by the National Marine Fisheries Service as threatened or endangered pursuant to the federal Endangered Species Act (16 U.S.C. 1531) in any coastal evolutionary significant unit that is shared with another state, and:

(A) The National Marine Fisheries Service initiates enforcement action against forestry operations lawfully conducted in compliance with the Oregon Forest Practices Act; or

(B) The National Marine Fisheries Service promulgates a final regulation under section 4(d) of the federal Endangered Species Act, 16 U.S.C. 1533(d), that directly imposes additional requirements on forest practices beyond those required by the Oregon Forest Practices Act.

(2) The repeal of section 2, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), pursuant to subsection (1) of this section shall become operative on the first day of the first month following a finding and notice by the Governor to the Department of Revenue that the event described in either subsection (1)(a) or (b) of this section has occurred.

(3) There shall not be any refund of taxes imposed under section 2, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), prior to the repeal of the tax pursuant to this section.

SECTION 12. If a provision of House Bill 3700 that is identical to the provision set forth in section 11 of this Act becomes law, section 11 of this Act is repealed.

SECTION 13. Notwithstanding any other provision of law, if during the interim between legislative sessions any agency responsible for implementing a portion of the Oregon Coastal Salmon Restoration Initiative or a program for the enhancement or restoration of streams throughout the state requires additional funding or an adjustment to the agency's expenditure limitations as approved by the Legislative Assembly to complete implementation of the Oregon Coastal Salmon Restoration Initiative, the agency shall first submit a report to the Joint Legislative Committee on Salmon and Stream Enhancement. The committee shall review the request and present a recommendation to the Emergency Board at the time the agency submits its request to the Emergency Board.

SECTION 14. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Passed by Senate March 12, 1997

Repassed by Senate March 21, 1997

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Secretary of Senate

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President of Senate

Passed by House March 18, 1997

Repassed by House March 21, 1997

.....
Speaker of House

Received by Governor:

.....M,....., 1997

Approved:

.....M,....., 1997

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 1997

.....
Secretary of State

Passed by Senate March 12, 1997

Repassed by Senate March 21, 1997

Judy Hall
 Secretary of Senate

Brody Glenn
 President of Senate

Passed by House March 18, 1997

Repassed by House March 21, 1997

Lyne Kendrick
 Speaker of House

Received by Governor:

11:05 A.M. March 25, 1997

Approved:

11:11 A.M. March 25, 1997

[Signature]
 Governor

Filed in Office of Secretary of State:

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Phil Henning
 Secretary of State

(c) Management techniques and programs for the protection and enhancement of watersheds can be most effective and efficient when voluntarily initiated at the local level;

(d) Cooperative partnerships between affected private individuals, interested citizens and representatives of local, state and federal agencies may improve opportunities to achieve the protection, enhancement and restoration of the state's watersheds; and

(e) The establishment of such cooperative partnerships should be encouraged by local individuals, local organizations and representatives of state agencies.

(2) The Legislative Assembly declares that:

(a) Voluntary programs initiated at the local level to protect and enhance the quality and stability of watersheds are a high priority of the state and should be encouraged;

(b) State agencies are encouraged to respond cooperatively to local watershed protection and enhancement efforts and coordinate their respective activities with other state agencies and affected federal agencies to the greatest degree possible; and

(c) State agencies responding to local watershed protection and enhancement efforts are encouraged to foster local watershed planning, protection and enhancement efforts before initiating respective action within a watershed. [1993 c.601 §1]

Note: 541.347 and 541.400 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

WATERSHED MANAGEMENT AND ENHANCEMENT

541.345 Watershed management program. In cooperation with other state, interstate and federal agencies, local governments, local watershed councils, nonprofit organizations and volunteer groups, the Water Resources Department shall administer a watershed management program which shall include projects, grants, contracts and coordinated agency activities. [Formerly 536.600]

Note: 541.345 (formerly 536.600) was added to and made a part of ORS chapter 536 by legislative action but was not added to or made a part of ORS chapter 541 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

541.347 Legislative findings. (1) The Legislative Assembly finds that:

(a) The long term protection of the water resources of this state, including sustainable watershed functions, is an essential component of Oregon's environmental and economic stability and growth;

(b) Each watershed in Oregon is unique, requiring different management techniques and programs;

541.350 Definitions for ORS 541.350 to 541.395. As used in ORS 541.350 to 541.395:

(1) "Associated uplands" includes those lands of a watershed that are critical to the functioning and protection of the riparian area.

(2) "Board" means the Governor's Watershed Enhancement Board created under ORS 541.360.

(3) "Division" means the Natural Resources Division created under ORS 561.400.

(4) "Local government group" consists of interested cities, counties, water supply districts and sewer districts.

(5) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow,

muskeg or ephemeral, intermittent or perennial stream.

(6) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(7) "Watershed council" means a voluntary local organization designated by a local government group convened by a county governing body to address the goal of sustaining natural resource and watershed protection and enhancement within a watershed. [1987 c.734 §1; 1995 c.187 §1]

541.355 Policy. (1) The Legislative Assembly finds that:

(a) The implementation of watershed-wide conservation, restoration or enhancement will require a comprehensive and cooperative approach, including assessing the condition of the watershed, developing a priority-based action plan and executing the plan using a broad range of financial and human resources.

(b) Each watershed in Oregon is unique and each requires different management techniques and programs.

(c) Local watershed councils are highly effective in the implementation of plans to maintain and restore the biological and physical processes in the watersheds for the sustainability of our communities and all residents of Oregon.

(d) The initiative and implementation of riparian area restoration and management programs, planned and implemented at the local level by persons or agencies that perceive the need and have the management responsibility for achieving the best solution for local watershed enhancement and improved land and water management, are important components of watershed health and enhancement.

(e) It is in the best interest of the state to restore and maintain and enhance its watersheds in order to protect the economic and social well-being of the state and its citizens.

(2) Therefore, the Legislative Assembly declares that:

(a) A goal of the people of the State of Oregon is to:

(A) Enhance Oregon's waters through the management of riparian and associated upland areas of watersheds in order to improve water quality and quantity for all beneficial purposes as set forth in ORS 536.310.

(B) Restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of

the state's rivers, lakes and estuaries systems.

(C) Restore and enhance the ground water storage potential associated with healthy riparian area ecosystems.

(D) Improve the filtering capability of riparian areas to reduce nonpoint source runoff and improve water quality.

(b) In order to achieve this goal in the most cost-effective manner, the State of Oregon shall:

(A) Maximize the use of individuals and groups wishing to volunteer time, resources and effort to watershed enhancement projects;

(B) Encourage private individuals and organizations and local, state and federal agencies to work jointly to conduct watershed enhancement programs; and

(C) Enforce statutes, rules and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the watersheds of the state. [1987 c.734 §2; 1995 c.187 §2]

541.360 Watershed Enhancement Board; officers; qualifications; staff. (1) The Governor's Watershed Enhancement Board is created. The board shall consist of 11 members as set forth in subsection (2) of this section. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2)(a) The five voting members of the board shall be the chairperson of each of the following boards or commissions, or a member of the board or commission designated by the commission to serve on the Governor's Watershed Enhancement Board in lieu of the chairperson:

(A) The Environmental Quality Commission;

(B) The State Fish and Wildlife Commission;

(C) The State Board of Forestry;

(D) The State Soil and Water Conservation Commission; and

(E) The Water Resources Commission.

(b) In addition to the voting members, the following persons shall serve as nonvoting members of the board and shall participate as needed in the activities of the board:

(A) The Governor's natural resources adviser, or a designee of the adviser, who shall serve as chairperson of the board;

(B) The director of the agricultural extension service of Oregon State University, or designee; and

(C) The Director of Agriculture, or designee.

(c) In addition to the voting and nonvoting members designated in paragraphs (a) and (b) of this subsection, representatives of the following federal agencies shall be invited to serve as additional nonvoting members of the board:

(A) A representative of the United States Forest Service.

(B) A representative of the United States Bureau of Land Management.

(C) A representative of the Natural Resources Conservation Service of the United States Department of Agriculture.

(3) The board shall use state agency employees with relevant expertise to provide staff support necessary for the board to carry out its duties and responsibilities under ORS 541.350 to 541.395. [1987 c.734 §3; 1995 c.187 §3]

541.365 Board to conduct watershed enhancement program. A watershed enhancement program shall be conducted by the Governor's Watershed Enhancement Board to benefit all users of the waters of this state. The program shall be conducted in a manner that provides the greatest possible opportunity for volunteer participation to achieve the goals of the program. [1987 c.734 §5]

541.370 Duties of board; advisory committees. (1) In carrying out the watershed enhancement program, the Governor's Watershed Enhancement Board shall:

(a) Coordinate the board's funding of enhancement projects with the activities of the Natural Resources Division staff and other agencies, especially those agencies working together through a system of coordinated resource management planning.

(b) Use the expertise of the appropriate state agency according to the type of enhancement project.

(c) Provide educational and informational materials to promote public awareness and involvement in the watershed and enhancement program.

(d) Coordinate and provide for or arrange for assistance in the activities of persons, agencies or political subdivisions developing local watershed enhancement projects funded by the board.

(e) Grant funds for the support of watershed councils in assessing watershed conditions, developing action plans, implementing projects and monitoring results and for the implementation of watershed enhancement projects from such moneys as may be available to the board therefor.

(f) Develop and maintain a centralized repository for information about the effects of watershed enhancement and education projects.

(g) Give priority to proposed watershed enhancement projects receiving funding or assistance from other sources.

(h) Identify gaps in research or available information about watershed health and enhancement.

(i) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to watershed enhancement incorporate the state's intent to the fullest extent practicable.

(j) Encourage the use of nonstructural methods to enhance the riparian areas and associated uplands of Oregon's watersheds.

(2) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee. [1987 c.734 §6; 1995 c.187 §4]

541.372 Authority of board to accept moneys; disposition. (1) The Governor's Watershed Enhancement Board may accept moneys from any public or private source, including the Federal Government, made available for the purpose of encouraging, promoting and securing watershed enhancement or to facilitate and assist in carrying out the functions of the board, including administrative expenses, as provided by law.

(2) All moneys received by the board under this section shall be deposited in the State Treasury and kept in separate accounts in the General Fund designated according to the purposes for which moneys were made available.

(3) Notwithstanding the provisions of ORS 291.238, all moneys received under this section are continuously appropriated to the board for the purpose for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [1991 c.657 §2]

541.375 Watershed enhancement projects; application for funds or assistance; criteria for approval. (1) Any person, state agency, federal agency, federally recognized Indian tribe, watershed council or political subdivision of this state may submit a request for funding for or for advice and assistance in developing a watershed

enhancement project under the program established by the Governor's Watershed Enhancement Board under ORS 541.365.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board. The requester may submit the request to the board or to a local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

(3) Based upon criteria established by rule by the board, within 90 days after a district receives a request under subsection (1) of this section, the district shall either:

(a) Approve the request and provide the requested advice, assistance or funding for the project; or

(b) Forward the request to the board for approval or disapproval.

(4) A watershed enhancement project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment, site specific in-stream structures, watershed assessments and action plan development, implementation and monitoring.

(5) A watershed enhancement project proposal submitted to a district under this section shall not be subject to review and approval by the Natural Resources Division under ORS 561.400.

(6) The Governor's Watershed Enhancement Board shall approve for funding only those enhancement projects that:

(a) Are based on sound principles of watershed management;

(b) Use enhancement methods most adapted to the project locale; and

(c) Meet the criteria established by the board under ORS 541.380.

(7) The Governor's Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(8) If the Governor's Watershed Enhancement Board approves funding for a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license. [1987 c.734 §7; 1989 c.171 §71; 1995 c.187 §5]

541.380 Rules. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Governor's Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to:

(a) Criteria for selecting projects to receive assistance or funding from the board.

(b) Conditions for approval by the board for implementation of a project including but not limited to:

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employees of any cooperating agency providing staff services for the board access to the project area;

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project;

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board; and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project.

(c) The amount of funding that a local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933 can provide directly for a watershed enhancement project without prior approval of the board. [1987 c.734 §8]

541.382 Water Resources Department to provide staff for board. The Water Resources Department shall provide staff for project oversight and the day-to-day operation of the Governor's Watershed Enhancement Board, including scheduling meetings, providing public notice of meetings and other board activities and keeping records of board activities. [Formerly 541.385]

541.384 Watershed management program; project funding; high priority watersheds. (1) The Governor's Watershed Enhancement Board shall initiate a watershed management program that relies on the establishment of voluntary local watershed councils comprised of residents, state and federal agency staff, members of federally recognized Indian tribes and other citizens interested in the management of watersheds and that provides for the development by these partnerships of local plans that may include but are not limited to the

assessment of the watershed condition, the creation of a watershed action plan and a strategy for implementing the action plan. The program shall focus state resources on the achievement of sustainable watershed health, including funding major projects that contribute to the overall health of a watershed. In addition, the board shall fund smaller, voluntary projects for watershed enhancement and for restoration of riparian areas and associated uplands.

(2) In carrying out the program under subsection (1) of this section, the board may designate high priority watersheds. However, the designation of high priority watersheds is intended only as a management tool for state agencies in allocating resources to support coordinated watershed management activities. Such designation is not intended to establish or confer any right, duty or authority, nor to have any legal significance beyond that described in this section, nor to discourage or prohibit the formation and function of voluntary local watershed councils in other watersheds.

(3) The elected officials representing the appropriate local government groups containing or within a proposed watershed council area shall determine whether to participate in the voluntary formation of a local watershed council. When multiple local government groups are involved within an area that would be served by a watershed council, the affected local government groups shall together determine their respective roles and the appropriate method for appointing members to a local watershed council. [1993 c.601 §2; 1995 c.187 §6]

541.385 [1987 c.734 §4; renumbered 541.382 in 1995]

541.388 Voluntary local watershed councils. (1) Local government groups are encouraged to form voluntary local watershed councils in accordance with the guidelines set forth in subsection (2) of this section. The Governor's Watershed Enhancement Board may work cooperatively with any local watershed council that may be formed. Requests from local watershed councils for state assistance shall be evaluated on the basis of whether the requesting organization reflects the interests of the affected watershed and the potential to protect and enhance the quality of the watershed in question.

(2) Local watershed councils formed under subsection (1) of this section shall consist of a majority of local residents, including local officials. A watershed council may be a new or existing organization as long as the council represents a balance of interested and affected persons within the watershed and assures a high level of citizen involvement in the development and implementation

of a watershed action program. A local watershed council may include representatives of local government, representatives of nongovernment organizations and private citizens, including but not limited to:

- (a) Representatives of local and regional boards, commissions, districts and agencies;
- (b) Representatives of federally recognized Indian tribes;
- (c) Public interest group representatives;
- (d) Private landowners;
- (e) Industry representatives;
- (f) Members of academic, scientific and professional communities; and
- (g) Representatives of state and federal agencies.

(3) If more than one watershed council exists in a county, each watershed council shall periodically report the activities of the council to the county governing body. [1993 c.601 §3; 1995 c.187 §7]

Note: Section 9, chapter 187, Oregon Laws 1995, provides:

Sec. 9. This Act is not intended to affect any watershed council in existence on the effective date of this Act [September 9, 1995]. Any watershed council formed pursuant to section 3, chapter 601, Oregon Laws 1993, prior to the effective date of this Act shall be considered to be formed under this Act. [1995 c.187 §9]

541.390 Duties of Natural Resources Division. In addition to the duties conferred on the Natural Resources Division under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933, the division shall:

(1) In cooperation with the Governor's Watershed Enhancement Board, provide appropriate personnel who, under the direction of the board, shall:

- (a) Serve as community advisors to cooperatively develop watershed enhancement projects with volunteers; and
- (b) Cooperatively evaluate watershed enhancement projects with those responsible for project implementation.

(2) Provide technical assistance to individuals responsible for implementation of a watershed enhancement project.

(3) Work with the Governor's Watershed Enhancement Board to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning. [1987 c.734 §9]

541.395 State agency reports to be provided to board. In order to assist the Governor's Watershed Enhancement Board in developing and maintaining a centralized repository under ORS 541.370, the following agencies shall provide the board with a copy

of any report produced by the agency that is related to enhancement or restoration of riparian areas or associated uplands:

- (1) The Department of Environmental Quality.
- (2) The State Department of Fish and Wildlife.
- (3) The Water Resources Department.
- (4) The State Forestry Department.
- (5) The State Department of Agriculture.
- (6) The agricultural extension service of Oregon State University. [1987 c.734 §10]

541.400 Reports to Legislative Assembly. (1) The Governor's Watershed Enhancement Board shall report annually to the appropriate legislative committee on the implementation of the management program under ORS 541.384. The report shall include but need not be limited to:

- (a) An explanation of the effectiveness and workability of the partnership process described in ORS 541.384;
- (b) A description of any modifications to the process that have been instituted; and
- (c) Recommendations concerning the need for future legislative action.

(2) On or before January 1, 1997, the Governor's Watershed Enhancement Board shall submit a report on the projects undertaken under ORS 541.384 to the Sixty-ninth Legislative Assembly. [1993 c.601 §4; 1995 c.187 §8]

Note: See note under 541.347.

June 23, 1998

Policies affecting grant applications. Adopted by the GWEB June 18, 1998.

Up to 10 percent of GWEB grant funds can be used for project administration.

GWEB should limit its contribution for coordinator salary and benefits to \$37,500 per year. Additional council support grant costs would be based on local need and effectiveness of achieving watershed benefits.

The Board decided to remove the existing policy which directs funding for watershed council support to be at declining levels over time.

GWEB should require landowner agreements on maintenance be signed for state funded projects.

GWEB should solicit for single activity projects. Each activity needs to be described at the time of application. In the future, after a standardized assessment approach and action plan products are similar, there may be a time to reconsider this policy.

GWEB should not fund projects if applicants are delinquent in obligations under existing agreements.

Proof of commitment is necessary by key partners contributing to the 25% match and it must indicate whether funds or resources committed are secured or pending approval. If pending, the funds would have to be approved and available prior to the release of GWEB funds.

The applications should be considered complete when received. However, if the members of the regional review committees have questions during the application review process, they should forward those questions to staff who will contact the applicant and report their findings back to the committees.

Proposed New Administrative Rules, adopted as Temporary Rules June 18, 1998 (permanent Rulemaking to be initiated):

GWEB shall fund state or federal agency projects only if the project is unable to be completed by a local watershed council or SWCD and it either addresses a project that crosses watershed council boundaries and/or is necessary to implement a watershed council action plan and is a priority for the watershed council.

GWEB should give first priority to funding for education and outreach that provides landowner involvement and results in demonstrable watershed benefits. GWEB should give second priority to cooperative ventures between local groups (SWCD's and Watershed Councils) and School Districts that address watershed priorities.

GWEB will not consider requests for grant funds directly from consultants for personal service. GWEB will consider requests from consultants as part of the application process from other entities where there is a positive collaboration between the consultant and the applicant.

**DIVISION 1
PROCEDURAL RULES**

- 695-001-0000 Notice Rule
- 695-001-0005 Model Rules of Procedure

DIVISION 20

APPLICATIONS AND PROCEDURES

- 695-020-0010 Purpose
- 695-020-0020 Definitions
- 695-020-0030 Application Requirements
- 695-020-0040 Application Processing
- 695-020-0045 Watershed Project Priorities
- 695-020-0050 Evaluation of Watershed Projects Submitted for Board Funding
- 690-020-0055 Special Conditions for Watershed Projects
- 695-020-0060 Project Evaluation Process
- 695-020-0070 Funding a Project
- 695-020-0080 Grant Agreement Conditions
- 695-020-0090 Distribution of Funds
- 695-020-0100 Funding of Watershed Management Projects
- 695-020-0105 Special Watershed Educational Project Grants
- 695-020-0110 Evaluation of Watershed Enhancement Applications for Water Development Loan Fund Money

DIVISION 25

**COMPLIANCE WITH STATEWIDE PLANNING GOALS,
COMPATIBILITY WITH COMPREHENSIVE PLANS,
AND COORDINATION ON LAND USE MATTERS**

- 695-025-0010 Purpose
- 695-025-0015 Definitions
- 695-025-0020 Policy
- 695-025-0025 Applicability
- 695-025-0030 Compliance with Statewide Planning Goals
- 695-025-0035 Compatibility with Acknowledged Comprehensive Plans
- 695-025-0040 Assuring That New or Amended Rules and Programs Comply with the Goals and are Compatible with Acknowledged Comprehensive Plans
- 695-025-0045 Coordination with State and Federal Agencies and Special Districts
- 695-025-0050 Cooperation with, and Technical Assistance to, Local Governments

DIVISION 30

**TECHNICAL AND EDUCATIONAL ADVISORY
COMMITTEES RULES**

- 695-030-0010 Purpose
- 695-030-0020 Technical Advisory Committee
- 695-030-0030 Educational Advisory Committee

DIVISION 1

PROCEDURAL RULES

**695-001-0000
Notice Rule**

Prior to adoption, amendment or repeal of any rule, the Governor's Watershed Enhancement Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Governor's Watershed Enhancement Board's mailing list established pursuant to ORS 183.335(7) at least 15 days prior to the effective date.

(3) By mailing or furnishing a copy of the notice at least 15 days prior to the effective date to:

(a) Organizations:

(A) Watershed Councils and Watershed Interest Groups;

(B) Soil and Water Conservation Districts;

(C) Such other environmental and resource interests who have expressed an interest in the Governor's Watershed Enhancement Board Program;

(D) The Joint Legislative Committee on Salmon and Stream Enhancement, and;

(E) The Nine Federally Recognized Indian Tribes.

(b) State Agencies:

(A) Agriculture, Department of;

(B) Environmental Quality, Department of;

(C) Fish and Wildlife, Department of;

(D) Forestry, Department of;

(E) Geology and Mineral Industries, Department of;

(F) Governor's Office, Assistant for Natural Resources;

(G) Health Division, Department of Human Resources;

(H) Land Conservation and Development;

(I) Parks and Recreation Department;

(J) Department of Transportation;

(K) Oregon Department of Education, and

(L) State Lands, Division of.

(c) Federal Agencies:

(A) Bureau of Land Management;

(B) Corps of Engineers;

(C) Bureau of Reclamation;

(D) Forest Service;

(E) Department of Agriculture;

(F) Natural Resource Conservation Service;

(G) The National Marine Fisheries Service;

(H) The US Fish and Wildlife Service;

(I) The Bonneville Power Administration;

(J) The Northwest Power Planning Council; and

(K) Other public agencies with similar resource responsibilities or who have expressed an interest in the GWEB Program.

(d) News Media.

Stat. Auth.: ORS Ch. 183

Hist.: GWEB 2-1987(Temp), f. & ef. 8-27-87; GWEB 4-1987, f. & ef. 10-20-87

695-001-0005

Model Rules of Procedure

The Attorney General's Model and Uniform Rules of Procedure, September 15, 1997 edition, are adopted by the Governor's Watershed Enhancement Board and shall be followed in all matters except where a different procedure is prescribed by statute.

Stat. Auth.: ORS Ch. 183, 541 & OL 1987, Chapter 734

Hist.: GWEB 1-1987, f. & ef. 8-27-87; GWEB 1-1989, f. & cert. ef. 3-9-89; GWEB 1-1992, f. & cert. ef. 6-29-92

DIVISION 20

APPLICATIONS AND PROCEDURES

695-020-0010

Purpose

These rules guide the Governor's Watershed Enhancement Board in accepting applications and considering watershed enhancement proposals for funding under the provisions of ORS 541.350, et seq.

Stat. Auth.: ORS Ch. 541

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

695-020-0020

Definitions

(1) "Affected City" means any city within which all or part of a watershed enhancement project funded by the Board would be located.

(2) "Affected County" means any county within which all or part of a watershed enhancement project funded by the Board would be located.

(3) "Board" means Governor's Watershed Enhancement Board.

(4) "Educational Advisory Committee", or "EAC", is a continuous committee comprised of representatives from agencies and natural resources boards or commissions with representation on the Board and others with environmental, industrial or agricultural interests.

(5) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in OAR 695-020-0080, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

(6) "Non-Structural Methods" are those which rely on strategies other than the creation and installation of structures to meet the project goals.

(7) "Staff" is the Director of the Water Resources Department and personnel assigned the duties of administering the GWEB program.

(8) "Technical Advisory Committee" or "TAC", is a continuous committee of the Board comprised of designated personnel from the Oregon Departments of Forestry, Fish and Wildlife, Water Resources, Environmental Quality, Agriculture and the Oregon State University Extension Service; USDA Forest Service, USDI Bureau of Land Management; and the USDA Natural Resources Conservation Service and other members invited by the Board to participate in Committee activities.

(9) "Watershed Action Plan Project" means a project that identifies and prioritizes potential action that would benefit watershed conditions based on problems identified in a watershed assessment.

(10) "Watershed Assessment Project" means a project that systematically reviews existing information about watershed conditions and processes such as erosion rates, pollution sources, fish habitat conditions, riparian conditions, culvert fish passage problems, etc., and relates those conditions and processes to desired future conditions.

(11) "Watershed Council Support Project" means a project that provides assistance to councils in conducting the work of the council. It may include coordinator salary and benefits, bookkeeping, equipment and supplies, travel, rent, phone, etc.

(12) "Watershed Education Project" means a project whose primary purpose is to communicate information about watersheds. It may be a workshop, demonstration project or a planned course of study or the implementation of a public awareness strategy.

(13) "Watershed Management Project" means a project that involves an on-the-ground element such as: riparian planting, fish habitat construction, wetland restoration, livestock grazing plans, conservation easements, lease of water rights for instream use, water conservation projects utilizing the state Conserved Water Program, etc.

(14) "Watershed Monitoring Project" means a project that identifies conditions in the watershed. It may be for the purpose of gathering baseline data on current conditions, for evaluation of the specific effects of management actions, or for comparing similar watershed components before and after a project.

Stat. Auth.: ORS Ch. 183, 197 & 541

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90

695-020-0030

Application Requirements

(1) Applications must be submitted on the form prescribed by the Board. An explanation must accompany the application if any of the following information required under this section cannot be provided:

(a) Names, addresses and telephone numbers of the applicant contact person(s), the financially responsible party and the name of the person responsible for the fiscal administration of the project;

(b) Name and address of affected landowner(s);

(c) The name and location of the proposed project. The location shall be described in reference to the public land survey, county and stream mile;

(d) Description of the problem the project addresses, the project plan and project benefits;

(e) Estimated total project budget including the costs of project design, construction, monitoring and maintenance and the sources and amounts of funding; and the amount of funding requested;

(f) Identification of specific project elements for which GWEB funds will be used;

(g) A list of any federal or other funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;

(h) Identification of volunteers and the work they will perform on the project;

(i) Evidence of appropriate authorization for access to the location to perform project work, maintenance and monitoring; and to allow the Board to inspect and evaluate the project;

(j) Land use information from affected counties and cities as referenced in OAR Chapter 695, Division 25 and the Board's certified State Agency Coordination Procedures Guide;

(k) A statement from appropriate agencies that permits or licenses required by state or local government can be obtained;

(l) A project schedule including times of project beginning and completion;

(m) A commitment from a state, federal or local agency to inspect the completed project work;

(n) A plan to monitor and evaluate project results including identification of responsible parties;

(o) A plan for operation and maintenance of the project for the projected life including identification of the responsible parties; and

(p) Additional information that will aid the Board in evaluating the project under OAR 695-020-0050 through 695-020-0070.

(2) The Board may require additional information to aid in evaluating and considering the proposed watershed project.

(3) Project applications may be submitted to the Board within the periods prescribed by the Board for acceptance of applications.

Stat. Auth.: ORS Ch. 183, 197 & 541

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90

695-020-0040

Application Processing

(1) The Board will announce periods for submitting applications as funding is available.

(2) Project applications will be reviewed for compliance with the items in of OAR695-020-0030(1)(a) through (p).

(3) Projects not funded may be resubmitted during application submission periods prescribed by the Board.

Stat. Auth.: ORS Ch. 183, 197 & 541

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90

695-20-045

Watershed Project Priorities

(1) The Board shall adopt priorities for funding specific resources or geographic areas. As it is the nature of priorities to change once objectives have been achieved and the status of resource values change, all project priorities adopted by the Board will be enumerated and described in the grant application solicitation material periodically distributed by the Board. The priorities developed by the Board shall be forwarded for review by the Joint Legislative Committee on Salmon and Stream Enhancement.

(2) Priorities for project funding have been developed to reflect preferences between projects rather than create a hierarchy of funding choices. The preferences listed in 3 and 4 below are not prioritized.

(3) For the solicitation of grant applications to be funded by the Watershed Improvement Grant Fund, the following preferences shall apply:

- a) Projects that address altered watershed functions affecting water quality, water flow volume and duration, and the production capacity for fish will be given preference over projects that address site specific land use problems.
 - b) Projects that include removal or remediation of human caused alterations (roads, culverts, channelization, etc.) to improve water quality and/or fish habitat will be given priority over enhancement of naturally functioning systems.
 - c) Projects that change land management practices to address the causes of chronic disturbances to the watershed will be given preference over projects that address only symptoms of disturbance.
 - d) Projects with direct evidence of collaboration between stakeholders and agencies will generally be given preference over single-party projects.
 - e) As a general principle, projects focusing on upslope and upstream treatments will be given priority over projects focusing on downslope and downstream treatments, unless the project addresses tidal driven systems or addresses other specific issues (eg. address historic losses) that encompass whole watershed conditions.
 - f) Watershed and riparian education projects that provide peer education about watershed processes for landowners will be given priority over creation of new curriculum materials.
 - g) Watershed assessment projects that address whole basin conditions to focus restoration needs will be given preference over single function research projects.
- (4) Funding priority will also be given to:
- a) Projects that ensure monitoring of both implementation and effectiveness and are structured to have measurable outcomes and identifiable results,
 - b) Projects developed from a watershed-level assessment and analysis of conditions that includes an action plan for restoration or enhancement of watershed functions.

Stat. Auth.: ORS 541.384 (1) (2)

695-020-0050

Evaluation of Watershed Projects Submitted for Board Funding

(1) Watershed Management project proposals must meet the following criteria to be considered for funding by the Board:

- (a) The project demonstrates sound principles of watershed management;
- (b) The project uses methods adapted to the project locale; and

(c) The project complies with state land use planning goals and is compatible with acknowledged comprehensive plans as required under ORS 197.180 and the Board's State Agency Coordination Procedures Guide.

(2) Watershed Management projects meeting the criteria established by section (1) of this rule will be further evaluated on the basis of the extent to which the project:

(a) Enhances Oregon's waters through the management of riparian and upland areas of watersheds in order to improve water quality and quantity for all beneficial uses as defined by ORS 536.310;

(b) Protects, restores, maintains, and enhances the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuary systems;

(c) Restores and enhances the groundwater storage potential associated with a healthy riparian ecosystem;

(d) Improves the filtering capability of riparian areas to reduce non-point source runoff and improve water quality;

(e) Provides educational opportunities or promotes public awareness of watershed enhancement benefits;

(f) Encourages the use of non-structural methods to enhance riparian areas and associated uplands;

(g) Includes funds or in-kind services from federal agencies and/or other sources;

(h) Is cost-effective based on the extent to which it maximizes participation of volunteers, encourages individuals and organizations to work jointly to accomplish the project and involves intergovernmental cooperation.

(3) Watershed Council Support projects will be evaluated on the basis of the extent to which the council has identified a scope of work which:

(a) Demonstrate on-going efforts to become self supporting over time;

(b) Addresses the protection, restoration or enhancement needs of the watershed(s) served;

(c) Encourages citizen participation in watershed projects; and,

(d) Promotes learning about watershed resource issues.

(4) Watershed Monitoring, Assessment and/or Action plan projects will be funded on the basis of the extent to which they:

(a) Are developed in the context of the entire watershed;

(b) Follow appropriate protocols that are accepted by state or federal regulatory agencies; and,

(c) Use the information to implement or direct projects to enhance or sustain the health of watersheds.

(5) Watershed Education projects which meet the criteria established by Section (1) of this rule and which promote the concepts listed in Section (2) of this rule will be evaluated on the basis of the extent to which they:

(a) Further the broad goal of developing and maintaining healthy watersheds;

(b) Provide information on alternative management practices that support watershed enhancement efforts by landowners, watershed council members and other local groups.

(c) Raise awareness of the citizens of the State of Oregon;

(d) Teach about the long term benefits of healthy watersheds;

(e) Have well-defined instructional goals and objectives;

(f) Have the potential for being accomplished;

(g) Apply learning strategies that are appropriate for the target audience; and,

(h) Can be used at other locations without major modifications.

(6) The Board shall not fund a watershed project:

(a) That consists solely of construction of a storage structure for out-of-stream use; or

(b) Constructed solely to comply with a state or federal agency directive; or

(7) The Board shall not fund routine project maintenance costs but major catastrophic replacement costs may be eligible.

Stat. Auth.: ORS Ch. 183, 197, 541.350 - 541.395

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90; GWEB 2-1990, f. & cert. ef. 11-20-90; GWEB 1-1991, f. & cert. ef. 10-31-91

695-020-0055

Special Conditions For Watershed Projects

Applicants must demonstrate conformance with the following provisions:

(1) Watershed Council Support applicants must:

(a) Show the value of using state funds in generating other watershed investments;

(b) Demonstrate an active role taken by watershed council members in raising community support and awareness for watershed enhancement; and

(c) Indicate whether funding is requested for a one or two year period.

(d) Applications for watershed council support funding from previously funded grantees will be evaluated based upon their previous GWEB funded accomplishments.

(2) Monitoring applicants must:

(a) Demonstrate knowledge of state and/or federally accepted monitoring protocols;

(b) Provide assurance that an appropriate protocol will be used; and

(c) Acknowledge that the results will be available to a state database.

(3) All applicants shall demonstrate at least 25% in secured match prior to disbursement of Board funds. Match may include:

- (a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project;
- (b) Secured funding commitments from other sources;
- (c) Pending commitments of funding from other sources. In such instances, GWEB funding will not be released prior to secured commitment of the other funds. Pending commitments of the funding must be secured within 12 months from the date of the award;

- (d) The value of donated conservation easements; or,
- (e) The value of labor and materials essential to the project.

(5) All applications submitted by watershed councils shall demonstrate that the council reflects a balance of interests in the affected watershed as suggested by ORS 541.388 (2). In order to make a determination that the watershed council has the potential to protect and enhance the quality of the watershed the Board shall require:

- (a) Each watershed council applicant shall provide a list of the interests represented on the council; and,
- (b) Proof that the watershed council existed prior to September 9, 1995 or proof of local government recognition if the watershed council was formed after September 9, 1995.

(6) All applications which involve physical changes or monitoring on private land or stream and riparian systems adjacent to private lands shall include a signature of approval of the landowner signifying their approval and the understanding that all monitoring information obtained on their property is public record or explain why their signature was not obtainable at the time of application.

(7) When project activities cannot be completed only by volunteer labor, assurance must be provided that procurement of services will comply with local procurement practices that secure the skills, local landscape knowledge and technical capacity needed to produce long-term cost effective results.

(8) All project activities must demonstrate, to the extent possible, that assessment, monitoring and implementation or monitoring project effectiveness are consistent with local community, workforce and economic development plans and policies.

Stat. Auth.: ORS Ch. 183 & 541
Hist.: GWEB 2-1990, f. & cert. ef. 11-20-90

695-020-0060

Project Evaluation Process

- (1) In evaluating applications under OAR 695-020-0050 and 695-020-0055, recommendations of the Technical and/or Educational Advisory Committee and other appropriate agencies shall be solicited and considered to determine whether the proposal meets the considerations in OAR 695-020-0050 and 695-020-0055.
- (2) The Board and/or its committees may use a point rating system in selecting projects for funding.

Stat. Auth.: ORS Ch. 183 & 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 2-1990, f. & cert. ef. 11-20-90

695-020-0070

Funding a Project

The Board may fund a project in whole or in part.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88

695-020-0080

Grant Agreement Conditions

- (1) The Grantee must submit a report at completion of the project describing the work done.
- (2) The Grantee shall monitor the long-term effectiveness of the project, and continue its maintenance, submitting periodic reports on a schedule set by the Board. All reports will be filed with GWEB or at a location specified by the Board.
- (3) The Grantee must agree to complete the project as approved by the Board and within the time-frame specified in the Grant Agreement unless proposed modifications are submitted and approved by the Board prior to the beginning of any work proposed in the modification.
- (4) The Board will consider project modifications including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project, the proposed activity is within the same watershed, and the modification would be compatible with acknowledged comprehensive plans.
- (5) Proposals to make major modifications to previously awarded grants shall be filed and considered in the following manner:
 - (a) The grantee shall file a written request for permission to amend or expand the project or the time schedule including the rationale for the requested amendment;
 - (b) The TAC and/or the EAC will review the request and notify the grantee if additional information or documents are necessary;

(c) Staff shall send a report to the Board describing the proposed amendment and any recommendation on the proposed project change;

(d) The Board shall respond to staff within 15 days of mailing with comments or objections to the requested project change; and

(e) The Board shall notify the Grantee in writing of the Board's decision on the proposed modification.

(6) Staff may authorize minor changes within the scope of the original project plan.

(7) Upon notice to the Grantee by certified or registered mail to the last known address, the Board may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board.

(8) The Grantee shall allow Board members or designated representatives access to the project area at a mutually agreeable time to monitor and evaluate the project.

(9) The Grantee shall account for funds distributed by the Board, using project expense forms provided by the Board.

(10) The Grantee shall obtain the necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy to the Board.

(11) The Board may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the watershed enhancement program. Such conditions may include:

(a) Requirements for easements or a commitment for continued access for monitoring the project after completion;

(b) A commitment by the Grantee to maintain the project for a period of time as deemed appropriate by the Board;

(c) A commitment to supply future reports on the project;

(d) Such other conditions as the Board deems appropriate to the particular circumstances of the project.

Stat. Auth.: ORS Ch. 183, 197 & 541

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90

695-020-0090

Distribution of Funds

(1) Funds will normally be released upon presentation of a completed fund release request form accompanied by proof of completion of specific work elements of the project as identified in the Grant Agreement.

(2) Proof of completion may be the presentation of paid receipts or invoices for materials or contracted labor, or inspection reports.

(3) Funds may also be released upon presentation of a detailed estimate of expenses for a time period specified in the Grant Agreement. No additional funds will be released until all receipts for expenditures of previous fund releases are submitted.

(4) Funds can not be disbursed until the Board receives satisfactory evidence that necessary permits and licenses have been granted and documents required by the Board have been submitted.

(5) Except as provided in section (6) of this rule, the Board shall retain ten percent of project funds until the final report as required in OAR 695-020-0080(1) has been submitted and the project has been evaluated for completion and compliance with the Grant Agreement.

(6) Grants of less than \$5,000 may be funded in one payment when the Grantee provides evidence required by section (2) and (4) of this rule without reservation of ten percent of the grant funds as otherwise required by section (5) of this rule.

Stat. Auth.: ORS Ch. 183 & 541

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89

695-020-0100

Funding of Watershed Management Projects

The Board may establish a fund with the Natural Resources Division of the Oregon Department of Agriculture, for distribution to soil and water conservation districts for funding watershed management projects:

(1) The Division shall:

(a) Enter into an agreement with the Board for receipt and administration of the funds;

(b) Be responsible for distribution of the funds to soil and water conservation districts, and for reporting to the Board on the distribution and use of the funds on a date specified by the Board;

(c) Prepare an application for interested parties to apply to districts for funding under this rule; and

(d) Supply an appropriate number of copies of the above referenced application to soil and water conservation districts and the Board. The application shall include the following information:

(A) A description of the proposed project for which funds are requested;

(B) Identification of the proposed project location, and names and addresses of affected landowners;

(C) Identification of all groups, volunteer and otherwise, participating in the project;

(D) Description of expected watershed benefits to accrue from project implementation;

(E) Identification of specific uses for which requested funds are intended;

- (F) Names and addresses of responsible parties;
- (G) Total project budget and total Board funds requested; and
- (H) Evidence of appropriate authorization for access to the location to perform project work.
- (e) Return any monies remaining in the fund created under this rule to the Board by a date specified by the Board for reallocation to approved projects under OAR695-020-0010 through 695-020-0090.

(2) Each district may provide funding under this rule up to an amount set by the Board for one or more watershed enhancement projects that:

- (a) Are consistent with the watershed enhancement criteria set by Board in OAR 695-020-0050;
- (b) Are based on sound principles of watershed management.
- (3) Districts receiving funds according to the provisions of this rule may also participate in the Board's watershed enhancement program as detailed in OAR695-020-0010 through 695-00-0090.
- (4) Soil and water conservation districts shall report to the Natural Resources Division on a form provided by the Division as to the use of all funds expended under this rule.
- (5) Soil and water conservation districts shall be responsible for assuring the projects comply with state land-use planning goals and are compatible with acknowledged comprehensive plans as required under ORS197.180 and the Board's State Agency Coordination Procedures Guide, and that necessary permits have been obtained.

Stat. Auth.: ORS Ch. 183, 197 & 734

Hist.: GWEB 5-1987, f. & ef. 12-9-87; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90

695-020-0105

Special Watershed Educational Project Grants

In addition to grants awarded under OAR 695-020-0030 to OAR695-020-0100, the Board may:

- (1) Solicit proposals for specific projects which meet the needs of the watershed enhancement program; and
- (2) Provide grants to agencies or organizations for educational projects to increase public awareness of watershed enhancement principles or provide training in watershed management concepts or techniques.

Stat. Auth.: ORS Ch. 183 & 541

Hist.: GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 2-1990, f. & cert. ef. 11-20-90

695-020-0110

Evaluation of Watershed Enhancement Applications for Water Development Loan Fund Money

(1) Applications for watershed enhancement project loans submitted to the Water Development Loan Fund (WDLF) under ORS 541.700, shall be transmitted by the WDLF to the Board for its recommendations.

(2) The Board may suggest that a GWEB grant application apply to the WDLF for loan money if the Board determines the project may be suitable under the provisions of ORS541.700.

(3) Applications may be submitted to the Board under section (1) of this rule, at any time and are not subject to the time restrictions on watershed enhancement project applications listed in OAR695-020-0040(1) and (3).

(4) With the advice of the Technical Advisory Committee, the Board's recommendations on applications submitted under ORS 541.700 shall be based on whether the proposed project meets the goals in ORS541.355(2)(a); and the criteria in OAR695-020-0050(1)(a), (b) and (c).

Stat. Auth.: ORS Ch. 183 & 541

Hist.: GWEB 2-1989, f. & cert. ef. 3-9-89; GWEB 3-1989, f. & cert. ef.

DIVISION 25

COMPLIANCE WITH STATEWIDE PLANNING GOALS, COMPATIBILITY WITH COMPREHENSIVE PLANS, AND COORDINATION ON LAND USE MATTERS

695-025-0010

Purpose

These rules establish policies and procedures for assuring that Board actions which affect land use comply with Statewide Planning Goals and are compatible with acknowledged comprehensive plans. These rules also prescribe measures for providing technical assistance to local governments, participation in periodic review of comprehensive plans, resolution of land use disputes and other aspects of state agency coordination required by OAR Chapter 660, Division 30. These rules, coordination rules in OAR Chapter 695, Division 20, and the **Governor's Watershed Enhancement Board State Agency Coordination Guide** constitute the Board's state agency coordination program pursuant to ORS 197.180.

Stat. Auth.: ORS Ch. 197 & 541

Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0015

Definitions

(1) "Action" means grant-related activities governed by OAR Chapter 695, Division 20, or the adoption, amendment, or implementation of any future Governor's Watershed Enhancement Board rule or program found to affect land use pursuant to OAR 660-030-0005(2).

(2) "Board" means Governor's Watershed Enhancement Board.

(3) "Department" means Water Resources Department.

(4) "Land Use Approval" means a final decision or determination made by a local government that concerns the adoption, amendment, or application of the goals or comprehensive plan provisions or implementing ordinances.

(5) "Planning Director" means the director of county or city planning departments, an appropriate designee, or other local official responsible for carrying out land use planning functions.

Stat. Auth.: ORS Ch. 197 & 541

Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0020

Policy

State law establishes a complementary relationship between state and local management of watersheds. The Board is required by statute to restore, maintain, and enhance watersheds to protect the well-being of the state and its citizens. Board programs shall, however, be planned and implemented by responsible parties at the local level. Local comprehensive plans must provide inventories of local watersheds as well as measures for protecting and managing those watersheds in order to comply with Statewide Planning Goals. The Board recognizes that coordination between state, local and federal agencies responsible for land management is essential to meeting policy objectives for watershed enhancement established in ORS 541.350 through 541.395. In carrying out its mandate, the Board shall maximize the effectiveness of its watershed enhancement efforts by incorporating and accommodating land use objectives as prescribed in acknowledged comprehensive plans.

Stat. Auth.: ORS Ch. 197 & 541

Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0025

Applicability

These rules shall apply to Board actions authorized and governed by OAR Chapter 695, Division 20, Applications and Procedures.

Stat. Auth.: ORS Ch. 197 & 541

Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0030

Compliance with Statewide Planning Goals

(1) Except as provided in section (2) of this rule, Board actions shall comply with the Statewide Planning Goals by ensuring compatibility with acknowledged comprehensive plans as described in these rules and OAR Chapter 695, Division 20.

(2) The Board will adopt findings that its actions comply with the Statewide Planning Goals if:

(a) An acknowledged comprehensive plan does not contain:

(A) Requirements or conditions specifically applicable to a Board action; or

(B) General provisions, purposes, or objectives which would be substantially affected by the action; or

(b) Other conditions outlined in OAR 660-030-0065 exist.

Stat. Auth.: ORS Ch. 197 & 541

Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0035

Compatibility with Acknowledged Comprehensive Plans

(1) The Board shall assure that its actions are compatible with acknowledged comprehensive plans by complying with ORS 541.375(8) and following provisions established in OAR Chapter 695, Division 20. These provisions shall:

(a) Require grant applicants to obtain and submit land use information with the application package; and

(b) Preclude the distribution of grant awards until the planning directors of affected counties or cities verify that the project is allowed by and compatible with comprehensive plans; and, all local land use approvals have been issued.

(2) The Board shall avoid land use disputes with local government agencies following procedures prescribed in section (1) of this rule. However, the Board shall provide for appropriate resolution measures as required by OAR 660-030-0070(4) and (7) through (12) if warranted.

Stat. Auth.: ORS Ch. 197 & 541

Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0040

Assuring that New or Amended Rules and Programs Comply with the Goals and are Compatible with Acknowledged Comprehensive Plans

(1) The Board shall examine proposals to amend or add to its rules and programs to determine if they affect land use as prescribed in OAR 660-030-0005(2). The Board may approve supplementary criteria for use in making its determination.

(2) The Board shall notify the Department of Land Conservation and Development and any local governments relying on the Board for goal compliance as provided in OAR660-030-0085 of all pending rule or program changes which are found to affect land use as described in section (1) of this rule. The notice shall describe:

- (a) The proposal;
 - (b) How the proposal affects land use;
 - (c) How the proposal provides for compliance with the Goals and compatibility with comprehensive plans;
- and,
- (d) A date until which the Board will accept written and oral comment on the proposal.

(3) The Board shall not approve any rule or program changes, which have been identified in responses to the notice provided pursuant to section (2) of this rule, as out of compliance with the Goals or incompatible with acknowledged comprehensive plans.

Stat. Auth.: ORS Ch. 197 & 541
Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0045

Coordination with State and Federal Agencies and Special Districts

The Board shall coordinate its actions with state and federal agencies and special districts as required in OAR660-030-0060(c) by complying with the interagency coordination provisions in ORS 541.350 through 541.395. These provisions include:

(1) Encouraging individuals, organizations and agencies to work jointly on watershed enhancement programs.

(2) Cooperating with federal agencies and participating in enforcing rules and statutes governing federal riparian enhancement activities.

(3) Coordinating the development of local watershed enhancement programs and projects.

(4) Coordinating the implementation of enhancement projects with the activities of the Natural Resources Division of the Oregon Department of Agriculture, and other affected local state and federal agencies.

Stat. Auth.: ORS Ch. 197 & 541
Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

695-025-0050

Cooperation with, and Technical Assistance to, Local Governments

(1) The Board shall place a high priority on cooperating with and providing technical assistance to participating agencies as prescribed in ORS 541.350 through 541.395.

(2) The Board shall maintain information relating to watershed management and enhancement.

(3) The Board shall coordinate its participation in periodic review of comprehensive plans with the Water Resources Department pursuant to provisions in the Department's certified state agency coordination program.

Stat. Auth.: ORS Ch. 197 & 541
Hist.: GWEB 1-1990, f. & cert. ef. 8-8-90

DIVISION 30

TECHNICAL AND EDUCATIONAL ADVISORY COMMITTEES RULES

695-030-0010

Purpose

The purpose of these rules is to describe the organizations, terms of office, duties and responsibilities of the committees of the Governor's Watershed Enhancement Board.

Stat. Auth.: ORS Ch. 541
Hist.: GWEB 2-1988, f. & cert. ef. 5-17-88

695-030-0020

Technical Advisory Committee

(1) The Technical Advisory Committee shall be comprised of a person designated by each of the agencies or natural resource boards and commissions represented on the Board, and such other persons as designated by the Board with the intent to balance representation among agencies and groups with differing expertise. The Board Chair is ex-officio a member of the Committee.

(2) The term of each member of the Committee may be established by the respective Board member representing the agency, board or commission.

(3) The Committee shall elect one member to serve as chairperson of the Committee for a term of one year.

(4) The Committee members shall serve without compensation from the Board for travel or per diem.

(5) The Committee is responsible for:

(a) Evaluating grant applications based upon the goals and objectives in ORS 541.350 et seq. and OAR 695-020-0010 through 695-020-0090 for watershed projects; and submitting recommendations for funding of the projects to the Board;

(b) Supplying on-going advice to the Board and to project grantees in areas of each Committee member's expertise;

(c) Referring grant applications of an educational nature to the Educational Advisory Committee for evaluation; and

(d) Such other activities as requested by the Board.

Stat. Auth.: ORS Ch. 183 & 541

Hist.: GWEB 2-1988, f. & cert. ef. 5-17-88; GWEB 2-1990, f. & cert. ef. 11-20-90

695-030-0030

Educational Advisory Committee

(1) The Educational Advisory Committee shall be comprised of one person designated by each of the agencies and natural resource boards or commissions represented on the Board and such other persons designated by the Board with the intent to balance representation among agencies and groups with differing interests. The Board Chair is ex-officio a member of the Committee.

(2) The term of each member of the Committee may be established by the Board or by the Board chairperson.

(3) The Committee shall elect one member to serve as chairperson for the Committee for a term of one year.

(4) The Committee shall formulate and recommend to the Board for approval a policy and a program for education and for increasing public awareness of watershed enhancement benefits. As part of the Board's educational program, the Committee shall:

(a) Formulate rules in accordance with the educational policy approved by the Board in section 4 of this rule, for evaluating applications for grant funds for proposals of an educational nature and make funding recommendations to the Board;

(b) Maintain a repository of information on GWEB projects and educational materials; and

(c) Formulate a long-range plan to publicize and promote the Board's watershed enhancement program and to make available the information the Board collects from funded projects.

Stat. Auth.: ORS Ch. 183 & 541

Hist.: GWEB 2-1988, f. & cert. ef. 5-17-88; GWEB 2-1990, f. & cert. ef. 11-20-90

(e) Entering into an agreement to obtain from a willing owner a determinate interest in land that protects the watershed resources. Such interest may include only a nonpossessory interest in land, including but not limited to an interest under ORS 271.715 to 271.795, a lease of land or a lease under ORS 537.348.

SECTION 6. The Governor's Watershed Enhancement Board may award funds from the Watershed Improvement Grant Fund only for the purposes listed in section 5 of this 1997 Act. Any project that the board approves for funding shall comply with the following criteria:

- (1) There is a matching contribution from other program funds, in-kind services or other investment in the project;
- (2) The project to be funded is reviewed and approved by a technical committee in accordance with ORS 541.370 (3); and
- (3) The project provides a public benefit through improved:
 - (a) Water quality;
 - (b) Fish or wildlife habitat; or
 - (c) Public information or education on a watershed function.

SECTION 7. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Governor's Watershed Enhancement Board shall adopt rules to carry out the provisions of sections 4 to 6 of this 1997 Act. The rules shall include but need not be limited to grant application requirements and review and selection criteria.

SECTION 8. ORS 541.370 is amended to read:

541.370. (1) In carrying out the watershed enhancement program, the Governor's Watershed Enhancement Board shall:

- (a) Coordinate the board's funding of enhancement projects with the activities of the Natural Resources Division staff and other agencies, especially those agencies working together through a system of coordinated resource management planning.
- (b) Use the expertise of the appropriate state agency according to the type of enhancement project.
- (c) Provide educational and informational materials to promote public awareness and involvement in the watershed and enhancement program.
- (d) Coordinate and provide for or arrange for assistance in the activities of persons, agencies or political subdivisions developing local watershed enhancement projects funded by the board.
- (e) Grant funds for the support of watershed councils in assessing watershed conditions, developing action plans, implementing projects and monitoring results and for the implementation of watershed enhancement projects from such moneys as may be available to the board therefor.
- (f) Develop and maintain a centralized repository for information about the effects of watershed enhancement and education projects.
- (g) Give priority to proposed watershed enhancement projects receiving funding or assistance from other sources.
- (h) Identify gaps in research or available information about watershed health and enhancement.
- (i) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to watershed enhancement incorporate the state's intent to the fullest extent practicable.
- (j) Encourage the use of nonstructural methods to enhance the riparian areas and associated uplands of Oregon's watersheds.

(2) In accordance with sections 4 to 6 of this 1997 Act, the Governor's Watershed Enhancement Board shall administer a watershed improvement grant program using funds from the Watershed Improvement Grant Fund established under section 4 of this 1997 Act.

[(2)] (3) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee.

SECTION 9. Section 4, chapter 512, Oregon Laws 1989, as amended by section 1, chapter 184, Oregon Laws 1991, and section 3, chapter 619, Oregon Laws 1993, is amended to read:

Sec. 4. In addition to the fees otherwise prescribed by law, the issuer of each of the following licenses shall charge and collect each time the license is issued, during the period beginning January 1, [1990] 1998, and ending December 31, [1997] 2003, the following surcharges:

- (1) Resident combination license issued under ORS 497.132, [\$2] \$5.
- (2) Resident annual angling license issued under ORS 497.121 (1)(a), [\$2] \$5.
- (3) Resident juvenile angling license issued under ORS 497.121 (1)(f), \$1.
- (4) Angling license to angle for one day issued under ORS 497.121 (1)(d), [\$1] \$2.50.
- (5) Nonresident annual angling license issued under ORS 497.121 (1)(b), [\$5] \$12.50.
- (6) Nonresident angling license to angle for seven consecutive days issued under ORS 497.121 (1)(c), [\$2.50] \$6.25.

SECTION 10. Section 6, chapter 512, Oregon Laws 1989, as amended by section 2, chapter 184, Oregon Laws 1991, is amended to read:

Sec. 6. In addition to the fees otherwise prescribed by law, the issuer of each of the following permits shall charge and collect each time the permit is issued, during the period beginning January 1, [1990] 1998, and ending December 31, [1997] 2003, the following surcharges:

- (1) Ocean Troll Salmon Fishery permit issued under ORS 508.816, \$65.
- (2) Columbia River Gillnet Fishery permit issued under ORS 508.790, \$74.

SECTION 11. Section 8, chapter 512, Oregon Laws 1989, as amended by section 3, chapter 184, Oregon Laws 1991, is amended to read:

Sec. 8. In addition to the [poundage] ad valorem fee prescribed by law, during the period beginning January 1, [1990] 1998, and ending December 31, [1997] 2003, there shall be paid for each fish species referred to in ORS 508.505 (1)(a), an additional fee of five cents per pound. The [poundage] ad valorem fee referred to in this section is subject to ORS 508.505 to 508.540.

SECTION 12. Section 12, chapter 512, Oregon Laws 1989, is amended to read:

Sec. 12. (1) The Restoration and Enhancement Board shall meet, adopt and recommend to the State Fish and Wildlife Commission, within 120 days after [the effective date of this 1989 Act] July 1, 1989, and at not more than 120-day intervals thereafter, fish restoration and enhancement programs.

(2) The commission shall review such programs and may approve or disapprove any or all program recommendations by the board. Funds may be expended from the subaccount referred to in section 10, chapter 512, Oregon Laws 1989, [of this 1989 Act] for projects [which] that have been approved by the commission.

(3) The State Department of Fish and Wildlife and the board jointly shall submit to each biennial session of the Legislative Assembly a report on expenditure of funds for the fish restoration and enhancement program and on the status of various projects. [The board and the department also shall make such a report on or about July 1, 1990, to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not then in session.]

(4) In recommending fish restoration and enhancement programs, the board shall:

(a) Recommend a mix of projects [which] that provide a balance between restoration and enhancement benefits.

(b) Recommend projects that are to be implemented by the salmon and trout enhancement program and nonprofit organizations engaged in approved restoration and enhancement activities.

(c) Encourage projects [which] that result in obtaining matching funds from other sources.

(5) All moneys made available for the fish restoration and enhancement program from surcharges received under sections 4, 6 and 8, chapter 512, Oregon Laws 1989, [of this 1989 Act] and from gifts and grants made to carry out the fish restoration and enhancement program may be expended only if recommended by the board and approved by the commission. Such amounts may be expended:

(a) On programs benefiting the commercial fishing industry in the same proportion as revenues received from surcharges under sections 6 and 8, chapter 512, Oregon Laws 1989, [of this 1989 Act] bear to the total amount of surcharge revenues.

(b) On programs benefiting recreational angling in the same proportion as revenues received from the surcharge under section 4, chapter 512, Oregon Laws 1989, [of this 1989 Act] bear to the total amount of surcharge revenues.

(6) The board may accept, from whatever source, gifts or grants for the purposes of fish restoration and enhancement. All moneys so accepted shall be deposited in the subaccount referred to in section 10, chapter 512, Oregon Laws 1989 [of this 1989 Act]. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section.

(7) As used in this section:

(a) "Enhancement" includes, but is not limited to, the following activities:

(A) Angler access.

(B) New fishways and screens.

(C) Habitat.

(D) New hatchery equipment and technology.

(E) Public education.

(F) Aquatic inventories.

(b) "Restoration" includes, but is not limited to, the following activities:

(A) Modification of existing fishways and existing screens.

(B) Hatchery restoration.

(C) Liberation equipment.

SECTION 13. Notwithstanding any other law, of the moneys received from surcharges imposed under sections 4, 6 and 8, chapter 512, Oregon Laws 1989, as amended by sections 9, 10 and 11 of this Act, during the biennium beginning July 1, 1997, \$1 million shall be deposited into the Watershed Improvement Grant Fund established under section 4 of this Act, according to a schedule adopted by rule by the State Fish and Wildlife Commission, to be expended for the purposes described in sections 5 and 6 of this Act.

SECTION 14. The amendments to sections 4, 6 and 8, chapter 512, Oregon Laws 1989, by sections 9, 10 and 11 of this Act become operative on January 1, 1998.

SECTION 15. (1) Section 2 of this Act shall become operative on the effective date of an Act that appropriates a minimum of \$15 million from the General Fund for the biennium ending June 30, 1999, for the purpose of providing additional funding for programs necessary to carry out the Oregon Coastal Salmon Restoration Initiative or other programs for improving water quality of our streams and achieving healthy streams throughout the State of Oregon.

(2) The Department of Revenue may take any action before the operative date of this Act that is necessary to enable the department to exercise, on and after the operative date of this Act, all the duties, functions and powers conferred on the department by this Act.

SECTION 16. (1) Section 2 of this Act is repealed if either of the following occurs:

(a) Any salmonid species is listed by the National Marine Fisheries Service as threatened or endangered pursuant to the federal Endangered Species Act (16 U.S.C. 1531) in any coastal evolutionary significant unit located exclusively in the State of Oregon; or

(b) Any salmonid species is listed by the National Marine Fisheries Service as threatened or endangered pursuant to the federal Endangered Species Act (16 U.S.C. 1531) in any coastal evolutionary significant unit that is shared with another state, and:

(A) The National Marine Fisheries Service initiates enforcement action against forestry operations lawfully conducted in compliance with the Oregon Forest Practices Act; or

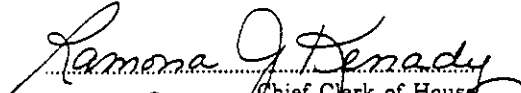
(B) The National Marine Fisheries Service promulgates a final regulation under section 4(d) of the federal Endangered Species Act, 16 U.S.C. 1533(d), that directly imposes additional requirements on forest practices beyond those required by the Oregon Forest Practices Act.

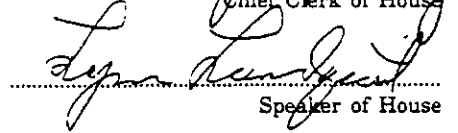
(2) The repeal of section 2 of this Act pursuant to subsection (1) of this section shall become operative on the first day of the first month following a finding and notice by the Governor to the Department of Revenue that the event described in either subsection (1)(a) or (b) of this section has occurred.

(3) There shall not be any refund of taxes imposed under section 2 of this Act prior to the repeal of the tax pursuant to this section.

Passed by House March 18, 1997

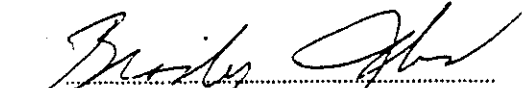
Repassed by House March 24, 1997


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Chief Clerk of House


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Speaker of House

Passed by Senate March 20, 1997

Repassed by Senate March 24, 1997

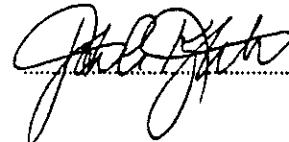

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President of Senate

Received by Governor:

8:45 AM, March 25, 1997

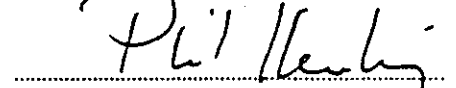
Approved:

11:12 AM, March 25, 1997


.....
Governor

Filed in Office of Secretary of State:

2:40 PM, March 25, 1997


.....
Secretary of State

Enrolled
House Bill 5042

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Budget and Management Division, Department of Administrative Services)

CHAPTER00006.....

AN ACT

Relating to state financial administration; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Notwithstanding any other provision of law, in addition to the amounts appropriated by law, there is appropriated to the following agencies, for the biennium beginning July 1, 1997, out of the General Fund, the following amounts for the purposes of funding grants and staff necessary to implement the Oregon Plan:

- (1) State Department of Agriculture..... \$ 2,959,851
- (2) Department of Environmental Quality \$ 2,523,853
- (3) State Department of Fish and Wildlife..... \$ 2,275,000
- (4) State Forestry Department \$ 779,821
- (5) Water Resources Department
 - (a) Governor's Watershed Enhancement Board \$ 482,219
 - (b) Governor's Watershed Enhancement Board Grants \$ 5,865,355
- (6) Department of Land Conservation and Development..... \$ 113,901

SECTION 2. If section 2, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), is repealed as a result of the operation of section 16, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), then on the date the repeal becomes operative, section 1 of this Act is amended to read:

Sec. 1. Notwithstanding any other provision of law, in addition to the amounts appropriated by law, there is appropriated to the following agencies, for the biennium beginning July 1, 1997, out of the General Fund, the following amounts for the purposes of funding grants and staff necessary to implement the Oregon Plan:

- (1) State Department of Agriculture [\$ 2,959,851]
..... \$ 1,754,926
- (2) Department of Environmental Quality [\$ 2,523,853]

.....	\$ 1,261,927
(3) State Department of Fish and Wildlife	[\$ 2,275,000]
.....	\$ 1,137,500
(4) State Forestry Department.....	[\$ 779,821]
.....	\$ 389,911
(5) Water Resources Department	
(a) Governor's Watershed Enhancement Board	[\$ 482,219]
.....	\$ 241,110
(b) Governor's Watershed Enhancement Board Grants	[\$ 5,865,355]
.....	\$ 10,157,678
(6) Department of Land Conservation and Development.....	[\$ 113,901]
.....	\$ 56,951

SECTION 3. Notwithstanding any other law, the following amounts are established for the biennium beginning July 1, 1997, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the following agencies:

(1) State Department of Agriculture.....	\$ 550,000
(2) State Forestry Department	\$ 782,848

SECTION 4. If section 2, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), is repealed as a result of the operation of section 16, chapter _____, Oregon Laws 1997 (Enrolled House Bill 3700), then on the date the repeal becomes operative, section 3 of this Act is amended to read:

Sec. 3. Notwithstanding any other law, the following amounts are established for the biennium beginning July 1, 1997, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the following agencies:

(1) State Department of Agriculture	\$ 550,000
(2) State Forestry Department.....	[\$ 782,848]
.....	\$ 391,424

SECTION 5. Notwithstanding any other law, the amount of \$1 is established for the biennium beginning July 1, 1997, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received in the Watershed Improvement Grant Fund by the Governor's Watershed Enhancement Board.

SECTION 6. Notwithstanding any other law, \$1 million is established for the biennium beginning July 1, 1997, as the maximum limit for payment of expenses from federal funds collected or received by the Water Resources Department for the Governor's Watershed Enhancement Board.

SECTION 7. If on July 1, 1997, there is no listing by the National Marine Fisheries Service of a salmonid species as threatened or endangered pursuant to the federal Endangered Species Act (16 U.S.C. 1531) in any coastal evolutionary significant unit located exclusively in the State of Oregon then, in addition to and not in lieu of any other appropriation, there is appropriated to the Emergency Board for the biennium beginning July 1, 1997, out of the General Fund, the sum of \$15 million.

SECTION 8. Notwithstanding any other law, sections 1 to 7 of this Act are subject to Oregon Department of Administrative Services rules related to allotting, controlling and encumbering funds.

SECTION 9. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1997.

Passed by House March 19, 1997

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate March 21, 1997

.....
President of Senate

Received by Governor:

.....M.,....., 1997

Approved:

.....M.,....., 1997

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 1997

.....
Secretary of State

SECTION 8. Notwithstanding any other law, sections 1 to 7 of this Act are subject to Oregon Department of Administrative Services rules related to allotting, controlling and encumbering funds.

SECTION 9. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1997.

Passed by House March 19, 1997

Raymond J. Tenady
.....
Chief Clerk of House

Frank O'Connell
.....
Speaker of House

Passed by Senate March 21, 1997

Lyn Lundquist
.....
President of Senate

Received by Governor:

8:45 A.M. March 25, 1997

Approved:

11:10 A.M. March 25, 1997

John A. Blatter
.....
Governor

Filed in Office of Secretary of State:

2:40 P.M. March 25, 1997

Phil Herby
.....
Secretary of State

Memo

To: Environmental Quality Commissioners
From: Wayne C. Thomas
Program Manager
Umatilla Chemical Disposal Program
Date: September 17, 1998
Re: Umatilla Chemical Disposal Facility

Based on our discussion at the August 6, 1998 Commission meeting, I have prepared the enclosed attachments to provide information for the Commission on the status of permit modifications and the status of permit conditions required by the Commission. The following items are attached:

1. A list of Permit Modifications received by the Department of Environmental Quality for the Umatilla Chemical Disposal Facility.
2. A description and status of the permit conditions required by the Commission.
3. A copy of the second Notice of Deficiency issued by the Department on September 2, 1998 for the Carbon PAS permit modification.

In addition, I have enclosed a copy of the Army's notice of a decision to remove the Dunnage Incinerator and the Department's initial response.

Umatilla Chemical Disposal Facility Permit Modifications

ID	Tracking Number	Class	Modification Description	Received	Decision date
1	UMCDF-97-001-CLOS(1R)	1	Closure Plan Soil Sampling	Thu 5/8/97	Mon 5/12/97
2	UMCDF-97-002-RDC(3E)	3EQC	Add Raytheon as Co-Permittee	Wed 4/9/97	Fri 1/9/98
3	UMCDF-97-003-MISC(2)	2	Operational Limitations due to severe weather	Thu 8/7/97	NA
4	UMCDF-97-004-CHB(1N)	1	Container Handling Building Double wall piping	Fri 10/24/97	Wed 12/3/97
5	UMCDF-97-005-PAS(2ta)	2	Carbon PAS	Mon 2/9/98	NA
6	UMCDF-97-006-MON(1R)	1	Staggered ACAMS	Tue 12/30/97	NA
7	UMCDF-98-001-HVC(1R)	1	Secondary Containment Compliance date extension	Thu 1/22/98	Thu 3/5/98
8	UMCDF-98-002-MISC(1R)	1	Post Trail Burn Risk Assessment	Mon 2/9/98	Wed 7/1/98
9	UMCDF-98-003-WAP(1R)	1	Agent Purity and ton container history	Mon 2/9/98	Thu 4/23/98
10	UMCDF-98-004-MISC(1R)	1	Background Soil Sampling	Fri 2/27/98	Wed 7/1/98
11	UMCDF-98-005-MISC(1R)	1	Extension of Compliance deadline for Subpart CC	Mon 3/30/98	Tue 3/31/98
12	UMCDF-98-006-CONS(1R)	1	Concrete 24 hour repair	Fri 4/17/98	Fri 5/15/98
13	UMCDF-98-007-BRA(1R)	1	Subpart X Engineering Drawings	Mon 6/22/98	Tue 8/4/98
14	UMCDF-98-008-CONS(1R)	1	Concrete Specification 03300	Mon 2/9/98	NA
15	UMCDF-98-009-MDB(2R)	2	MDB Vestibule Secondary Filters	Fri 8/7/98	NA
16	UMCDF-98-010-CONS(1R)	1	09850-Speciality Coatings System	Wed 8/26/98	NA
17	UMCDF-98-011-MISC(1R)	1	UMCDF EPA Identification Number	Thu 9/10/98	NA
18	UMCDF-98-012-CONS(1R)	1	Concrete Spec. 03200	Thu 9/10/98	NA
19	UMCDF-98-013-MISC(1R)	1	Subpart CC extension of Compliance deadline	Thu 9/10/98	NA

EQC PERMIT CONDITIONS

During the public comment period for the Umatilla Chemical Agent Disposal Facility draft hazardous waste permit the Environmental Quality Commission (EQC) instructed the Department to include several new permit conditions (or modify existing conditions). The "EQC Permit Conditions" reflected the specific concerns of the Commission, often as result of public comment the Commission received. The conditions, and their current status, are listed below.

MODIFICATION TO THE OPENING STATEMENT OF THE PERMIT INTRODUCTION (RELATED TO CONCERNS ABOUT THE RISK OF CONTINUED STORAGE)

INTRODUCTION: "The Permittee shall proceed expeditiously in procuring a contractor, beginning construction and commencing operation of the Umatilla Chemical Disposal Facility (UMCDF) in order to eliminate the significant risk to human health and the environment posed by the continued storage of the chemical weapons and chemical agents at the Umatilla Chemical Storage Depot."

STATUS: The Permittee awarded the construction and operations contract to Raytheon Demilitarization Company in February, 1997. Construction was started in May, 1997.

I.C. PERMIT ACTIONS

I.C.4. ("RE-OPENER") If Congress or the President makes substantial changes in the Chemical Weapons Demilitarization program or in CSEPP, the Commission reserves the right to reopen the permit, after appropriate opportunity for the Permittee and , at the discretion of the Commission, government officials and the public to be heard. If the Commission determines to reopen the permit, it may remove or modify conditions or impose additional conditions, relating to the reason for reopening the permit.

STATUS: This permit condition has not been enacted by the Commission to date.

II.A DESIGN AND OPERATION OF THE FACILITY (ADVERSE WEATHER CONDITIONS)

II.A.3. The Permittee shall submit to the Department a request for a Class 2 permit modification, within 180 days of the effective date of this permit, identifying the standard operating procedures that will be followed by Umatilla Chemical Depot and UMCDF personnel for handling and transporting munitions from the storage igloos to the UMCDF site, and for hazardous waste treatment, during inclement weather or adverse wind conditions. The Standard Operating Procedures must include a description of the weather conditions, in addition to the procedures that are to be followed by UCD and UMCDF personnel.

STATUS: The Class 2 permit modification request was submitted in August, 1997. The Department has not yet issued a Notice of Decision.

**II.A DESIGN AND OPERATION OF THE FACILITY
(COMPREHENSIVE MONITORING)**

II.A.4. Within 180 days of the effective date of the permit, the Permittee shall submit for Department review and approval a Comprehensive Monitoring Program (CMP) Workplan to implement a program that will confirm results of the Pre-Trial-Burn and Post-Trial-Burn Risk Assessments for each of the areas described: Zone 1 - the Umatilla Chemical Demilitarization Facility to the Umatilla Chemical Depot fenceline, Zone 2 - the Umatilla Chemical Depot fenceline out to a fifty-kilometer radius from the UMCDF common stack, and Zone 3 - locations beyond the fifty-kilometer radius. Within the CMP, Zone 1 also is to include a monitoring system to detect permitted and unpermitted releases.

STATUS: The Department and the Permittee have been working since August, 1997, with an "Interested Parties Workgroup" that includes 31 people representing 19 different state, federal, and Tribal agencies. The Class 2 permit modification request for the CMP Workplan is expected to be submitted in October, 1998. An additional Class 2 permit modification request for the Sampling and Analysis Plan will also be submitted, probably in late 1998.

**II.E GENERAL INSPECTION REQUIREMENTS
(INDEPENDENT OVERSIGHT)**

II.E.5. The Permittee shall submit, within 180 calendar days of the effective date of this permit, a written program that describes the independent oversight process for the demilitarization construction activities, health and safety operations, and chemical agent process/handling operations at the UMCDF site. All reports generated by the oversight activities described in this report and reports of independent investigations shall be made available to the Department within 15 days of report finalization, in order for the Director of the Department to attest to the effectiveness of the independent oversight program. With written direction from the Department, the Permittee shall place such inspection reports in a public repository in Hermiston, Oregon. In the case of special independent investigations caused by unique and non-routine incidents, the Permittee shall notify the Department of the initiation of the investigation within 24 hours of the time the Permittee becomes aware of the investigations. Upon request by the Department or Commission, the Permittee shall provide an updated report describing the independent oversight program that incorporates all appropriate additions and changes in response to any deficiencies or requested changes. An independent oversight review shall be conducted on a periodic basis and when specifically requested by the Department or Commission. If the Commission is not satisfied with the independent oversight program or the results of the independent investigations, the Commission may issue an order to halt immediately all operations.

STATUS: The Permittee submitted a summary of their independent oversight program in August, 1997.

**II.H CONTINGENCY PLAN
(CSEPP READINESS—STATUS REPORT)**

II.H.4. The Permittee shall submit within 150 days of the effective date of the permit and every 180 days thereafter until all agent at the Depot has been destroyed; a written progress report to the Department on the status of the Chemical Stockpile Emergency Preparedness Program (CSEPP). The report shall evaluate CSEPP's readiness for responding to an incident at the Umatilla Chemical Depot and should address at a minimum, status of community emergency sirens and distribution of tone alert radios of the Alert Notification System (ANS); the ability to provide off-site chemical agent monitoring and decontamination during an incident, off-site triage and treatment of casualties; and, the state of enhanced sheltering and positive pressurization of buildings, such as schools and hospitals, where substantial numbers of persons can be expected to gather daily. [40 CFR 270.32(b)(2)]

STATUS: The Permittee has been submitting the CSEPP readiness status report in accordance with the schedule required in the permit condition.

**II.H CONTINGENCY PLAN
(GOVERNOR'S DETERMINATION OF CSEPP READINESS)**

II.H.4.i. The Permittee shall not commence any thermal shakedown, trial burn, or post-trial burn activity, as defined in Module VI, until the Department has notified the Permittee in writing that it has received written notification from the Governor of the State of Oregon, or his designee, that an adequate emergency response program is in place and fully operational for protecting the general population (Chemical Stockpile Emergency Preparedness Program [CSEPP]). The written determination of the Governor (or his designee) shall be placed in the administrative record.[40 CFR 270.32(b)(2)]

STATUS: The Department has been working with Oregon Emergency Management to develop a CSEPP readiness "matrix" which will identify the criteria that will be used to determine the emergency preparedness of the local communities.

**II.H CONTINGENCY PLAN
(EMERGENCY OPERATIONS CENTER (EOC) POSITIVE PRESSURE)**

II.H.5. For the UCD Emergency Operations Center (EOC) that gathers or disseminates information used to respond to off-Depot releases, the Permittee shall have a positive-pressurized Emergency Operations Center (EOC) that is adequately staffed 24 hours a day, 7 days a week. For this permit condition, "positive-pressurized" shall mean that ambient non-air vapors can not enter during times of emergency training, in the event of an actual emergency, or when tested on request by a Department inspector. The EOC must be pressurized within 300 days of the effective date of this permit, and the EOC is to comply with the staffing requirement within 90 days of the effective date of this permit.

STATUS: The Permittee began staffing the EOC on a 24-hour basis on May 11, 1997. The positive pressurization of the EOC was completed December 12, 1997.

II.M LIABILITY REQUIREMENTS

II.M. The Permittee must provide the liability coverage for sudden-and-accidental-occurrence requirements, as specified in 40 CFR §264.147, and provide liability insurance in accordance with ORS 466.105(5), and 40 CFR §264.147(a) unless exempted by state or federal law.

STATUS: As a federal agency the U.S. Army was exempt from the liability requirement. Prior to Commission approval of the Class 3 Permit Modification to add Raytheon Demilitarization Company as a Permittee, the Commission required that Raytheon provide proof of liability insurance, and that the Army and Raytheon enter into what an "Advance Agreement" concerning liability issues.

II.R PAS CARBON FILTER UNIT

II.R. The Permittee shall build and operate the Pollution Abatement System (PAS)/PAS Filter Systems for each incinerator in accordance with the appropriate drawings of Volume 5, Attachment D-3 and Volume VII of the application, Sections D-5B-02, D-5B-07, D-6B-02, D-6B-04, D-7B-02, D-7B-05, D-8B-02, D-8B-04, and D-8B-05. Removal of any component of the PAS Filter Systems, including but not limited to, the quench tower, venturi scrubber, packed scrubber tower, demister, or carbon filter system shall be a Class 3 permit modification and shall require Commission approval.

STATUS: A Class 2 permit modification request was submitted in November 1997 and is still under Department review. The modification request was for approval of a number of design changes in the PAS Carbon Filter System. A Notice of Deficiency was issued by the Department on September 2.

The following EQC permit conditions are related to conditions of operation or closure and have not yet been applied to the facility.

VI.A GENERAL CONDITIONS DURING SHAKEDOWN, TRIAL-BURN AND POST TRIAL-BURN FOR ALL THE INCINERATORS AT THE UMCDF SITE.

VI.A.1.vi. The Permittee shall maintain and operate each incinerator during shakedown, trial burn and post-trial burn periods in accordance with the operating requirements specified in this permit. Each incinerator shall meet the applicable performance standards specified in permit conditions VI.B.1., VI.C.1., VI.D.1., and VI.E.1. before entering each incinerator's carbon filter system.

VII.A GENERAL CONDITIONS FOR ALL THE INCINERATORS AT THE UMCDF SITE.

VII.A.8 The Permittee shall maintain and operate each incinerator during shakedown, trial burn and post-trial burn periods in accordance with the operating requirements specified in this

permit. Each incinerator shall meet the applicable performance standards specified in permit conditions VII.B.2., VII.C.2., VII.D.2., and VII E.2. before entering each incinerator's carbon filter system.

COMMENT: Conditions VI.A and VII.A were included to ensure, as additional protection for the public, that each furnace meet all the applicable emission limits prior to the Carbon Filter System, which was considered an extra layer of protection.

I.C. PERMIT ACTIONS

I.C.2. In accordance with ORS 466.170, the Commission may revoke this permit after public hearing upon a finding that the Permittee has violated any provision of ORS 466.005 to 466.385 and 466.890 or rules adopted pursuant thereto or any material condition of the permit, subject to review under ORS 183.310 to 183.550.

I.C.3. In accordance with ORS 466.200, if the Department or Commission finds that there is reasonable cause to believe that a clear and immediate danger to the public health, welfare or safety or to the environment exists from the continued operation of the site, the Department may halt demilitarization operations at the UMCDF. Non-compliance with the Department's written notification shall be a violation of this permit condition. Resumption of operations shall be initiated only upon written approval of the Department.

I.L. PROPER OPERATION AND MAINTENANCE

I.L.2. In accordance with ORS 466.180(1), the Department or Commission may limit, prohibit, or otherwise restrict storage and treatment operations at the UMCDF upon receipt of information that indicates non-compliance with permit condition I.L.1. The Department shall invoke such restrictions by written notification that specifies actions that the Permittee must take to comply. Non-compliance with the Department's written notification shall be a violation of this permit condition.

COMMENT: Conditions I.C.2, I.C.3, and I.L emphasize the power of the Commission or the Department to halt operations at UMCDF, and/or modify or revoke the hazardous waste permit.

II.B RECEIPTS OF OFF-SITE WASTE AND SHIPMENT OF ON-SITE WASTE

II.B.1 The Permittee is not authorized to accept and therefore shall not receive hazardous waste, chemical agent, or munitions containing chemical agents from off-site.

II.B.2 The Permittee shall not send any material or waste off-site that has detectable amounts of GB, VX, or HD. Only material or wastes meeting the agent-free 3X or 5X criteria may be sent off-site.

II.B.3 The Permittee shall process, in accordance with this permit, all chemical agents, and chemical agent-contaminated materials currently stored or otherwise located at the Umatilla Chemical Depot.

COMMENT: Conditions II.B.1 through II.B.3 were included in the hazardous waste permit to insure that the Umatilla Chemical Depot (1) would not accept any additional chemical agent material for storage or treatment; (2) would not send any material off-site that had detectable amounts of chemical agent; and (3) process through the applicable furnace all agent, or agent-related waste, that was on-site at the time of permit issuance.

II.J CLOSURE

II.J.9 Following submittal of all successful closure decontamination certifications in accordance with permit condition II.J.6., the Permittee shall dismantle, remove, and properly manage the disposal of the Munition Demilitarization Building (MDB) to an approved disposal facility. All other structures (e.g., buildings, parking areas, underground structures, fences, etc.,) within the boundary of the UMCDF shall also be properly managed and removed to a disposal facility. All areas where structures have been removed shall be reclaimed. If the Umatilla Chemical Depot - Local Reuse Authority (UCD-LRA) identifies a use for any of the structures, except the MDB, the Permittee may request a modification to this permit condition as a class 2 modification in accordance with 40 CFR §270.42(b) and 40 CFR §270.32(b)(2) to accommodate such use.

COMMENT: Condition II.J.9 was included to insure that when the base closes the local community would not be involuntarily left with buildings that were not suitable for any other use than treatment of chemical agent. The requirement to dismantle and remove the Munition Demilitarization Building (MDB) was put in the permit because the MDB will be contaminated with chemical agent and unsuited for any further use.



NOTICE OF DEFICIENCY

September 2, 1998
DEQ Item No. 98-0614



**CLASS 2 PERMIT MODIFICATION
REQUEST NO. UMCDF-97-005-PAS (2TA)
UMATILLA CHEMICAL DISPOSAL FACILITY
OR6 213 820 917**

I. DESCRIPTION OF THE PFS MODIFICATION

The proposed design modification simplified the originally permitted design of the Pollution Abatement System Carbon Filter System (PFS). The PFS was physically moved to a location closer to the Munitions Demilitarization Building (MDB) where the furnaces are located, eliminating extensive duct work. The modification also eliminates the need for several pieces of equipment originally used to condition the flue gases before they were passed through the carbon filter beds. In addition, the design modification eliminates the acid washing system for the demister candles (replacing the demister candles was found to more effective and economical).

Although sufficient information was provided to satisfy the criteria for approval of a Temporary Authorization Request to commence construction activities, the Department of Environmental Quality (DEQ or Department) was unable to complete processing of the initial modification request. There were still numerous unresolved items concerning details of the proposed design. The Department issued a Notice of Deficiency (NOD) to the Program Manager for Chemical Demilitarization (PMCD or Permittee) on April 23, 1998. The Permittee submitted a "Supplemental Information Package" on May 12, 1998, and a response to the NOD on July 16.

II. DEPARTMENT CONCLUSION

The Department has reviewed both the supplemental information and the Permittee's response to the April NOD and has identified numerous issues that remain unresolved from the April NOD, and additional issues that were identified during review of the new information. The Department will be unable to make a decision on the PFS permit modification request until each of the deficient items listed below has been addressed. The Department comments in Section IV below reflect comments to items not answered, or insufficiently answered, in the Response to the April 23, 1998 NOD. There are also new comments related to the supplemental package and subsequent information submitted. This NOD documents outstanding issues that must be resolved before the Department can issue a decision on this Class 2 modification request.

The Department is issuing this Notice of Deficiency in accordance with 40 CFR 124.3 (c) as adopted by Oregon Administrative Rule 340-100-002. The Permittee shall submit the required additional information no later than October 15, 1998.

III. HISTORY OF THE MODIFICATION REQUEST

November 17, 1997:

The United States Army Program Manager for Chemical Demilitarization (PMCD) submitted to the Department of Environmental Quality (Department) a Class 2 Permit Modification and Temporary Authorization request package [UMCDF-97-005-PAS (2TA)]. The Modification was submitted for revision of the design of the Pollution Abatement System Carbon Filter System (PFS), which included the removal of the acid wash system from each incinerator's pollution abatement system. The Temporary Authorization Request (TAR) to commence construction activities was based on the need to incorporate some of the modifications during the current phase of construction (such as laying the foundation). Granting the TAR would prevent delay of the overall construction schedule at UMCDF while the Department considered the Modification Request.

The modification request package consisted of a transmittal letter with four attachments, a four-inch binder with revised text and tables, and 110 revised drawings. Attachment 1 contained the public notice, the mailing list notices, and the transmittal letter for sending copies of the request package to various public locations. Attachment 2 contained a summary of the proposed changes to the package with associated justification. Attachment 3 contained a table identifying the pages of the UMCDF Hazardous Waste Permit and Permit Application affected by this request package. Attachment 4 contained a list of affected Permit Application (Volume V) drawings.

The four-inch binder contained several items including the redline/strikeout permit pages showing proposed additions/deletions. The revised Permit Application Volume V drawings were provided in a separate package of 110 (15-inch by 21-inch) drawings.

November 18, 1998:

A 60-day public comment period was opened.

November 24, 1998:

The Department issued a letter of concurrence with the PMCD's request for a 180 day Temporary Authorization to construct. PMCD proceeded with construction activities at its own risk.

December 9, 1997:

A public informational meeting was held in Hermiston, Oregon.

January 20, 1998:

The public comment period was closed.

April 23, 1998:

The Department issued a Notice of Deficiency (NOD), DEQ item number 3076, to the Class 2 Modification. The NOD outlined specific items in the Class 2 Modification Request that were not sufficiently addressed or supported.

May 12, 1998:

PMCD requested a 180-day extension to the Temporary Authorization to construct, in conjunction with submittal of a "supplemental information" package on the Class 2 Permit Modification Request. The supplemental information included clarifications, information that had previously been omitted, and additional changes to the original Class 2 Modification request package. The additional changes were made to reflect the configuration of two, rather than three evaporators in the Brine Reduction Area, and the removal of the Demister Candle Wash System.

A new 60-day public comment period was opened.

May 15, 1998:

The Department granted the extension of the Temporary Authorization Request (to November 18, 1998).

May 26, 1998:

PMCD requested a one-time 30-day extension to respond to the April 23, 1998 NOD.

June 8, 1998:

The Department granted a one-time extension for the NOD response (to July 17, 1998).

June 22, 1998:

PMCD submitted a letter of outstanding items for the Supplemental Information package for the Class 2 Permit Modification Request.

A public informational meeting was held in Hermiston, Oregon.

July 13, 1998:

The public comment period was closed.

July 16, 1998:

PMCD submitted a response to the NOD. The response to the NOD addressed the Departments comments in the April 23, 1998 NOD and referred to information that would be submitted no later than July 31, 1998.

July 30, 1998:

The Department requested PMCD concurrence for an extension until November 18 for the Department's decision on the Class 2 modification request.

August 5, 1998:

PMCD submitted a response to outstanding items to the NOD not addressed in the July 16, 1998 Response. The outstanding items addressed the Department comments 1, 4, 34, 35, 36, 37 and 39 of the April 23, 1998 NOD. In addition, clarifying information was submitted regarding the DiOctylphthalate (DOP) and Freon leak testing on the filter units.

August 10, 1998:

PMCD submitted a letter of concurrence to extend the due date of the Department's decision to November 18, 1998.

IV. DEPARTMENT COMMENTS ON DEFICIENT ITEMS

The following addresses the response to the April 23, 1998 NOD, items found deficient in the Supplemental package, and outstanding issues to the PFS Modification.

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
1.	40 CFR § 270.42(b)(6)(ii)(A)	General comment	<i>This item was sufficiently addressed in the August 5, 1998 PMCD Letter, PMU-980666.</i>
2.	40 CFR § 270.30(h)	General comment	<i>This item was sufficiently addressed. Drawings submitted on July 17, 1998.</i>
3.	40 CFR § 270.30(h), 40 CFR § 270.60(b)(2)(iii)	General comment	<p><i>Original NOD comment by the Department:</i></p> <p>“On page D-5-26 the Permittee shall add a narrative that the trial burn stack sampling point location will be after the reheater to assure that the impact of the reheater on emissions is captured. The information shall also be included in the trial burn plans. The reheater system shall be deleted from this paragraph and discussed in a separate narrative. It has been stated that there exists 60 feet of duct length between the demisters and filter units. The Permittee shall add a note representing the sampling test ports and location for the following piping and instruments drawings:”</p> <p>DUN: Pg. 237 UM-5-F-502; pg. 238UM-5-D-508 (add a note) LIC1: Pg. 182 UM-6-F-508; (Note4 good local –test ports) LIC2: Pg. 184 UM-6-F-511; (Note4 good local –test ports) MPF: Pg. 203 UM-6-F-509; (Note5 good local –test ports) DFS: Pg. 221 UM-6-F-507; (Note5 good local –test ports)</p>

¹ “Item No.” in this column is equivalent to the Item Numbers in the Department’s April 23, 1998 NOD, and the Permittee’s response to the April 23 NOD.

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p><i>Permittee response to the NOD comment:</i></p> <p>The Permittee responded that, based on an “informal” meeting with the DEQ regarding this comment, it was clarified that the narrative pertaining to the sampling port locations for the Trial Burn stack sampling downstream of the reheater would be included in the re-submittal of the Trial Burn Plans for the Deactivation Furnace System (DFS), the Liquid Incinerators (LICs), the Metal Parts Furnace (MPF), and the Dunnage Incinerator (DUN).</p> <p>In accordance with the permit condition in Module VI, the Trial Burn Plans are required to be re-submitted to the DEQ as a permit modification at least 180 days prior to the start of the shakedown period for each Trial Burn. Therefore, at least 180 days prior to a surrogate Trial Burn shakedown period, the Permittee would include in the re-submittals of the Trial Burn Plans a narrative describing the stack sampling locations downstream of the reheater.</p> <p>The Process Flow Diagrams identified in the NOD item, and the Piping and Instrument Diagram (UM-5-D-508), were revised to include the sampling locations. In addition to these revised drawings, the Permittee also revised diagrams UM-6-F-510, UM-6-D-524, UM-6-D-525, UM-6-D-526, and UM-6-D-535 to include the sampling location. These drawings were provided as a separate attachment to the response.</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>The duct length has been reduced significantly in the modified design. It is unclear if the duct is long enough to support the required number and configuration of sampling locations that will be needed during the Trial Burns. The Permittee must clearly demonstrate that the proposed design modification will not affect access to a suitable number of testing locations that meet all the requirements of EPA Methods 1 and 2 for isokinetic sampling locations.</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			Therefore, prior to construction of the ducting, the Permittee must demonstrate that sufficient duct length will be provided to support sampling locations that are free of flow disturbances. The Permittee shall provide dimensioned schematics showing the location of sampling ports, which sampling train will be located at a given port during simultaneous sampling, and the port's distance (in number of duct diameters upstream and downstream) from expected flow disturbances. In addition, the schematics must be accompanied by a table of all sampling trains that will be required for trial burns, sampling locations needed (such as a train requiring isokinetic sampling), and the train's proposed location on the dimensioned schematics.
4.	40 CFR § 124.3(c), 40 CFR § 270.30(h)	General comment	<i>This item was sufficiently addressed in the August 5, 1998 PMCD Letter, PMU-980666.</i>
5.	40 CFR § 270.62(b) (2)(ii)	General comments	<i>This item was sufficiently addressed in the Response to the NOD.</i>
6.	40 CFR § 270.30(h)	Section 3, pg. 3-4	<i>This item was sufficiently addressed in the Response to the NOD.</i>
7.	40 CFR § 270.32(b)(2)	Section 3, Pages 3-7,3-9,3-15 and 3-16; Section 7, Table 7-1 UMCDF Permit section, AWFCO Tables 6-3, 6-7, 6- 11, 6-15, 7-2, 7-4, 7-6, and 7-8	<i>Original NOD comment by the Department:</i> The information provided was not sufficient to support the modification to the PFS Automatic Waste Feed Cut-Offs (AWFCOs) for temperature and relative humidity. The proposed operating temperature of 160°F and 39% relative humidity are well below the AWFCO levels indicated in the proposed modifications to the AWFCO Tables in the UMCDF Permit, the modifications to the drawings, and the Specification for the PAS Filter Units. The Permittee's proposed revision to the AWFCO Tables and the associated drawings reflect a high-high alarm and stop feed at 80% relative humidity for the reheated gas stream, and a stop feed and bypass of the carbon filters at a high temperature of 180°F.

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>The Department stated that "From a regulatory standpoint, normal (nominal) is not what the Department usually enforces; the Department will enforce maximum/minimum setpoints. The Permittee shall submit change pages to the modification package that are revised to reflect high-high alarm and automatic waste feed cutoff when the reheated gas stream exceeds a temperature of 160°F and exceeds a relative humidity of 39%. The range and accuracy specifications for the moisture will also be submitted with the change pages."</p> <p><i>Permittee response to the NOD comment:</i></p> <p>"The current design calls for a high-high alarm with an associated waste feed cut-off at 180°F and 80% relative humidity. In addition, a high alarm is provided at 60% relative humidity. The reheated stream to the carbon filters is at 160°F and at or below 55% relative humidity.</p> <p>"Comparing the operating condition of 160°F and 39% relative humidity with a high-high alarm of 180°F and 80% relative humidity is irrelevant. The alarm and operating set points are based on empirical data for agent adsorption on carbon. A reheat temperature of 160°F was found to be optimal for the efficiency of agent adsorption on carbon. The "Value Engineering Report PFS Alternative Configuration Study" (Parsons B-11G-1, September 1995, page 3-13) states, "an improvement occurs in the adsorption performance for 120°F dew point exhaust when the relative humidity is reduced from 60% to 40%." Thus an operating set point of 160°F was chosen. At 180°F and 80% relative humidity the efficiency of the carbon filter begins to get compromised. The waste feed is stopped and the filters are bypassed to prevent desorption from the carbon. This temperature is also well below the auto-ignition temperature for any of the unburned hydrocarbons present in the exhaust gas stream."</p> <p>The Permittee also submitted proposed changes to the AWFCO Tables to "maintain consistency," and gave the expected range and accuracy of the moisture monitor (0.0 –</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>100.0% with an accuracy of $\pm 2\%$). Proposed changes to the Instrument and Process Data tables for each of the incinerator systems in Modules VII of the UMCDF Hazardous Waste Permit were also included.</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>Sufficient data has been supplied for justification to operate the carbon PAS filters at a flue gas temperature of 160°F and 39% relative humidity. Justification has still not been supplied to operate the carbon PAS filters at the proposed AWFCO set points of 180°F and 80% relative humidity. The Permittee must not operate the carbon PAS filter system beyond 160°F and 39% relative humidity without sufficient supporting data. The Department will not accept AWFCO setpoints higher than 160°F and 39% relative humidity without Department review and approval of supporting data.</p> <p>The proposed modification to Table 7-7 (UMCDF Permit, Page 278 of 290), Item No. 28 (thermocouple) shows an instrument range that is outside of the predicted operating range (See Department comment item No. 18).</p>
8.	Typographical	Sect. 3, Pg. 3-12	<i>This item was sufficiently addressed in the Response to the NOD.</i>
9.		Tbl. 3-1, Pg. 3-14	<i>This item was sufficiently addressed in the Response to the NOD.</i>
10.	Typographical	Table 7-4, Pg. 7-5	<i>This item was sufficiently addressed in the Response to the NOD.</i>
11.	40 CFR §270.32(b)(2)	Section UMCDF Permit page 50	<p><i>Original NOD comment by the Department :</i></p> <p>The Department indicated that the statement being added to Section II.O (indicating that the Section was only applicable to the MDB and Laboratory carbon filter systems) was</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>acceptable only if permit conditions were added elsewhere to reflect the specific monitoring and change-out requirements for the PFS carbon filter system.</p> <p><i>Permittee response to the NOD comment:</i></p> <p>The Permittee originally proposed to remove permit condition II.R and reinsert the text as permit conditions VI.G. and VII.G. (See Item No. 14 below). In the response to the Department's NOD, and in their supplemental information, the Permittee proposed additions to permit conditions VI.G. and VII.G. to address agent monitoring and carbon change out requirements.</p> <p>The additional conditions (and associated modification to the narrative in the original request) indicated that a Depot Area Air Monitoring System (DAAMS) instrument will sample the exhaust gas passing between the two carbon beds in series. An Automatic Continuous Air Monitoring System (ACAMS) instrument would be located both upstream and downstream of the filter units (before the common stack) to provide near real-time detection of agent. The Permittee proposed changing the charcoal within a carbon bank (i.e., two carbon beds in series) when agent was detected breaking through the first carbon bed, or prior to commencing a new chemical agent campaign, whichever occurred first.</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>Proposed permit conditions VI.G.1. and VI.G.2. are insufficient to adequately describe the operating, monitoring, and carbon change-out requirements for the PFS. The proposed conditions do not adequately describe the locations of the DAAMS sampling point, the meaning of "once per work shift," nor the proposed detection level at which the Permittee determines that there has been "breakthrough" requiring the change-out of carbon beds.</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>There is no mention of the upstream and downstream ACAMS, nor what actions will be taken if an ACAMS monitor indicates presence of agent. The ability of the DAAMS sampling location to detect agent breakthrough in a given "bank" of carbon cannot be determined because the actual flow path of the gases through the filter system is unclear (See also Department comments on Items 12, 28, 31, 32, and 47).</p> <p>Proposed permit language for section VI.G. must include, at a minimum, the following :</p> <ul style="list-style-type: none"> a. A statement indicating that the PFS for any given incinerator will be operational during shakedown and trial burn operations of that incinerator (similar to language in II.O.1). b. The monitoring requirements for the DAAMS within a PFS, and the ACAMS upstream and downstream (similar to language in II.O.2.i.). c. A statement indicating that there will be continuous monitoring of pressure drop across the filters, consistent with the AWFCO Tables (similar to language in II.O.2.ii.). d. A statement indicating that the PFS for each incinerator will be maintained in accordance with a table similar to Table 2-2 or 2-3 of the permit (see permit condition II.O.4. and II.O.5 and Tables 2-2 and 2-3). The statement and table must include the specific change-out requirements for each pre-filter, HEPA filter, or carbon filter upon detection of agent and upon detection of excessive pressure drop (similar to language in II.O.7.). e. A statement indicating that all carbon banks will be changed out prior commencing a new agent campaign (similar to language in II.O.6.).

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			The permit modification request inconsistently uses the terms "charcoal," "carbon bed," "carbon bank," "carbon filter," "filter unit," and "filter bank." Clarification of each term, and consistent use of a given term, will facilitate review of future submittals.
12.	40 CFR §270.32(b)(2)	Proposed UMCDF Permit page 51	<p>Original NOD comment by the Department :</p> <p>"In condition II.O.6. the change shall not be added unless a more stringent or regular plan of changing filters out for the LIC, MPF, and DFS carbon filter system is submitted."</p> <p>Permittee response to the NOD comment:</p> <p>"As addressed in the response to Item 11, a change was proposed in the Class 2 Permit Modification request to relocate permit condition II.R. to Module VI and VII as permit condition VI.G.2 and VII.G.2 that address the carbon change out requirements."</p> <p>Department response: This item has not been fully addressed.</p> <p>The Department will accept the proposed change to condition VI.O.6. only after the modifications required in the Department's response to Item 11 above have been implemented (items "d" and "e" in the list of required statements).</p>
13.	40 CFR §270.32(b)(2)	Proposed UMCDF Permit page 53	This item was sufficiently addressed in the Response to the NOD.
14.	40 CFR §270.32(b)(2)	UMCDF Permit page 53	<p>Original NOD comment by the Department :</p> <p>The Department objected to deleting condition II.R. moving it to VI.G. and VII.G.</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p><i>Permittee response to the NOD comment:</i></p> <p>The Permittee stated that since the PFS units are an integral part of each of the incinerator systems that this condition more appropriately belonged in Modules VI and VII, where the operating requirements for each of the furnaces are located.</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>The Department re-iterates that Condition II.R. will not be re-located nor revised. Condition II.R. as currently written is appropriately located in Module II covering "General Facility Conditions." The Department concurs that specific operating requirements are more appropriately located in Modules VI and VII. This will be done with the additions of conditions VI.G. and VII.G. which will contain specific operating conditions (such as those outlined in Item 11 above), but that will not contain the text from II.R..</p>
15.	Typographical	Proposed UMCDF Permit page 191	<p><i>Original NOD comment by the Department:</i></p> <p>"MPF: The moisture content is programmed to indicate signals from MIT-96A or MIT-96B or average of the two measurements. (Both shall be included)."</p> <p><i>Permittee response to the NOD comment:</i></p> <p>"In accordance with Note 15 on Piping and Instrumentation Diagram UM-6-D-526, the moisture content is programmed to indicate signals from MIT-96A or MIT-96B or average of two measurements. Therefore, item Number MPF-33 on Table 6-7 (page 191 of 290 in Module VI of the Permit), Item Number 48 on page 262 in Module VII and Item Number</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>MPF-33 on Table 7-4 (page 266 of 290 in Module VII of the permit) were modified to maintain consistency with the drawing.”</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>The modification request does not indicate how moisture will be measured. The Department assumes that the intent is to use a wet bulb/dry bulb calculation to determine moisture content of the gas stream, which would require a pair of thermocouples for each moisture measurement. Assuming that the dry bulb temperature indicator will be MPF-32 (Table 6-7), clarification is still needed on the averaging process referred to in Table 6-7. What criteria will the operators use to determine when a single measurement should be used or when an average should be used? If only one measurement will be used, how will the selection be made? The Department considers the accurate measurement of the moisture content of the gas stream to be a critical operating parameter for this system.</p> <p>The proposed revisions to Tables 6-7 and 7-4 indicate the AWFCOs of 180°F and 80% relative humidity. See the Department response to Item 7 above for a discussion of the AWFCOs (“The Permittee must not operate the carbon PAS filter system beyond 160°F and 39% relative humidity without sufficient supporting data.”).</p> <p>The proposed revision to Table 7-3 in Module VII on page 262 indicates that Item No. 47 (temperature) has an indicated instrument range (95°F to 300°F) that is outside of the predicted “expected” flue temperature range (50°F to 130°F). If the Permittee adequately supports the 160°F operating temperature (See Item 7 above) the “expected” high temperature on Table 7-3 must be modified.</p>
16.		Proposed UMCDF Permit page 257	<p><i>Original NOD comment by the Department :</i></p> <p>“LIC1: The moisture content is programmed to indicate signals from MIT-534A or MIT-</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>534B or average of the two measurements. LIC2: The moisture content is programmed to indicate signals from MIT-434A or MIT-434B or average of the two measurements. (Both shall be included.)”</p> <p><i>Permittee response to the NOD comment:</i></p> <p>“In accordance with Note 15 on Piping and Instrumentation Diagram UM-6-D-535 (LIC1) and UM-6-D-525 (LIC2), the moisture content is programmed to indicate signals from MIT-534A (MIT-434A for LIC2) or MIT-534B (MIT-434B for LIC2) or average of two measurements. Therefore, Item Number LIC-36 on Table 6-3 (page 181 of 290 in Module VI of the Permit), Item Number 46 on page 253 of 290 in Module VII of the permit and Item Number LIC-36 on Table 7-2 (page 257 of 290 in Module VII of the permit) were modified to maintain consistency with the drawing.”</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>The Department considers the accurate measurement of the moisture content of the gas stream to be a critical operating parameter for this system. See Item 15 above for the Department’s comments on the proposed method for flue gas moisture measurement.</p> <p>The proposed revisions to Tables 6-3 and 7-2 indicate the AWFCOs of 180°F and 80% relative humidity. See the Department response to Item 7 above for a discussion of the AWFCOs (“The Permittee must not operate the carbon PAS filter system beyond 160°F and 39% relative humidity without sufficient supporting data.”).</p> <p>The proposed revision to Table 7-1 in Module VII on page 253 indicates that Item No. 45 (temperature) has an indicated instrument range (95°F to 300°F) that is outside of the predicted “expected” flue temperature range (50°F to 130°F). If the Permittee adequately</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			supports the 160°F operating temperature (See Item 7 above) the “expected” high temperature on Table 7-1 must be modified.
17.		Proposed UMCDF Permit page 274	<p>Original NOD comment by the Department :</p> <p>“DFS: The moisture content is programmed to indicate signal from MIT-431A or MIT-431B or average of the two measurements. (Both shall be included.)”</p> <p>Permittee response to the NOD comment:</p> <p>“In accordance with Note 15 on Piping and Instrumentation Diagram UM-6-D-524, the moisture content is programmed to indicate signals from MIT-431A or MIT-431B or average of two measurements. Therefore, Item Number DFS-38 on Table 6-11 (page 201 of 290 in Module VI of the Permit), Item Number 42 on page 270 of 290 in Module VI of the permit and Item Number DFS-38 on Table 7-6 (page 274 of 290 in Module VII of the permit) were modified to maintain consistency with the drawing.”</p> <p>Department response: This item has not been fully addressed.</p> <p>The Department considers the accurate measurement of the moisture content of the gas stream to be a critical operating parameter for this system. See Item 15 above for the Department’s comments on the proposed method for flue gas moisture measurement.</p> <p>The proposed revisions to Tables 6-11 and 7-6 indicate the AWFCOs of 180°F and 80% relative humidity. See the Department response to Item 7 above for a discussion of the AWFCOs (“The Permittee must not operate the carbon PAS filter system beyond 160°F and 39% relative humidity without sufficient supporting data.”).</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>The proposed revision to Table 7-5 in Module VII on page 270 indicates that Item No. 41 (temperature) has an indicated instrument range (95°F to 300°F) that is outside of the predicted "expected" flue temperature range (50°F to 130°F). If the Permittee adequately supports the 160°F operating temperature (See Item 7 above) the "expected" high temperature on Table 7-5 must be modified.</p>
18.		Proposed UMCDF Permit page 281	<p>Original NOD comment by the Department :</p> <p>"DUN: The moisture content is programmed to indicate signal from MIT-422A or MIT-422B or average of the two measurements. (Both shall be included.)"</p> <p>Permittee response to the NOD comment:</p> <p>"In accordance with Note 13 on Piping and Instrumentation Diagram UM-5-D-508, the moisture content is programmed to indicate signals from MIT-422A or MIT-422B or average of two measurements. Therefore, Item Number DUN-23 on Table 6-15 (page 208 of 290 of the Permit), Item Number 29 on page 278 of 290 in Module VII of the permit and Item Number DUN-23 on Table 7-8 (page 281 of 290 in Module VII of the permit) were modified to maintain consistency with the drawing."</p> <p>Department response: This item has not been fully addressed.</p> <p>The Department considers the accurate measurement of the moisture content of the gas stream to be a critical operating parameter for this system. See Item 15 above for the Department's comments on the proposed method for flue gas moisture measurement.</p> <p>The proposed revisions to Tables 6-15 and 7-8 indicate the AWFCOs of 180°F and 80% relative humidity. See the Department response to Item 7 above for a discussion of the</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>AWFCOs (“The Permittee must not operate the carbon PAS filter system beyond 160°F and 39% relative humidity without sufficient supporting data.”).</p> <p>The proposed revision to Table 7-7 in Module VII on page 278 indicates that Item No. 28 (temperature) has an indicated instrument range (95°F to 300°F) that is outside of the predicted “expected” flue temperature range (50°F to 130°F). If the Permittee adequately supports the 160°F operating temperature (See Item 7 above) the “expected” high temperature on Table 7-7 must be modified.</p>
19.	None	Section B-1, Figures B-1-3, B-2, and C-1	<i>This item was sufficiently addressed in the Response to the NOD.</i>
20.	Typographical	Table of Contents, Page 31, List of Attachments	<i>This item was sufficiently addressed in the Response to the NOD.</i>
21.	Typographical	Table of Contents, Page IX, List of Attachments	<i>This item was sufficiently addressed in the Response to the NOD.</i>
22.	None	Section D-1, D-2, D-3, and D-4	<i>This item was sufficiently addressed in the Response to the NOD.</i>
23.	None	Pages D-5-26, D-6-27, and D-7-27	<i>This item was sufficiently addressed in the Response to the NOD.</i>
24.	N/A	N/A	<i>This item number was not used in the April 23, 1998 NOD.</i>
25.	40 CFR	Section D-5, Page	<i>This item was sufficiently addressed in the Response to the NOD.</i>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
	§270.30(h)	D-5-28	
26.	40 CFR §270.32(b)(2)	Section D-5, Page D-5-23, line 30; Page D-6-23, line 39; and Page D-7-24, line 33	<p>Original NOD comment by the Department :</p> <p>“During testing and normal operations, if the reheat system is bypassed there will be a tendency to operate the filter units at undesirable conditions and moisture may clog the filter units disrupting the normal operation of the filter units. Therefore, the Permittee will add a line stating the gas reheat system will not be bypassed.”</p> <p>Permittee response to the NOD comment:</p> <p>“Condition VI.A.5.ii of Module VI of the UMCDF Hazardous Waste Permit requires the Trial Burn Plans for each incinerator be resubmitted as a permit modification at least 180 days prior to the start date of the shakedown period for each Trial Burn. Since the sections referenced pertain to the Trial Burn operating conditions, the Permittee is proposing to address the issue of bypassing the carbon filter units during undesirable conditions upon the resubmittal of the specific Trial Burn Plans for the DFS, LICs, and MPF.</p> <p>Department response: This item has not been fully addressed.</p> <p>The Department notes that Permit Condition VI.A.5 does require the re-submittal of Trial Burn Plans at least 180 days prior to a shakedown period. This item can be re-addressed in the revised Trial Burn Plan at that time, but the Permittee should note that testing for determination of compliance with emission limits and operating efficiency (i.e., DRE) must be conducted upstream of the carbon filter system. See Department response to Item 3 above for further discussion of testing concerns.</p>
27.	Typographical	Section D-5, Page D-5-36	This item was sufficiently addressed in the Response to the NOD.

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
28.	40 CFR§270.30(h)	Section D-6, Page D-6-29	<p><i>This item was sufficiently addressed, however,</i></p> <p>For clarity, the permit application language should be consistent with other areas of permit as to the how the flue gas flows through the carbon filter unit (in parallel, or series, or a combination) and consistent use of the terms “charcoal”, “carbon bed”, “carbon bank”, “carbon filter”, and “filter unit”. See Department Comments on Item 11 above.</p>
29.	Typographical	Section D-6, Page D-6-38	<p><i>This item was sufficiently addressed in the Response to the NOD.</i></p>
30.	40 CFR §270.30(h)	Section D-7, Page D-7-30	<p><i>This item was sufficiently addressed, however,</i></p> <p>For clarity, the permit language should be consistent with other areas of permit as to the how the flue gas flows through the carbon filter unit (in parallel, or series, or a combination) and consistent use of the terms “charcoal”, “carbon bed”, “carbon bank”, “carbon filter”, and “filter unit” (See Department Comments on Item 11 above).</p>
31.	40 CFR §270.30(h)	Section D-8, Page D-8-24	<p><i>This item was sufficiently addressed, however,</i></p> <p>For clarity, the permit language should be consistent with other areas of permit as to the how the flue gas flows through the carbon filter unit (in parallel, or series, or a combination) and consistent use of the terms “charcoal”, “carbon bed”, “carbon bank”, “carbon filter”, and “filter unit”. See Department Comments on Item 11 above.</p>
32.	40 CFR §270.30(h)	Section D-8, Page D-6-34 (sic) (should be Page D-8-34)	<p><i>This item was sufficiently addressed, however,</i></p> <p>For clarity, the permit language should be consistent with other areas of permit as to the how the flue gas flows through the carbon filter unit (in parallel, or series, or a combination) and consistent use of the terms “charcoal”, “carbon bed”, “carbon bank”, “carbon filter”, and “filter unit”. See Department Comments on Item 11 above.</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
33.		Section D-9 and Section on Drawings	<i>This item was sufficiently addressed in the Response to the NOD.</i>
34.	OAR 340-101-033, 40 CFR§260.22	Section D-4B-01, Page 1-5	<i>This item was sufficiently addressed in the Response to the NOD.</i>
35.	40 CFR§124.3	Section D-4B-01, Page 2-2	<i>This item was sufficiently addressed in the August 5, 1998 PMCD Letter, PMU-980666.</i>
36.	40 CFR§270.30(h)	Section D-4B-01, Page 2-3	<i>This item was sufficiently addressed in the August 5, 1998 PMCD Letter, PMU-980666</i>
37.	40 CFR §270.32(b)(2)	Section D-4B-01, Page 2-3	<i>This item was sufficiently addressed in the Response to the NOD.</i>
38.	40 CFR§270.30(h)	Section D-4B-01, Page 2-25, Page 2-26	<p>Original NOD comment by the Department :</p> <p>“On page 2-25 and Table 2-9, page 2-26, the lining material for these tanks has been changed to “Teflon FEP or PVDF” from “modified epoxy for 200°F.” The modification/TA request shall be amended by the Permittee to describe and support this change (i.e., compatibility information of new material for waste to be stored, etc.).”</p> <p>Permittee response to the NOD comment:</p> <p>“The operating temperature on the Brine Surge Tanks had to be increased from 60°F to 180°F to prevent salt precipitation. Subsequently, the design temperature of the tank metal was increased to 360°F (the tank is heated with a steam jackets at 358°F). The lining</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>material was changed from “modified epoxy” to “Teflon FEP or PVDF” to accommodate the new design metal temperature. Teflon FEP or PVDF is compatible with the waste to be stored in the Brine Surge Tanks.</p> <p>“The Engineering Change Proposal (ECP) that was issued to accommodate these design changes was UMAC111BRA and was reviewed with the Department of Environmental Quality representatives on March 26, 1998. Upon review of the ECP, the DEQ concurred that this change would require a permit modification at a later date. The Permittee will submit a permit modification for this change under a separate cover letter. Specification 13202 (Tank Vessels) in the UMCDF Hazardous Waste Permit Application will also be modified to incorporate this design change.”</p> <p><i>Department response: This item was sufficiently addressed in the Response to NOD only as it applies to the PFS tank system.</i></p> <p>For the purposes of this Class 2 Modification Request the Department reviewed the August 1, 1998 submittal only for the modifications made specifically to the PFS tank system components.</p> <p>The Department will conduct a complete RCRA assessment of the tank modification when received.</p>
39.	40 CFR §270.32(b)(2)	Section D-4B-01, Table 2-13, Page 2-35	<p>Original NOD comment by the Department :</p> <p>“The thickness requirement has changed from a “Specified “ thickness of 3/8-inch to a “Recommended” thickness of 3/8-inch. This change is not acceptable by the Department. The change in the specification would allow the contractor to choose a different shell thickness for this tank, jeopardizing the integrity of the tank system. The Permittee shall</p>

Item No. ¹	Regulatory Citation	Application and/or Permit Reference	Department Comment
			<p>restore the term "specified". A change in the tank shell thickness will require the Permittee to provide a modification request specifying and justifying the amended thickness which could also be reviewed as inconsistent with Data Sheet Document Number PAS-UM-23-D-1, Section D-4B-03, page 13202-9, that specifies a minimum shell thickness of 3/8-inch.</p> <p><i>Permittee response to the NOD comment:</i></p> <p>"Table 2-3 on page 2-35 of the UMCDF RCRA Tank Assessment will be modified to restore the original language. The "Recommended" shell thickness of 3/8-inch has been changed to "Specified" shell thickness of 3/8-inch for the Liquid Waste Holding Tank.</p> <p>"As mentioned in the response to item No. 1, the Permittee is currently reviewing the proposed changes to the RCRA Tank Assessment submitted in the Class 2 Permit Modification request and will provide a technical justification for each proposed change. Upon completion of the review the Amy will submit a list of the changes proposed to the RCRA Tank Assessment and provide an updated RCRA Tank Assessment (i.e., Section D-4B-01) no later than July 31, 1998. Therefore the Tank assessment will incorporate the comment provided for this item."</p> <p><i>Department response: This item has not been fully addressed.</i></p> <p>On Table 2-13 on page 2-35 under the Tank System Description a calculated shell thickness is listed as "TBD." The Permittee shall calculate a shell thickness and list the calculated shell thickness on this table.</p> <p>The Department is aware that a tank modification is forthcoming.</p>

The following comments are new comments from the Department—the Item Numbers are unrelated to the April 23 NOD.

Item No.	Application and/or Permit Reference	Department Comment
40.	Specification 15160, Section D-4B-19	Line size changes are indicated, but are not specified. The Permittee shall list the line size changes and their location.
41.	Section D, Page D-5-55, Table D-5-6	The previously listed clean-liquor system piping was epoxy-coated, the new clean liquor lines are shown as carbon steel. The Permittee shall demonstrate that carbon steel pipe is equivalent to an epoxy-coated line for this application or specify this line as epoxy coated.
42.	Section D, Page D-6-19	Provide clarification on the increased horsepower rating on this pump.
43.	Supplemental item 4, Page 6	<p>The Permittee shall define carbon breakthrough.</p> <p>The Permittee shall indicate how and where carbon breakthrough will be measured (location, type, and number of measuring devices). (See Department comments on Item No. 11 above).</p> <p>The Permittee shall indicate how the “spent/loaded” carbon will be tested for agent loading and how the agent loading will be quantified.</p>
44.	Specification Section, Figure 2, Page 15828-7	<p>The Permittee shall indicate how are fugitive emissions will be captured from the vent and drain on the clean-liquor air-coolers. Are the drain lines double contained? Do the vent lines vent straight to atmosphere? Is there a set pressure at which the vents will open?</p> <p>The elevation view of Figure 1 “General Arrangement, PFS Clean Liquor Air Cooler” on page 15828-6 show the vent and drain of the clean liquor air coolers as venting or draining to atmosphere.</p>
45.	Specification Section, Page 15987-19	Sufficient data have been supplied for justification to operate the carbon PAS filters at a temperature of 160°F and 39% relative humidity. Justification has not been provided to operate the carbon PAS filters at

Item No.	Application and/or Permit Reference	Department Comment
		the AWFCO set points of 180°F and 80% relative humidity. The Permittee must not operate the carbon PAS filter system beyond 160°F and 39% relative humidity without sufficient supporting data. (See Department comments on Item 7 above).
46.	Supplemental package, Page 3-11, Section 3.2 First Paragraph	<p>For clarity and consistency the Permittee shall add a description of how the flue gas will flow through the carbon filter unit (in parallel, or series, or a combination) and how the flue gas flow will be equally diverted to each carbon bank.</p> <p>The permit modification request inconsistently uses the terms “charcoal”, “carbon bed,” carbon bank,” “carbon filter,” “filter unit,” and “filter bank.” Clarification of each term, and consistent use of a given term, will facilitate review of future submittals (See Department Comments on Item 11 above).</p> <p>The Permittee shall add a description clarify the number of filters as five, six or seven</p> <p>Five = particulate+ hepa+ {carbon [one bed] + carbon [one bed]}+ hepa), or six=particulate+ hepa+ carbon bank (2 beds), carbon bank, carbon bank, hepa) or seven (particulate, hepa, carbon bank (2 beds), carbon bank, carbon bank, carbon bank, hepa)</p> <p>(See Department Comments on Item Nos. 28, 30, & 31.)</p>
47.	Specification Section, Page 15987-19 (CC0008) Data Sheet 1 Design Criteria	The specified outdoors-maximum summer temperature of 100°F is low. Summer outdoor temperatures regularly exceed 100°F at Umatilla. The efficiency of the PFS could be compromised. The Permittee should demonstrate that the clean-liquor-coolers are capable of cooling the clean-liquor to 120°F in temperatures in excess of 100°F.



DEPARTMENT OF THE ARMY
PROGRAM MANAGER FOR CHEMICAL DEMILITARIZATION
ABERDEEN PROVING GROUND, MARYLAND 21010-5401

98-0584
700

18 August 1998

Project Manager
for Chemical Stockpile Disposal

PMU - 980709

SUBJECT: Decision Being Pursued to Remove the Dunnage Incinerator (DUN) from the Umatilla Chemical Agent Disposal Facility (UMCDF) Scope

Mr. Wayne Thomas
Program Manager, UMCDF
Oregon Department of Environmental Quality
256 East Hurlburt
Hermiston, OR 97838

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

11 25 1998

Dear Mr. Thomas:

HERMISTON OFFICE

Notification is provided that the U.S. Department of the Army, Program Manager for Chemical Demilitarization (PMCD) is pursuing a decision to remove the DUN from the UMCDF scope. PMCD believes, based on experience at other chemical demilitarization facilities and estimated waste processing requirements for the DUN, an improved method for meeting these requirements can be utilized at the UMCDF.

In order to proceed with making this decision, PMCD intends to utilize the Change Management Process (CMP) to solicit public input concerning this decision. PMCD is completing the necessary studies and activities required by the CMP process. These include updates to the Health Risk Assessment and Quantitative Risk Assessment.

Currently, efforts are on hold with regard to procurement of the DUN and design efforts are underway to provide for DUN the removal. Implementation of efforts beyond design will be made in accordance with regulatory requirements and will not be undertaken until after a decision has been finalized.

PMCD looks forward to working with the Department of Environmental Quality in proceeding with the decision process and the required regulatory actions to implement the decision, if so decided.

Mr. Wayne C. Thomas
18 August 1998
Page 2
PMU-980709

If you have any questions, please call my point of contact, Mr. Wendell Wrzesinski at (541) 564-7053.



Martin A. Jacoby
Lieutenant Colonel, USA
Commander
*CERTIFICATION STATEMENT

Sincerely,



Raj K. Malhotra, P.E.
UMCDF Site Project Manager
*CERTIFICATION STATEMENT

CF:
Mr. B. McKnight (DEQ-Bend)
Ms. K. Massimino (EPA)
Mr. J. Michael (EPA Headquarters)

*I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHER AND EVALUATE THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

FILE

98-0606 10



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region

Hermiston Office

256 E Hurlburt

Hermiston, OR 97838

Phone: (541) 567-8297

FAX: (541) 567-4741

TTY: (503) 229-6993

August 27, 1998

Lieutenant Colonel Martin A. Jacoby
Commander
Umatilla Chemical Depot
Hermiston, OR 97838-9544

Mr. Raj Malhotra
Project Manager for UMCDF
78080 Ordnance Road
Hermiston, OR 97838-9544

Re: Dunnage Incinerator
Umatilla Chemical Disposal Facility
DEQ Item No. 98-0606

Dear LTC Jacoby and Mr. Malhotra:

The Department of Environmental Quality (DEQ) acknowledges receipt on August 20, 1998 of your letter providing notification that the U.S. Army Program Manager for Chemical Demilitarization (PMCD) is pursuing a decision to remove the Dunnage Incinerator (DUN) from the permitted facility design. The Department understands that the Army will utilize the Change Management Process to solicit public input in October 1998 concerning the decision to delete the DUN.

The Army's recommendation to proceed with a decision to delete the DUN from the approved permitted design is a very significant decision. This decision will require a Class 3 permit modification with review and approval by the Environmental Quality Commission. The Department is currently evaluating the regulatory requirements to allow the Army to proceed with this decision; however, it is difficult to fully assess the requirements until we have more information from the Army. Therefore, the Department requests that within 30 days the Permittee provide a comprehensive briefing on the proposed decision. At a minimum, the briefing must address the following issues:

- Potential effects on the Health Risk Assessment Analysis and Quantitative Risk Analysis
- Management of Secondary Waste Streams currently targeted for the DUN
- Campaign schedule

I have designated Sue Oliver as the Department lead person for this complex regulatory and technical issue. If you have any questions please contact Sue Oliver in the Hermiston Office at (541) 567-8297, Ext. 26.

Sincerely,

Wayne C. Thomas
Program Manager
Umatilla Chemical Disposal Program

MEMORANDUM – DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE: August 7, 1998

TO: Environmental Quality Commission

FROM: Stephanie Hallock, Administrator, Eastern Region

RE: Followup to Question from Commissioner Eden on Umatilla Chemical Depot Carbon PAS Filter permit modification

Attached is a copy of the permit condition regarding the PAS Carbon Filter Unit. The condition was expressly written so that **removal** of any component of the PAS filter system would need to be approved by the EQC. It was not anticipated, however, that every proposed modification to that system would require EQC approval.

Also attached are three pages of the transcript from the June, 1997 EQC meeting at which the upcoming proposed modification to the PAS system was briefly raised by Brett McKnight. Brett did state that the modification would be a Department, not EQC action, but since there is no EQC response in the record, it is not clear whether all of the EQC members understood the distinction and were comfortable with it.

Brett did speak with Henry Lorenzen prior to that June, 1997 EQC meeting and explain the PAS modification. Henry's instruction to Brett was to make the EQC aware of it at the meeting, and if there were no objections to proceed.

Clearly, now that we have a new Commission and a new project manager for Umatilla, we need to be sure that we provide information to the Commission in whatever manner it wishes, and we intend to discuss this with you at the September meeting.

Cc: Langdon Marsh
Brett McKnight
Wayne Thomas

II.R. PAS CARBON FILTER UNIT

The Permittee shall build and operate the Pollution Abatement System (PAS)/PAS Filter Systems for each incinerator in accordance with the appropriate drawings of Volume 5, Attachment D-3 and Volume VII of the application, Sections D-5B-02, D-5B-07, D-6B-02, D-6B-04, D-7B-02, D-7B-05, D-8B-02, D-8B-04, and D-8B-05. Removal of any component of the PAS Filter Systems, including but not limited to, the quench tower, venturi scrubber, packed scrubber tower, demister, or carbon filter system shall be a Class 3 permit modification and shall require Commission approval.

Modifications other than removal were not anticipated to require EOC approval.

June, 1997 EQC

1 Mr. Marsh: Commissioner Van Vliet?

2 Comm. Van Vliet: Yes.

3 Mr. Marsh: Commissioner Whipple?

4 Comm. Whipple: Yes.

5 Mr. Marsh: Commissioner Eden?

6 Comm. Eden: Aye.

7 Mr. Marsh: Chair Lorenzen?

8 Chairman: Aye. Petition for reconsideration is denied. Thank you very much for
9 your presentations. And I might say, just for the record, I know these
10 things -- we are viewed often as a dispassionate board which many
11 respects it is our duty to be, but I can tell you I personally have a great
12 deal of interest in this issue since I live downwind of it as well, and my
13 family lives downwind and my farm is downwind and believe me, I will
14 continue to watch this with a careful eye as well, and I will be -- I will
15 haunt people at these proceedings if things start to go awry. But I
16 believe sincerely that the most important thing for us in our region is to
17 be able to rid ourselves of the storage of these chemicals as quickly as
18 we can and that this should be done in a very safe manner and that's
19 why I've -- I have voted the way I have to go forward with incineration
20 and destruction of these weapons in this manner. I am not a fan of
21 incineration. I don't like it. I agree to a large extent to many of the
22 ideas propounded by Dr. O'Brien and others relating to the dangers of
23 dioxin, but we are in the business of balancing risk in every day life
24 and, in my mind, the balance comes out in favor of moving forward.
25 For whatever help that may be, that is an insight into my perspective on
26 why I continue to vote as I have. Thank you very much.

Brett McKnight
↓

1 Unidentified: Mr. Chairman, just to remind you, I had two informational items that I
2 wanted to quickly update the Commission on and they are related to
3 this issue in a sense. The first one has to do with the carbon filters we
4 have talked about in here already, but what I wanted to share with the
5 Commission is that we have had discussions with the Army on
6 modifications to the carbon filter design and I wanted to share with the
7 Commission that the modifications that the Army is proposing are
8 enhancement and in making the unit more efficient. They involve such
9 things as deeper bed configuration with the carbon bed will actually be
10 thicker, streamlined. Some of the gas free conditions in making the
11 unit more simplified and also looking at the condensate recovery
12 portion of the carbon filter, the gas stream prior to entering the carbon
13 filter. These modifications, because the Department views them as
14 enhancement in improving the efficiency of the system, we're
15 proceeding with Departmental as -- Department approved
16 modifications, but I wanted to take the time to update the Commission
17 that it is not a modification to remove the unit but actually enhance it.
18 I just wanted to share that with the Commission.

19 The second item has to do with the co-permittee modification of
20 adding Raytheon to the permit. That application has been submitted to
21 the Department. We've had an opportunity to review the request and
22 have found it to be incomplete and are requiring additional information
23 in some areas of the application and have submitted a notice of
24 deficiency back to the applicant and the Army asking them to respond
25 to the information that we requested in the -- in our notice of
26 deficiency. But again, for the Commission's information, we have

1 (Unidentified): received the request and we are in the process of proceeding with
2 reviewing that, and as soon as we have complete documents we will be
3 coming back to the Commission at a later date for a ^{per} ~~permanent~~ mod to
4 add Raytheon and that will require Commission approval, so --

5 Chairman: Okay.

6 Unidentified: Question; when is the additional information due?

7 Unidentified: The notice of the carbon filter unit or --

8 Unidentified: No, I'm sorry, on the modification adding the co-permittee?

9 Unidentified: We gave them a 60 day turn around for submitting the information
10 back to us. That letter went out, I think, May 22nd. Excuse me, May
11 12.

12 Chairman: One thing I might alert the Commission members to; Brett and I have
13 been discussing this to some extent and that is the issue of the identity
14 of the permittee, and while it's often referred to as Raytheon, it is my
15 understanding it is a subsidiary of Raytheon and that Raytheon, in that
16 there's a potential for liability being limited to this particular subsidiary,
17 these are the same types of issues we faced in issuing permits relating
18 to Heap Leach Mining operations and often the application is made in
19 the name of a subsidiary. Mr. McKnight is particularly sensitive to this
20 issue and is analyzing this in terms of what type of liability or bonding
21 should be assumed in conjunction with the operation given the fact that
22 it is a subsidiary that is making the application. Okay.

23 Unidentified: Thank you very much.

24 Chairman: Yes, we are finished now. Thank you.

25 END OF PARTIAL TRANSCRIPT

26

Department of Environmental Quality

Memorandum

DATE: September 16, 1998

TO: EQC Commissioners

FROM: Langdon Marsh



Director's Report

Portland Harbor Sediments

Agency activities continue to increase on two fronts as we deal with contaminated sediment concerns both in Portland Harbor and at Ross Island. We are working closely with the Port of Portland, other interested parties and the Governor's office to develop effective short and long-term strategies. At issue now with Portland Harbor is settling on the best approach to deal with contaminants there. Based on sediment sample findings, portions or all of the harbor area could qualify for EPA listing on the National Priorities List (otherwise known as the Superfund list). We have discussed this with EPA and made clear that Oregon prefers to handle the situation at the state level, and is capable of doing so.

Contaminated sediment disposal at Ross Island has been an issue for more than a year. Over the last month, we have made considerable progress on strategies to address Ross Island concerns. In addition, we are also developing longer-range approaches to contaminated sediment disposal in the lower Willamette and statewide. A fact sheet on Portland Harbor is attached.

Clean Air Action Days

It was a hot summer in the Portland area with 8 Clean Air Action Days, but according to the Air Quality Programs preliminary review of the ozone monitoring data, the Portland area is currently in compliance with the new 8-hour ozone standard.

To attain the 8-hour, 0.08 parts per million (ppm) standard, the 3-year average of the fourth-highest daily maximum 8-hour average of continuous ambient air monitoring data over each year must not exceed 0.08 ppm. The new standard measures a lower level of ozone, over a longer period of time. With the rounding convention it means the 3-year average would need to be 0.085 or more to be out of compliance. We did have three days with exceedences during the summer. This summer the fourth-highest maximum 8-hour average was 0.082. In 1997 it was 0.063. The Air program is reviewing whether the contingency trigger in the Portland airshed plan, which is based on the former 1-hour average standard, is still appropriate for the new standard.

The Portland Metropolitan area Vehicle Inspection Program has completed construction of new Clackamas, Sunset, Sherwood, Northwest and Gresham stations which can accommodate the new enhanced test. The Department is still looking for a location for a new Northwest station.

Medford-Ashland Ozone Levels up

Preliminary data indicates Medford may have had five exceedences of the new 8-hour ozone standard for the summer. Although the data will not be finalized for a couple of months, and could change, the preliminary numbers signal a concern. Since 1988, Medford has had only one exceedence of the old one-hour standard for ozone. Because the new standard is computed on a three-year rolling average, the implications of the data will not be known for another year or two. In addition, the three-year average uses the fourth highest value for the year in the rolling average. Even if the finalized data shows the same number of exceedences, the area will not go into a non-attainment status this year, because when

averaged with the previous two years, Medford's air quality is still with in the ozone standard. DEQ staff will be analyzing weather data to try to determine the cause of this year's elevated ozone levels. Staff will discuss the findings with the Medford-Ashland Air Quality Advisory Committee at its next meeting.

Columbia Slough TMDL soon to be submitted to EPA

The Columbia Slough TMDL is being routed to the Director for signoff and delivery to USEPA this week. The USEPA review of the draft TMDL suggests it will be approvable and adequate for delisting the slough from Oregon's 303(d) list of impaired waters.

Port of Portland, co-permittee airlines and the Air National Guard de-icing permit is out for applicant review. DEQ plans to have final draft ready for public review within two weeks.

Orders signed for Coos Bay area cleanups

Two contaminated shipyard sites in Coos Bay have agreed to clean up their sites. Southern Oregon Marine and the Oregon International Port of Coos Bay have signed consent orders with DEQ. The two companies have each agreed to investigate the extent of contamination in on-shore, tidal and off-shore areas, remove or contain contaminated soil and sediment, and take measures necessary to ensure the future protection of human health and the environment.

Previous studies completed by DEQ and the US Environmental Protection Agency have found that ship maintenance and repair operations at the Southern Oregon Marine facility and the Port's Charleston Boatyard have resulted in contamination of the sites with metals, organotins and petroleum-related chemicals. The signed orders include specific steps to be completed by SOMAR and the Port to identify appropriate cleanup actions at the sites. The orders also have enforceable schedules with stipulated penalties for non-performance. The orders for both sites require that an initial evaluation of the contamination be completed before the end of the 1998 calendar year.

As part of a separate action, DEQ has begun work at a third shipyard site in the Coos Bay area. The former Mid-Coast Marine site was declared an "orphan" site by DEQ. So far, DEQ has fenced the site to prevent trespassing and removed several truckloads of hazardous materials left on the property. During the next phase of the site work, DEQ will evaluate the extent of the contamination in site soil and sediments. DEQ is working to ensure coordination with the Division of State Lands, which oversees tidal lands, and to make sure that the property's neighbors are kept well informed of cleanup activities.

Outstanding Resource Waters

In January, the EQC received a petition for rule making by several environmental groups proposing Outstanding Resource Water designation under Oregon's water quality standards and antidegradation provisions. The petition was withdrawn since DEQ had not completed development of "screening criteria" from an earlier process initiated in the early 1990's.

Second, the National Marine Fisheries Services requested DEQ to evaluate the potential of designation as ORW "core areas", which are highly critical coho salmon habitat areas.

The Department has formed a work group to help develop the screening criteria. Several major issues have surfaced from those discussions including whether an ORS waterbody could also be on the 303(d) list, with the ultimate ramifications of ORW designation are to land owners and dischargers, and fundamentally, whether ORW is the appropriate tool to protect coho core areas. The Department is concluding the discussions with the work group and plans on providing a report to the EQC at the December meeting.

Western Region to Implement Geographic Approach in Southern Oregon Project

Over the next two years, Western Region will focus a multi-program effort on the Calapooya and Sutherlin Creek sub-basins. Both of these water-quality limited sub-basins flow into the Umpqua River, which has been designated one of the three highest priority basins in the state for Coastal Salmon restoration efforts by the Governor.

Western Region already has a Water Quality Basin Team for the Umpqua, and the EPOC (Environmental Partners for Oregon Communities) program is working with the City of Oakland. The region's Hazardous Waste Program, following its success in the A-3 Channel in Eugene, will expand upon that experience and focus on the Calapooya-Sutherlin sub-basin.

Both sub-basins are listed as water-quality limited. A project team has been established, including staff from Water Quality, EPOC, Hazardous Waste, Tanks, On-Site, Cleanup, Umpqua Basin and Public Affairs. The team will document baseline data and work together to balance technical assistance with regulatory work.

Willamette River Restoration Initiative

The Governor announced yesterday the establishment of a Willamette Restoration Initiative Board. The Board will lead the Willamette River Initiative, a public/private partnership tasked with carrying out the work identified by the Willamette Basin Task Force needed to improve and protect the river's health. Oregon State University President Paul Risser will chair the effort. Lang Marsh is the State Agency's representative on the Board.

Outstanding work by DEQ Staff

Steve Masuo, of DEQ's information systems staff, noticed that our line printer used for printing of labels and certificates used replaceable ribbon, which had to be replaced frequently. Steve did some research and found a ribbon inker for about \$69. We now use it and haven't had to replace ribbons within the last two years. We normally would have done so more than twenty times. The Department will save \$285 every year because of Steve's suggestion.

Three other individuals were recognized by DEQ management at their quarterly meeting in September:

Jeff Ingalls from Eastern Region for his outstanding efforts as ER's only hazardous waste compliance inspector, and his initiative in integrating technical assistance into compliance visits.

Steve Crane from Western Region for his achievements to improve Oregon's Air Quality by conducting the Field Burning Program from 1988 through 1997, and for his contribution in the successful enactment of legislation to reduce the annual acreage burned from over 250,000 acres to the 40,000 acres annual cap now in place.

Ann Levine from Northwest Region for her leadership in the protection of public health and the environment on the Columbia Slough Sediment Remediation Project.

Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Seventy-First Meeting

**September 17, 1998
Regular Meeting**

The Environmental Quality Commission convened its regular meeting at 8:30 a.m. on Thursday, September 17, 1998, at the Department of Environmental Quality Headquarters, 811 SW Sixth, Portland, Oregon. The following members were present:

Carol Whipple, Chair
Tony Van Vliet, Member
Mark Reeve, Member

Also present were Larry Edelman, Shelley McIntyre 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.

Chair Whipple called the meeting to order. The following items were addressed:

A. Approval of Minutes

Commissioner Reeve made the following correction to the August 6-7, 1998 minutes: on page 2, Item C, a line should be added to the end to read "Commissioner Eden requested that no modification to the specific conditions made to the permit by the Commission be granted without the EQC being briefed." A motion was made by Commissioner Van Vliet to accept the minutes as amended. Commissioner Reeve seconded the motion and it carried with three "yes" votes.

B. Approval of Tax Credits

Approvals

Maggie Vandehey, Tax Credit Coordinator, presented tax credits for approval as represented in Attachment B of Agenda Item B with the following two exceptions.

1. The facility cost presented in Portland General Electric Company's (PGE) application 4879 was corrected to \$80,378 as shown in an Addendum. It had erroneously been represented as \$71,416 in Agenda Item B.
2. Willamette Industries requested application 4792 be removed from consideration for approval at this Commission meeting. They expressed their intention to address the Commission in December regarding the exclusion of fire protection and catwalks as part of the cost of the facility.

Approved Applications

App.#	Applicant
4394	Portland General Electric Company
4442	Portland General Electric Company
4454	Portland General Electric Company
4457	PGE See Denials
4459	Portland General Electric Company
4460	Portland General Electric Company
4464	Portland General Electric Company
4465	Portland General Electric Company
4466	Portland General Electric Company
4470	Portland General Electric Company
4471	Portland General Electric Company
4475	Portland General Electric Company
4777	Portland General Electric Company
4797	Portland General Electric Company
4798	Portland General Electric Company
4826	Columbia Steel Casting Co., Inc.
4829	Integrated Device Technology (IDT)
4830	Integrated Device Technology (IDT)
4857	Elf Atochem North America
4879	Portland General Electric Company
4880	Portland General Electric Company
4882	Portland General Electric Company
4883	Portland General Electric Company
4884	Portland General Electric Company
4895	Mitsubishi Silicon America
4896	Mitsubishi Silicon America
4899	Eagle Foundry Company
4911	WWDD Partnership
4916	WWDD Partnership
4918	Neher: Larry & Mary Lou Neher
4937	Don Rhyne Painting Co.
4941	Oregon Brewing Company
4968	Nosler, Inc.
4969	Denton Plastics, Inc.

4973	Portland General Electric Company
4974	Portland General Electric Company
4992	Pioneer Truck Equipment, Inc.
4997	Denton Plastics, Inc.
5000	Portland General Electric Company
5008	Portland General Electric Company
5010	Neuschwander, Lyle D.
5012	Marx, Carol
5013	Ash Grove Cement Co.
5014	Cruickshank, Kenneth D. & Karen L.
5015	Seiler & Smith, Inc.
5016	Bashaw Land & Seed, Inc.
5017	Bowers, Eric & Vicki
5018	Capitol Recycling & Disposal, Inc.
5019	B & F Drycleaners, Inc.
5023	Capitol Recycling & Disposal, Inc.
5025	United Disposal Service, Inc.
5026	United Disposal Service, Inc.
5027	Corvallis Disposal Co.
5029	United Disposal Service, Inc.
5030	Willamette Industries, Inc.
5031	United Disposal Service, Inc.
5032	Corvallis Disposal Co.
5033	Capitol Recycling & Disposal Co.
5034	Portland General Electric Co.
5037	Roth, Scott
5038	SOLEM, INC.
5039	United Disposal Service, Inc.
5044	Avison Wood Specialties, Inc.
5050	Scheffel Farms Inc.
5051	Scheffel Farms, Inc.
5056	United Disposal Service Inc.

When Chair Whipple asked if drain tiles had been granted tax credits in the past and how drain tiles contribute to the control of air pollution, staff responded that drainage tiles had been granted tax credits as an approved alternative method for field sanitation. Jim Britton, Department of Agriculture, added that drainage tiles allow grass seed growers who have wet soil the ability to control weeds without open field burning.

Commissioner Reeves asked if any investment is eligible under the Reclaimed Plastic as exemplified by the bar code systems printers, computer and scanners presented for approval in Denton Plastics' application 4911. Staff stated most investments made to collect, transport, or process reclaimed plastic or to manufacture a reclaimed plastic product are eligible for a tax credit under the Reclaimed Plastic Tax Credit Rules.

A motion to approve the tax credit applications presented in Attachment B with the exception of applications 4792 and 4879 and application 4879 in the amount of \$80,378 as presented in the Addendum. The motion was seconded by Commissioner Van Vliet and carried with three "yes" votes.

Denials

Staff presented nine applications for denial.

Ed Miska, Manager of Taxes, from PGE addressed the Commission regarding the denial of tax credit applications 4458 and 4463.

Application 4458: Mr. Miska stated PGE's drift eliminator claimed on application 4458 was installed solely as a pollution control facility since it was installed to protect the fish and wildlife habitat from discharging water and concentrated salts. PGE's effort to protect fish, wildlife, wetlands and surrounding vegetation exceeds the standards required by DEQ. Ms. Vandehey indicated the facility was not required by the DEQ or EPA but by the Energy Facility Siting Council for PGE to comply with Condition V.D.1(4).4 of its Approved Site Certificate. The Facility did not prevent, control or reduce a substantial quantity of water pollution. Renato Dulay, Water Quality Division, explained that cooling towers are used to cool down hot water and the drift eliminator reduces the use of fresh water due to evaporative losses and cooling tower blowdown. Therefore, the facility is not used exclusively for the purpose of pollution control and it does not treat industrial waste as required by the tax credit rules.

Mr. Miska did not agree with staff's assessment. The Commission acknowledged that protecting the fish and wildlife habitat is a beneficial environmental goal. Though they expressed empathy for PGE's position, they agreed the facility did not meet the definition of a pollution control facility for the purpose of receiving tax credit certification.

Application 4463: Mr. Miska presented additional written information to the Commission and staff regarding PGE's tax credit application 4463. The continuous monitoring system presented in this application does control the amount of NO_x pollutant emitted from the plant because it is integrated with the chemical (ammonia) injection system claimed on application 4457. The Department recommended the monitoring system be denied a tax credit because it is not an air-cleaning device. Had applications 4463 and 4457 been combined, components of the monitoring system might have been eligible for the tax credit certification. Dave Kauth, Air Quality Division, stated the information presented in the application was not sufficient to determine if any components would have been eligible had the two applications been combined.

Commissioner Eden arrived for the remainder of the meeting.

The Commission asked if the two applications could be combined. Legal Counsel cautioned combining or separating tax credit applications. After discussion, the Commission directed tax credit application 4463 be removed from consideration and brought back to the Commission in December. This would give staff enough time to review the additional information presented by PGE. The Commission also directed staff to explore ways to consider the monitoring system presented in tax credit application 4463 and the air pollution control facility presented in application 4457 in light of the additional information presented by PGE. This entailed reversing the approval of tax credit application 4457 from the list of approved tax credits in Attachment B.

A motion was made by Commissioner Van Vliet to reverse the approval of tax credit application 4457 as presented in Attachment B. The motion was seconded by Commissioner Reeve and carried with four "yes" votes. Commissioner *Van Vliet* made a motion to deny the tax credit applications presented in Attachment C with the exception of application 4463. The motion was seconded by Commissioner Reeve and carried with four "yes" votes.

Denied Applications

Applica	Applicant
4455	Portland General Electric Company
4456	Portland General Electric Company
4462	Portland General Electric Company
4580	Portland General Electric Company
4893	Elf Atochem North America
4458	Portland General Electric Company
4972	Cain Petroleum, Inc.
5011	Herndon, Tom

Revocations

According to ORS 315.304, PGE notified the Department that the facility located at 14655 SW Old Scholls Ferry Road in Beaverton was removed from service in June, 1998. The facility was issued Certificate 3158 on September 10, 1993. Consistent with OAR 468.185 (1)(b), the Department recommended the revocation of the certificate. Commissioner Van Vliet made the motion to revoke Pollution Control Facility Certificate 3158 as presented in Attachment D. The motion was seconded by Commissioner Reeve and carried with four "yes" votes.

Clarification

The Department asked for clarification regarding Mt. Hood Metals' Application 4933. The Commission approved the facility for certification as a pollution control facility on June 11, 1998. However, staff erroneously presented two review reports in the staff report; each with a different facility cost. The applicant and staff understood the correct amount of the facility cost was \$877,644. Commissioner Reeve made the motion to approve the facility cost for tax credit application 4933 in the amount of \$877,644. The motion was seconded by Commissioner Van Vliet and carried with four "yes" votes.

Rejection

Ms. Vandehey indicated Willamette Industries Inc. requested the Department postpone rejection of tax credit application 4800 so they could address the Commission in December. This item was moved to the December meeting.

C. Rule Adoption: Compliance Assurance Monitoring (CAM) and Credible Evidence Rules

Andy Ginsburg, Acting Air Quality Division Administrator, and Sarah Armitage, Title V Compliance Specialist, Air Quality Division, presented this item. This proposal adopts the federal Compliance Assurance Monitoring (CAM) rules verbatim and the Credible Evidence rule by reference.

Commissioner Eden asked why, in OAR 340-28-1200, are standards promulgated after 1990 exempted from CAM requirements. Staff responded that standards promulgated after 1990 would already contain CAM-like provisions because the 1990 Clean Air Act reauthorization initiated the concept of CAM. It is necessary only to apply CAM to the pre-1990 standards.

Commissioner Reeve questioned the meaning of "credible" in the Credible Evidence rule. Specifically, there was concern the language in OAR 340-28-310, allowing "any credible evidence" to be used to establish air quality violations, would set a higher threshold standard for admission of evidence than currently exists. The word "credible" could be redundant and unnecessarily restrictive when applied to evidence of violations. The trier of fact is the one to determine credibility of evidence. It was suggested that "any evidence" may be more appropriate than "any credible evidence".

EPA has not defined "credible" in the Credible Evidence rule. "Credible Evidence" is used by EPA in the NSPS and NESHAPs rules the Department proposed for adoption by reference, and is assumed to be a term of art, not intended to limit the kind of evidence admitted for air quality violations. Based on federal

legislative and rule history, staff understands "Credible Evidence" to be all relevant evidence *other than reference test method data*. Shelley McIntyre, DOJ, will draft a memo to the Commission, explaining the development and meaning of the term "credible" in the Credible Evidence rule. It appears in the penalty determination section of the 1990 amendments to the Clean Air Act, which reversed the limiting decision in Kaiser Steel. The Commission may want to revisit OAR 340-28-310 after reviewing the DOJ's memo on the meaning of "credible."

A motion was made by Commissioner Van Vliet to adopt the rules as proposed by staff. Commissioner Eden seconded the motion and it was carried with four "yes" votes.

D. Rule Adoption: Amendments to Division 22 Reasonably Available Control Technology (RACT) Rules

Andy Ginsburg and Dave Kauth, Senior Permit Consultant, Air Quality Division, presented this item explaining proposed changes and the reason for the rulemaking. Questions were asked regarding the sequence of events leading to this rule making and the difference in the definition for Potential to emit between Divisions 22 and 28. Clarification on the sequence included an explanation that the rule was changed previously to make the definitions in Divisions 22 and 28 consistent, but the change was not approvable as a State Implementation Plan (SIP) amendment. The Department proposed and the Commission adopted an emergency rule in 1997, as part of the Portland Ozone Maintenance Plan, to fix the definition. This proposal makes the changes adopted in the emergency rule permanent. The definition of PTE in division 28 is for determining applicability of Title V. For Title V applicability it is acceptable to include control equipment in the calculation of PTE, but in Division 22, source specific RACT, control equipment can not be included in the PTE calculation. A motion was made by Commissioner Reeve and seconded by Commissioner Van Vliet to adopt the rule changes as an amendment to the Oregon SIP. The motion carried with four "yes" votes.

E. Rule Adoption: Update New Source Performance Standards (NSPS) and Emission Guidelines for Hospital/Medical and Infectious Waste Incinerators

Andy Ginsburg and Kathleen Craig, Environmental Specialist, Air Quality Division, presented the proposed adoption of federal New Source Performance Standards and rules that implement Emission Guidelines for new and existing hospital/medical/infectious waste incinerators. The rule action includes housekeeping items for landfill rules, and incorporates new federal language on credible evidence. No sources are identified at this time that will be affected by proposed rules. A motion was made by Commissioner Van Vliet to adopt this rule package including the housekeeping rules. Commissioner Reeve seconded the motion and it was carried with four "yes" votes.

F. Rule Adoption: Update Existing NESHAP, Adopt New NESHAP Standards and Revise Existing Division 25 Standards

Andy Ginsburg, John Kinney, representing the Air Quality Division, and Raj Kapur representing the Water Quality Division, presented this item. This rulemaking adopts NESHAP standards, and revises those already adopted with updated federal amendments. These standards set emission standards for 188 toxic chemicals and compounds emitted from 173 source categories. The rulemaking also details the Department's implementation of the Pulp and Paper Cluster Rule, 40 CFR Part 63, Subpart S. Also, the existing Primary Aluminum refining regulations in Division 25 have been amended to eliminate conflict and redundancy with the new Division 32 NESHAP standards. Mr. Kinney addressed the Commission's concern on the stringency of regulation after these rule amendments stating there will be no loss in regulatory effectiveness with these new amendments. Regulation of affected source categories, and the degree of reduction in the emission of hazardous air pollutants will increase.

Raj Kapur presented an overview of the cluster rule effluent standards, together with a review of public comments and the Department's response to public comments. In the Department's evaluation, none of the comments received contained new or substantive material that had not been previously considered by

the Commission or EPA. Therefore, the Department will implement the cluster rule effluent standards consistent with EPA's determination that ECF technology represents Best Available Technology.

Item F was interrupted to hear General Public Comment.

Public Comment:

Mike Dubrasich, Corvallis, Oregon, presented public comment asking the Department to revoke the July 28, 1995 site authorization issued to the City of Corvallis to land apply anaerobically digested biosolids. The Commission asked the Department to research the matter and to report back to the Commission.

Item F was resumed.

A motion to adopt the NESHAP standards, Division 25 amendments, and implementation of the cluster rule was made by Commissioner Eden. The motion was seconded by Commissioner Reeve and carried with four "yes" votes.

Public testimony was then taken regarding Item F. Ms. Sue Danver, representing Friends of the Willamette, gave oral testimony at the commission meeting requesting the Department impose totally chlorine free technology standards at affected Oregon sources.

Executive Session:

The EQC held an executive session pursuant to ORS 192.660(1)(h) for the purpose of consulting with legal counsel in regard to pending litigation against the department.

G. Appeal of Hearing's 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 matter came before the Commission on an appeal by the Department. The hearing was originally set for the August, 1998 meeting but the Commission set the matter over for oral arguments at its September meeting. Jeff Bachman represented the Department and the Respondent represented himself.

The Department filed five exceptions to the Hearing Officer's conclusions and opinion as follows:

1. The ruling that the respondent is not liable for any violations until after the Department notified him that the material may contain asbestos. The Department argued this ruling is erroneous for failure to apply the standard of strict liability contained in the statutes. A majority of the Commission concluded the Hearing Officer erred and liability attached when the respondent began the asbestos abatement.
2. The ruling that the base penalty should be reduced to \$1,000 since the violation was not intentional. The Department argued that the magnitude of the violation should be based on the potential environmental or public health harm caused by the violation, not by the respondent's intent. A majority of the Commission finds the respondent's actions were intentional, as the term is used in OAR 340-012-0045. In spite of that finding, the majority of the Commission agreed it would not exercise its discretion to increase the magnitude of the violation based on the percentage of asbestos contained in the removed material and the base penalty will remain \$1,000.
3. The ruling that the occurrence factor in the base penalty should be zero since the violations only occurred on one day. The Commission was unable to reach consensus and the Hearing Officer's decision will stand on this issue.
4. The ruling that the causation factor in the base penalty should be reduced to 2 since the respondent was at most negligent. The Department argued that only a general intent (i.e. the intent to remove the asbestos containing material) is required and not the specific intent to violate

the asbestos regulations. The majority of the Commission agreed with the Department and the factor is 6.

5. The ruling that the cooperativeness factor in the base penalty should be -2 since the respondent was cooperative after he knew the materials were asbestos containing. The Department argues the correct value should be zero since the respondent was neither wholly cooperative or uncooperative. The Commission was unable to reach agreement on this issue and therefore the decision of the Hearing Officer's decision will stand on this issue.

Commissioner Eden made a motion encompassing the above exceptions and ordering the respondent to pay a civil penalty in the amount of \$1,400 based on the following formulation:

$$\text{Penalty} = \text{BP} + [(.1 \times \text{BP})(\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB}$$

where BP = 1000

P = 0

H = 0

O = 0

R = 6

C = -2

EB = 0

The motion was seconded by Commissioner Reeve and a roll call vote was taken; Chair Whipple, yes; Commissioner Van Vliet, no; Commissioner Reeve, yes; and Commissioner Eden, yes. The motion was carried with three "yes" votes. The Commission asked legal counsel to draft an opinion and order that they could review and approve at the next Commission meeting.

H. Petition for Reconsideration of Certification #98-002 and #98-032

On August 10, 1998 the Oregon Natural Desert Association filed a petition for reconsideration with the Commission regarding several section 401 certifications that were issued for the Hideaway Grazing Allotment. The certificates were issued on June 11, 1998 by the Director of the Department. After reviewing the petition, the Attorney General's office concluded the Commission did not have authority to reconsider the decision for two reasons: (1) the Department's rules do not authorize reconsideration of an order in other than a contested case and (2) the correct body to reconsideration would be the Director since the Director issued the certifications. The commission elected to take no action on the petition and the petition was deemed denied.

I. Update to the Commission on Activities of the Governor's Water Enhancement Board (GWEB)

Roger Woods, Water Quality Division, and Carol Whipple, Chair, EQC, presented this item. Mr. Woods presented the Commission members with an informational packet of information and gave a brief overview of the Governor's Water Enhancement Board (GWEB). The original purpose of the GWEB was a "win-win" option for cooperative partnerships to help solve instream flow problems through watershed restoration and enhancement. The resulting improvement was intended for all beneficial uses and for all users. It has become the catalyst for exploration and experiment for all the public agencies and private interests now involved in the Oregon Plan. GWEB has built a solid reputation based on a moderate, centrist approach and on the hard work and steady participation of the members. It is now the crucial funding vehicle for the Oregon Plan, which is to say for state funding of water quality programs, especially those addressing WQL streams on the 303(d) list. The EQC representative and DEQ staff have always played a leadership role in GWEB. Continued active involvement is crucial.

Chair Whipple indicated she was the current EQC representative to GWEB. Her term as the EQC representative to the GWEB Board will end when she leaves the Commission. It would be beneficial to identify another commissioner to be appointed to Board as soon as possible so they will be in place and knowledgeable by the time Chair Whipple leaves the Commission.

J. Update on the Umatilla Chemical Depot

Stephanie Hallock, Eastern Region Administrator, and Wayne Thomas, Umatilla Program Manager, presented an informational update on the permit status of the Umatilla Program. The Commissioners were provided reports of permit modifications received by the Department and the status of permit conditions required by the Commission. The Department will continue to provide status reports on the general activities of the Umatilla Program. It was decided reports would be sent to the Commissioners quarterly.

The Department also advised the Commission that the Army has proposed deletion of the Dunnage Incinerator. Copies of correspondence from the Army and from the Department to the Army were distributed. The Army has been advised that the proposed change will require review and approval by the EQC.

K. Commissioners' Reports

There were no Commissioner reports.

L. Director's Report

Agency activities continue to increase as we deal with contaminated sediment concerns both in Portland Harbor and at Ross Island. We are working closely with the Port of Portland, other interested parties and the Governor's office to develop effective short and long-term strategies. At issue now with Portland Harbor is settling on the best approach to deal with contaminants there. Based on sediment sample findings, portions or all of the harbor area could qualify for EPA listing on the National Priorities List (otherwise known as the Superfund list). Contaminated sediment disposal at Ross Island has been an issue for more than a year. Over the last month the Department has made considerable progress on strategies to address Ross Island concerns. And have developed longer-range approaches to contaminated sediment disposal in the lower Willamette and statewide.

The Portland area had eight Clean Air Action Days, but according to the Air Quality Programs preliminary review of the ozone monitoring data, the Portland area is currently in compliance with the new 8-hour ozone standard. The Portland area did have three days with exceedances during the summer. The Air program is reviewing whether the contingency trigger in the Portland airshed plan, which is based on the former 1-hour average standard, is still appropriate for the new standard.

The Portland Metropolitan area Vehicle Inspection Program has completed construction of new Clackamas, Sunset, Sherwood, Northwest and Gresham stations which can accommodate the new enhanced test. The Department is still looking for a location for a new Northwest station.

Preliminary data indicates Medford may have had five exceedances of the new 8-hour ozone standard for the summer. The area will not go into a non-attainment status this year, because when averaged with the previous two years, Medford's air quality is still within the ozone standard. DEQ staff will be analyzing weather data to try to determine the cause of this year's elevated ozone levels.

Two contaminated shipyard sites in Coos Bay, Southern Oregon Marine and the Oregon International Port of Coos Bay, have agreed to clean up their sites. The two companies have each agreed to investigate the extent of contamination in on-shore, tidal and off-shore areas, remove or contain contaminated soil and sediment, and take measures necessary to ensure the future protection of human health and the environment. As part of a separate action, DEQ has begun work at a third shipyard site in the Coos Bay area. The former Mid-Coast Marine site was declared an "orphan" site by DEQ. DEQ is working to ensure coordination with the Division of State Lands, which oversees tidal lands, and to make sure that the property's neighbors are kept well informed of cleanup activities.

The Governor announced on September 16 the establishment of a Willamette Restoration Initiative Board. The Board will lead the Willamette River Initiative, a public/private partnership tasked with

carrying out the work identified by the Willamette Basin Task Force needed to improve and protect the river's health. Oregon State University President Paul Risser will chair the effort. Lang Marsh is the State Agency's representative on the Board.

There being no further business, the meeting was adjourned at 4:25 p.m.